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Food security and patents

European Patent Office casts doubt on patenting of a tomato breed

The technical board of appeal of the European Patent Office (EPO) has decided to refer a decision on the legality of a patent on a tomato breed (riddled tomato) to the enlarged board of appeal, raising doubts about the legality of this patent. While the decision does not yet mean the patent (EP 1211926), obtained in 2003, will be annulled, it does indicate that there are doubts as to whether products from biological processes like plant breeding are patentable.

The Greens are strongly opposed to the patenting of life-forms, which would have serious implications for global food security and the rights of small farmers by giving large multinationals exclusive rights over the means for food production. The hope is now that the enlarged board of appeal will recommend withdrawing the patent.

The hearings are part of an appeal case which will result in a decision to maintain the patent, possibly in amended form, or to revoke it altogether. The patent - which concerns a breed of tomato bred to require reduced water content - is valid in ten European countries (with around 100 patents covering other plant varieties).

Decisions (G 2/07 and G 1/08) issued on 9 December 2010 by the enlarged board of appeal ruled that selection and breeding methods consisting of sexually crossing the whole genomes of plants could not be patented. Nor did the use of molecular markers render such methods patentable. This ruling is binding on the EPO and its boards of appeal and must now be applied to each individual case.

However, the patents on the products of these "essentially biological processes" have been maintained, meaning that the riddled tomato and other plants are still patented. A hearing on a similar case involving broccoli was cancelled, meaning that the patent on the broccoli has been maintained.

The Greens believe that there needs to be a European debate on prohibiting the patenting of life-forms and will seek to put the issue on the agenda of the European Parliament, with a view to pressing the European Commission to come forward with proposals to prevent the patenting of plants and animals derived from conventional breeding.

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