Plants obtained from conventional breeding can’t be patented, European patent court rules

The highest judicial authority at the [European Patent Office] EPO issued their opinion …. in the controversial G3/19 (Pepper) case. Contrary to previous decisions in G2/12 and G2/13 (Tomato/Broccoli), the Enlarged Board of Appeal (EBA) has found that plant and animal products produced by essentially biological processes should NOT be patentable.

This U-turn is the end result of significant political pressure from across Europe in favor of farmers and breeders who consider that patents on plants obtained from conventional breeding methods will hinder their activities.

Importantly, this new interpretation will not have retroactive effect on European patents granted before 1st July 2017, or pending European applications that were filed before this date.

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This case provides a definitive answer on patentability of animal and plant products resulting from conventional breeding at the EPO. The position will not come as a surprise, in light of the amendment to the Biotech Directive and, subsequently, the EPC. However, it will still be a blow to the Agritech industry, who will now need to rely more on plant variety rights for protecting innovations in this area.

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