European Patent Office

“Method for Breeding Tomatoes/Israel”

European Patent Convention, Art. 53(b)

Communication from the Enlarged Board of Appeal
Case No. G 2/12

© Max Planck Institute for Intellectual Property and Competition Law, Munich 2013

In accordance with Article 112(1)(a) EPC, Technical Board of Appeal 3.3.04 referred the following points of law to the Enlarged Board of Appeal with interlocutory decision of 31 May 2012 in case T 1242/06:

1. Can the exclusion of essentially biological processes for the production of plants in Article 53(b) EPC have a negative effect on the allowability of a product claim directed to plants or plant material such as a fruit?
2. In particular, is a claim directed to plants or plant material other than a plant variety allowable even if the only method available at the filing date for generating the claimed subject-matter is an essentially biological process for the production of plants disclosed in the patent application?
3. Is it of relevance in the context of questions 1 and 2 that the protection conferred by the product claim encompasses the generation of the claimed product by means of an essentially biological process for the production of plants excluded as such under Article 53(b) EPC?

Available at: <http://www.epo.org/law-practice/case-law-appeals/pdf/t061242ex2.pdf>.