



Plenary sitting

B9-0047/2019

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 Renew Group

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

The European Parliament,

- having regard to its resolution of 17 December 2015 on patents and plant breeders' rights¹,
- 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 inventions, in particular Article 4 thereof, which states that products obtained from essentially biological processes are not patentable²,
- having regard to the European Patent Convention (EPC) of 5 October 1973, in particular Article 53(b) and Article 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 inventions³,
- having regard to the decision of the Administrative Council of the European Patent Organisation of 29 June 2017 amending Rules 27 and 28 of the Implementing Regulations to the European Patent Convention (EPC) (CA/D 6/17),
- having regard to the decision of the Technical Board of Appeal of the European Patent Office (EPO) in case T 1063/18 on the patentability of plants of 18 December 2018, which states the possibility of granting patents for natural characteristics of plants,
- having regard to the fact that in March 2019 the President of the EPO requested a final judgment from the Enlarged Board of Appeal of the EPO in order to conclude this issue,
- having regard to the numerous pending cases (approximately 250 patent applications and 4 oppositions) awaiting the decision of the Enlarged Board of Appeal of the EPO,
- having regard to the Implementing Regulations to the EPC, in particular Rule 26 thereof, which states that for European patent applications and patents concerning biotechnological inventions, Directive 98/44/EC is to be used as a supplementary means of interpretation,
- having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community

¹ OJ C 399, 24.11.2017, p. 188.

² OJ L 213, 30.7.1998, p. 13.

³ OJ C 411, 8.11.2016, p. 3.

- plant variety rights, in particular Article 15(c) and (d) thereof⁴,
- having regard to the Council conclusions of 20 February 2017 on patentability of plants,
 - 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 essential 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 is essential to the innovative capacity of the European plant-breeding sector, its global competitiveness and the development of new plant varieties;
 - B. whereas access to basic resources in agriculture is key for food production, European food security and the freedom of choice of farmers and growers; whereas barrier-free access to plant material is crucial for developing new varieties capable of withstanding changing agricultural conditions as a consequence of climate change;
 - C. whereas any restriction or attempt to hamper 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;
 - D. 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;
 - E. whereas intellectual property rights are key to safeguarding economic incentives for the development of new plant products and ensuring competitiveness;
 - F. whereas Directive 98/44/EC legislates for biotechnological inventions, in particular genetic engineering;
 - G. whereas in its notice of 8 November 2016 the Commission clearly stated that it was never its intention, nor that of Parliament, to allow the granting of patents on natural traits that are introduced into plants by means of essentially biological processes such as crossing and selection;
 - H. whereas patents on products derived from conventional breeding or on genetic material necessary for conventional breeding may 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 European Patent Organisation amended Rules 27 and 28 of the Implementing Regulations to the EPC⁵,

⁴ OJ L 227, 1.9.1994, p. 1.

⁵ EPO Official Journal, July 2017 (CA/D 6/17).

confirming that patents on plants and animals are prohibited;

- J. whereas with these new rules, the Administrative Council brought European patent practice into line with the interpretation provided by the Commission; whereas the rules were approved almost unanimously by the 38 member states of the European Patent Organisation;
 - K. whereas the new Rule 28(2) is in line with Article 53(b) of the EPC, as the exclusion of essentially biological processes for the production of plants would be rendered completely ineffective if patents on products derived from such processes were permitted, thereby frustrating and undermining the intention of the legislator to exclude patents from conventional breeding;
 - L. whereas the new Rule 28(2) brings clarity to the text of the EPC, without interpreting or contradicting it, and unequivocally declares that no patents are to be granted on plants and animals obtained through essentially biological processes;
 - M. whereas on 5 December 2018 the Technical Board of Appeal of the EPO declared the new Rule 28(2) of the Implementing Regulations of the EPC to be non-binding for further European Patent Organisation decisions allowing for the possibility of granting patents for products from essentially biological processes⁶;
 - N. whereas in March 2019 the President of the EPO forwarded two questions to the Enlarged Board of Appeal on the patentability of plants and animals derived from essentially biological processes;
 - O. whereas following the decision of the Technical Board of Appeal of the EPO, numerous pending cases (approximately 250 patent applications and 4 oppositions) await a decision by the Enlarged Board of Appeal of the EPO;
 - P. whereas it is a fundamental principle of the international system of plant variety rights based on the 1991 UPOV Convention, 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 plants obtained by essentially biological processes are not patentable;
 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. Expresses its deep concern that the decision of the Technical Board of Appeal of the EPO on the patentability of plants of 5 December 2018 (T 1063/18) stated the possibility of granting patents in respect of natural traits introduced into new varieties by means of essentially biological processes such as crossing and selection;
 4. Urges the Commission to file the opportune observations and statements in order to

⁶ Written decision in case T 1063/18 of the Board of Appeal of the EPO.

reaffirm under the Enlarged Board of Appeal of the EPO that no patents should be granted for the products of essentially biological processes such as crossing and selection, e.g. for natural traits that are introduced into plants by means of such processes;

5. Calls on the Commission to protect the innovative capacity of the European plant-breeding sector and the general public interest before the Enlarged Board of Appeal of the EPO and to periodically report to this Parliament on the latest developments;
6. Calls on the Enlarged Board of Appeal of the EPO to restore legal certainty in the interest of the users of the European patent system and of the public;
7. Calls on the Commission and the Member States to ensure that the Union will safeguard 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;
8. Calls on all Member States to send the political message that national EU patent authorities must not grant any patents on products derived from essentially biological processes;
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 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;
11. Instructs its President to forward this resolution to the Council, the Commission and the European Patent Office.