The examination is being carried out on the **following application documents**

Description, Pages

1-73 as originally filed

Sequence listings, SEQ ID NO

1-65 as originally filed

Claims, Numbers

1-3 filed in electronic form on 04-11-2020

Drawings, Sheets

1/22-22/22 as originally filed

1 **Added subject-matter; Article 123(2) EPC.**

New claims 1-3 filed in electronic form on 04.11.2020 seem to comply with the requirements of article 123(2) EPC.

2 **Novelty; Article 54 EPC.**

Previous claim 6 has been deleted. Consequently the present claims are considered to be novel in the sense of article 54 EPC.

3 **Inventive step; Article 56 EPC.**

Claims 1-3 correspond to previous claims 1-3. The inventive step of these claims has already been recognised.

4 **Clarity; Article 84 EPC.**

In the light of the amendments, the claims are now considered to be clear.

5 Exception from patentability; Article 53(b) EPC.

Claim 1 (iii) refers to the step of producing a population of plants from the at least one plant cell, tissue, organ, or whole plant.

This wording is considered to encompass implicit steps of breeding (crossing and selection).

According to decision G1/08 :

1. A non-microbiological process for the production of plants which contains or consists of the steps of sexually crossing the whole genomes of plants and of subsequently selecting plants is in principle excluded from patentability as being "essentially biological" within the meaning of Article 53(b) EPC.

2. Such a process does not escape the exclusion of Article 53(b) EPC merely because it contains, as a further step or as part of any of the steps of crossing and selection, a step of technical nature which serves to enable or assist the performance of the steps of sexually crossing the whole genomes of plants or of subsequently selecting plants.

3. If, however, such a process contains within the steps of sexually crossing and selecting an additional step of a technical nature, which step by itself introduces a trait into the genome or modifies a trait in the genome of the plant produced, so that the introduction or modification of that trait is not the result of the mixing of the genes of the plants chosen for sexual crossing, then the process is not excluded from patentability under Article 53(b) EPC.

4. In the context of examining wether a process is excluded from patentability as being "essentially biological" within the meaning of Article 53 (b) EPC, it is not relevant whether a step of a technical nature is a new or known measure, whether it is trivial or a fundamental alteration of a known process, whether it does or could occur in nature or whether the essence of the invention lies in it.

It has to be noted with regard to point 3. that this applies only where the additional step is performed within the steps of sexually crossing and selection, independently from their number of repetitions. Any additional technical steps which are performed either before or after the process of crossing and selection should [...] be ignored when determining whether or not the process is excluded from patentability under Article 53 (b) EPC. This is the case, for example, for genetic engineering techniques applied to plants which techniques differ profoundly from conventional breeding techniques [...]. In such cases the claims should not, explicitly or implicitly, include the sexual crossing and selection process.

Therefore, claim 1-3 cannot be considered as allowable under article 53(b) EPC.

This could be solved by deletion of step (iii) in claim 1.

6 Once the problem under point 5 above solved the newly filed claims would be considered to be allowable. The applicant is invited to adapt the description to such amended claims and amend or delete any statements or expressions

which cast doubt on the scope of protection (Guidelines, F-IV, 4.3). Failure to do so could lead to refusal of the application under Article 97(2) EPC in combination with Article 84 EPC.

Care should be taken during revision, especially of the introductory portion including any statements of problem or advantage, not to add subject-matter which extends beyond the content of the application as originally filed (Article 123(2) EPC).

The description should be amended where appropriate to fulfil the following requirements:

- The technical field of the invention (Rule 42(1)(a) EPC; Guidelines F-II. 4.2) must correspond to the amended set of claims.
- The summary of the invention (Rule 42(1)(c) EPC; Guidelines F-II.4.5) must correspond to the amended set of claims. Where appropriate, statements such as “The invention is set out in the appended set of claims“ or “The invention is as defined in claim X“ may be used instead of repeating the claims verbatim.
- Embodiments which are no longer covered by the claims must be deleted, unless they can reasonably be considered to be useful for highlighting specific aspects of the amended subject-matter. If this is the case, they must be clearly marked as not being part of the present invention (T 1808/06 and Guidelines F-IV, 4.3) :
    - Any combinations of features which do not fall under the scope of the amended independent claims must be clearly marked as not being part of the present invention.
    - Statements such as “The following examples/aspects/embodiments X, Y, Z are not according to the invention and are present for illustration purposes only” may be used at the start of the description or in the list of figures.
- The technical features of the independent claims may not be presented as optional in the description. Where they precede a feature of an independent claim, terms such as “for example“, “may“, “can”, “exemplary“, “optionally“, “preferably“ and the like must be removed.