matter was directed to obtaining a Brassica oleracea plant resistant to clubroot by crossing a Brassica rapa plant resistant to clubroot with a B. oleracea plant, rescuing embryos resulting from the cross and regenerating plants from them, selecting plants that were resistant to clubroot, back-crossing such plants with a B. oleracea plant, rescuing embryos resulting from the back-cross, and again selecting a plant that was resistant to clubroot. The board held that all methods containing or consisting of steps of sexually crossing the whole genome of plants and the subsequent selection of plants, regardless of those plants being sexually incompatible or not, to be excluded from patentability and not just those methods involving meiotic recombination events throughout the whole genome during perfect pairing of homologous chromosomes in the process of meiosis. Furthermore, the board held that while the embryo rescue steps were additional steps of a technical nature, as defined in answer 3 of decisions **G 2/07** and **G 1/08**, the embryo rescue steps by themselves did not introduce the clubroot resistance trait into the genome of the plants produced. The claimed subject matter was held to be excluded from patentability.

In **T 915/10** the invention concerned soybean plants which had been genetically modified. The claimed method was defined solely by the technical process step of introducing a gene sequence into the genome of the plant by a genetic engineering step introducing heterologous DNA in plant cells. The board noted that the introduced trait was due directly to the expression of the inserted DNA and was not the result of a plant breeding method characterised by crossing and selection. Indeed, the method as claimed did not require nor define steps of mixing genes of plants by sexual crossing and subsequent selection of plants, either explicitly or implicitly. The board was thus satisfied that the claimed method did not fall under the exclusion of "essentially biological processes for the production of plants" pursuant to Art. 53(b) EPC. The board considered that the claimed subject-matter was a method for the production of plants by means of genetic-engineering techniques, which involves laboratory techniques essentially different from breeding methods and which as such have been accepted in the case law to be patentable. The board noted that there was nothing in decisions **G 2/07** and **G 1/08** which would indicate that the Enlarged Board of Appeal was of the opinion that this practice ought to be reconsidered as a result of its analysis of the process exclusion in Art. 53(b) EPC.

b) Patentable technical processes

In **T 1729/06** the invention was in the field of the production of watermelon fruit, in particular of seedless watermelons. The claimed use and methods concerned the pollination of the sterile female flowers of the triploid watermelon plant with pollen of the diploid polliniser plant. They did not concern sexually crossing two whole genomes of plants (implying meiosis and fertilisation) and the subsequent selection of plants. The board was therefore satisfied that the use and methods as subject-matter of the claims were not such methods which the Enlarged Board of Appeal in its decisions **G 2/07** (OJ 2012, 130) and **G 1/08** (OJ 2012, 206) had considered to fall under the exclusion of "essentially biological processes for the production of plants".

The board noted that, in those decisions, the Enlarged Board had not given a comprehensive and exhaustive definition of the subject-matter to which the process exclusion in Art. 53(b) EPC applies in relation to plant inventions. Therefore, it still needed