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The European Patent Office’s new rules are unacceptable

Patents on “natural” seeds

Today, the European Patent Office (EPO) missed the opportunity to change its internal rules in a way that would have clearly prevented the granting of patent on non genetically modified seeds. Indeed, while apparently banning this shocking practice, the new text opens two major loopholes will very probably lead to even more patents on “natural” plants, allowing seed companies to privatise nature and the source of our food. This validation by an official body of what amounts to Bio-piracy is unacceptable.

It all started in 2014, when the EPO granted patents on a "wrinkled" tomato and on broccoli which were by no means genetically modified. GM plants are normally the only ones patentable in the EU, as clearly stated by Directive 98/44: plants and animal obtained through classical breeding or just present in Nature cannot be patented. But some seed companies made, with the consent of the EPO, a very daring interpretation of the text by patenting seeds based on specific characteristics (like for example 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 plants with the same trait. This was an easy way for multinational corporations, and increasingly agro-chemical giants who together already control between 60 and 90% of the various seed sectors[1], to award themselves the rights to plants and food that were created by natural processes and/or bred and selected by farmers over centuries.

This was of course widely denounced by farmers’ organisations, NGOs and many legislators. The European Parliament has even produced two resolutions on this issue, calling for this kind of patents on plants arising from natural processes to be stopped. A position shared by the European Commission in its legislative interpretation released in November 2016. Indeed, the EPO's decisions exploited a loophole in the legal text, and blatantly ignored the clear intent of the legislators back in the nineties.

This was not enough for the EPO to stop its practices though, as they are not accountable to the authority of the EU institutions. It took them six more months of internal discussions to conclude, and unfortunately, the resulting text is far from the par. Indeed, even though it does ban the patenting of “essentially biological processes”, it is allowing new kinds of patents. One concerns “specific genetic conditions” without referring to the method used to obtain these - any plants with such “genetic conditions”, obtained through biotechnologies or just existing in nature, would be covered by the patent.

It seems to us that the intent of these new rules was to give the appearance of following the EU

Commission's opinion while opening even wider the door to the privatisation of life. Why would an official body make such incredible gifts to the industry against the stated will of the Commission and of the EU legislators? It can actually be explained easily: EPO is not an EU agency and is not directly submitted to its regulation. Furthermore, its budget is financed to a significant extent from the granting of patents; the more patents EPO grants, the more revenues it gets. What is less clear for us is the role played by the EU member states, which are all members of the administrative council of the EPO. Why would they validate such a scandalous text which is contradicting what they approved at the Council level in 1998?

As Greens/EFA, we cannot accept that the EPO is subverting the implementation of the regulation of the European Union, which was clearly meant to ban any kind of patenting of plants and animals not modified by biotechnologies. Granting rights to private companies on plants and animals they have simply found in nature or in the fields is not only completely unfair, it is dangerous. These plants and animals are the source of our food and they should not be falling in the hands of companies whose sole aim is making profits.

We are calling on the Member states sitting in the EPO administrative council to revert this decision. We will continue to fight for the end of all patents on life and to put the fate of the seeds back in the hands of the farmers for locally adapted, resilient crops.

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[1] See this study by Ivan Mammana

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