

DR. AGRAR. EVA GELINSKY

On Behalf of the Initiative for GE-free Seeds and Breeding (IG Saatgut)

BIOPATENTS AND AGRICULTURAL MODERNIZATION

PATENTS ON PLANTS AND THEIR POSSIBLE
IMPACT ON THE WORK OF PRESERVATION AND
ORGANIC BREEDING ORGANIZATIONS IN THE
FIELD OF GE-FREE SEED

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Fourteen years after the passing of the EU Biotechnology Patents Directive, biopatents continue to be contentious throughout Europe. Social and economic concerns are increasingly raised in addition to ethical and scientific concerns: Particularly in agriculture and plant breeding, patents can hamper and even partially block access to genetic resources. Also, research and development can be impeded and disproportionate costs arise in the agricultural and plant breeding value chains. Preservation initiatives and organic breeding organizations that aim to secure and make available GE-free seed into the future can also be affected by biopatent developments.

The present study was commissioned by The Initiative for GE-free Seeds and Breeding (IG Saatgut). The principles developed here are designed to help estimate the impact of biopatents on the work in the field of GE-free seeds. They also intend to support the critical discourse on biopatents.

The first part of the study (chapters 2-4) gives an overview of developments in plant breeding protection under private and public law (plant variety protection and patent rights in Germany, Austria and Switzerland). This is placed into the historical and political-economic context, assuming that the current tightening of plant variety protection and the expansion of patent rights are linked to a *programme of agricultural modernization*. Rather than legal regulations in the sense of “industrial” regulations, plant variety protection and patent protection represent the legal instrument of an (agricultural) political strategy aimed at the capitalist (“industrial”) organization of the entire agricultural value chain. A comparison between countries makes clear that the specific forms and pathways taken by such policies of modernization depend on the respective market conditions and competitive conditions, the structure of the agrarian sector and the political balance of power.

The second part of the study (chapter 5) presents the current situation with respect to biopatents, with particular focus on patents in the field of conventional plant breeding. Since the 1970s, developments in natural sciences and technology (gene technology as a door opener for patents in plant breeding) and the increasing internationalization of the economy have led to the convergence of national agricultural policy and the corresponding legal frameworks. Apart from the economic argument for patents, chapter 5 also covers the current legal situation and the interconnections between the international level (UPOV 1991, CBD, TRIPS), the EU and the national level. It also refers to problems in applying the existing law and the critical discourse on biopatents.

The third part of the study (chapter 6) discusses possible impacts on the work of organic breeding organizations and preservation initiatives. In this context, a patent on a conventionally bred sunflower is presented as a precedent which could influence an ongoing organic breeding project.

The fourth part (chapter 7) sets out approaches that implicitly or explicitly present themselves as alternatives to biopatenting, such as *open source* and commons concepts, and sketches out potential demands and perspectives for action. This differentiates between demands that can be made within the existing system – such as calls for comprehensive, freely available information on patents applied for and granted, legal aid and (state) support during opposition proceedings, or the prohibition of certain patent contents - and demands that could go beyond the existing framework. A central question is how breeding could be organized and financed without protection under private law. A discussion will also be needed on how to avert further modernization in agriculture in favour of ecological reform and greater regionalization.