



MEMBERS RIGHTS & OBLIGATIONS

1 July 2026, 13:30h

Aniek, Sonja

ILP Cornerstones

- ▶ Worldwide Territory
- ▶ Scope “All-in”
 - Patents relating to all vegetable plant traits
 - Patented varieties (only relevant to the US)
 - ILP’s Patent Register: ~ 400 patent families (WO/EP/US)
 - No GMO traits / no transfer of materials / no technology licenses
- ▶ Transparent information on all included patents of members in publicly available ILP Patent Register
- ▶ Non-profit organisation (incorporated under Dutch law)
- ▶ Membership
 - Open to all interested parties - private or public sector organizations involved in plant breeding or trait research and development
- ▶ Financed by membership fees
 - Small / medium / large

ILP - How does it work?

Availability of traits within 3 months after publication of patent application

Contractual (limited) breeders' exemption

- Non-assert (allowance) for breeding with patented material legally available for breeding from any other member
- To make use of the non-asserts the interested member has to notify the holder of the patents

Commercial license: safety net approach

- Standard license agreement available
- In case bilateral negotiation unsuccessful within period of 3 months baseball arbitration for royalties kicks in
- Process encourages both members to come up with reasonable positions from the onset
- No case so far showing that safety net works



MEMBERS RIGHTS & OBLIGATIONS

OBLIGATIONS - Art 2 IR

1 July 2026

Aniek, Sonja

Obligations of Members

- ▶ Notify ILP Board about new Committed Patents within 3 months after the publication date (2.1)
- ▶ Make licenses available to ILP members for all Committed Patents (2.2)

See also “Recommendations to ILP members when a technology provider license is involved in a trait covered by a Committed Patent” (March 2026)

- ▶ Member will NOT invoke its Variety patents, Committed Patents and GT&C that prohibit use of a variety for the purpose of breeding and/or development (“Non-asserts”) (2.2)

What are Committed Patents?

Are all patents automatically committed?

► Patents covering vegetable breeding traits (1.1 Definition Patents)

that would, without a License, be infringed by the use of biological material for breeding new varieties of Vegetable plants and/or the use and exploitation of such newly developed varieties

excluding (i) plant patents meant in the United States Code Title 35 Chapter 15 or any rights identical to such plant patents, ii) patents solely covering Special Traits, and iii) Variety patents

excluding patents that solely cover “*Special Traits*” which require a product safety assessment under EU Directive 2001/18 or similar legislation

“Vegetables”: Annex 3

What are Committed Patents?

- ▶ Patents owned or controlled by members (1.1 Definition Committed Patents)
excluding those under which a Patentee Member has granted an exclusive license or entered into any other agreement before that Patentee Member became a Member
- ▶ Recorded in an up-to-date Patent Register which is made publicly available (4.1/4.3)

Completeness of Patent Register

- ▶ Request of Managing Director to Patentee member for patent information for clarification about missing patents

- ▶ Annex 1

Reason for omission (please tick box)

- ☐ Accidental omission - please add the patent to the list of Committed Patents
- ☐ The patent is not a Committed Patent because neither the use of biological material for breeding new varieties of Vegetable plants nor the use and exploitation of such newly developed varieties does infringe this patent (see definitions of “Committed Patent” and “Patent” in article 1.1 of the Internal Regulations).
- ☐ The patent relates to a “Special Trait” as defined in article 1.1 of the Internal Regulations (evidence attached).
- ☐ The patent is a “Variety patent” as defined in article 1.1 of the Internal Regulations and therefore the non-assert as described in article 8 of the Internal Regulations applies.
- ☐ The patent is subject of an agreement (including but not limited to an exclusive license agreement) entered into before we became a member of the ILP Vegetable and which precludes granting a license under the ILP Vegetable (see definition of “Committed Patent” in article 1.1 of the Internal Regulations), (evidence attached).

What is a Normal Trait?

- ▶ A trait covered by a Committed Patent which is not a Special Trait (1.1)

What is a „Special Trait“? ⁽³⁾

- ▶ A Regulated Trait which, is subject to an environmental risk assessment under EU Directive 2001/18 or corresponding legislation in other countries
developed by using genetic modification techniques which lead to genetically modified organisms (1.1)
- ▶ A Regulated Trait which, according to the Expert Committee, involves substantial liability risks or substantial deregulation costs (1.1)
- ▶ Excluded from ILP (1.1 / 3.2)

What if the same trait can be both “Special” and “Normal”?

- ▶ Patents covering both “*Special*” and “*Normal Traits*” are included in the ILP, but the scope of global license is limited to “*Normal Traits*” (3.2)
- ▶ It is possible that the same trait can be considered “Special” or “Normal” because of
 - (i) different processes used in the making of the trait and/or
 - (ii) differences in country legislations

What if the same trait can be both “Special” and “Normal”?

- ▶ In case a trait is considered a Normal Trait in several countries, but not in some other countries, a Member will only obtain rights in the countries where the trait is considered to be a Normal Trait. (3.2)

- ▶ Commercially available material can be used under an ILP license or non-assert

UNLESS the Patentee Member is commercializing the material with labelling and restrictions from which unambiguously follows that the material concerns a Special Trait. If no such measures are used, a Member can access the Material. The underlying rationale is that a Licensee should not be more restricted than the Patentee Member. (3.2)

What if the same trait can be both “Special” and “Normal”?

- ▶ Pre-commercial material, patent deposits (3.2, *last paragraph*):

If it is not unambiguously clear from the related patent whether such material is regulated under EU Directive 2001/18, Patentee Members will use reasonable efforts to indicate this in the Patent Register

Variety patent

- ▶ Granted patent or published application thereto under title 35 of the United States Act or equivalent right in other countries that claims a specific Variety as such
- ▶ Owned or controlled by a Member and/or its Affiliates
- ▶ If a patent claims a Variety but also claims a Normal Trait it should be considered a Patent and not a Variety patent (1.1 Definition Variety patent)

What if?

- ▶ A third party acquires (part of) the Committed Patents and/or Variety Patents?

What if?

- ▶ A third party acquires (part of) the Committed Patents and/or Variety Patents?

Member undertakes that the obligations shall apply unimpaired to the acquiring third party and its affiliates for 5 years (2.5)

What if?

- ▶ A Member ceases to be an ILP Member?

What if?

- ▶ A Member ceases to be an ILP Member?

Obligations will continue for 5 years (2.4) including the procedures under art. 5 (License Agreement) and 6 (Baseball Procedure)

However, after termination of Membership, the former member is no longer obliged to add new Committed Patents/Variety patents to the Patent Information List (2.4)

Pre-Existing Agreements

- ▶ Earlier license agreements remain valid
- ▶ ILP does not override prior contracts

No obligation to grant Licenses under a specific patent to a Member if that Member already obtained a license for that patent before that Member joined the ILP.

The obligation to grant licenses will not revive by terminating the old license (2.3)

- ▶ Members must respect commitments entered into before ILP membership

What about patents
licensed before joining ILP?

Exclusive Third Party License(s)

- ▶ In case a Member holds an exclusive license to a Patent of a third party, the relevant Member shall use reasonable efforts to obtain the right to sub-license under the ILP (2.6)
- ▶ Still possible to grant licenses to non-ILP members but not exclusively (Definition of Patents and 7.2)

Third party collaborations

- ▶ If a Member develops jointly with one or more third parties (not being a Member) new biological material containing a Normal Trait
such Member will use reasonable efforts to have any related Patent included as Committed Patent (2.7)
- ▶ The Expert Committee can verify whether the Member has used reasonable efforts

Third-Party Technology Licenses

- ▶ ILP does not guarantee full freedom-to-operate
- ▶ Additional licenses may still be required
- ▶ External patents may cover other technologies
See Memo “ILP Commitments and agreements relating to genome editing patents” (17 Jan. 2019)
- ▶ See also “Recommendations to ILP members when a technology provider license is involved in a trait covered by a Committed Patent” (March 2026)



MEMBERS RIGHTS & OBLIGATIONS

NON-ASSERTS - ART 8

1 July 2026

Marian, Sonja, Aniek

Contractual (Limited) Breeder's Exemption

- ▶ Non-assert provisions (8):
 - Variety patents (breeding & commercialization)
 - Committed Patents (breeding)
 - Terms&Conditions (breeding)
- ▶ Notification required (8.5, 8.1.2.i)/8.2.2.i))
- ▶ “Sufficiently different” (8.1.2.ii)/8.2.2.ii))

Notification

Annex IV [Notification Form April 2017.pdf](#)

2 Options:

- ▶ Option 1: general option for all non-asserts
- ▶ Option 2: for (reasonable number of) specific Committed Patents/Variety patents:
 - Specific patents to be included in Attachment I
 - In case of notification for a Variety patent the Patentee Member shall make reasonable efforts to inform about a related Committed Patent (if any), if it is not public information that the variety is also covered by a Committed Patent (8.1.5)

Notifications

- No notification required in case the Patentee Member has not disclosed the name of the Variety covered by the Variety patent or the variety/varieties covered by the Committed Patent(s) (8.1.2.i)/8.2.2.i))
- Option 1: The non-assert can be invoked for use of varieties which takes place after the date of signature of the notification
- Option 2: The non-assert can be invoked for use of varieties which took place after 5 April 2017, but not more than 12 months prior to the date of signature of the notification
- Committed Patents: License required as soon as a member starts to produce propagating material for commercial exploitation (8.2.3)

OP (A) falling under a Variety patent (8.1)

➤ at least 2 crosses

A x B



C



C x B

(or D, or E...etc.)

B, D, E...etc. ≠ not a variety of the Patentee Member

No repetitive backcrossing against a Variety (8.1.3)

OP (A) falling under a Committed Patent (8.2)

A x B

➤ at least 1 cross



C

B ≠ variety of the patent holder

No backcrossing against A (8.2.2.ii)a))

OP (A) falling under a Variety patent and a Committed Patent (8.2.4)

➤ at least 2 crosses

A x B



C



C x B

(or D, or E....etc.)

B, D, E...etc. ≠ a variety of the Patentee Member

Hybrids (8.1.2.ii)b)/8.2.2.ii)b))

Doubled haploids or an equivalent technology, including but not limited to pedigree selection and SSD, can be applied to the original variety to produce doubled haploids or equivalent products

Non-Assert for General Terms & Conditions (8.3)

General terms & conditions may restrict breeding: non-asserts available

- ▶ In case variety concerned is protected by a Variety patent or not protected by a patent: see criteria for Variety patents (8.3.2.i))
- ▶ In case variety concerned is protected by a Committed patent, see criteria for Committed patents.
(If also covered by Variety patents, criteria for Variety patents apply)
(8.3.2.ii))
- ▶ Notification: option 1

Non-assert Watch-outs

- ▶ Non-asserts will not apply

To the use of parent lines that are repeatedly used in the production of hybrids and that are not being exploited as commercial varieties (8.4)

To material deposited in connection with a patent (application) with a recognized depository institution recognized under the Budapest Treaty for the Purposes of Patent Procedure, if and as far as the applicable law or the applicable rules of the recognized depository institution concerned prohibit or limit the use of such material for the breeding and/or development of new plant varieties (8.6)