Kluwer Patent Blog

European Parliament supports ban on patenting of gene edited plants

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The European Parliament supports the introduction of a full ban on patents for all plants produced by certain New Genomic Techniques (NGT), plant material, parts thereof, genetic information and process features they contain. The ban, part of a proposal to introduce two different categories of NGT plants, got support in a vote today. The provision on a patent ban has been criticized as 'wishful thinking' and 'not the right arena'.

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According to the European Parliament, the ban avoids 'legal uncertainties, increased costs and new dependencies for farmers and breeders.' MEPs also request a report by June 2025 on the impact of patents on breeders' and farmers' access to varied plant reproductive material as well as a legislative proposal to update EU rules on intellectual property rights accordingly.

MEPs introduced the ban on patents by amending a proposal of the European Commission to have two different categories and two sets of rules for NGT plants. NGT plants considered equivalent to conventional ones (NGT 1 plants) would be exempted from the requirements of the GMO legislation, whereas for NGT 2 plants with more complex modifications this legislation adapts the GMO framework to those NGT plants.

The proposal has to be discussed with the member states before it can be adopted. Whether this will be possible before the European elections of June is uncertain.

Criticism

The proposed ban has been criticized by both industry and environmentalists. In a press release issued two weeks ago, when the Committee on Environment, Public Health and Food of the EP

had adopted the proposal, the lobby group IFOAM Organics Europe wrote: ‘This rushed legislative process to deregulate NGTs goes against the interest of European breeders, farmers and citizens. Today’s vote by MEPs in the Environment committee leaves too many issues about risks, patents and the right of farmers and consumers to avoid NGTs, unsolved. (…) Claiming to address the patent issue with an amendment and a report is wishful thinking, but far behind reality.’ IFOAM called for the plenary 6 February vote to be delayed.

In Science Business, Garlich von Essen, secretary general of seed industry association Euroseeds, said an amendment to the NGT regulation is not the right arena to strike a balance between firms which develop technologies and the use of these by small companies. ‘It will not be done with two or three trilogue meetings.’

Last week, the epi wrote on its website: ‘epi, together with other associations and companies has called upon MEPs to reconsider the proposed amendment to ban patents on NGT plants, because without adequate protection, companies in Europe will not be able to invest in NGTs, the pace of innovation will slow down and the EU’s goal of fostering competitiveness with stronger biotechnology contributions will be put at risk.

New technologies such as gene editing (e.g. CRIPR-Cas9) and NGTs offer new opportunities. However, they require significant investments. The ability to protect newly created traits with patents is therefore an essential component to secure sustainable investments in the creation of innovative crops that help farmers to keep up productivity in times of climate change and help to introduce more sustainable cropping systems.

The MEPs seem to be motivated by concerns that patents may limit breeder´s and farmer´s access to these novel plant materials. It is important to note in this connection that already today, the scope of the patent protection is limited by the general research exemption in European patent law and by the breeders’ exemptions implemented also by many EU Member States as well as in the recently implemented EU unitary patent system.

Moreover, the Biotech Patent Directive, the EU Plant Variety Regulation as well as the Unified Patent Court Agreement all contain provisions allowing farmers to save protected seeds for using it in a next cultivation cycle on their own farm. Small farmers do not have to pay anything.

Finally, over the last years, the Administrative Council of the European Patent Organisation has introduced provisions into the European Patent Convention to exclude from patentability plants or plant material, if the claimed product is exclusively obtained by means of an essentially biological process or if the claimed process features define an essentially biological process.

A solution should be reached that acknowledges the importance to gain access on fair licensing terms to genetic material especially for small market players whilst respecting the importance of patent protection for trait innovators.’

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