

Seed Patents: Proposals for Political Solutions

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ARCHE NOAH – Who we are



Summary of the Problem



- Patents on plant traits are hindering the work of conventional and organic plant breeders, including farmers engaging in breeding activities – contrary to the intention of EU
- What about the EPO “disclaimer”?
 - It does not fix the problem, as it only applies to plants derived exclusively from crossing and selection – it does not extend to the use of naturally occurring genetic variability or random mutagenesis, or the use of markers
 - It is also not consistently applied by the EPO
- Weakening oversight of New GMOs/NGTs will accelerate the problem, as the market will be flooded with patented seeds

Scale of the problem: Tomato patents

Perfection Fresh to slash 'significant number of jobs' amid tomato virus outbreak



By Yashee Sharma | 7:10pm Sep 25, 2024

yahoo!news

Cost of supermarket staple could rise if highly-contagious virus spreads

The devastating virus can cause crop losses of up to 70 per cent, meaning demand could outweigh supply if it is not managed.



Kamilia Palu · News Editor

Updated 31 January 2025 · 4-min read



Virus Outbreak Threatens Morocco's Thriving Tomato Industry

[Moroccan desert tours](#)

In the fields of Morocco, a silent adversary is threatening to wreak havoc on the nation's thriving tomato industry — the Tomato Brown Rough Fruit Virus (ToBRFV).



by mahamadou-simpara — Nov, 09, 2023

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- As the virus spreads, farmers increasingly demand resistant varieties — so patent holders will get a monopoly on the market for tomato seeds
- This is just one example: Overall effect risk to resilience of our seed and food systems
- Policy-makers must act!

What is needed to solve the most urgent problems? Part 1 - Patentability



1. Highest priority amendment proposal to create maximum legal certainty: Clarifying patentability by adding an interpretation in Article 4, paragraph 2 of Directive 98/44/EC - NPOS proposal

"Inventions which concern plants or animals or their genetic material shall **only** be patentable if the genetic material is changed directly and in a targeted way, and to an extent previously not available for breeding, and if the technical feasibility of the invention is not confined to a particular plant or animal variety."

In parallel the clarification should be added to Rule 27 of the Implementing Regulations of the European Patent Convention (EPC).

2. Additional clarifications on patentability would be helpful:

- Codifying the intention to exclude the products of essentially biological processes from patentability, as well as the processes themselves Art. 4, para 1b)
- Keeping AM for Art. 4 para 1d) from the EP position to exclude techniques excluded under 2001/18/EC from patentability

What is needed to solve the most urgent problems? Part 2 - Scope



3. EP amendments on scope for Art. 9: Important safeguards for farmers not working with GMOs

- Amendments limit the scope of patent protection, so it does not extend to genetic information, products and plant material which are „not distinguishable from plant material obtained or which can be obtained by an essentially biological processes“
- May need e.g. an interpretive notice to UPC

4. Limiting the scope in Art. 8 by keeping the EP amendment, with a minor change

Art. 8 3. scope shall not extend to “a) biological material possessing the same characteristics that is *obtained independently of the patented biological material* or from essentially biological processes, or to biological material obtained from such material through propagation or multiplication.”

- Exemption for breeders and farmers working with material from EBP

5. Adding a full breeders’ exemption in Art. 8 as proposed by Metzger/Zech/Kock

- Makes it possible for breeders to work with all plants (including NGTs)
- But: Would need changes in UPC and national law = not a short-term solution

Why is the combination of solutions needed?



Proposals have different strengths and weaknesses – legal certainty could be achieved through a combination both:

- *Clarifying patentability:*
Highest priority, can be fast (just interpretation of current law), but EPO could find new „creative“ interpretation not in line with the legislators' intents sometime in future?
- *Limiting scope* (full breeders' exemption + Changes in Art. 8 + 9 as proposed by EP with minor change):
Can include full breeders' exemption for all NGT plants and increases legal certainty for farmers and breeders working with essentially biological processes. But full breeders' exemption needs changes in UPC/national laws = time we do not have.
Full breeders' exemption alone does not solve problems for other actors in the food chain
- Excluded compared to EP position: Full ban on patents on NGTs since it would need a change of the EPC

Fake Solutions



- Non-legislative and voluntary approaches do not address the core issues of patentability, nor the scope of patent protection
- Easing access with patent pools, licensing platforms and increased transparency, and limited breeders' exemption do not solve the problem:
 - SME breeders and farmers do not have resources to enter in negotiations with large corporations – and they should not have to as classical breeders!
 - Additional issues as incomplete information, not all actors involved, inaccessible for farmers, legal uncertainty because of legal battles around patents etc.
 - Limited breeders exemption does not allow commercialisation
- **ARCHE NOAH's recommendations : If no substantial legislative solutions can be agreed on in the trilogues, EP negotiators should walk away from negotiations**

Long-term goal



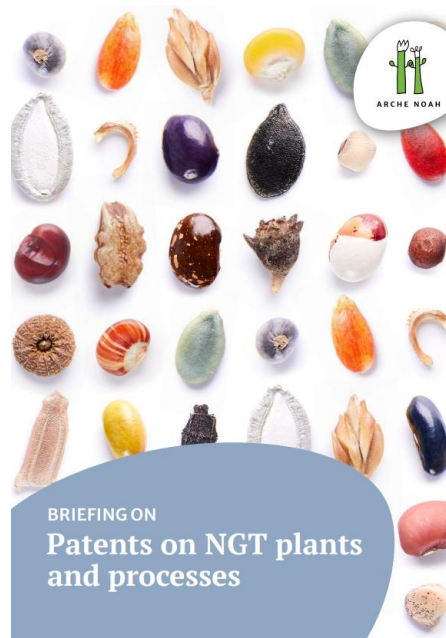
- In the medium term: Full overhaul of European patent legislation to excludes patents on all plants, seeds and animals, as well as the genetic information contained therein
- Complex and lengthy process requiring revisions of the EU Biotech Directive and EPC
- Necessary to once and for all put an end to legal loopholes that can be exploited to gain monopoly rights over the plants and seeds that are the starting point for our food security!
- But: First steps must be taken now on both patentability and scope as part of the negotiations on the NGT file



Further information



- ARCHE NOAH published a legal briefing on the impact of patents and the framework of patent laws on different levels.
Conclusion: EU institutions have the legal power to act



- Document with proposed amendments + prioritisation available for policy makers in the EP + experts in Member States

Thank you for your attention!

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