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Plants and animals obtained by biological breeding are no longer patentable at the EPO

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The European Patent Office amends its Regulations in order to exclude from patentability plants and animals exclusively obtained by an essentially biological breeding process.

The decision, during the 152st meeting of the Administrative Council of the EPO, came after years of discussion and decisions to the contrary by the Enlarged Board of Appeal in the so-called Broccoli-II and Tomato-II cases (G 2/12 and G 2/13), that 'plant products such as fruits, seeds and parts of plants are patentable even if they are obtained through essentially biological breeding methods involving crossing and selection.'

According to a press release issued today, the proposal from the EPO took account of a Notice of the European Commission from November 2016 related to certain articles in the EU Directive on biotechnological inventions (98/44/EC).

As the EPO reports, the Directive 'excludes essentially biological processes from patentability but does not provide for a clear exclusion for plants or animals obtained from such processes. However, in its Notice the Commission clarified that it was the European legislator's intention to exclude not only processes but also products obtained by such processes. (…)

The new provisions will apply with immediate effect starting on 1 July 2017. Proceedings in examination and opposition cases concerning plants or animals obtained by an essentially biological process have been stayed since last November following the Commission's Notice. These cases will now be gradually resumed and be examined according to the clarified practice.'

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