

Press release

How to protect intellectual property on plants ? ESA calls upon Council and Parliament to use EU Patent to foster research and innovation

European Parliament draft resolution on patentability of plant breeding processes to be voted on Thursday could help break the deadlock on the Council's discussions on the future EU Patent

For quite some time now, the legislative process on the adoption of the long awaited new EU Patent has been blocked in Council, mainly due to differences of key Member States on the seat of the future related Court which amongst other countries is claimed by Germany and France. This blockage has also resulted in the strange situation that a point of broad agreement of not only Member States but also almost all political groups in the European Parliament still has not made it into the most recent texts of both institutions.

“The need to allow for further research and breeding with plant material, even where this is protected by IP rights, is a cornerstone of the European plant breeding sector's position on intellectual property protection for plants and seed” explains Garlich v. Essen, Secretary General of the European Seed Association. This principle is enshrined in the EU's specific plant breeders' rights legislation – but is missing from the current texts for the future EU patent. Consequently, ESA has proposed to add such a “breeder's exemption” to the provisions of the new IP instrument - and has received widespread support for it. “We had a positive vote of the EP's Research Committee, we have support from the rapporteur and shadow rapporteur in the EP, we know of numerous Member States that would welcome such an addition to the Council's text – what we still need is that both institutions realise that such an addition will not put the overall agreement on the EU patent at risk but will rather support it.” von Essen describes the current task. The debate on an EP resolution on the patentability of plants is therefore seen as an opportunity to once again underline the sector's needs: ESA requests the addition of a limited breeders exemption into the EU Patent law as well as a consequent implementation of the limitation of patentability to real biotechnological inventions, i.e. excluding ‘classical’ breeding processes as well as resulting products.

With such an amendment to the EU Patent as well as further clarification by the European Patent Office, ESA sees no major need for further legislative work.

“It is a great opportunity for EP and Council to tie up some loose ends without having to go through a full scale legislative review of the respective rules” von Essen describes the plant breeding sector's position.

**To Members of the European Parliament: ESA comment on draft resolution on
limitation of patentability of plant related inventions**

Importance: High

Via e-mail

European Parliament debate and draft resolution on the limitation of patentability of plant related inventions / on-going discussion of the European Patent and need for a formal Breeder's Exemption

Dear Member of the European Parliament,

in view of the upcoming debate on a draft resolution on a limitation of patentability of plant related inventions (9./10. May), ESA European Seed Association herewith supplies you with its principal considerations on this important topic:

- ESA underlines its position that no patents may be granted for essentially biological breeding processes based on crossing and selection.

This position has just recently been supported by a respective decision of the EPO Board of Appeal.

- ESA is of the opinion that the exemption of such 'classical' breeding processes from patentability must logically be valid also for products resulting from these processes.

The non-patentable process of combining two genotypes by classical crossing and selection must not lead to a patentable plant or plant product. ESA is confident that a respective EP resolution will bring an important contribution to the upcoming deliberations of the EPO on the interpretation of this part of the current EU legislation. ESA would like to take this opportunity to urge the European Parliament to make use of the debate to once again stress its support for the introduction of a limited breeders exemption in the provisions of the future EU Patent, currently under consideration by the Council and still to be voted by the plenary of the EP in due course.

Here, ESA would like to stress:

- ESA fully supports the future instrument of a European Patent as it will facilitate applications and cut related costs. This will be beneficial specifically for SMEs.

- The addition of a limited breeders exemption to the future EU Patent would practically implement the EP's policy approach as contained in the draft resolution; it will assure legitimate access to patent protected material for the purpose of further breeding and plant variety development, to the benefit of breeders, farmers and society as a whole.

- It will also align the provisions of the EU's plant breeders rights legislation with the provisions of the patent law in the area of plants and seed without triggering the need for a comprehensive and lengthy legislative review and revision process. ESA is of the opinion that such an opportunity for clarification of the desired scope and effect of IP protection must not be missed by the legislator.

- Based on numerous discussions with representatives of the European Parliament as well as from a number of Member States, ESA is convinced that the addition of a breeders exemption would receive the widest possible support from both, all major political groups in the European Parliament and of a broad majority of Member States.

Before this background, I would like to emphasise that ESA welcomes the upcoming debate on the patentability as the right discussion at the right time.

A strong political signal from the European Parliament, not only on the limitation of patentability but also on the need to provide for a practical implementation of free access to protected material for further breeding, would surely not fail to impress the on-going

debate on the EU Patent at Council level and provide political input to the further related deliberations of the EPO.

Attached, I have the pleasure to provide you with ESA's respective Press Statement for your kind consideration and further use.

I remain at your disposal for further information,

Sincerely yours,

Garlich von Essen Secretary General

