the EPC legislator had not envisaged the possibility of **genetically modified plant varieties** and therefore could not have intended to exclude them from patentability could not be accepted – laws were not restricted in their application to situations known to the legislator.

3.2. Animals and animal varieties

In **T 19/90** (OJ 1990, 476) the board confirmed the general principle that the exception to patentability under Art. 53(b) EPC 1973 applies to certain categories of animals, but **not to animals as such**. In interpreting the term "animal varieties" the board emphasised the narrow interpretation to be given to the provisions of Art. 53(b) EPC 1973. It is not a bar to patentability for subject-matter which is not covered by any of the terms "animal varieties", "races animales" or "Tierarten".

Concerning the patentability of animals, it was held in **T 315/03** (OJ 2006, 15) that, in an assessment under Art. 53(b) EPC 1973, the principle enunciated in **G 1/98** (OJ 2000, 111) concerning plants and "plant varieties" should also be followed in the case of animals. This meant that a patent could not be granted for a single animal variety (or species or race, depending on which language text of the EPC 1973 was used) but could be granted if varieties might fall within the scope of its claims.

The bar on patenting under Art. 53(b), first part of sentence, EPC 1973 did not extend to the products of a micro-biological process, which were patentable under Art. 53(b), second part of sentence, EPC 1973. Thus patents were held to be grantable for **animals produced by a microbiological process**. However, particularly in cases of genetic manipulation of animals involving, as in the case at issue, the insertion of an activated oncogene, there are compelling reasons to consider the provisions of Art. 53(a) EPC when assessing patentability (**T 19/90**).

In **T 315/03** the board did not agree with the assertion of some of the opponent appellants that the claimed transgenic mice were a new species because they inherited one particular characteristic, namely an increased probability of developing tumours. This was not enough to create a new species when the possible "starting material" might be any of a whole genus of animals, namely all mice. The board held that Art. 53(b) EPC 1973 did not exclude the patentability of the claims amended to encompass only mice and maintained the patent on that basis.

3.3. Essentially biological processes

Processes for the production of plants or animals are not patentable (under either the old or the revised version of the EPC) if they are essentially biological processes. Processes which are not essentially biological, on the other hand, are patentable.

3.3.1 Essentially biological processes for the production of animals

In **T 19/90** (OJ 1990, 476) the board agreed that the process claims for the production of transgenic non-human mammals through chromosomal incorporation of an activated