NO PATENTS ON SEEDS!

2 February 2022 - Conference call NPOS

Minutes

Participants

1. Bram de Jonge / Oxfam
2. Nout van der Vaart / Oxfam
3. Martha Mertens / FOE Germany (BUND, BN)
4. Dagmar Urban / ARCHE NOAH
5. Magdalena Prieler / ARCHE NOAH
6. Axel Grunt / ARCHE NOAH
7. François Meienberg / ProSpecieRara
8. Ruth Tippe / No patents on life
9. Anne-Charlotte Moy / No patents on seeds!
10. Christoph Then / No patents on seeds!
11. Johanna Eckhardt / No patents on seeds!

Chair: Christoph
Minutes: Johanna

Agenda

- We welcomed Nout van der Vaart from Oxfam to the group.

1. Updates

1.1. from countries / member organisations

- **Austria/Dagmar**: We are planning more communication about the petition on social media over the next months to get more signatures. We are preparing meetings with more partners for the petition. We had a meeting with Bio Austria (organic farmers association). They supported the last petition. They may support this petition. Maybe as well the Chamber of workers and employees, etc.
- As a result of last year's capacity building workshops on patents several participants joined the NPOS Zoom talk for organisations to support the petition.
- **Switzerland/François**: The commission of our senate agreed to a motion that the national patent law is going to be revised, but this process will still take a long time.
- **Christoph**: Together with Oxfam we had a good meeting with Plantum. We hope for follow up meetings. We hope to have more contacts to mainstream breeders.

2. Petition

The following petitions are already online:

- No patents on seeds! (1.200 signatures): https://www.no-patents-on-seeds.org/en/petition
- ARCHE NOAH (15.000 signatures): https://arche-noah-petition.sicher-helfen.org/pet/patentestopp/?cf=www

- Gen-ethisches Netzwerk: https://www.gen-ethisches-netzwerk.de/januar-2022/petition-keine-patente-auf-saatgut

Info about the petition on homepages of our members:

- Bund Naturschutz in Bayern: https://www.bund-naturschutz.de/landwirtschaft/gentechnik-und-landwirtschaft
- AbL: https://www.abl-ev.de/apendix/news/details/?tx_ttnews%5Btt_news%5D=4355&cHash=da7fe0d2d5fa888fb508b27da0662b18

- WeMove finishes the preparations to go online with the petition soon.
- Umweltinstitut München will most probably go online with the petition on 10 Feb. [update: 17 Feb.] They will communicate in their newsletter, but will not prepare a press release.
- The German association of private breweries (Freie Brauer) will have their homepage and Social media channels about the petition online in the next couple of days. They will then prepare a press release (possibly next week). NPOS will use that opportunity to send out a press release as well.
- **Martha**: "We could send out a press release (at least in Germany) for all the initiatives in Germany, that is BN, AbL, Umweltinstitut, Freie Brauer" – Agreed. We'll try to coordinate that. [Update: Umweltinstitut agrees, too.]
- **François**: The Swiss organisations will as well be ready to launch the petition in the next couple of days.
- **Johanna**: The first Zoom talk for partner organisations went very well, a lot of interest. For the next Zoom talk on 15 Feb. we'll have a template for a letter to the ministries ready.
- Copa Cogeca signed the petition, we may aim for a meeting with them.

Conference of Ministers

- **François**: Do we know if such a conference took place in the last 20 years? Our wording is ambiguous. – If such a conference would have taken place in the last 20 years, it should be documented on the EPO website – and it is not. So we could be more precise in our wording.
- But since we still don't know exactly how such a conference is conveyed, it may be possible that such a conference was held f.e. within a meeting of the Admin. Council in a very minimal form.
- **Dagmar**: Maybe there was a substitute meeting. It is unsure if they are in breach of the Convention. Would be good to find that out.
- We should find out more about the exact procedure.
- **Christoph**: At the moment we shouldn't ask the EPO directly, but try to find out more via the ministries, f.e. Germany and Austria.
- **Dagmar**: Yes, I can ask Austria. But we have been asking them a lot. It would be better if we wouldn't just rely on Austrian contacts, but include as well other ministries/countries.
- Please try to establish contacts with your ministries!
- The signatures will be handed over end of June. We could use the meeting of the Administrative Council of the EPO on 29/30 June. But we will aim to meet national ministries before that, hand over the signatures and have a meeting.
- **Nout**: We can try to establish a contact with the NL ministry.

Johanna: I tried to find more info about the Conference on the EPO website. Article 4a was introduced at the EPC revision in 2000. Some proposals to the administrative steps for a Conference have been made, but only a very simple proposal (by UK) has been accepted. So I couldn't find out the exact steps needed. We should inquire with experts from the ministries or the EPO to tell us where to find the info. Plus, it was proposed that the Conference of Ministers will not have decision making power, but will only have political significance.

Some further info about the Conference :

- Article 4a: https://www.epo.org/law-practice/legal-texts/html/epc/2020/e/ar4a.html
- Article 4a (Conference of ministers) has been added to the EPC at the revision in 2000. See preparatory documents of the revision: https://www.epo.org/law-practice/legal-texts/epc/archive/documentation.html and https://www.epo.org/law-practice/legal-texts/epc/archive/documentation/travaux-preparatoires.html
- proposal from 26.6.2000 from president to Admin. Council / Patent Law Committee (CA/83/00) – not approved: https://documents.epo.org/projects/babylon/eponet.nsf/0/1DE3339ED2AEAF36C125727C004AD07B/$File/ec00083.pdf
  "The heads of delegation agreed that the establishment of a conference of ministers should not affect the powers of these bodies. In other words, it could not take decisions which had a legally binding effect on the Organisation. Instead, its functions and significance would be of a purely political nature. Firstly, it could set the Organisation objectives, either by issuing mandates or in some other suitable way, which the Organisation's bodies would endeavour to meet by exercising their respective powers. Secondly, it could initiate co-operation between the contracting states in matters which extend beyond the scope of the EPC."
- proposal from UK to Administrative Council on 24.8.2020 to establish conference of ministers (CA/123/00) - accepted: https://documents.epo.org/projects/babylon/eponet.nsf/0/D4FEE15F0D4838BBC125727C00438784/$File/ec00123.pdf
- "Since Ministers will not be taking decisions which are legally binding on the Organisation, we see no need to specify voting arrangements or other formalities, which can be decided for each conference if necessary."
- AC accepted the proposal of UK (CA/123/00) at its 81th meeting on 5-7 sept. 2000, see meeting protocol:

https://documents.epo.org/projects/babylon/eponet.nsf/0/E82686912F2D94DCC125727A004E11CF/$File/ecpv081.pdf

"169. In conclusion, the Council approved by eleven votes to two with six abstentions the inclusion in the basic proposal of an amendment to Article 4 EPC as set out in CA/123/00 (for Denmark, Germany, Spain, Ireland, Italy, Netherlands, Austria, Portugal, Switzerland, Sweden, United Kingdom; against Cyprus, Ellas; abstentions Belgium, Finland, France, Liechtenstein, Luxembourg, Monaco). The Council also noted CA/83/00"

3. Patents

3.1. Patents on beer

Hearing 3rd beer patent (EP2575433) on 10 May 2022

- We have patent lawyers that advise us, but they will not represent us at the hearing. They want to apply article 56. EPO is discussing whether mutations are a technical invention. This is an interesting new approach.
- Article in Nature (sent around by Christoph[1]): Random mutations can not escape natural mechanisms, it just raises the rate of mutations. Technical inventions could escape natural mechanisms. Mutations do not occur on random. It is controlled by the cell. This is as well true for in-vitro mutation (as well controlled by the cell).

CSIRO-patents

- patent on gluten-free beer, one patent applied in 2021, a German brewery (Radeberger) already started to produce this beer, but then they stopped again. Seemingly they grow it in Australia and then export it, no license to grow it in Germany.
- Would be interesting to know if the access to gluten-free beer is hampered by patents.
- We asked the German breweries if they can find out more.

3.2. Patent opposition Nunhems

- **Christoph**: We filed an opposition last minute on the Nunhems patent on a tomato / drought resistance.
- We should decide if we want another opposition this year. I propose another Nunhems patent on shelf-life (tomato). With this case we could as well explain the problem of mixing genome editing and conventional breeding.
- We could either use these patents for press releases now or only when we publish the report.
- **Dagmar**: In the next couple of days NPOS will have a press release on the petition. There should at least be a 2 weeks gap between good stories. We should have regular press releases. When we publish the report, journalists will rather be interested in figures, general developments, etc., but not in specific patent cases. So it would be better to communicate about the report and specific patent cases separately.
- **Axel**: Agreed. We shouldn't be quiet for too long and aim to have regular media coverage. The stories about the Nunhems tomatoes and the gluten-free beer are great.
- **Bram**: Since it is a Dutch company, this can be very important for us to communicate about. As always, I advise NPOS to give the cited companies an opportunity to comment for press releases and the report. – Agreed.

3.3. Further patents

- François sent an interesting patent on red beet. Christoph will analyse it and then maybe include it in the patent report.

3.4. Patent report

- **Christoph**: I have received the patent research of 2021. I want to include the idea of a breeder that approached me.
- I can give an overview about the report at our meeting in March.
- We could publish the report around the meeting of the Admin. Council on 22 March.
- But we should definitely publish the report before the Easter holidays. (start in D/A/CH: 4/9/11/15 April)

[1] summary by Testbiotech: www.testbiotech.org/en/news/new-findings-evolution-plants

4. Other

4.1. Membership request Dachverband Kulturpflanzen- und Nutztiervielfalt

- **Johanna**: Please send me an informal email with your vote until latest 15 February.

4.2. Meeting of members

- We will include our next conference call to discuss daily business in our meeting on 3 March. We will first discuss administrative issues of the meeting of members, then have the conference call with daily business and in the afternoon have the strategy discussion (9h-16h).
- Translation from English to German will be provided.

4.3. Disclaimer

- In the last EPO document CA-PL-3-21[2] provided for the Patent Law Committee, the Disclaimer solution is discussed in detail. This is why we added a paragraph on the Disclaimer in the template letter to the ministries.

[See German version below]

Can disclaimers be a solution?

The EPO proposes a so-called 'disclaimer' to solve the problem. A disclaimer is inserted into the wording of the claims and can limit the scope of a patent. For example, if genetically modified 'mammals' are claimed, 'humans' must be excluded in the disclaimer because patent law prohibits claims to the human body. Now, a disclaimer should also be used when patent claims cover both plants (or animals) from technical processes and plants (or animals) from non-patentable processes. The basis of the disclaimer is the definition of 'essentially biological process'. This is intended to exclude plants (or animals) bred by non-technical processes. However, plants (and animals) with random mutations are not affected by the definition of 'essentially biological processes' currently used by the EPO. Therefore, these are also not excluded by the disclaimer. Rather, random genetic changes (mutations) are equated with changes that are targeted and technically induced, such as caused by genetic engineering (or genome editing). That is why disclaimers, as they are currently applied, are not a solution to the problem.

Können Disclaimer eine Lösung sein?

Das EPA schlägt zur Lösung des Problems einen sogenannten ‚Disclaimer' vor. Ein Disclaimer wird in den Wortlaut der Ansprüche eingefügt und kann die Reichweite eines Patentes begrenzen. Werden beispielsweise gentechnisch veränderte ‚Säugetiere' beansprucht, müssen ‚Menschen' im Disclaimer

[2] ENGLISH: "Exception to patentability under Article 53(b) and Rule 28(2) EPC of plants and animals exclusively obtained by means of an essentially biological process following opinion G 3/19 of the Enlarged Board of Appeal – Situation report" https://www.epo.org/modules/epoweb/acdocument/epoweb2/554/en/CA-PL_3-21_en.pdf

GERMAN: Patentierbarkeitsausschluss von ausschließlich durch im Wesentlichen biologische Verfahren gewonnene Pflanzen und Tiere gemäß Artikel 53 b) und Regel 28 (2) nach der Stellungnahme G 3/19 der Großen Beschwerdekammer – Sachstandsbericht https://www.epo.org/modules/epoweb/acdocument/epoweb2/554/de/CA-PL_3-21_de.pdf

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4.4. Next conference call

- Will be included in our Meeting of Members on 3 March.