Ministry of Economic Affairs

# *Patents vs Plant Variety Rights*

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# Brief history in the Netherlands

- Topic with a long history (starts in 1986)
- Already the implementation in NL of Biotech-directive 98/55/EC was problematic
- Most recent debate started 2009; fear that ‘’biotech-companies’’ replace plant breeding companies
- This debate is still on the table
- Wide policital agreement that balance between patents and PVP is distorted and must be restored
- Main drivers:
    - fear of monopolisation;
    - acces to genetic diversity is important for food security; patents limit access
    - native traits are public property and should not be patented (native traits are not inventions)

# Study ‘’Breeding Business’’

2010: report on developments in plant breeding

- New technological possibilities,
- Merging of bio-tech industries,
- Globalization

These factors lead to new developments in plant breeding industry.

The rising use of patents is one of those developments.

Conclusions:

- Where PBR is ‘’open innovation’’ with Breeders Exemption, with patents this is not the case.
- Risk is that this leads to monopolies, less choices for growers and for consumers and to restrictions on access to genetic sources.
- Something needs to be done

# Restore balance

- Balance between patents and PVP must be restored
- But there is not 1 single solution; patents have an important role in plant breeding too.
- Plant-related patents are important for (bio-)chemical and pharmaceutical industries.
- We need to strike a good balance between protecting and encouraging inventions and ensuring fair access for all stakeholders to these inventions.

→ There is no easy solution

# What is done since 2010

Balance improved by:

- Introduction of limited BE in national Patent Law and in Unitary Patent Regulation
- Improve quality of patents (‘Raising the bar’)
- Dissemination of good information on the issue (very important to educate stakeholders)
- Improve information on patented traits in current varieties (Pinto database by ESA)
- Development of Industry Licensing Code (FRAND) – ILP. There is now fair and reasonable access to important patented traits of most of the industry through the ILP vegetables.

- But……
- ……recent decision of Enlarged BoA is a big step back

# Quick action required

- Recent decision of Enlarged BoA: The Enlarged BoA states it can only look at the European Patent Convention (EPC) and Vienna Convention
- Very important is that EPC recognizes ‘’essentially biological processes’’ (such as classical breeding) but gives no direction on the further interpretation of this; do products of these processes also fall under the scope of a patent?
- In German and Netherlands’ patent law this interpretation is clear: results of classical breeding are NOT patentable
- So there is legal uncertainty and a need for the European Commission to create certainty – at least within the EU
- It is urgently necessary to bring the interpretation of the Biotech-directive in line with DLD and NLD implementation (can be done without changing the directive) – we will write a letter with an analysis.
- Should be a priority of the new Commission striving for Better Regulation

# Long term solution also needed

- Studying different solutions: a full BE# in patent law or a limitation of patentability?
- Both solutions have pro's and cons
- At this moment impact of full BE is studied (result: september)
- Clear that changing the Biotech-directive is important; we are eagerly awaiting the report on it
- Solving this problem on EU-level needs to be prioriotized; NL will put this on the agenda of next AgriFish Council and Competition Council
- Also on agenda of FAO
- NL is preparing a position paper on this topic and is looking for political support of stakeholders, European Commission, Member States, European Parliament