



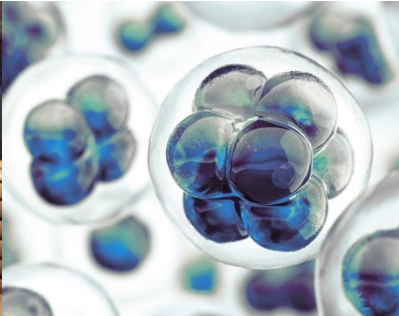
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Patentability of plants and animals

Report on EPO practice - GRUR Annual Meeting



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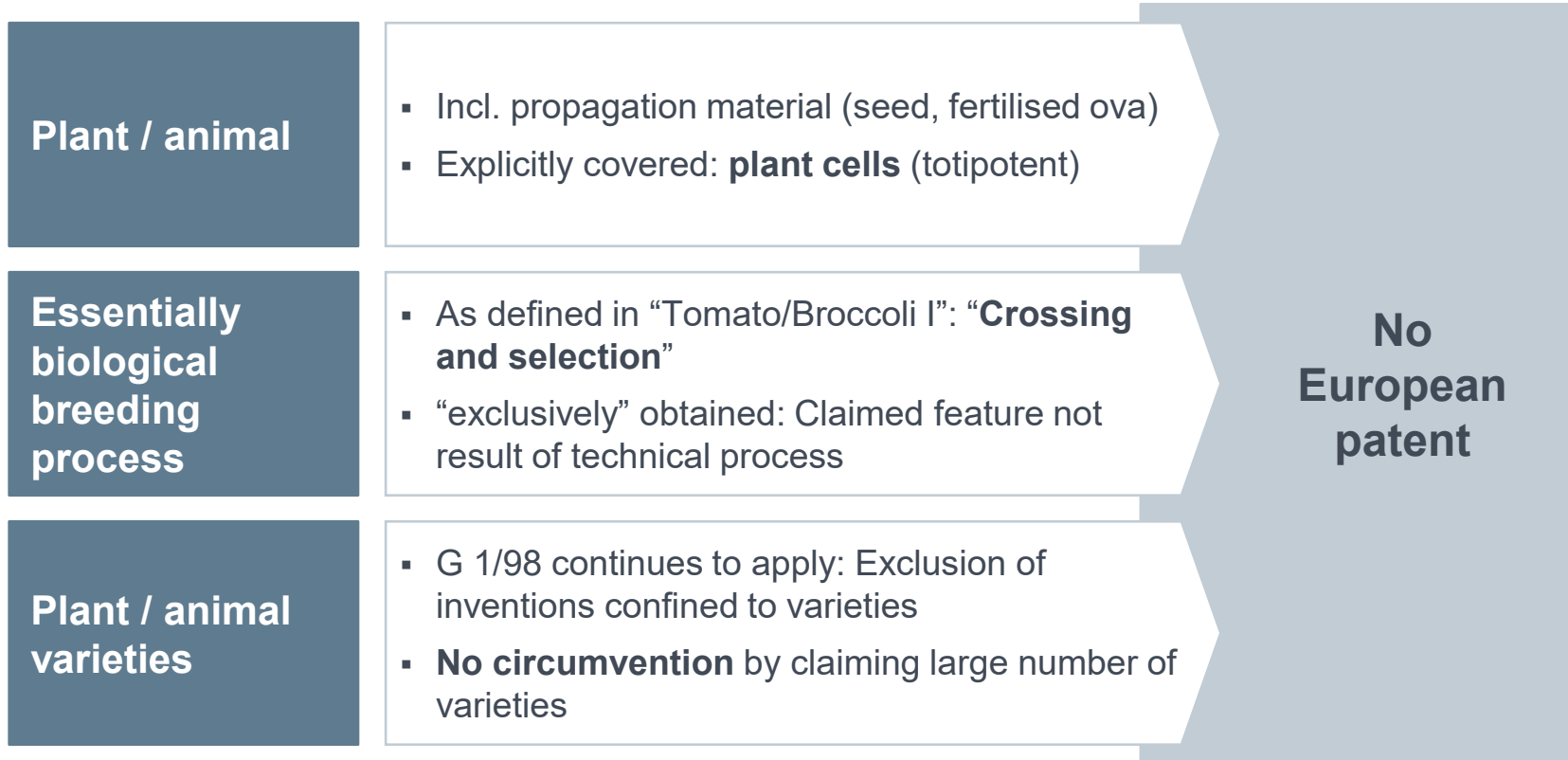


September 2021

Legal basis

- According to Article 53(b) EPC European patents shall not be granted in respect of plant or animal varieties or essentially biological processes for the production of plants or animals.
- According to Rule 28(2) EPC, enacted by the Administrative Council with effect from 1 July 2017, plants and animals exclusively obtained by means of an essentially biological process are excluded from patentability under Article 53(b) EPC.
- G 1/98 (exclusion of plant varieties), G 2/07 - G 1/08 (definition of essentially biological process), G 3/19 (exclusion from patentability)

Non-patentable plants and animals (as from 1.7.2017)

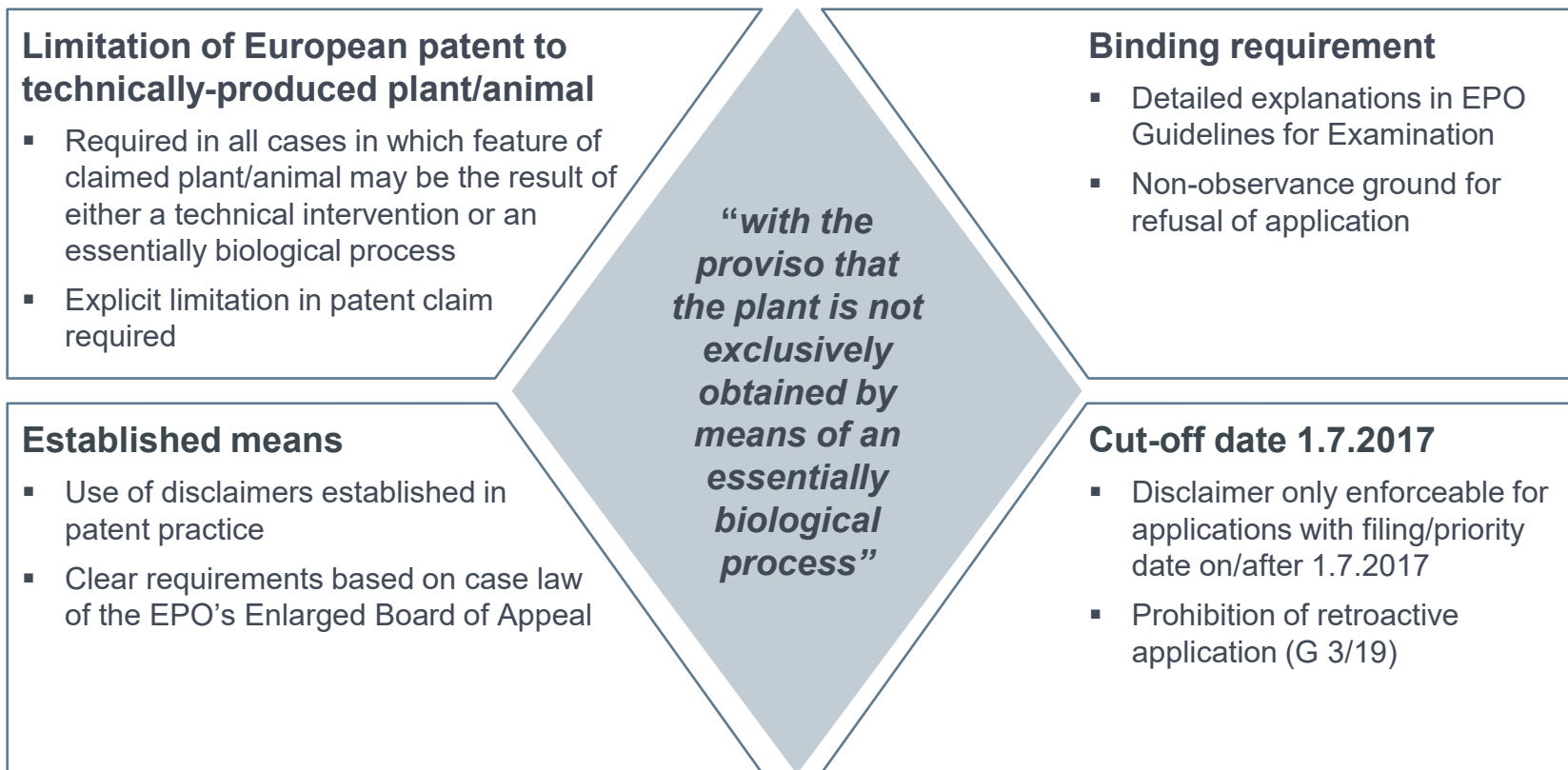


Non-excluded plants/animals

Technically produced plant/animal	Offspring	Parts / products
<ul style="list-style-type: none">▪ Genetic change result of technical process▪ Genetic engineering techniques (“Tomato/Broccoli I”)▪ Mutagenesis (e.g. CRISPR, radiation)▪ No variety (see before)	<ul style="list-style-type: none">▪ Mutation / transgene originates from technical process▪ Additional crossing / selection steps not decisive (not “exclusively” obtained by crossing and selection)	<ul style="list-style-type: none">▪ All parts of technically produced plants/animals▪ Plant products which are not propagation material (irrespective of method to obtain plant)

In principle patentable, since 1.7.2017 only with “disclaimer”

EPO Disclaimer Solution



Implementation of retroactivity ban from G 3/19

No retroactive effect

- Patent exception cannot be applied to European patent application/patents with filing/priority date before 1.7.2017
- Binding for EPO examining and opposition divisions (see, e.g., T 452/19 et al.)

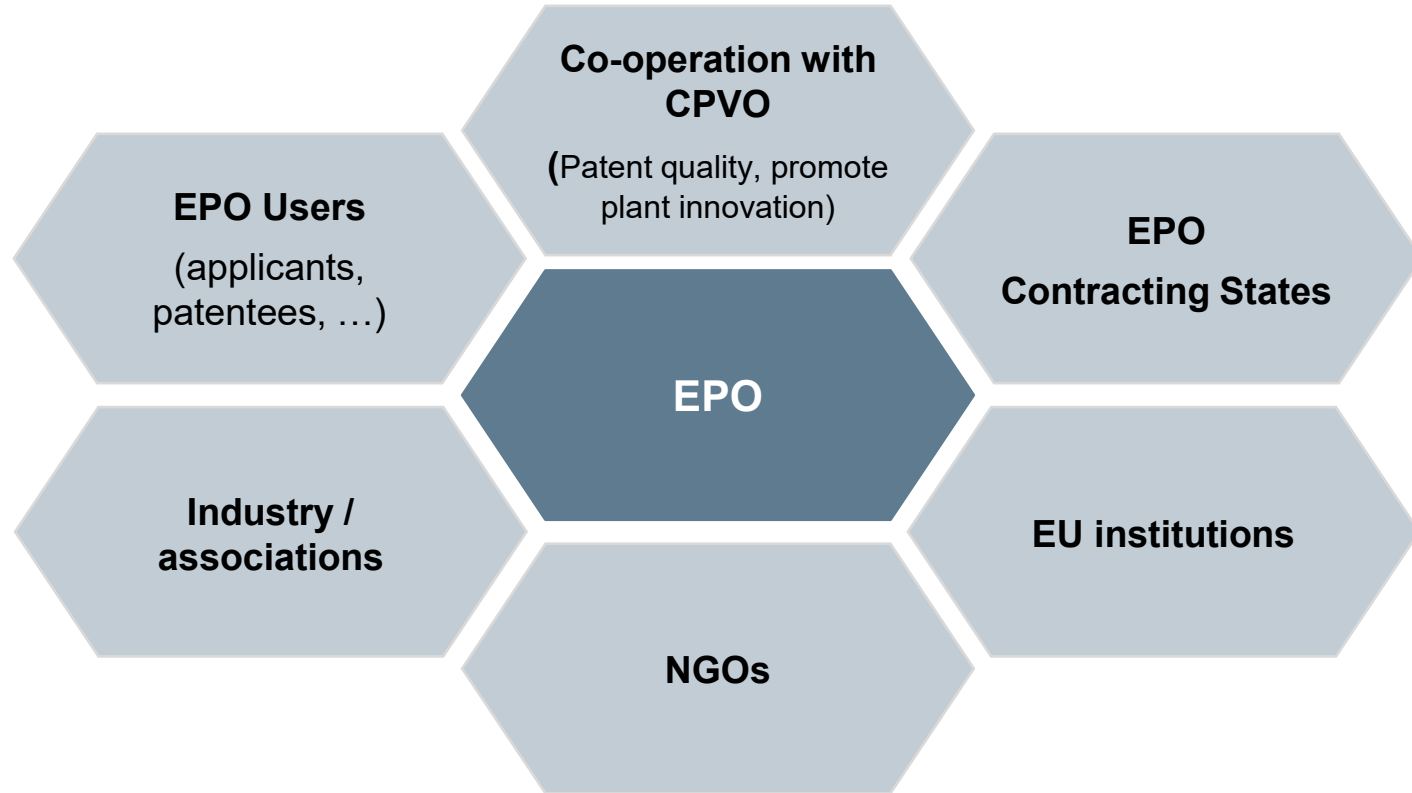
Cases concerned

- Around 300 in examination; dozen cases in opposition.
- “Conventional” plants: No patent exception
- Technically-produced plants: No disclaimer

Procedure

- Scrutiny of general patentability requirements such as:
 - Clarity
 - Sufficient disclosure
 - Novelty
 - Inventive step
- < 20 patents granted so far

Consultation and co-operation



Summary and outlook

- Implementation of Opinion G 3/19 has increased legal certainty for applicants/patentees and the public at large.
- EPO remains committed to dialogue with all stakeholders on this sensitive and complex issue with legal, societal and economic implications.

Thank you for your attention!