



## *No Patents on Seeds!*

### Annual report on activities 2020



Photo: Falk Heller

#### **The organisation**

*No Patents on Seeds!*, as non-profit organisation with its own statutes, was founded in 2018 and registered in Germany. The NGO is dedicated to follow up the activities of the previous international coalition of *No Patents on Seeds!*. Its statutes were updated at the beginning of 2020 (<https://www.no-patents-on-seeds.org/en/about-us/statutes>).

In 2020, the members of the organisation were: Arbeitsgemeinschaft bäuerliche Landwirtschaft (AbL), ARCHE NOAH, Bund Naturschutz in Bayern (BN), Corporate Europe Observatory, Danish Seed Savers, Gene-ethical network (GeN), Kein Patent auf Leben!, IG Nachbau, Oxfam, Plataforma Transgénicos Fora, ProSpecieRara, Public Eye and SWISSAID (<https://www.no-patents-on-seeds.org/en/about-us/member-organisations>).

#### **The team**

Involved resource persons: Christoph Then is the executive director of the organisation. Johanna Eckhardt is coordinating public outreach (responsible for the website, social media, organisation of media releases and newsletters) and contacts to the experts of Member States of the EPO. Johanna is working from Vienna and is supported by the infrastructure of ARCHE NOAH. Dr. Ruth Tippe, Anne-Charlotte Moy and Andreas Bauer-Panskus are conducting continuous patent researches and are organising a data base of relevant patents.

#### **The situation at the beginning of 2020**

In 2017, the Administrative Council of the European Patent Office (EPO) decided that no more patents can be granted on plants and animals derived from “essentially biological processes” for breeding. For this purpose, new Rule 28(2) was added to the Implementing Regulations of the European Patent Convention (EPC). This was an important success of the previous international coalition of *No Patents on Seeds!*.

However, this decision is not sufficient to generally exclude patents on plants and animals derived from conventional breeding. The reason: There is no sufficiently clear definition for the term “essentially biological processes”. In addition, in December 2018, the Technical Board of Appeal decided that the new rule 28 (2) can not be applied (decision T 1063/18). In consequence, the success as gained in 2017 was put in question.

In reaction, the President of the EPO announced a staying for further examination of applications for patents in conventional breeding of plant and animals. In parallel, he asked the Enlarged Board of Appeal (the highest legal institution of the EPO) to take a decision on the new Rule 28 (2). The public was invited to take position until October 2019.

After the decision of the Enlarged Board of Appeal G3/19, published in May 2020, we still see the need for further clarifications regarding

1. the definition of essentially biological processes,
2. the patentability of cells,
3. the scope of protection.

Further, following the decision G3/19 the new Rule 28 (2) does not have any effect for patents applied before July 2017. In consequence, 8 pending patent cases where *No Patents on Seeds!* filed an opposition (barley & beer, lettuce, melon, severed broccoli, pepper, fish) will be decided without rule 28 (2) rendering any effect. More info on patent cases: <https://www.no-patents-on-seeds.org/en/patent-cases>

To move our campaign forward, we managed direct contact with experts of more than a dozen Member States of the EPO, as well as direct talks to the experts of the EPO, including the Vice President of the EPO.

In result to our activities we see a change in the Examination Guidelines of the EPO (entering in force in March 2021), clarifying that viable cells (which might be used to generate whole plants or animals), are regarded as non-patentable if derived from EBP (essentially biological processes).

We also see a lot of interest in our demands and arguments which were discussed in the Committee on Patent Law of the EPO in November 2020 as well as on the level of the EU.

Furthermore, the German government announced a conference to discuss our findings and demands in July 2021. According to the ministry, the results then might be taken up by the Committee on Patent Law of the EPO at the end of the year and presented to the Administrative Council for further decision making in December 2021.

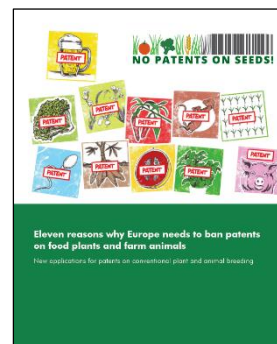
However, we did not manage to get further clarification on the definitions of EBP and the scope of patents yet. Therefore, at the end of the year 2020, we started a new petition, urging for a moratorium on further patents since sufficient legal clarity is still missing. We also created sculptures of ‘screaming vegetables’ which are used in public activities.

## Activities in 2020

In 2020, the following main activities were conducted:

- **Patent research and publishing a report**

Patent applications, filed in 2018 and 2019 at WIPO and EPA, were assessed according to relevant criteria. Cases were selected which seemed to be especially suitable for public communication. The report was published in German, English and Danish and also partially translated into French (<https://www.no-patents-on-seeds.org/en/background/publications>). After publication, the patent research was continued.



- **Legal analysis of the decision of the Enlarged Board of Appeal**

In May 2020, the Enlarged Board of Appeal confirmed the validity of Rule 28 (2) with its decision G3/19 for patent applications filed after June 2017. *No Patents on Seeds!* published a legal analysis of the decision which, in light of recent patent applications, shows urgent need for further political decision making. This analysis was brought to the attention of politics and patent experts of the Member States timely (<https://www.no-patents-on-seeds.org/en/activities/statements>). A letter to the German Minister of Justice was signed by around 40 organisations ([https://www.no-patents-on-seeds.org/en/news/appeal\\_minister](https://www.no-patents-on-seeds.org/en/news/appeal_minister)).

- **Exchange with experts of the EPO and its member states**

*No Patents on Seeds!* managed direct contact and an exchange of arguments with experts of more than a dozen Member States of the EPO (such as Austria, Czech Republic, Denmark, Germany, Hungary, Luxembourg, Norway, Portugal, San Marino, Sweden, United Kingdom), as well as direct talks to the experts of the EPO, including the Vice President of the EPO. The main issue of the discussion was the definition of ‘essentially biological processes’.

- **Preparing for public activities**

To mobilise more public awareness, also under conditions of Covid 19, we developed the idea of the ‘screaming vegetables’: 2-meter-high sculptures of broccoli and tomatoes being painted with ‘Der Schrei’ from Edvard Munch. This sculptures, for example, may be used in front of the EPO for public activities.



- **Starting a new petition**

At the end of the year 2020, we started a new petition, urging for a moratorium of the EPO on further patents until sufficient legal clarity is achieved (<https://www.no-patents-on-seeds.org/en/activities/petition>).

## Income and expenses

In 2020, our funding reached about 100.000 €. Our expenses were nearly identical to our funding. Our funders especially were the members of the organisation and the Gene-ethical Foundation.