

EUROPEAN INTELLECTUAL PROPERTY

# MAX PLANCK LAWYERS SEEK PATENT REFORMS

MUNICH—A West German Max Plank Institute\* has, in cooperation with other organizations and agencies, worked out several proposals to make European patent laws more compatible with the needs of industrial biotechnology. Friedrich-Karl Beier and Joseph Straus, legal specialists at the institute, would like to see certain restrictive provisions changed; these short-comings currently make it difficult or impossible to obtain full protection for many biotechnological inventions.

One of the institute's reform suggestions has already been implemented. Federal high courts in West Germany recently ruled that a researcher can apply for a patent on a microorganism simply by depositing a sample and a brief description. This has been the routine procedure in the United States and Japan, but in Germany one had to submit a report detailed enough to enable specialists to readily recreate the "invention." Genetic engineers often could not comply with this demand because the production of new strains frequently involves biological processes whose results are not

totally predictable.

The need for improvements in other aspects of European patent law has also become increasingly apparent in recent years. For one thing, Europeans cannot patent an innovation after details of the research leading to its development have been published. Seminar reports—or even non-confidential oral communications—are often considered equivalent to publication. In the U.S., by contrast, one can apply for a patent within a year of publishing the details. The Max Planck specialists would like European scientists to have the same option.

Also, newly developed macroscopic plants and animals are largely excluded from patent protection in the nations that signed the 1973 Munich Patent Convention: the Federal Republic of Germany, Austria, Italy, Belgium, France, the United Kingdom, Liechtenstein, Luxemburg, the Netherlands, Sweden, and Switzerland. This has effectively dampened commercial interest in the production of such organisms.

According to Straus, one *can* patent purely biotechnological procedures

for the production of new species. But plants or animals resulting from crossings can only be registered if they aren't listed in an extensive species catalog. For organisms mentioned in this document, the developer can merely obtain so-called strain protection. This restricts the sale of "reproductive materials" such as cuttings, but not that of end products (i.e., the improved peaches or pears). The reformers at Max Planck suggest that a choice of either strain- or patent-protection—or a combination of both—be made available for all new species.

Finally, current German patent procedures for microorganisms are also viewed as less than satisfactory. According to Ulrich Joos of Munich's Max Planck Institute, an innovation is inadequately protected during the period between the patent application and the granting of complete patent coverage.

—Stephen Sokoloff

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