Plants

Improvements in plants may be protected by patent protection or by a specific type of intellectual property called plant variety rights.

Plants which are new and inventive can be protected by a patent. However, plant varieties and essentially biological methods of producing plants are excluded from patent protection in the European Patent Office (EPO): EPC Art. 53(c). Essentially biological processes of producing plants are not patentable. These exclusions have been explored and confirmed in EPO decisions G 2/07 and G 1/08. However, patents may be granted for plants which have been genetically modified to have novel and useful properties.

Notable examples of patents protecting genetically modified plants include those held by Monsanto, relating to Bt toxin (EP1919935B1) and glyphosate ready crops (EP1261695B1). The plants in question were modified with genetic sequences enabling the crop to resist either pathogens or herbicides. Examples of outline patent claims of this type are as follows:

1. A transgenic plant or plant cell comprising a polynucleotide, wherein said polynucleotide is encoding a protein which is exhibiting the amino acid sequence as set forth in SEQ ID NO:X, and wherein said protein exhibits activity Y when expressed in said plant or plant cell.

2. Progeny or seed of the transgenic plant or plant cell of claim 1, wherein the progeny or seed comprise said polynucleotide.

Recently, the EPO has decided that essentially biological processes, though unpatentable, can produce plants which can be claimed in a patent, provided the plants are novel and inventive (EPO decisions G 2/12 and G 2/13).

Plant variety rights are available for new plant varieties. A new plant variety can be protected across the European Union, as a Community Plant Variety Right (CPVR), or in the UK, as a Plant Breeder's Right (PBR). A plant variety right can last for 25 to 30 years depending on the type of plant. To secure a plant variety right, the new plant variety must be uniform, stable and distinct from other plant varieties. This means that each plant of the breed has the same characteristics, can be bred to reproduce plants with the same characteristics over generations, and has some aesthetic difference from known varieties, for example, in flower colour, height, leaf shape or crop yield.

We have explained the general principles of protecting plant-related inventions and improvements in this AL Factsheet but it is only an introduction, and any live situation will need individual assessment. Please contact us if you need more detailed information.