Christoph Then, Frohschammerstr. 14, 80807 München

Europäisches Patentamt
80298 München

23. April 2021

Re: Appeal T0420/19-3.3.04

Dear Members of the Board of Appeal

In preparation for the hearing on 8 June, we hereby provide a legal analysis for the correct interpretation of 53 (b), EPC (attached). The analysis shows that the patent must be revoked because claims 6-9 and 16 are directed to plants derived from essentially biological processes.

The analysis makes reference to the G3/19 decision as mentioned in the preliminary opinion of the Technical Board of Appeal from March 2021 and strictly follows the logic of G3/19. However, if the Technical Board considers it as necessary, we would be ready to phrase questions to be forwarded to the Enlarged Board of Appeal to sort out any legal uncertainty.

Furthermore, for the hearing, we request translation from German to English and from English to German. As representative of the opponents & appellants I will speak and provide our arguments during the hearing in German.

We kindly request a link for registration which can be generally used by interested public to attend the public hearing. We do not think it is appropriate for a public hearing to request all interested individuals to register already several weeks before the hearing.

In addition, we will provide a list of expected participants within next weeks as requested by your previous letter.

With kind regards

Christoph Then

Attachment:
Correct legal interpretation of Article 53(b), EPC, regarding the patentability of essentially biological processes in relation to plants and animals within the context of the EU patent directive 98/44