

Proven innovation protection and continued freedom for breeders

No European country applies for more patents per capita than Switzerland. Many players of different sizes are involved in the innovation scene here. It is a good mix of large international companies, small innovative businesses, start-ups, but also very patent-active universities and public research institutions. Patent protection is a mandatory prerequisite for research and development, a foundation of Swiss welfare. Without legal protection, there is no basis for investing in new technologies – regardless of the field of expertise.

The requirements are very stringent. A patent can only be filed if the invention is novel compared to the current state of the art and is based on an inventive step. Something that is already known or that occurs in nature is not a patentable invention. This also applies to plant breeding.

In general, no patents can be filed for plant varieties. However, two proven mechanisms still provide the necessary innovation protection for seed research and guarantee that breeders can always rely on the greatest possible genetic diversity for further development.

1. Novel techniques and seed properties may be protected under patent law if they are sufficiently inventive to meet the criterion for obtaining a patent. The hurdles are very high. In addition, the Patent Law recognizes a specific breeder's exemption¹. All breeders may use patented material for the breeding of new plant varieties at any time. The resulting new variety may be marketed without a license, provided that it no longer contains the patent-protected material. If the new variety contains the patented feature or technique and profits from it, a corresponding license must be negotiated with the patent owner.
2. The Plant Variety Protection Act secures the ownership rights of breeders concerning new plant varieties. The granting of a plant variety protection title grants the breeder the right to protect the investment he has made over the course of many years from illegal commercial use. The Plant Variety Protection Act also recognizes a breeder's privilege². This exception guarantees that the use of plant varieties for further breeding remains possible for all breeders at any time without the authorization of the plant variety protection holder. As soon as a new breed is sufficiently different from the previous one, the new variety can be protected.

Patent Protection	Plant Variety Protection
1. Protects inventors' property as regards properties or techniques.	1. Protects breeders' property as regards new plant varieties.
2. For further breeding, even seeds with patent-protected properties can be freely used.	2. Protected plant varieties can also be freely used for further breeding.
3. If a new variety uses a patent-protected property or technique, a license must be purchased.	3. The resulting new varieties can be protected in turn.

¹ Patent Law Article 9(1)(e).

² Plant Variety Protection Act Article 6(c)

This is how protection in plant breeding has been working for almost a hundred years. Both proprietary protection mechanisms are limited in time (patents have a term of 20 years, plant variety protection a term of up to 30 years) and ensure that breeders and farmers can rely on the highest possible genetic diversity. This will not change if new breeding technologies are allowed.

While in plant variety protection the extensive breeder's privilege guarantees that the important diversity of varieties is extended, patent law is based on a transparent patent pool for the further development of novel techniques and properties. On platforms such as [PINTO](#) (patent information and transparency online), the inventions are made publicly available and, in contrast to the 'trade secret', described in detail. For researchers and breeders, the patent pool forms an important basis for their own research activities and offers easy access for the purchase of desired properties or techniques. Each actor is also dependent on transparency and easy licensing. Innovation only works if inventors can recoup their research investments through revenue.