



Plenary sitting

B9-0043/2019

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

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on behalf of the ECR Group

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

The European Parliament,

- having regard to its resolutions of 17 December 2015 on patents and plant breeders' rights¹ and of 10 May 2012 on the patenting of essential biological processes², – 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 inventions³, in particular Article 4 thereof, which states that products obtained from essentially biological processes shall not be patentable,
- having regard to the European Patent Convention (EPC) of 5 October 1973, in particular Articles 53(b) and 33(b) thereof,
- having regard to the Commission Notice 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 inventions⁴,
- having regard to the Council conclusions of 1 March 2017 on the Commission Notice 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 Office (EPO) 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 Implementing Regulations to the EPC, in particular Rules 26 and 28(2) thereof, which state that for European patent applications and patents concerning biotechnological inventions Directive 98/44/EC is to be used as a supplementary means of interpretation (Rule 26),
- having regard to the decision of the Technical Board of Appeal of the EPO on the patentability of plants of 18 December 2018 (case T 1063/18),
- having regard to the Referral of a point of law to the Enlarged Board of Appeal by the President of the EPO in March 2019,
- having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (hereinafter referred to as 'Council Regulation (EC) No 2100/94')⁵,

¹ OJ C 399, 24.11.2017, p. 188.

² OJ C 261 E, 10.9.2013, p. 31

³ OJ L 213, 30.7.1998, p. 13.

⁴ OJ C 411, 8.11.2016, p. 3.

⁵ OJ L 227, 1.9.1994, p. 1.

in particular Article 15(c) and (d) thereof,

- having regard to the Agreement on Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPS), in particular Article 27(3) thereof,
 - having regard to the question to the Commission on patentability of plants and essentially biological processes (O-000026/2019 – B9-0051/2019),
 - having regard to Rules 136(5) and 132(2) of its Rules of Procedure,
- A. whereas barrier-free access to plant material (including plant traits) is essential for the innovative capacity of the European plant-breeding sector, its global competitiveness and the development of new plants varieties in order to guarantee global food security, tackle climate change, while at the same time providing more opportunities for SMEs;
 - B. whereas any restriction or attempt to hamper the access to genetic resources may lead to an excessive market concentration in the field of plant breeding to the detriment of market competition, consumers and the European internal market;
 - C. whereas plant breeding is an innovative process that has been practised by farmers and farming communities since the birth of agriculture; whereas unpatented varieties and breeding methods are important for genetic diversity;
 - D. whereas intellectual property rights are important for safeguarding economic incentives to develop new plant products and for promoting competitiveness;
 - E. whereas Directive 98/44/EC legislates for biotechnological inventions, in particular genetic engineering;
 - F. whereas in its Notice of 8 November 2016 the Commission concludes that the EU legislator’s intention when adopting Directive 98/44/EC was to exclude from patentability products that are obtained by means of essentially biological processes;
 - G. whereas the Council in its conclusions of 3 February 2017 welcomes the Commission Notice; whereas all EU legislators involved have made explicitly clear that the EU legislator’s intention when adopting Directive 98/44/EC was to exclude from patentability products obtained through essentially biological processes;
 - H. whereas patents on products derived from conventional breeding or on genetic material necessary for conventional breeding undermine the exclusion established in Article 53(b) of the EPC and in Article 4 of Directive 98/44/EC;
 - I. whereas on 29 June 2017 the Administrative Council of the EPO amended Rules 27 and 28 of the Implementing Regulations to the EPC⁶, and determined that patents on plants and animals are prohibited;
 - J. whereas the 38 Contracting States of the EPC have confirmed that their national law

⁶ EPO Official Journal, July 2017 (CA/D 6/17).

and practice are aligned to effectively exclude products obtained by essentially biological processes from patentability;

- K. whereas on 5 December 2018 the EPO Technical Board of Appeal challenged the validity of Rule 28(2) of the EPC Implementing Regulations⁷;
- L. whereas in March 2019 the President of the EPO referred two points of law to the Enlarged Board of Appeal relating to the patentability of plants and animals derived from essentially biological processes;
- M. whereas it is a fundamental principle of the international system of plant variety rights based on the UPOV Convention 1991, and of the EU system based on Council Regulation (EC) No 2100/94, that the holder of a plant variety right cannot prevent others from using the protected plant for further breeding activities;
1. Reiterates that plant varieties, essentially biological processes as well as products obtained through such processes, shall not in any way be patentable, pursuant to Directive 98/44/EC and the EU legislator's intention;
 2. Considers that any attempt to patent products derived from conventional breeding or genetic material necessary for conventional breeding undermines the exclusion established in Article 53(b) of the EPC and in Article 4 of Directive 98/44/EC;
 3. Welcomes Commission Notice of 8 November 2016 clarifying that the EU legislator's intention when adopting Directive 98/44/EC was to exclude from patentability products that are obtained by means of essentially biological processes; welcomes the alignment by Contracting States of the EPC of their law and practice, and the Decision of the Administrative Council of the EPO to clarify the scope and meaning of Article 53(b) EPC regarding exceptions to patentability by means of Rule 28(2) EPC;
 4. Expresses its grave concern that the decision of the Technical Board of Appeal of the EPO of 5 December 2018 to challenge the validity of Rule 28(2) EPC that has been adopted by the Administrative Council of the EPO is leading to unnecessary prolongation of uncertainty regarding exclusions from patentability of these products;
 5. Urges the Commission to submit an *amicus curiae* brief to the Enlarged Board of Appeal of the EPO before 1 October 2019 confirming its conclusion laid down in the Commission's 2016 Notice that the EU legislator's intention when adopting Directive 98/44/EC was to exclude from patentability products that are obtained by means of essentially biological processes, and to attach this resolution to its statement;
 6. Calls on the Commission to protect the innovative capacity of the European breeding sector and the general public interest in the Enlarged Board of Appeal of the EPO, and to restore the balance between patent legislation and plant variety rights, as well as to periodically report on the latest developments to Parliament;
 7. Urgently calls on the Enlarged Board of Appeal of the EPO to confirm without delay

⁷ EPO Board of Appeal written decision (T 1063/18).

the validity of EPC Rule 28(2), and to restore legal certainty in the interest of users of the European patent system, breeders, farmers and the public;

8. Calls on the Commission and the Member States to ensure that the Union effectively safeguards guaranteed access to, and use of, material obtained from essentially biological processes for plant breeding, in order – where applicable – not to interfere with practices guaranteeing the exemption for breeders;
9. Calls on the Commission to engage actively with third countries when negotiating trade and partnership agreements, with a view to ensuring the exclusion of essentially biological processes and the products thereof from patentability;
10. Calls on the Commission to report on the development and the implications of patent law in the field of biotechnology and genetic engineering, as required under Article 16(c) of Directive 98/44/EC and as requested by Parliament in its resolution of 17 December 2015 on patents and plant breeders' rights, and to further analyse issues related to the scope of protection of patents;
11. Instructs its President to submit this resolution as a written statement to the Enlarged Board of Appeal of the EPO by 1 October 2019, and to forward this resolution to the Council and the Commission.