ANIMAL PATENTS

A RAY OF HOPE FOR ANIMAL PATENTS IN EUROPE

ITHACA, N.Y.—One topic generating much discussion at the Cornell University Animal Patent Symposium, held here in December, was inventors' frustrations at their inability to patent higher plants and animals in Europe. Although most of the symposium dealt with U.S. patent issues and their economic implications, the European Community's (EC) 1992 target date for full economic integration makes Europatent issues timely as well.

According to European Patent Convention Article 53(b), microorganisms are patentable, but "plant or animal varieties or essentially biological processes for the production of plants or animals" are expressly barred. With plants, the prohibition is seconded by a parallel—though somewhat inferior—law known as Plant Breeders' Rights (PBR), similar to the Plant Variety Protection Act in the United States. Animals, however, are included in this ban on "double protection"—the availability of a patent and rights under PBR—despite the fact that, unlike plants, an alternative form of animal protection is

not open under the international convention for plant breeders' rights, which administers PBR.

The October 1988 Directive proposed by the European Commission (*Bio/Technology* 7:26, Jan. '89) may bring a measure of relief to the animal patent conundrum. Driven by a competitive need to provide "...patent protection as effective as that in the competitive markets of Japan and the United States of America" (Directive, par. 9), an effort is being made to define around the current limitations of the statutory language.

In particular, the intent appears to be to cast the restriction as narrowly as possible, and not to exclude animals (and plants) unless they are in the fixed form of a variety. Chapter I of the Directive states that "living matter should not be summarily rendered unpatentable;" and that "plants and animals should not be excluded from patentability, only plant and animal *varieties* in their genetically fixed and stable form."

This approach follows similar past efforts in some European countries. Switzerland, in the 1986 revision of

its Examination Guidelines, defined variety narrowly to be a fixed form of an invention which is not applicable across a wider spectrum, including a species or genera. Thus, as Joseph Straus of the Max Planck Institute (Munich, F.R.G.) explained in a paper presented at the symposium, the "Harvard mouse" recently patented in the U.S.—with its claims extending to all nonhuman mammals—should be eligible for similar protection in Switzerland. The European Patent Office (EPO), which grants bundled patents, has similarly amended its Guidelines for Examination to clarify the concept of variety and demark the term "essentially biological." With the Directive proposing in effect that this approach be adopted throughout Europe, animal patents are closer to realization—at least conceptually.

The action taken by the Commission in the Directive must be viewed as more figurative than practical, at least currently. Europe nonetheless has signaled an intent to join a number of countries where animals are *potentially* patentable.

—William Lesser

Introducing the Gamajet Retraction System.

Now you can jet-clean your tanks without opening them up.

Finally, a complete tank jet-washing system for processors of resins, polymers, acrylics, and bio-chemicals. No matter how gummy your tanks become, this completely automated system can quickly jet-clean just about any kind of deposit—with or without chemical cleaning agents.

It operates economically at low to medium pressures (50 to 1,000 psi), at effective low-medium-high flow rates (30 to 150 gpm), and at sanitizing temps. (180°-215° F)—yet it delivers the cleaning efficiency of much higher priced water blasting systems that don't offer the retraction feature.

Gamajet Retraction System shown with optional 16' extension

Degassing becomes a thing of the past, because the retraction design eliminates exposure to the atmosphere. The tank remains sealed. Your product cannot become contam-

inated and toxic gases cannot escape, thereby minimizing possible EPA violations.

Before you invest in any cleaning equipment or new tanks, look carefully at the efficiency and economy of the Gamajet Retraction System. Call today.

1-800-356-7807

Nothing cleans like Gamajet.

121 So. Maple Ave. South San Francisco CA 94080 (415) 873-1750, Telex 34-9479, Telefax 415-873-0876

SYBRON | Gamajet®

Write in No. 50 on Reader Service Card