



15.12.15

B8-1394/2015}

B8-1395/2015}

B8-1399/2015}

B8-1400/2015} RC [1]

## ***JOINT MOTION FOR A RESOLUTION***

pursuant to Rule 128(5) of the Rules of Procedure

replacing the motions by the following groups:

EPP (B8-1394/2015)

S&D (B8-1395/2015)

ECR (B8-1399/2015)

ALDE (B8-1400/2015)

on Patents and Plant breeders' rights

**Albert Dess, Tadeusz Zwiefka**

on behalf of the EPP Group

**Paolo De Castro, Evelyn Regner**

on behalf of the S&D Group

**Jan Huitema, Jean-Mari Cavada**

on behalf of the ALDE Group

**James Nicholson, Bas Belder, Janusz Wojciechowski**

on behalf of the ECR Group

The European Parliament,

- having regard to Resolution 2012/2623 of the European Parliament of 10 May 2012,
- having regard to Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, and in particular Article 4 thereof, which states that products obtained from essentially biological processes shall not be patentable,
- having regard to the European Patent Convention (EPC) of 5 October 1973, and in particular Article 53 (b) thereof,
- having regard to the decision of the Enlarged Board of Appeal of the European Patent Office (EPO) of 25 March 2015 in Case G2/12 (on tomatoes) and G2/13 (on broccoli),
- having regard of the Implementing Regulations of the EPC and in particular Rule 26 thereof, which states that for European patent applications and patents concerning biotechnological inventions Directive 98/44/EC shall be used as a supplementary means of interpretation,
- having regard to the International Convention of 2 December 1961 for the Protection of New Varieties of Plants, as revised at Geneva on 10 November 1972, 23 October 1978 and 19 March 1991 (hereinafter referred to as the 'UPOV Convention 1991'),
- having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community Plant Variety Rights (hereinafter referred to as 'Regulation (EC) No 2100/94'), and in particular Article 15 (c) and (d),
- having regard to the Council Agreement on a Unified Patent Court 2013/C 175/01 of 19 February 2013 (hereinafter referred to as 'UPC Agreement') and in particular Article 27 (c),
- **having regard to the Agreement on Trade Related Aspects of Intellectual**

Property Rights, Including Trade in Counterfeit Goods (TRIPS), and in particular to Article 27(3) which states that Member Countries may exclude essential biological processes from patentability,

- having regard to Rules 128 of its Rules of Procedure,
  - A. whereas the access to biological plant material encompassing plant traits is absolutely necessary for boosting innovation and the development of new varieties in order to guarantee global food security, tackle climate change and to prevent monopolies within the breeding sector while at the same time providing more opportunities for SMEs;
  - B. whereas intellectual property rights are important to safeguard the economic incentives to develop new plant products and to deliver competitiveness;
  - C. whereas patents on products derived from conventional breeding or on genetic material necessary for conventional breeding can undermine the exclusion established in Article 53(b) of the European Patent Convention and in Article 4 of Directive 98/44/EC;
  - D. whereas the patentability of products obtained from essential biological processes, such as plants, seeds, native traits or genes should be excluded from patentability;
  - E. whereas plant breeding is an innovative process practiced by farmers and farming communities since the birth of agriculture; and whereas unpatented varieties and breeding methods are important for genetic diversity;
  - F. whereas Directive 98/44/EC legislates for biotechnological inventions, in particular genetic engineering, but as indicated in its Recital 52 and 53, it was not the intention of the legislator to allow the patentability of products obtained from essentially biological processes within the scope of this Directive;
  - G. whereas numerous applications on products obtained from essentially biological processes are currently awaiting decision at the European Patent Office resulting in an urgent need for clarification on the scope

and the interpretation of Directive 98/44/EC ,in particular article 4 thereof;

- H. whereas Directive 98/44/EC implicitly acknowledges the freedom to use material falling under the scope of a patent for experimental purposes as follows from article 12 sub 3 (b) and article 13 sub 3 (b);
  - I. whereas the breeder's exemption provided for in Article 27 (c) of the UPC Agreement will only be applicable to patents granted under the Unitary Patent system and shall not automatically apply to national patents in the EU, resulting in a non-harmonised situation regarding the possibilities of breeding with material obtained from essentially biological processes falling under the scope of a patent;
  - J. whereas it is a fundamental principle of the international system of plant variety rights based upon the UPOV Convention, and of the EU system based upon Council Regulation (EC) No 2100/94, that the holder of a plant variety cannot prevent others from using the protected plant for further breeding activities;
1. Expresses its concern that the recent decision of the Enlarged Board of Appeal of the EPO on the case G2/12 (tomatoes) and G2/13 (broccoli) could lead to more patents granted by the EPO on natural traits which are introduced into new varieties by using essentially biological processes like crossing and selection;
  2. Calls upon the Commission to urgently clarify the scope and interpretation of Directive 98/44 and in particular Article 4 along with Articles 12 sub 3 (b) and 13 sub 3 (b), in order to ensure legal clarity regarding the prohibition of the patentability of products obtained from essentially biological processes and that breeding with biological material falling under the scope of a patent is permitted;
  3. Calls on the Commission to communicate its forthcoming clarification on the patentability of products obtained from essentially biological processes to the EPO in order to be used as a supplementary means of interpretation;

4. Calls on the Commission and the Member States to ensure that the Union will safeguard the guaranteed access to and use of material obtained from essentially biological processes for plant breeding in order, where applicable, not to interfere with practices guaranteeing breeders' exemption;
5. Calls on the Commission to pursue the exclusion from patentability of essentially biological processes in the context of multilateral patent law harmonisation discussions;
6. Calls upon the Commission to report on the development and implications of patent law in the field of biotechnology and genetic engineering as required in Article 16 (c) of Directive 98/44/EC and requested by Parliament in its Resolution 2012/2623;
7. Instructs its President to forward this Resolution to the Council, the Commission and the EPO.