

Kluwer Patent Blog

EPO revokes Bayer broccoli patent

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For the first time, the European Patent Office has revoked a patent as a consequence of amended regulations which exclude plants and animals obtained by an essentially biological breeding process for patentability.

The [revocation](#), last month, concerned European patent number 1.597.965, covering a type of broccoli adapted to make harvesting easier. The patent was granted in 2013 to Monsanto, which was later bought up by Bayer. The revocation follows an [opposition filed in 2014](#) by a coalition of organisations, supported by 75.000 signatures.



The EPO [changed its guidelines in July 2017](#) after taking “account of a [Notice of the European Commission from November 2016](#) related to certain articles in the [EU Directive on biotechnological inventions \(98/44/EC\)](#). This Directive was implemented in the EPO’s legal framework in 1999. 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.”

Christoph Then of the organization ‘No Patents on Seeds!’ [said](#) the revocation “is an important success for the broad coalition of civil society organizations against patents on plants and animals. Without our activities, the EPO rules would not have been changed and the patent would still be valid. The giant corporations, such as Bayer, Syngenta and BASF, have failed in their attempt to completely monopolize conventional breeding through using patents. But there are still huge legal loopholes as shown in the case of conventionally bred barley. Political decision makers now have to take further action.”

The [Life Sciences IP Review](#) quoted Jason Rutt, patent attorney at Boulton Wade Tennant, as pointing out that while the EPO guidance was revised in 2017, the patent was granted in 2013. “While losing a patent to a retrospective law change can feel slightly contrary to natural justice, it’s hard to see how the claims could be maintained,” he said according to LSIPR.

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