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>

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To "DG3registry_eba" <dg3registry_eba@epo.org>
cc <w.roepstorff@epo.org>
bcc
Subject Re: addendum to amicus brief G-2/07, G-1/08

Dear Sirs

Below please find an Addendum to the *amicus* brief I submitted earlier regarding essentially biological processes (G-2/07, G-1/08):

As set out in the Communication of 16 June 2010 from the Registry, the issues of the interpretation of the words "essentially" and "production" in Art. 53(b) EPC are central to the cases before the Enlarged Board of Appeal, in the first case in view of Rule 26(5) EPC and in the second in view of the use of the term "Züchtung" in the German text of the EPC.

In the first case, Rule 26(5) EPC is subordinate to Art. 53(b) EPC, which remained unchanged with the adoption of EPC 2000. The language of Rule 26(5) EPC is such as to provide an *example* of what may be an essentially biological process, rather than to define what a process *must be* to be essentially biological - this it *can not* do since the word "entirely" used in the Rule has a different meaning from "essentially", the word used in the Article.

In the second case, both Plant Bioscience and Syngenta would have the Board believe that "Züchtung" must mean to produce a plant or animal of a new "variety". Züchtung however also means simply growing or cultivating, or, with bees, keeping, that is the activities of the farmer. In view of this possible meaning, there is no discrepancy between the words used in the three different languages of the EPC.

Yours sincerely,
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