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Patenting of essential biological processes

European Parliament resolution of 10 May 2012 on the patenting of essential biological processes (2012/2623(RSP))

The European Parliament,

- 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 (hereinafter referred to as ‘Directive 98/44/EC’), and in particular Article 4 thereof, which states that plant and animal varieties and essentially biological processes for the production of plants or animals shall not be patentable,
- having regard to Article 2(2) and Recital 33 of Directive 98/44/EC, stating 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 the importance of the proper implementation of Article 11 of Directive 98/44/EC, ensuring a farmer’s privilege,
- having regard to the Convention of 5 October 1973 on the Grant of European Patents (hereinafter referred to as the ‘European Patent Convention’) and Article 53(b) thereof,
- having regard to the decision of the Administrative Council of the European Patent Organisation of 16 June 1999 concerning the incorporation of Directive 98/44/EC into the Implementing Regulations to the European Patent Convention²,
- having regard to Decision G 2/06 of the European Patent Office (EPO) and Decision C-34/10 of the European Court of Justice, establishing that when interpreting prohibitions in patent law one has to take into account the technical teaching of the application as a whole and not only the wording of the claims,
- having regard to Decisions G 2/07 (on broccoli) and G 1/08 (on tomatoes) of the Enlarged Board of Appeal of the EPO, which in principle exclude a breeding process from patentability,
- having regard to the patents granted by the EPO for the production of conventionally bred plants such as broccoli (EP 1069819), tomatoes (EP 1211926) and melons (EP 1962578),
- having regard to the patents granted by the EPO for the production of conventionally bred animals, such as sex selection and breeding material used in conventional breeding (EP 1263521, EP 1257168), selection of dairy cows (EP 1330552) and livestock production (EP 1506316),
- having regard to the International Treaty on Plant Genetic Resources for Food and Agriculture, to which the European Union adhered pursuant to Council

¹ OJ L 213, 30.7.1998, p. 13.

² Official Journal EPO 7/1999, p. 437.

Decision 2004/869/EC¹,

- having regard to the International Convention of 2 December 1961 for the Protection of New Varieties of Plants, as revised at Geneva on 10 November 1972, 23 October 1978 and 19 March 1991 (hereinafter referred to as the ‘UPOV Convention’),
 - having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights² (hereinafter referred to as ‘Regulation (EC) No 2100/94’),
 - having regard to Rule 110(2) of its Rules of Procedure,
- A. whereas intellectual property rights are of importance for stimulating the development of new plant varieties and plant-related innovations, and are a necessary prerequisite for boosting growth and innovation and helping European business, in particular small and medium-sized enterprises (SMEs), to face the economic crisis and global competition;
- B. whereas, especially in the area of breeding, excessively broad patent protection can hamper innovation and progress and become detrimental to small and medium breeders by blocking access to animal and plant genetic resources;
- C. whereas the breeding of plants is an essential prerequisite for the security of the food supply and, to some extent, of the energy supply;
- D. whereas conventional breeding methods are of critical importance to modern plant and animal breeding;
- E. whereas it is a fundamental principle of the international system of plant variety rights based upon the UPOV Convention, and of the EU system based upon Regulation (EC) No 2100/94, that the holder of a plant variety cannot prevent others from using the protected plant to promote use of protected varieties for further breeding activities;
- F. whereas it is important that a similar privilege should exist within patent law throughout the European Union;
- G. whereas Article 4 of Directive 98/44/EC and Article 53(b) of the European Patent Convention establish that plant and animal varieties and essentially biological processes for the production of plants or animals shall not be patentable;
- H. whereas patents on products derived from conventional breeding or on genetic material necessary for conventional breeding can undermine the exclusion established in Article 4 of Directive 98/44/EC and Article 53(b) of the European Patent Convention;
- I. whereas, in the field of genetic engineering, patents can be granted but the prohibition of patents on plant and animal varieties has to be safeguarded;
- J. whereas, in the field of biotechnology, not only the wording of the claims, but the technical teaching of the invention as a whole should be taken into consideration when deciding on patentability, and this principle of whole content approach has been applied by the European Patent Office and the European Court of Justice in some of their recent

¹ OJ L 378, 23.12.2004, p. 1.

² OJ L 227, 1.9.1994, p. 1.

decisions¹;

- K. whereas under Article 16(c) of Directive 98/44/EC the Commission is required to report annually ‘on the development and implications of patent law in the field of biotechnology and genetic engineering’;
 - L. whereas the Commission has not published any such reports since 2005;
 - M. whereas, in its resolution of 26 October 2005 on patents for biotechnological inventions², Parliament called upon the Commission to address carefully in its next report the proper implementation of Article 4(1)(a) of Directive 98/44/EC;
 - N. whereas such Commission reports would serve the purpose of keeping the public fully informed, and whereas the European Union has to play a leading role in encouraging public debate;
1. Acknowledges the important role of the EPO in supporting innovation competitiveness and economic growth in Europe;
 2. Recognises that patents promote the dissemination of valuable technical information and are an important tool for the transfer of technology;
 3. Welcomes the decisions of the Enlarged Board of Appeal of the EPO in the so-called ‘broccoli’ (G 2/07) and ‘tomato’ (G 1/08) cases, dealing with the correct interpretation of the term ‘essentially biological processes for the production of plants (or animals)’ used in Directive 98/44/EC and the European Patent Convention to exclude such processes from patentability;
 4. Calls on the EPO also to exclude from patenting products derived from conventional breeding and all conventional breeding methods, including SMART breeding (precision breeding) and breeding material used for conventional breeding;
 5. Calls on the Commission to address in its forthcoming report the ‘broccoli and tomato decisions’ of the Enlarged Board of Appeal of the EPO;
 6. Welcomes the recent decision of the European Patent Office in the WARF case and of the European Court of Justice in the Brüstle case, as they appropriately interpret Directive 98/44/EC and give important indications on the so-called whole content approach; calls on the European Commission to draw the appropriate consequences from these decisions also in other relevant policy areas in order to bring EU policy in line with these decisions;
 7. Calls on the Commission to address in its forthcoming report the potential implications of the patenting of breeding methods for plants and their impact on the breeding industry, agriculture, the food industry and food security;
 8. Calls on the Commission and the Member States to ensure that the EU will continue to apply a comprehensive breeders’ exemption in its patent law for plant and animal breeding;

¹ Enlarged Board of Appeal of the European Patent Office, decision of 25 November 2008, G 2/06 (“WARF”), and ECJ judgment C-34/10 (Greenpeace vs. Brüstle).

² OJ C 272 E, 9.11.2006, p. 440.

9. Instructs its President to forward this resolution to the Council, the Commission, the governments of the Member States and the EPO.