



ARCHE NOAH

# **Introduction and recent discussions around Patents on Seeds**

**GMO Free Regions Conference**

**Workshop: „Patents on life – update and next steps”**

**4 september 2012**

**Pierre Sultana**





ARCHE NOAH

# Patents on seeds: dangers

- Private appropriation of plant genetic resources
  - ⇒ Concentration process
  - ⇒ Farmers' dependence
  - ⇒ In term, diminution of agricultural biodiversity
  - ⇒ Increased prices all along the food chain (from farm to fork)
  - ⇒ Seed industry chooses what I will eat

ARCHE NOAH



ARCHE NOAH

# Patent law: general principles

- Patents can only be granted on **inventions**  
=>“Invention”= action of making changes in something established, especially by introducing new methods, ideas, or products
  - **This excludes:** discoveries or natural resources.
  - “Discovery”= action of finding unexpectedly or during a search
  - **Problem:** this fundamental distinction between invention and discovery is about to be abandoned, especially in regard to patents on genetic resources and conventional breeding
- ⇒ **Risk:** increased number of patents granted on plants

ARCHE NOAH



ARCHE NOAH

# The European Patent Convention

- “Convention on the grant of European Patents” of 5 October 1973 which creates the European Patent Office

## **Article 53 - Exceptions to patentability**

European patents shall not be granted in respect of:

(b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof;

⇒ **Milestone:** decision T356/93

“Plant cells resistant to glutamine synthetase”

ARCHE NOAH



ARCHE NOAH

# Directive 98/44/EC on the Legal Protection of Biotechnological Inventions

- Article 1.1 Member States shall protect biotechnological inventions under national patent law.
- Article 3.1 For the purposes of this Directive, inventions which are new, which involve an inventive step and which are susceptible of industrial application shall be patentable [...]
- Article 4
  1. The following shall not be patentable:
    - (a) plant and animal varieties;
    - (b) essentially biological processes for the production of plants or animals.
  2. Inventions which concern plants or animals shall be patentable if the technical feasibility of the invention is not confined to a particular plant or animal variety.
  3. Paragraph 1(b) shall be without prejudice to the patentability of inventions which concern a microbiological or other technical process or a product obtained by means of such a process.
- Article 8 and 9 concerns the protection to:
  - any biological material derived from a patented biological material and possessing the same characteristics
  - any biological material obtained through a patented process and possessing the same characteristics
  - any product where a product containing or consisting of genetic information is contained and active.

ARCHE NOAH



ARCHE NOAH

## Broccoli and tomatoes: joint cases G2/07 & G1/08

*“a 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.”*

⇒ **End of patents on conventional breeding?**

- The “oil from seeds” case (May 2010)
- The “melon” case (May 2011)

ARCHE NOAH



ARCHE NOAH

# EP Resolution of 10 May 2012 on the patenting of essential biological processes

- K. whereas under Article 16(c) of Directive 98/44/EC the Commission is required to report annually ‘on the development and implications of patent law in the field of biotechnology and genetic engineering’;
- L. whereas the Commission has not published any such reports since 2005;
- 4. Calls on the EPO also to exclude from patenting products derived from conventional breeding and all conventional breeding methods, including SMART breeding (precision breeding) and breeding material used for conventional breeding;
- 8. Calls on the Commission and the Member States to ensure that the EU will continue to apply a comprehensive breeders’ exemption in its patent law for

ARCHE NOAH



ARCHE NOAH

# Proposal for a Unitary Patent – the text

## *Article 8*

### *Limitations of the effects of the European patent with unitary effect*

The rights conferred by the European patent with unitary effect shall not extend any of the following:

(b) acts done for the experimental purposes relating to the subject matter of the patented invention;

(h) acts as covered by the farmers privilege pursuant to Article 14 of Regulation (EC) No. 2100/94 which applies *mutatis mutandis*;

(i) the use by a farmer of protected livestock for farming purposes, on condition that the breeding animals or other animal reproductive material were sold or otherwise commercialised to the farmer by the patent proprietor or with his/her consent. Such use includes the provision of the animal or other animal reproductive material for the purposes of his/her agricultural activity, but not the sale in the framework of or for the purpose of commercial reproductive activity;

ARCHE NOAH






ARCHE NOAH

## Proposal for a Unitary Patent – the steps

ARCHE NOAH

- 2 July 2012: vote on the patent package was postponed in plenary by unanimity
- 10 July 2012: EP JURI Committee
- Next steps?



**Thank you for your attention!**

[pierre.sultana@arche-noah.at](mailto:pierre.sultana@arche-noah.at)