



Plenary sitting

B8-1400/2015

14.12.2015

MOTION FOR A RESOLUTION

further to Question for Oral Answer B8-1112/2015

pursuant to Rule 128(5) of the Rules of Procedure

on patents and plant breeders' rights
(2015/2981(RSP))

Jan Huitema, Jean-Marie Cavada, Ivan Jakovčić
on behalf of the ALDE Group

**European Parliament resolution on patents and plant breeders' rights
(2015/2981(RSP))**

The European Parliament,

- having regard to its resolution of 10 May 2012 on the patenting of essential biological processes¹,
- 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 inventions², 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 Article 53(b) thereof,
- 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 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 the International Convention for the Protection of New Varieties of Plants of 2 December 1961, as revised at Geneva on 10 November 1972, 23 October 1978 and 19 March 1991 (hereinafter referred to as the 'UPOV Convention 1991'), in particular Article 15(1)(iii) thereof,
- having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights³ (hereinafter referred to as 'Council Regulation (EC) No 2100/94'), in particular Article 15(c) and (d) thereof,
- having regard to the Council Agreement on a Unified Patent Court of 19 February 2013⁴ (hereinafter referred to as 'the UPC Agreement'), in particular Article 27(c) 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, which states that members may exclude essentially biological processes from patentability,
- having regard to the question to the Commission on patents and plant breeders' rights

¹ OJ C 261 E, 10.9.2013, p. 31.

² OJ L 213, 30.7.1998, p. 13.

³ OJ L 227, 1.9.1994, p. 1.

⁴ OJ C 175, 20.6.2013, p. 1.

(O-000146/2015 – B8-1112/2015),

- having regard to Rules 128(5) and 123(2) of its Rules of Procedure,
- A. whereas access to biological plant material encompassing plant traits is absolutely necessary for boosting innovation and the development of new varieties in order to guarantee global food security, tackle climate change and prevent monopolies within the breeding sector, while at the same time providing more opportunities for SMEs;
- B. whereas intellectual property rights are important in order to safeguard economic incentives for developing new plant products and to deliver competitiveness;
- C. 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 European Patent Convention (EPC) and in Article 4 of Directive 98/44/EC;
- D. whereas products obtained from essentially biological processes, such as plants, seeds, native traits and genes, should be excluded from patentability;
- E. whereas plant breeding is an innovative process that has been practised by farmers and farming communities since the birth of agriculture, and whereas unpatented varieties and breeding methods are important for genetic diversity;
- F. whereas Directive 98/44/EC legislates for biotechnological inventions, in particular genetic engineering, but whereas – as indicated in recitals 52 and 53 thereof – it was not the legislator’s intention to allow the patentability of products obtained from essentially biological processes within the scope of the directive;
- G. whereas numerous applications concerning products obtained from essentially biological processes are currently awaiting a decision by the European Patent Office (EPO), and whereas there is therefore an urgent need to clarify the scope and interpretation of Directive 98/44/EC, in particular Article 4 thereof;
- H. whereas Directive 98/44/EC implicitly acknowledges the freedom to use material falling within the scope of a patent for experimental purposes, as follows from Articles 12(3)(b) and 13(3)(b);
- I. whereas the exemption for breeders provided for in Article 27(c) of the UPC Agreement will only be applicable to patents granted under the unitary patent system and will not automatically apply to national patents within the EU, which will result in a non-harmonised situation as regards the possibility of breeding with material obtained from essentially biological processes falling under the scope of a patent;
- J. 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. Considers that 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;

2. Expresses its concern regarding the recent decision of the Enlarged Board of Appeal of the EPO on Cases G2/12 (tomatoes) and G2/13 (broccoli), which could lead to more patents being granted by the EPO in respect of natural traits introduced into new varieties by means of essentially biological processes such as crossing and selection;
3. Calls on the Commission, as a matter of urgency, to clarify the scope and interpretation of Directive 98/44/EC, and in particular Articles 4, 12(3)(b) and 13(3)(b) thereof, in order to ensure legal clarity regarding the prohibition of the patentability of products obtained from essentially biological processes, and to clarify that breeding with biological material falling under the scope of a patent is permitted;
4. Calls on the Commission to communicate its forthcoming clarification regarding the patentability of products obtained from essentially biological processes to the EPO so that it can be used as a supplementary means of interpretation;
5. 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;
6. 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 from patentability;
7. 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 10 May 2012 on the patenting of essential biological processes;
8. Instructs its President to forward this resolution to the Council, the Commission and the European Patent Office.