



## Decision imminent on a patent covering conventionally-bred lettuce

Hearing at the European Patent Office

**1 February 2024 / The European Patent Office (EPO) will decide on a patent covering conventionally-bred lettuce in a public hearing to be held on 7 February. The patent (EP2966992) was granted to the Dutch company, Rijk Zwaan, in 2018, and was opposed by *No Patents on Seeds!*. The 'invention' in the patent: the seeds are supposedly capable of germinating at higher temperatures.**

"By granting patents on seeds, the EPO is giving companies exclusive rights to the use of plant traits that may be critical for the development of new varieties that can cope with climate change. The patent holders can restrict or block other breeders from using this biological diversity. As a result, we will become increasingly dependent on a handful of global seed companies for climate change adaptation and our future food security", says Katherine Dolan from Arche Noah.



The patent claims lettuce seeds, plants, and their offspring with the described characteristics, regardless of whether the plants originated from conventional breeding or from genetic engineering. The trait was developed by using conventional plant breeding (random mutagenesis). The patented mutation enables lettuce plants to germinate at temperatures above 22 degrees.

"The patent on lettuce is a typical example of how companies are trying to circumvent existing prohibitions. European patent law only allows for patents on genetically engineered plants. Since the patented trait was generated by using non-targeted methods as used since decades in conventional breeding, *No Patents on Seeds!* demands the patent to be revoked", says Nout van der Vaart from Oxfam Novib.

Patents granted by the EPO are already impacting access to more than one thousand conventionally-bred varieties, thus undermining the breeders' freedom to operate, which is guaranteed in the European plants variety protection (PVP) law. Patents on plants obtained by new genomic techniques (NGTs) like CRISPR-Cas, are known as a particular problem in this context, as the scope of these patents frequently extends to conventionally-bred plants.

Currently, the European Parliament (EP) is discussing the deregulation of NGTs. Some members of the EU Parliament came up with the idea to ban all patents on plants obtained by NGTs. However, their proposal is very likely to have zero effect on the decisions made by the EPO. The reason: the EU cannot change the European Patent Convention (EPC), which is the basis for the national patent law of 39 countries as well as the decision-making basis of the EPO.

The EPC defines that patents may be granted on genetically engineered plants, as they are a product of an inventive process. Whereas it will be virtually impossible for the EU to change the EPC, it could easily prohibit patents on conventional breeding such as the patent on lettuce, as it would only require to correct the interpretation of existing law. However, so far, it seems to be difficult to find a majority for this initiative.

Some EU Member States, instead, are discussing the idea of only prohibiting the charging of license fees, that small and medium sized breeders have to pay in case they want to use patented seeds. However, even if smaller companies were to have access to the patented seeds free of charge, they would still need to sign contracts with the patent holders. This will create new dependencies and legal uncertainties. At the same time, the patent holders would be considerably strengthened in their efforts to control and potentially restrict access to biodiversity. Consequently, the future of independent plant breeding in Europe will be substantially weakened.

*“No Patents on Seeds!* is demanding that the whole spectrum of biological diversity should continue to be available for future conventional breeding, without restrictions being imposed by patent holders. As long as patents on seeds are not completely banned, they must be strictly limited to plants obtained from genetic engineering processes,” says Johanna Eckhardt from *No Patents on Seeds!*.

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### Further information

The new backgrounder: Patent on lettuce:

<https://www.no-patents-on-seeds.org/en/lettuce>

More info about the lettuce patent and how to participate at the online hearing at the EPO:

<https://www.no-patents-on-seeds.org/en/patent-cases/salad-hot-climate>

Recent report of *No Patents on Seeds!*:

<https://www.no-patents-on-seeds.org/en/report2023>

The recent campaign (Send an email to the EU Commission):

<https://www.no-patents-on-seeds.org/en/campaign>

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