



Roundtable discussion on patents, plant breeders' right and the Biotech directive

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Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions

*Article 4.1. The following shall not be
patentable (...)*

a) plant varieties

*b) essentially biological processes for the
production of plants or animals*

Possible solutions

Maintain the status quo:

- *[by not reopening the Directive*
- *not providing clarification guidelines]*

- *Undesirable on several levels, it would serve no purpose:*

The problem will not be solved, as we would be left with the uncertainty surrounding the patentability of products obtained by essentially biological products: not patentable for some national legislations (DE, NL and soon FR), patentable for others, as well as for the EPO (according to the decisions of the Enlarged Board of Appeal G2/12 and G2/13)

Risky and lengthy solutions

Reopening the Directive

- *"opening Pandora's Box" effect*
- *other sensitive issues such as patentability of human stem cells could arise and effectively challenge the adoption of a new Directive*
- *history to repeat itself: more than 10 years were needed to reach an agreement on the present Directive*

Rapid solutions

From the Commission's side, provide stakeholders with a clarifying Notice - in the light of the EBA's G2/12 and G2/13 Decisions - regarding the scope of article 4(b) of the Directive, namely what is patentable?

Rapid solutions

- *Such a Notice has a non-binding legal effect, but it still offers a satisfactory solution in terms of interpreting the scope of the Biotech Directive*

Rapid solutions

- *Support cross-licensing and cooperation networks that can effectively mitigate any disruptions in the balance between patent holders and plant breeders*
- *Promote the extension of the PINTO database to add transparency to the interplay between PVR and patent holders.*

Mid-term solution.

- *The Court of Justice of the European Union and the future Unitary Patent Court are both entitled to render judgement and further clarify the scope and intent of the Biotech Directive*
- *provision of a limited Breeders' exemption under the Unitary Patent Package can help mitigate at least partly potential negative consequences*

Report of the Expert Group

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http://ec.europa.eu/growth/industry/intellectual-property/patents/biotechnological-inventions/index_en.htm