

no patents on seeds



Media Release

European Patent Office and industry meeting on patents on seeds – public excluded

Patent Law Committee to discuss prohibiting patents on conventional breeding of plants and animals

26 April 2017 / Tomorrow the Committee on Patent Law of the European Patent Office (EPO) will meet in Munich to discuss how to in future prohibit patents on conventionally bred plants and animals. The meeting is a reaction to a statement by the European Commission that patents should only be granted in relation to genetical engineering and not conventional breeding. This statement is also supported by the EU Member States, which have a majority among the 38 Contracting States of the EPO. Given the EPO has granted around 200 patents concerning conventionally bred plants in recent years, steps must now be taken to change its practice. However, it is unclear whether the necessary changes will really be implemented. One reason: Representatives of industry and patent lawyers are invited to join the meeting, which takes place in complete secrecy, while representatives of civil society are excluded.

“The international coalition *No Patents on Seeds!* sent a letter to the EPO in February asking for public participation in this important meeting. We received no answer. Meanwhile, industry representatives (BUSINESSEUROPE) and patent law lobbyists (epi), which clearly both have strong interests in the issue, may attend the meeting and have access to all relevant documents”, says Katherine Dolan from Arche Noah, Austria. “The EPO’s status and income depend on the number of patents it can grant. So it is hardly surprising that it is trying to protect its own interest and that of the industry by preventing any public scrutiny of its actions.”

There are further reasons for doubting the willingness of the EPO to really move forward: In a confidential position paper of the President of the EPO seen by *No Patents on Seeds!* only minor changes are proposed. These changes would exclude from patentability only plants and animals that are derived exclusively from a combination of crossing and selection, not from other types of conventional breeding. As recent research by *No Patents on Seeds!* shows, this proposal can be easily circumvented by the clever wording of patent claims:

“Conventional breeding is not limited to a combination of crossing and selection. The selection and use of genetic variants and random mutations as well as propagation processes such as selfing are widely used in conventional breeding”, says Christoph Then from *No Patents on Seeds!* “Our research shows that 65% of all patents granted on conventionally bred plants in 2016 were based on random mutations. These plants still will be patentable if the proposal of the President of the EPO is adopted.”

Patents on beer granted in 2016 by the EPO for Carlsberg and Heineken are recent examples of how these loopholes are already being exploited. Following random mutations in the barley, all barley plants with a specific quality in brewing are claimed as inventions as well as the brewing process and produced beer. Civil society organisations in several European countries have started protests

against these patents.

In a detailed briefing sent to the Members of the Committee on Patent Law, “No Patents on Seeds!” has set out three key demands:

- The EPO must clarify that all conventional breeding processes, including the use of random mutations, and all steps used in the breeding process, such as selection and/or propagation, are excluded from patentability.
- The EPO must clarify that all “products” used in or emanating from essentially biological processes are captured by the exclusion, including all plant/animal parts and genetic information.
- No “absolute product protection” on plants and animals can be issued, which enables a patent on a plant or animal derived from a process of genetic engineering to get extended to all conventionally bred plants with the same characteristics.

The measures put forward by *No Patents on Seeds!* would provide legal clarity and certainty for conventional breeders, being comparable and complementary to the breeders exemption as established in plant variety protection system: As long as conventional breeders are not using methods for genetic engineering or plants and animals derived thereof, they do not have to worry about the patent system, but are free to operate in their breeding activities.

It is expected that the 38 Contracting States of the EPO, which include the EU Member States, will convene in June 2017 at a meeting of the Administrative Council. They could then make a decision on how the current prohibitions in patent law can be applied in future. A two-thirds majority is required for a decision.

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Further information:

Technical briefing of *No Patents on Seeds!*: <http://no-patents-on-seeds.org/en/information/background/summary-note-implementing-commission-s-legal-notice>

Research on patent applications filed in the field of conventional breeding in 2016: <http://no-patents-on-seeds.org/en/node/394/patent-applications-2016>

Protest action against patents held by Carlsberg: www.no-patents-on-beer.org/en/