



European Patent Office
Registry of the Enlarged Board of Appeal
Attn. of Mr. Wiek Crasborn
DE 80298 München

EBAamicuscuriae@epo.org

Didcot (U.K.), October 1, 2019

Subject: written statement International Association of Horticultural Producers (AIPH) in respect of case G3/19

Dear Mr. Crasborn,

On behalf of all AIPH members we would like to address the following to you.

It is with continuing interest that AIPH follows the developments in the discussions regarding the exclusions to patentability of essentially biological processes and the products thereof during the past years in Europe and at the European Patent Office. Therefore AIPH does appreciate the opportunity to present its opinion on the questions submitted pursuant to Article 112 (1) (b) EPC by the President of the EPO to the Enlarged Board of Appeal on 5 April 2019, which relate to the patentability of plants exclusively obtained by essentially biological processes and to decision T 1063/18 of a Technical Board of Appeal of 5 December 2018.

Short introduction to AIPH

Since 1948, AIPH has united horticultural producers in an international community that thrives to this day. AIPH supports the work of grower associations globally and together we champion a prosperous industry, growing plants that enhance lives, advance societies and sustain our planet for this generation and the next. Through our Novelty Protection Group, we advocate a good working and strong plant breeders' rights (PBR) system, encouraging innovation through good breeding work and rewarding quality of the propagating material, so that new varieties will be produced and will be available for growers and farmers.



The availability of new varieties is very important, for society but also for breeders, growers and farmers. Think of new varieties with disease resistance or herbicide resistance, plants which need less water or can be produced in other climate zones. We, as growers, share the interest of a good working PBR system with breeders and this large common interest is AIPH's basis for consultation with breeders and their associations such as Euroseeds and Plantum. Since many years, AIPH has observership in UPOV (the International Union for the Protection of New Varieties of Plants), where it represents the interests of the worldwide horticultural producers.

AIPH's interest to confirm the non-patentability of plants exclusively obtained by essentially biological processes.

It is very important for growers that they are supplied with propagating material in time, in the desired and sufficient quantity and quality and at equal and reasonable prices. This access for growers has always been and is guaranteed by the good working plant breeder's right system, as laid down in the UPOV Convention, especially by the so called breeders exemption principle. This plant breeder's right system is of importance to the growers as it provides the base for: 1. their necessary product innovation; 2. their sufficient access to the available propagating material; 3. their guarantee of the quality of the propagating material.

That is why AIPH gives full support to the statements of Plantum and Euroseeds where they strongly hold that the unrestricted access to all genetic resources for further breeding and the freedom to operate in crossing and selection must be safeguarded. In plant breeding, as laid down in the breeders exemption principle mentioned above, the physical use of the genetics of already existing plants is essential. The aim of a plant breeder is always to obtain the best possible combination of genetics responding to the determined breeding goals which are - to a large extent - driven by societal needs and environment challenges. This requires access to the widest possible genetic variability in order to maximise options for such combinations.

Because of the abovementioned interests of the growers, it needs no further argument that AIPH fully agrees with the statement that Rule 28 (2) EPC adopted by the administrative Council of the EPO in 2017 and the subsequent practice of the EPO to request a disclaimer in patent claims to restrict the scope of protection to the technical invention, are of key importance in safeguarding the abovementioned principles.

AIPH has its member associations spread over 5 continents, but AIPH has learned that decisions



about legislation in the plant breeding field in Europe may have a major impact on legislations and on the concerned horticultural industry elsewhere. Therefore as well, we see it as our task to fully support the mentioned breeders associations in their statements.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'T. Briercliffe', is placed on a white rectangular background.

Tim Briercliffe
Secretary General