



Europäisches
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8b. Patentability of plants and animals in Europe - Recent developments

US Bar-EPO Liaison Council

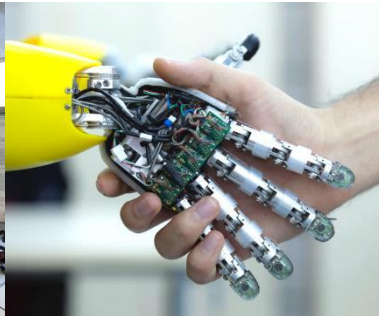
Washington, DC, 24 September 2019



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24 September 2019

Outline

- Patentable plant/animal inventions
- EPO – CPVO co-operation
- Statistics
- Unpatentable plant/animal inventions
 - Products of “classical” breeding
 - Referral G 3/19

Patentable plant/animal inventions

- Plant- and animal-related inventions not limited to specific variety and not obtained by “classical” breeding.
- Technical breeding processes and their products.

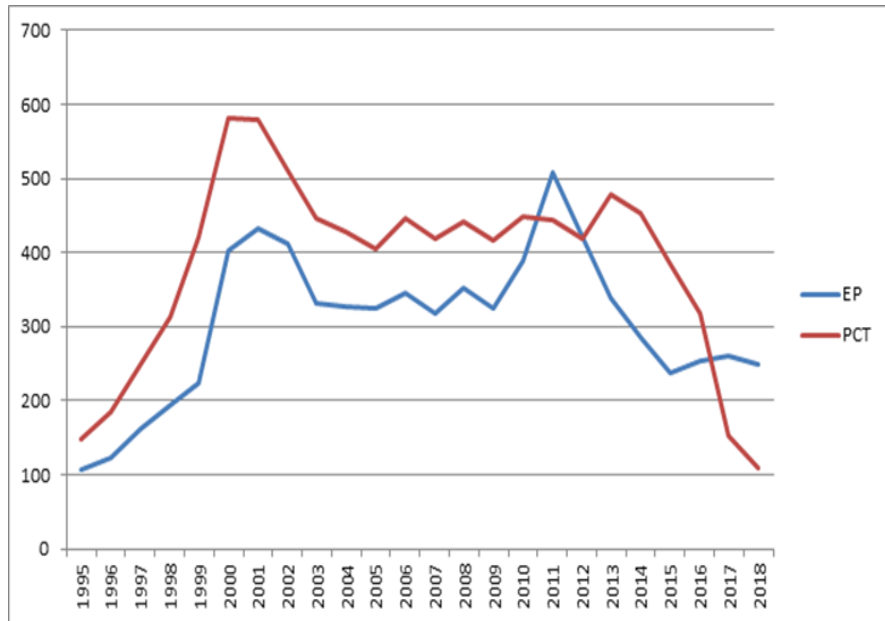
→ *In particular: Genetically-modified plants/animals (GM) and GM methods.*

EPO – CPVO co-operation

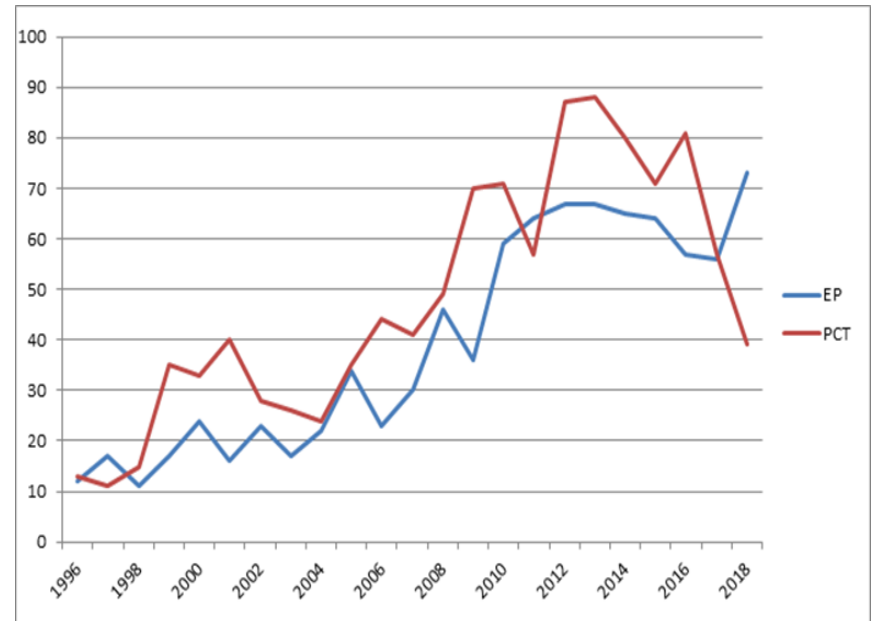
- CPVO responsible for granting plant variety rights in the EU.
- Formal co-operation since 2016 in view of interrelations between plant variety and patent system.
- Establishment of a full-text database with data and records from plant variety applications to further improve quality of patent search and examination in the field of plant-related inventions.

Filing Trends – Plant technology

Transgenic plants

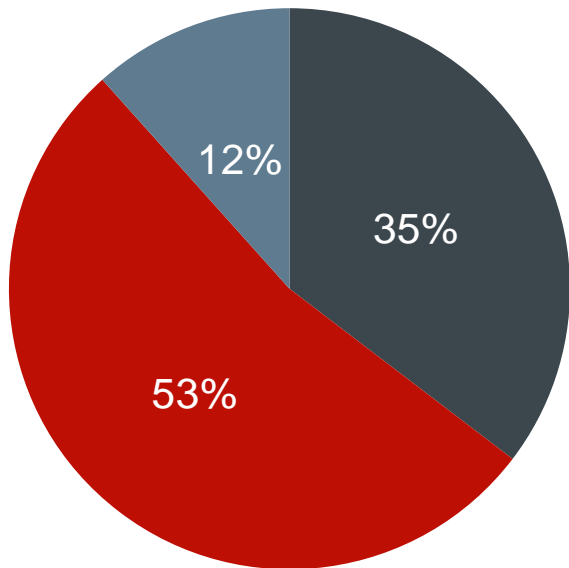


Conventional Plants and Plant Breeding technology



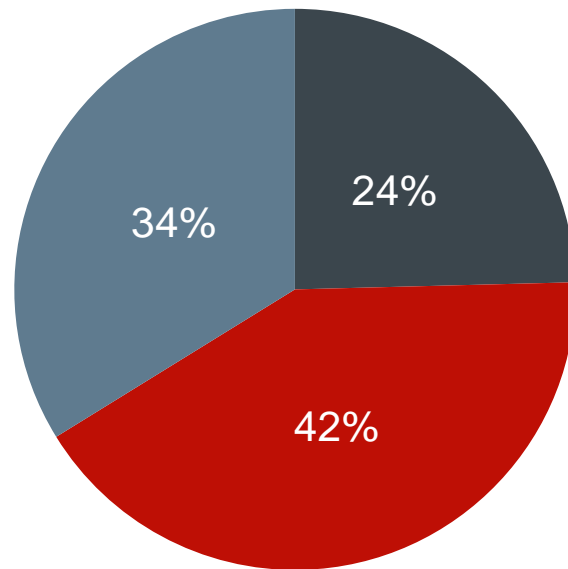
Outcome of the EP applications published 1995-2017

Transgenic plants



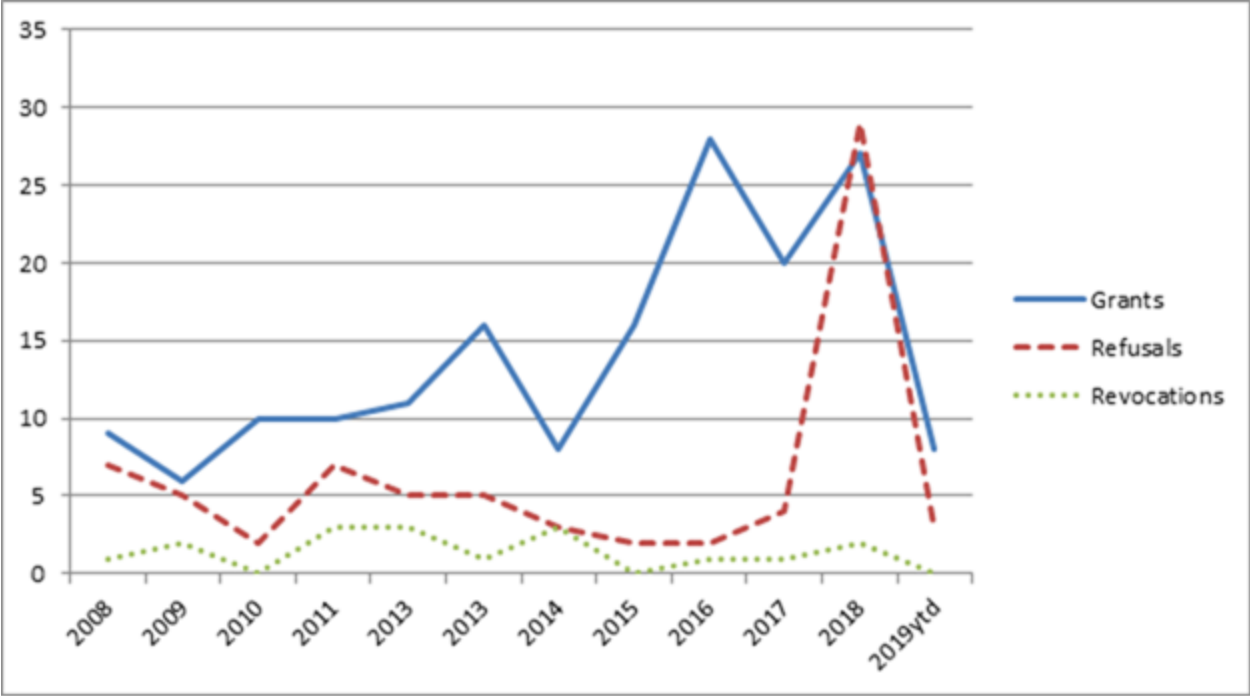
- Granted (amended or unamended)
- Withdrawn, refused or revoked
- Pending

Conventional plants and Plant Breeding technology



- Granted (amended or unamended)
- Withdrawn, refused or revoked
- Pending

Outcomes of the published patent applications Conventional plants



Unpatentable plant/animal inventions

- European patent law excludes from patentability:
 - Plant varieties (“*Granny Smith*”) and animal varieties (“*Holstein cow*”).
 - “Classical” breeding methods (“crossing and selection”).
- European Patent Convention fully in line with EU Biotech Directive.

Products of “classical” breeding

- Question about patentability of plants/animals exclusively obtained by “classical” breeding:
 - *EPO Enlarged Board of Appeal in 2015: No explicit exclusion in EPC.*
 - *European Commission in 2016: Excluded under EU Biotech Directive.*
 - *EPO legislator in 2017: Clarification in the Implementing Law to the EPC.*
- *In December 2018 a Technical Board of the EPO’s judiciary questioned the legal force of the legislative clarification (case T 1063/18).*

Referral G 3/19

- In April 2019 the EPO President has requested the EPO's Enlarged Board of Appeal to clarify the patentability of conventional plants/animals in light of recent legal developments (case G 3/19).
- Affected examination and opposition proceedings currently stayed.
- Enlarged Board has invited third parties (*amicus curiae*) to submit written comments on the points of law raised in the referral by 1 October 2019.

Thank you very much for your attention!

