



Plenary sitting

B9-0042/2019

16.9.2019

MOTION FOR A RESOLUTION

further to Question for Oral Answer B9-0051/2019

pursuant to Rule 136(5) of the Rules of Procedure

on the patentability of plants and essentially biological processes
(2019/2800(RSP))

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on behalf of the GUE/NGL Group

**European Parliament resolution on the patentability of plants and essential biological processes
(2019/2800(RSP))**

The European Parliament,

- having regard to the European Patent Convention (EPC) of 5 October 1973, in particular Article 53(b) thereof,
- having regard to Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions¹, in particular Article 4 thereof, which states that products obtained from essentially biological processes are not patentable,
- having regard to Article 2(2) and Recital 33 of Directive 98/44/EC, which state that a process for the production of plants or animals is essentially biological if it consists entirely of natural phenomena such as crossing or selection,
- having regard to its resolution of 10 May 2012 on the patenting of essential biological processes²,
- having regard to its resolution of 17 December 2015 on patents and plant breeders' rights³,
- having regard to the decision of the Enlarged Board of Appeal of the European Patent Office (EPO) of 25 March 2015 in Cases G2/12 (on tomatoes) and G2/13 (on broccoli),
- having regard to Commission Notice C/2016/6997 of 8 November 2016 on certain articles of Directive 98/44/EC of the European Parliament and of the Council on the legal protection of biotechnological inventions,
- having regard to the decision of the Administrative Council of the European Patent Organisation (EPOrg) of 29 June 2017 amending Rules 27 and 28 of the Implementing Regulations to the European Patent Convention (CA/D 6/17),
- having regard to the decision of the Technical Board of Appeal of the EPO of 5 December 2018 in case T 1063/18,
- having regard to the oral question to the Commission on the patentability of plants and essential biological processes (O-000026/2019 – B9-0051/2019),
- having regard to Rules 136(5) and 132(2) of its Rules of Procedure,

¹ OJ L 213, 30.7.1998, p. 13

² OJ C 261E, 10.9.2013, p. 31.

³ OJ C 399, 24.11.2017, p. 188.

- A. whereas access to biological plant material that includes plant traits is absolutely necessary in order to develop new varieties so as to guarantee global food security, tackle climate change and prevent monopolies within the animal and plant breeding sectors, thus giving more opportunities to farmers;
- B. whereas plant breeding is a process that has been practised by farmers and farming communities since the birth of agriculture; whereas plant and animal varieties, in addition to breeding methods, are important for genetic diversity;
- C. whereas breeding plants in their natural environment is particularly required in order to contend with the impact of climate change on weather and hygrometry, in addition to the emergence of new parasites and new plant disease epidemics; whereas this requires open access for farmers and seed-breeders to breeding material;
- D. whereas Article 4 of Directive 98/44/EC and Article 53(b) of the EPC plant and animal varieties and essentially biological processes for the production of plants or animals from patentability;
- E. whereas in March 2015, the Enlarged Board of Appeal of the EPO on cases G2/12 (tomatoes) and G2/13 (broccoli) ruled that such biological products were patentable and not in conflict with Article 53(b) EPC, which does not allow patents for ‘essentially biological’ processes;
- F. whereas in November 2016, the Commission adopted a notice on certain articles of Directive 98/44/EC with regard to the patentability of plants and animals obtained by means of essentially biological processes, and took the view that, in accordance with the EU legislator’s intention, such plants and animals may not be patented under the directive;
- G. whereas in June 2017, the Administrative Council of the EPO took the decision that patents would not be allowed on plants and animals derived from conventional breeding or produced without using genetic engineering;
- H. whereas in December 2018, the Technical Board of Appeal of the EPO announced that one of its latest rules, which prohibited patents being granted to plants or animals that have been exclusively obtained by means of an essentially biological process, was in conflict with the articles outlined in the EPC;
- I. whereas EPO has, on many occasions, disregarded and undermined the bans laid down in the EPC and Directive 98/44/EC;
- J. whereas in the EU, in recent years, a growing number of patent applications are being filed on plants and animals, among which the number of patents on plants derived from conventional breeding – not from genetic engineering – has been steadily increasing; whereas, to date, more than 1 600 such applications have been filed and around 220 patents have been granted;
- K. whereas the new decision from the Technical Board of Appeal of the EPO has potentially created a situation that would be advantageous for big multinationals, such as Bayer-Monsanto, Syngenta and BASF, which are aiming to monopolise seeds and

plants, and therefore take control of basic resources for food production through patent rights;

- L. whereas there is an urgent need for EPO, faced with a legally chaotic situation, to clarify the scope and interpretation of its rules; whereas the ban on patents on plant and animal varieties has to be safeguarded;
1. Expresses its concern that the recent decision of the Technical Board of Appeal of the EPO in case G3/19 could lead to the EPO granting more patents on natural traits present in, or plant characteristics introduced into, new varieties by means of essentially biological processes such as crossing and selection;
 2. Stresses that the decision from the Technical Board of Appeal's decision of the EPO of December 2018 on cases G3/19 is in conflict with the previous decision of the Administrative Council of the EPOrg of June 2017, which stated that plants and animals exclusively obtained by means of an essentially biological process would no longer be patentable;
 3. Calls on EPO to observe the EPC, which is the basis for European patent law and excludes plants and animals from patentability;
 4. Expresses its strong opposition to the patenting of living processes, including plants and animals; stresses that patents on plants and animals and essential biological processes granted by EPO promote market concentration, serve to promote unjust monopoly rights, and ultimately endanger the agricultural biodiversity of ecosystems and the ability of food production systems to adapt to the challenges posed by climate change;
 5. Strongly criticises EPO internal decision-making and its proceedings, which are not conducted under democratic and political scrutiny, with no independent controls in place or space for public participation;
 6. Stresses that EPO rules on patents concerning products obtained from essentially biological processes are based largely on trivial technical features and represent a misuse of patent law, where it is used it as a tool for misappropriation that turns the agricultural resources that are needed for daily food production into the so-called intellectual property of just a few big companies, thus putting our global food security and regional food sovereignty at risk;
 7. Urgently calls on EPO to clarify its rules in this matter, since numerous applications for patenting concerning products obtained from essentially biological processes are currently awaiting a decision; stresses that granting patents to products that are obtained from essentially biological processes completely undermines the bans laid down in European patent law;
 8. Calls on the Enlarged Board of Appeal of the EPO to answer positively to the two questions laid down in the Referral of a point of law to the Enlarged Board of Appeal by the President of the European Patent Office (Article 112(1)(b) EPC);
 9. Calls on the Commission and the Member States to ensure that the EU will safeguard guaranteed access to, and use of, material obtained from essentially biological processes

for plant and animal breeding, in order – where applicable – not to interfere with practices that guarantee a comprehensive breeders' exemption and farmers' rights;

10. Calls on the Commission to submit a written statement to the Enlarged Board of Appeal of the EPO concerning case G3/19 on the patenting of plants exclusively obtained by means of an essentially biological process, in order to ensure that products resulting from natural processes are not patentable, following the conclusions of its notice on certain articles of Directive 98/44/EC of the European Parliament and of the Council on the legal protection of biotechnological inventions⁴;
11. Calls on the member states of the EPOrg and all the parties of the EPC to take decisive action in order to stop further patents on plants and animals and to reinforce existing bans;
12. Calls on the Commission to pursue the exclusion from patentability of essentially biological processes in the context of discussions on the harmonisation of multilateral patent law;
13. Calls on the Commission to report on the development and implications of patent law in the field of biotechnology and genetic engineering, as required in Article 16(c) of Directive 98/44/EC and as requested by Parliament in its resolution of 10 May 2012 on the patenting of essential biological processes⁵;
14. Instructs its President to forward this resolution to the Council, the Commission, the Member States and the European Patent Office.

⁴ OJ C 411/03, 8.11.2016, p. 3

⁵ OJ C 261E, 10.9.2013, p. 31