

WIPO Circular C.9620

Contribution of Germany to a Draft Reference Document on the Exception Regarding Farmers' and/or Breeders' Use of Patented Inventions

I. Relevant provision in German law

According to Section 11 para 2a German Patent Act, the effect of a patent does not extend to the use of biological material for the purpose of breeding, discovering and developing a new plant variety.¹

II. Background

The provision was implemented into the German Patent Act in the year 2005 via Art. 1 No. 7 of the law implementing EU Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions ("Gesetz zur Umsetzung der Richtlinie über den rechtlichen Schutz biotechnologischer Erfindungen", BGBl. 2005 I 146).

III. Definitions

The term "biological material" is defined in Section 2a para 3 No. 1 German Patent Act as "any material containing genetic information and capable of reproducing itself or being reproduced in a biological system".

The term "plant variety" is defined in Section 2a para 3 No. 4 German Patent Act as "a variety as defined in Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L 227, 1.1.1994, p. 1), as amended".

¹ Translation according to https://www.gesetze-im-internet.de/englisch_patg/englisch_patg.html#p0091, an online service by the German Federal Ministry of Justice. Please note that the translations of German statutes into languages other than German are intended solely as a convenience to the non-German-reading public and that any discrepancies or differences that may arise in translations of the official German versions of these materials are not binding and have no legal effect for compliance or enforcement purposes (https://www.gesetze-im-internet.de/Teilliste_translations.html). The original German wording of the provision is: „Die Wirkung des Patents erstreckt sich nicht auf die Nutzung biologischen Materials zum Zweck der Züchtung, Entdeckung und Entwicklung einer neuen Pflanzensorte.“