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Utviklingen i EPO og i EU

- *Brokkoli og tomat*
- *Soyamel*

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Broccoli:

1. A method for the production of *Brassica oleracea* with elevated levels of 4-methylsulfinylbutyl glucosinolates, or 3-methylsulfinylpropyl glucosinolates, or both, which comprises:
 - a) **crossing** wild *Brassica oleracea* species selected from the group consisting of *Brassica villosa* and *Brassica drepanensis* with broccoli double haploid breeding lines;
 - b) **selecting** hybrids with levels of 4-methylsulfinylbutyl glucosinolates, or 3-methylsulfinylpropyl glucosinolates, or both, elevated above that initially found in broccoli double haploid breeding lines;



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Broccoli:

- c) **backcrossing and selecting** plants with the genetic combination encoding the expression of elevated levels of 4-methylsulfinylbutyl glucosinolates, or 3-methylsulfinylpropyl glucosinolates, or both; and
- d) **selecting a broccoli line** with elevated levels of 4-methylsulfinylbutyl glucosinolates, or 3-methylsulfinylpropyl glucosinolates [sic], or both, capable of causing a strong induction of phase II enzymes, wherein molecular markers are used in steps (b) and (c) to select hybrids with genetic combination encoding expression of elevated levels of 4-methylsulfinylbutyl glucosinolates, or 3-methylsulfinylpropyl glucosinolates, or both, capable of causing a strong induction of phase II enzymes.

Broccoli:

Er ikke dette en plantesort?
Definert ved en genotypisk egenskap?
Unntaket blir et formalunntak

Men er søkt som prosesspatent

Broccoli:

4. The method according to claim 1 or claim 2, wherein only 3-methylsulfinylpropyl glucosinolate is elevated **relative** to that initially found in the Brassica oleracea breeding lines.
5. An edible **Brassica plant** produced according to the method of any one of claims 1 to 4.
6. An **edible portion of a broccoli plant** produced according to the method of any one of claims 1 to 4.
7. **Seed of a broccoli plant** produced according to the method of any one of claims 1 to 4.

Broccoli:

1. Hvorvidt en ikke-mikrobiologisk prosess for å produsere planter som **bygger på steg av kryssing og seleksjon**, omfattes eller faller utenfor unntaket i EPC artikkel 53(b), bare fordi det i tillegg til steg av kryssing og seleksjon også innebærer et tilleggssteg som er mer teknisk og ikke-biologisk?

Broccoli:

2. Hvis spørsmål 1 besvares negativt, **hva er det relevante kriteriet** for å skille det ikke-mikrobiologiske i planteforedlingsprosesser (som er unntatt fra patenterbarhet etter EPC artikkel 53(b)) fra de prosessene som ikke er omfattet av unntaket? Dette er relevant siden oppfinnelsens sentrale element ligger i den delen av prosessen som faller utenfor unntaket og derfor kan patenteres.

Monsanto i EU-domstolen:

Soya: patentert i Europa, ikke i Argentina

- Paragraph 32: '(1) Must Article 9 of Directive 98/44 ... be interpreted as meaning that the protection provided under that provision can be invoked even in a situation such as that in the present proceedings, **in which the product (the DNA sequence) forms part of a material imported into the European Union (soy meal) and does not perform its function** at the time of the alleged infringement, but **has indeed performed** its function (in the soy plant) or would possibly again be able to perform its function after it has been isolated from that material and inserted into the cell of an organism?'

Monsanto i EU-domstolen:

50 Accordingly, the answer to the first question is that Article 9 of the Directive must be interpreted as **not conferring patent right protection** in circumstances such as those of the case in the main proceedings, in which the patented product is contained in the soy meal, where it **does not perform the function** for which it was patented, but did perform that function previously in the soy plant, of which the meal is a processed product, or would possibly again be able to perform that function after it had been extracted from the soy meal and inserted into the cell of a living organism.

Monsanto i EU-domstolen:

Første fortolkning av EUs Patentedirektiv

- **Begrensende faktor for omfanget av beskyttelse**
- **Et visst inngrep i beskyttelsen**
- **Begrensende ifht effekt utenfor sitt eget territorium**

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Kombinasjon:

Brokkolipatentet og EU-domstolens avgjørelse

- **I Monsanto-saken var egenskapen klart definert og knyttet til produksjonen**
- **I brokkolipatentet er egenskapen knyttet til plantene**
- **Høyere og uspesifisert nivå av sukkerforbindelsen**

Norsk genressursrett

- RETTSLIGE BETINGELSER FOR
INNOVASJON INNENFOR BIO- OG
GENTEKNOLOGI

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