

Unofficial translation:

Resolution by the German Parliament (Bundestag)

Tabled by CDU/CSU, SPD, FDP, Greens

adopted 09.02.2012

No patenting of conventionally bred livestock and plants

I. The German Bundestag affirms:

Directive 98/44/EC (Biotech Patents Directive) was adopted by the European Union in 1998 after long and difficult negotiations. [...]

(Para.3) In plant breeding, the variety protection system has proven successful as the primary system for the protection of intellectual property. No equivalent system exists for livestock breeding. Together with livestock breeders, it is essential to guarantee sufficient protection of intellectual property and at the same time ensure open access to genetic resources.

(Para.4) In drawing up a common European patent, Germany is committed to retaining existing options for national structures such as those already included in the Biotech Patent Directive, so that they remain valid in the common European patent (Unitary patent) e.g. breeder's privilege.

(Para. 5) Conventional breeding methods are not covered by patent law. This concern is also acknowledged by the ruling of the Enlarged Board of Appeal of the European Patent Office on the so-called broccoli-tomato-patents, dated 9 December 2010. According to this path-breaking decision, processes are also "essentially biological", and therefore not patentable when technical steps are used to carry out plant cross-breeding processes and subsequent selection of useful plants. The ruling of the Enlarged Board of Appeal clarified that when making use of an essentially biological process the subsequent plants as well as the seeds and edible parts cannot be patented. The open question is whether pure product claims on plants with specific properties are still permissible, and this decision has been re-referred to the Enlarged Board of Appeal in the tomato-patent case. However, one can expect further attempts to use legal loopholes in order to obtain wide-ranging patents. Therefore, there must be a guarantee that conventional breeding methods and products derived through such methods remain excluded from patentability in the future.

(Para. 6) Product-by-process patent claims can only be recognised as a description for product patents and should only be granted where sufficient structural characterisation is not practical or possible. The novelty of the product and a sufficiently inventive step must be the decisive factors. In livestock and plant breeding, current law does not guarantee that product-by-process patent claims are limited to the product whose production method is described in the patent, and do not extend to any identical product independent of the production method.

(Para.7) Changes to the current law have to be carried out at EU level, in order to prevent patents on conventional breeding methods, livestock and plants derived by such methods,

as well as their offspring and products thereof. For this purpose, a change in patent law is necessary insofar as European requirements allow for deviations in national patent law. Such a change can also be seen as a signal towards a supplement of European patent law. Furthermore, it must be clearly observed that future patents contain a sufficiently inventive step and that the scope of patents is adequately limited.

II. The German Bundestag calls on the federal government to:

1. Work on EU-level towards a specification and change of the Biotech Patents Directive 98/44/EC to ensure

- that no patents are granted on conventional breeding methods, livestock and plants derived by such methods, as well as their offspring,
- that the scope of product-by-process patents which cover livestock and plants is limited to the process described in the patent;

2. Ensure that any changes of the Biotech Patent directive will be incorporated into the European Patent Convention;

3. Insist that the EU's "unitary patent" includes the possibility of national variations as guaranteed in the Biotech Patents directive, such as the breeder's privilege;

4. Examine whether patent law can be changed in deviation from European guidelines in such a way

- that no patents are granted on conventional breeding methods, livestock and plants derived by such methods and their offspring,
- that the scope of product-by-process patents which cover livestock and plants is limited to the process described in the patent,
- and to table amendments to the current patent law (if this is deemed possible);

5. To create a state bio-patent-monitoring-system which can detect developments at an early stage, and in this respect

- publish a report every two years on the effects of patent law in biotechnology, focusing amongst others on the question of sufficient technicality, as well effects in the area of plant- and livestock breeding,
- engage in a dialogue with groups affected by bio-patents;

6. To engage on a European level to ensure that the EU Commission includes developments of patents in biotechnology, ethical aspects, any after-effects on innovation, competition and research in its yearly reports.