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The abuse of European Patent law must stop!

This Thursday, 19 September, the European Parliament will vote on a resolution on the issue of the patentability of biological plants and animals, aka plants and animals that could be found in nature or bred by farmers.

The case of the wrinkled tomato

The whole story started back in 2012, when the European Patent Office (EPO) granted patents on a variety of "wrinkled" tomato and on broccoli, which were by no means genetically modified, but could already be found in nature or in the fields as products obtained from essentially biological processes such as crossing and selection. GM plants are normally the only ones patentable in the EU, as clearly stated in Directive 98/44: *plants and animals obtained through classical breeding or just present in nature cannot be patented.*

But the EPO - which is actually not forced to follow EU rules and gives here its very personal interpretation of them - decided to patent seeds based on specific characteristics, actually found in plants in their natural condition (like the level of a certain component in a plant). This means companies were able to patent perfectly "natural" common plants just by describing a characteristic, granting them the rights to every plant with the same trait. This has made it easy for multinational corporations, and a handful of agro-chemical giants - who together already control between 60 and 90% of the various seed sectors - **to award themselves the rights to plants and foodstuffs that were created by natural processes** and/or bred and selected by farmers over centuries.

A long-winded tug of war

As a response, the European Parliament adopted a resolution calling for clarification of patent law for plants. Judging by the Commission's answer on 8 November 2016, that EU law never intended to grant patents on natural traits that are introduced into plants by means of essentially biological processes such as crossing and selection. All Member States supported this reading and the Board of Directors of the EPO eventually amended its policy so as not to grant patents on products from essentially biological processes.

Following this answer from the EU political arena, the Administrative Council of the EPO made a further decision and eventually agreed that patents on plants and animals derived from conventional breeding are

prohibited. However, the Technical Board of Appeal of the EPO rejected this decision on 18 December 2018 by arguing that the Administrative Council had overstepped its powers and that, therefore, patents on plants may be granted.

The EU legislators strike back

Public parties, including the European Parliament have until 1 October 2019 to comment on this latest episode of the EPO saga. While the Commission will be responsible for sending the official position of the EU on this matter, the political groups in the European Parliament decided to have a debate and a joint resolution **in order to reiterate - for the third time - their opposition to any patenting of non-biotech plants and animals**.

- EU citizens also have the possibility to take a position on this matter
  by signing a letter addressed to the EPO (deadline for signature: September 25).

Although the issue gathers a *rare* cross-party outrage, the Greens have been taking an especially hard line when it comes to upholding farmers' rights. Indeed, these patents on natural plants deprive farmers of their rights to use natural seeds, as they cannot use the patented varieties to further breed them. This therefore gives pride of place to bio-piracy at the expense of biological diversity.

Furthermore, this EPO-decision-switching saga clearly shows how **the governance of the structure needs to be urgently addressed** as its decision-making process is based on an internal operating logic and actually ignores limits put to patents by EU legislators as well as international treaties and conventions (Nagoya Convention, Convention on Biological Diversity).

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