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NETZWERK AFRIKA DEUTSCHLAND

• Glaube und Gerechtigkeit •

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to the Enlarged Board of Appeal, Case G2/07

Dear member of the Enlarged Board of Appeal

Netzwerk Afrika Germany would like to inform you about our opposition to patents on normal plants and seeds. We are particularly concerned about the possible implications of the so-called Broccoli Case regarding a plant derived from marker assisted breeding (MAB).

To our deepest understanding patents on plants and animals derived from marker assisted breeding cannot be regarded as patentable according to these basic principles in European Patent Convention (EPC):

„..patents shall not be granted in respect of: (b) plant or animal varieties or essentially biological processes for the production of plants or animals;..." (Art. 53b; EPC)
„The following (...) shall not be regarded as inventions (...): (a) discoveries, scientific theories and mathematical methods; (...)"(Art 52 (2), EPC)

MAB uses the natural phenomenon of correlations and combinations between certain genetic conditions, which has been in a basic principle in plant and animal breeding for centuries. MAB is mostly used in combination with natural phenomena such as crossing and selection, which are not patentable under to European patent law.

Plants bred with conventional techniques (as MAB) in Europe are protected by plant variety protection laws. For the needs of breeders these are clearly more appropriate than patent law. Broadening the area of patentable inventions in the plants sector does not result in better protection but, on the contrary, replaces a law specifically designed for seeds (pvp-laws) with a law that does not take into account the specific needs of this sector.

The granting of such patents will hinder research, innovation and plant breeding. Similar effects have been described in the field of medical diagnoses (Klein, R.D., „Gene patents and genetic testing in the United States", Nature Biotechnology, Vol. 25, No. 9, September 2007, pp. 989-990); there are also general warnings that plant breeding might fail to secure world food supply because of strong IPRs (Knight, J., 2003, „Crop improvement: A dying breed", Nature 421:568-570). These negative consequences for farmers, breeders, and consumers will be multiplied by the fact that a patent holder could try to monopolize all

subsequent generations of the patented seed (or animals) as well as all steps in the food production chain. The possibility of patenting seeds has already led to a highly concentrated market structure with only 10 multinational companies controlling about half of the international seed market and the process continues.

Please see attached the global appeal against patents on seeds and animals, supported by about 50 farmers' organizations worldwide as well as more than a hundred other organizations (more information at www.no-patents-on-seeds.org). Please be aware that your decision will have major impact not only on farmers, breeders and food sovereignty in Europe but also will be seen as an important signal in other regions.

Furthermore it will have implications on the general direction of patent law development in the near future. Many experts throughout the world are concerned that more and more patents are granted without providing true inventions. In any case, the Broccoli Case is bound to influence the current discussion about the inflation in patent law in one way or another. It is time to set a signal for a patent law that is limited to real inventions that serve the interests not only of patent holders but of society as a whole.

Yours faithfully

Wolfgang Schönecke
Director
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