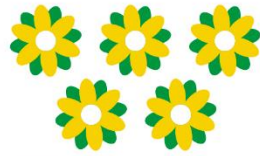


Online Workshop Patents on seeds

Steffen Kawelke, German Plant Breeder's Association (BDP)

16.10.2025 via Zoom

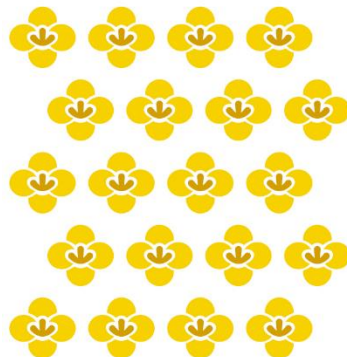
The diversity of commercial plant breeding in Germany



5 Breeders
Ornamentals



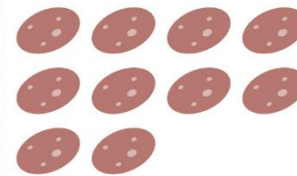
7 Breeders
Forage Crops



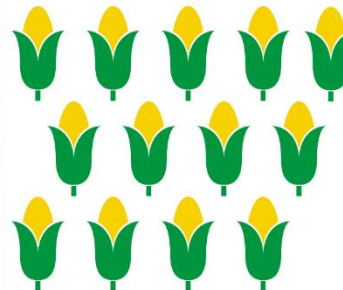
20 Breeders
Oil- and
Proteincrops



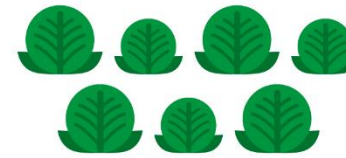
5 Breeders
Beet



10 Breeders
Potatoes



13 Breeders
Maize



7 Breeders
Vegetables

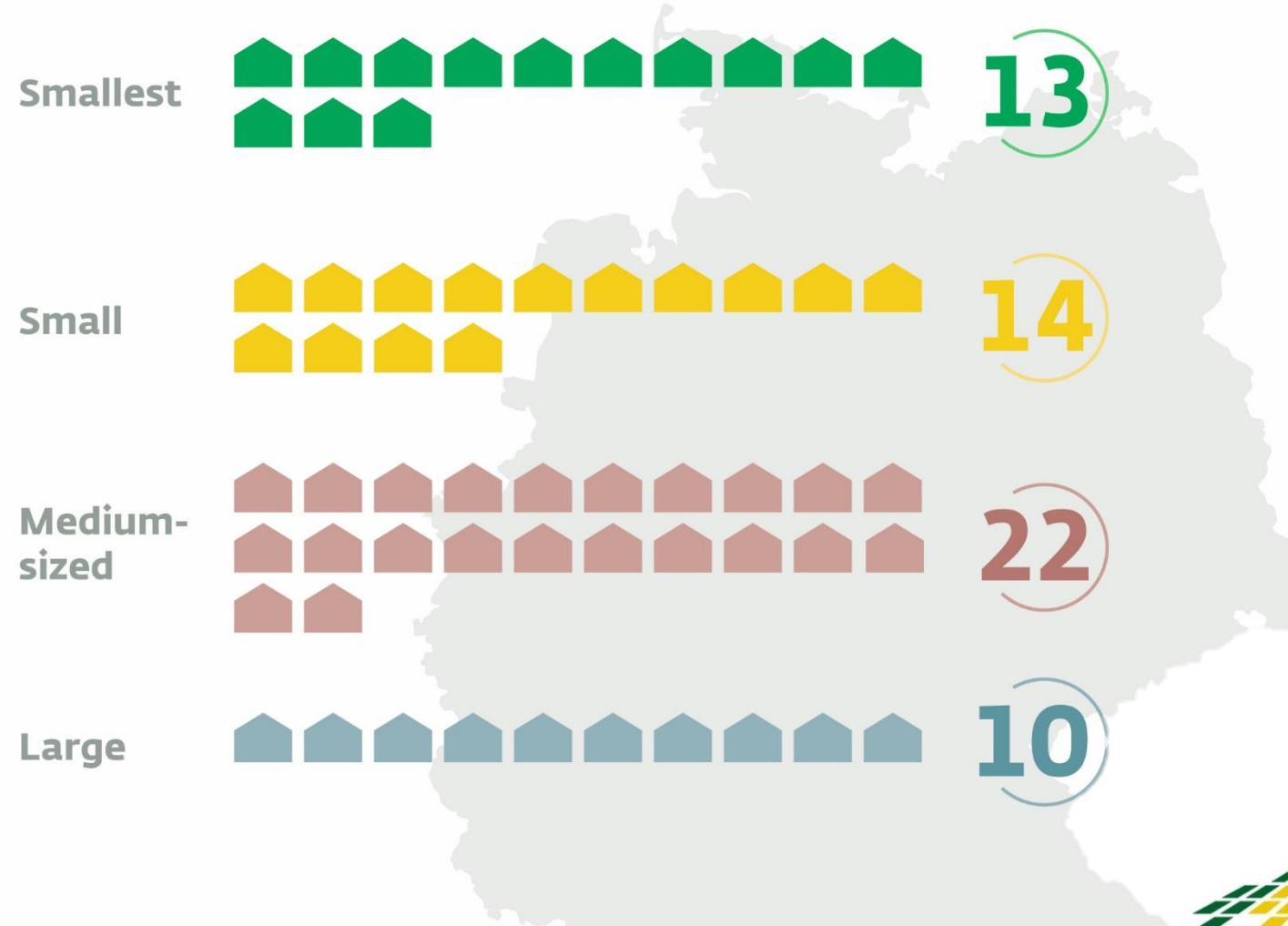


28 Breeders
Grains

Shown are companies with own breeding program. Double entries are possible because companies can run several breeding programs.

Industry structure plant breeding in Germany

Size of plant breeding companies with own breeding programme,
based on the turnover thresholds* of Commission Recommendation 2003/361/EC.



The EP3911147-patent

- **nucleic acid** (CDS) – patentable
- isolated nucleic acids only, no “naturally occurring” copies are covered
- **selection method** – patentable
- as long as it does not also cover crossing-steps
 - granting of the patent is in line with applicable law – no circumvention of European rules and laws in respect to Article 53 b) EPC and Rule 28 (2) EPC IR
 - claims on nucleic acids don't cover natural occurring DNA (native traits)
 - patent covers *selecting* for the trait based on DNA-testing

Current situation in Germany and EU

Influence of intellectual property rights on plant breeding

- **Plant variety protection (PVP)** is the primary, preferred IP right in plant breeding in Germany and Europe
 - it guarantees unrestricted and free access to the latest plant genetic material ("open source system")
 - it ensures continuous breeding progress

Current situation in Germany and EU

Influence of intellectual property rights on plant breeding

- **Plant variety protection (PVP)** is the primary, preferred IP right in plant breeding in Germany and Europe
 - it guarantees unrestricted and free access to the latest plant genetic material ("open source system")
 - it ensures continuous breeding progress
- **Patent law** is a strong prohibition right compared to plant variety protection and has a potentially limiting effect on free access to current breeding material
- **BUT** patent law currently has limited practical significance in plant breeding because...
 - ... "essentially biological processes" as well as products thereof and varieties are not patentable and
 - ...the commercial significance of patentable "technical traits" is currently not given in Europe:
 - Regulatory hurdles for "classical" GMOs & genome editing
 - Low practical significance of traits from undirected mutagenesis

Potential future situation in Germany and EU

Influence of intellectual property rights on plant breeding

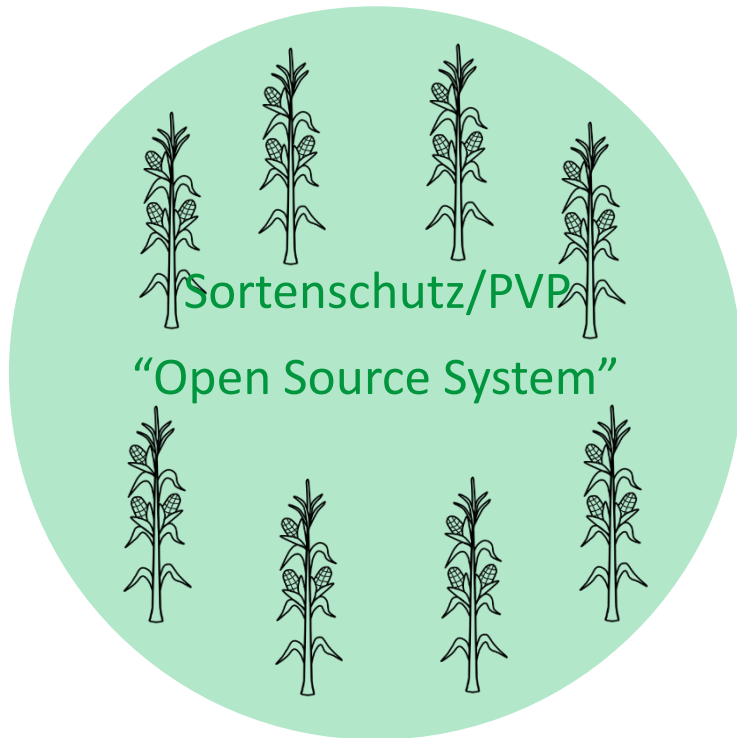
- As soon as genome editing becomes applicable in EU (which we hope!) and traits are still patentable:

Patents could increase and gain in importance:

- a large proportion of new plant traits would be patentable
 - A **growing number of varieties could be affected by patents.**
- **Plant variety protection (PVP) could be undermined** as a result
- The prohibition right of patent protection cancels out the open source character (full breeder's exemption) in PVP.
- The PVP "open source"-system in plant breeding could be weakened or even come to a standstill.

Current situation in Germany and EU

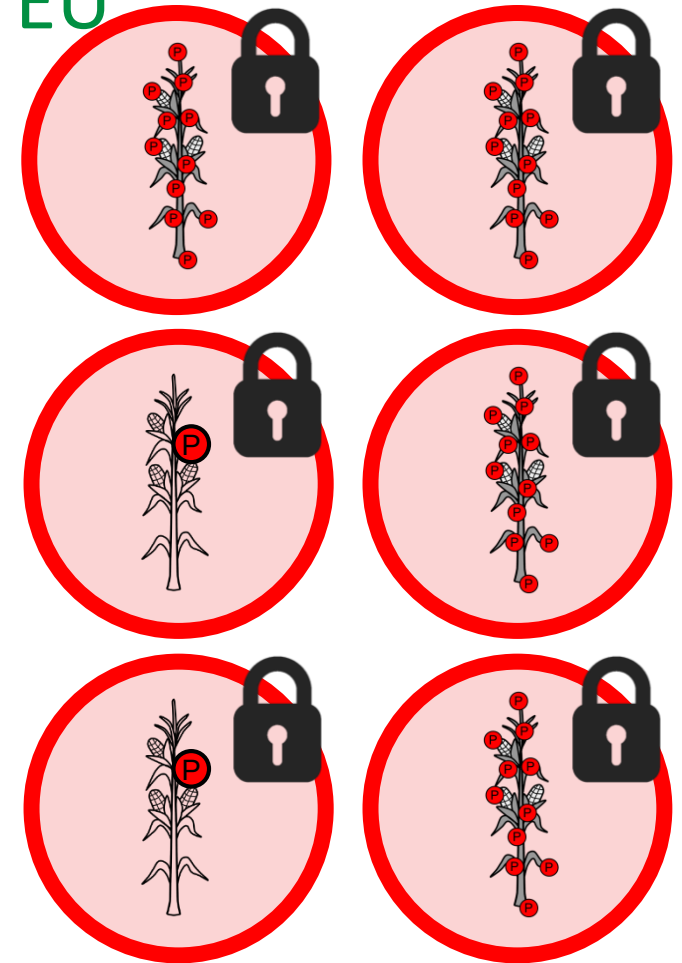
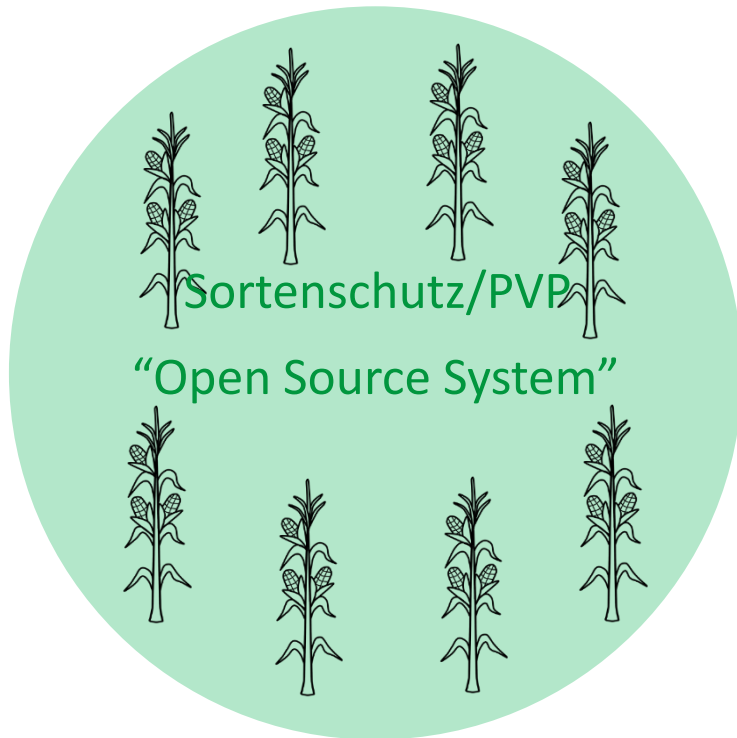
Influence of intellectual property rights on plant breeding



patent protection

Potential future situation in Germany and EU

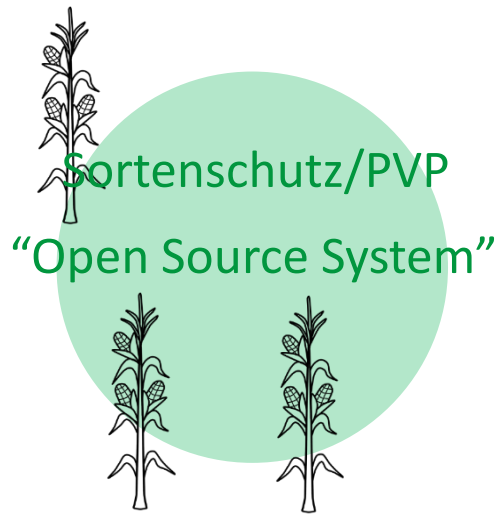
Influence of intellectual property rights on plant breeding



patent protection

Potential future situation in Germany and EU

Influence of intellectual property rights on plant breeding



- access to biological material is no longer guaranteed
- additional costs (royalties) where there are none today/in PVP
- cost are harder to shoulder for small companies: risk of oligopolization and loss of diversity in agriculture



Current positioning of BDP

- **The patentability of biological material, which also exists or could develop in nature, must not be possible, regardless of how it was produced.**
- The possibility of using patented material for breeding purposes, as provided for example in the German and French patent laws, must be introduced throughout Europe.
- The consistent implementation of the existing legal framework, namely:
 - a) The decision of the Enlarged Board of Appeal of the European Patent Office (GBK) **G3/19**, according to which no patents may be granted on breeding processes based on crossing and selection (essentially biological processes), as well as biological material produced in this way, must be implemented consistently.
 - b) Rule 28(2) EPCO, according to which patent protection on technical inventions may not extend to biological material produced by an "essentially biological process", must be implemented consistently.

Preferred Solution



„White Paper“ by Metzger et al.

Establish a „Full Breeder's Exemption“ in Patent Law

- breeders would be free to cross with patented biological material
 - crossbreed-products could be commercialized like in PVP: no consent, no royalties
 - BUT: breeders would not be free to integrate a patented trait by technical means („re-CRISPR“)
 - patents would not be worthless/useless
 - if you want to go the fast lane (e.g. CRISPR) you need consent (and likely pay royalties)
 - if you want to stick to your classical breeding by crossing and selection, you can do so without being affected by patents
-
- classical breeding work as known under Sortenschutz/PVP could be upheld
 - anything that would be available from the regulatory side could also be used in terms of IP.

Thank you!

This presentation was a contribution to the patent workshop organized by “No Patents on Seeds” on October 16, 2025.

The video recording of the presentation contains further details and explanations of the slides and is available at <https://www.no-patents-on-seeds.org/en>.

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