

A world perspective on protection of Intellectual Property through Plant Breeders' Protection

Bastiaan Koster standing in for Dr. Edgar Krieger

Dr. Edgar Krieger

We better choose the right way!

Ciopora is the forum

- “ To discuss openly the challenges; and
- “ To shape the future of IP protection for
ornamentals and fruits on a worldwide level



Definition of “perspective”

the state of existing in space before the eye: The elevations look all right, but the building's composition is a failure in perspective.

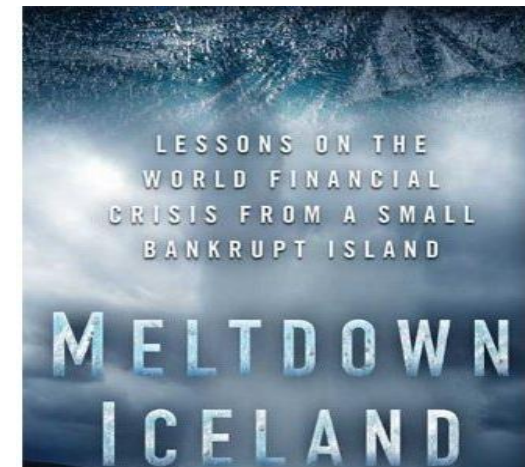
(much like the banking systems in some countries and the USA economy)

Iceland

The Stunning Collapse of Iceland

Even after the government's seizure of top banks, Iceland may face bankruptcy, with dire effects for huge Icelandic investments overseas

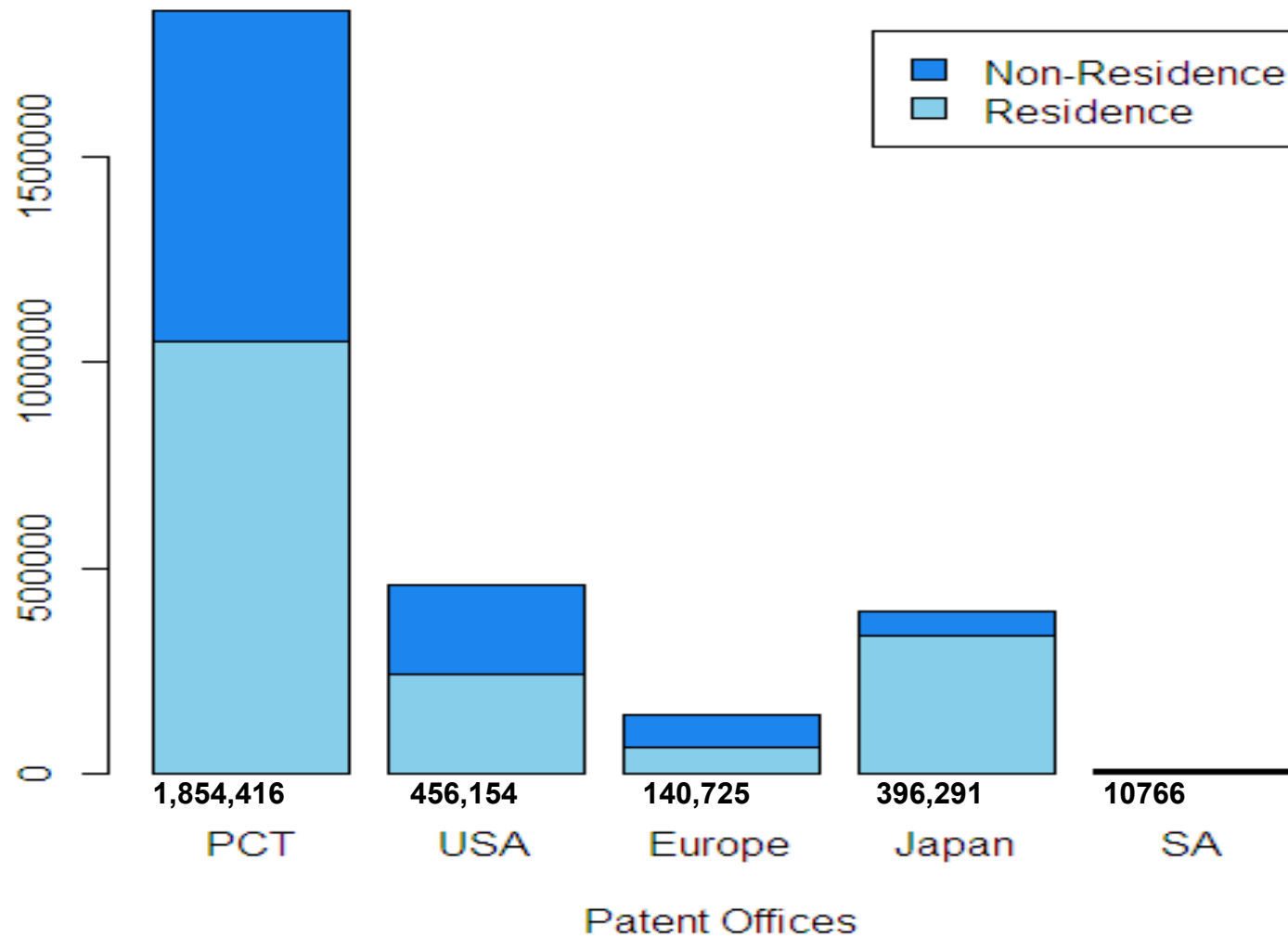
And then ...



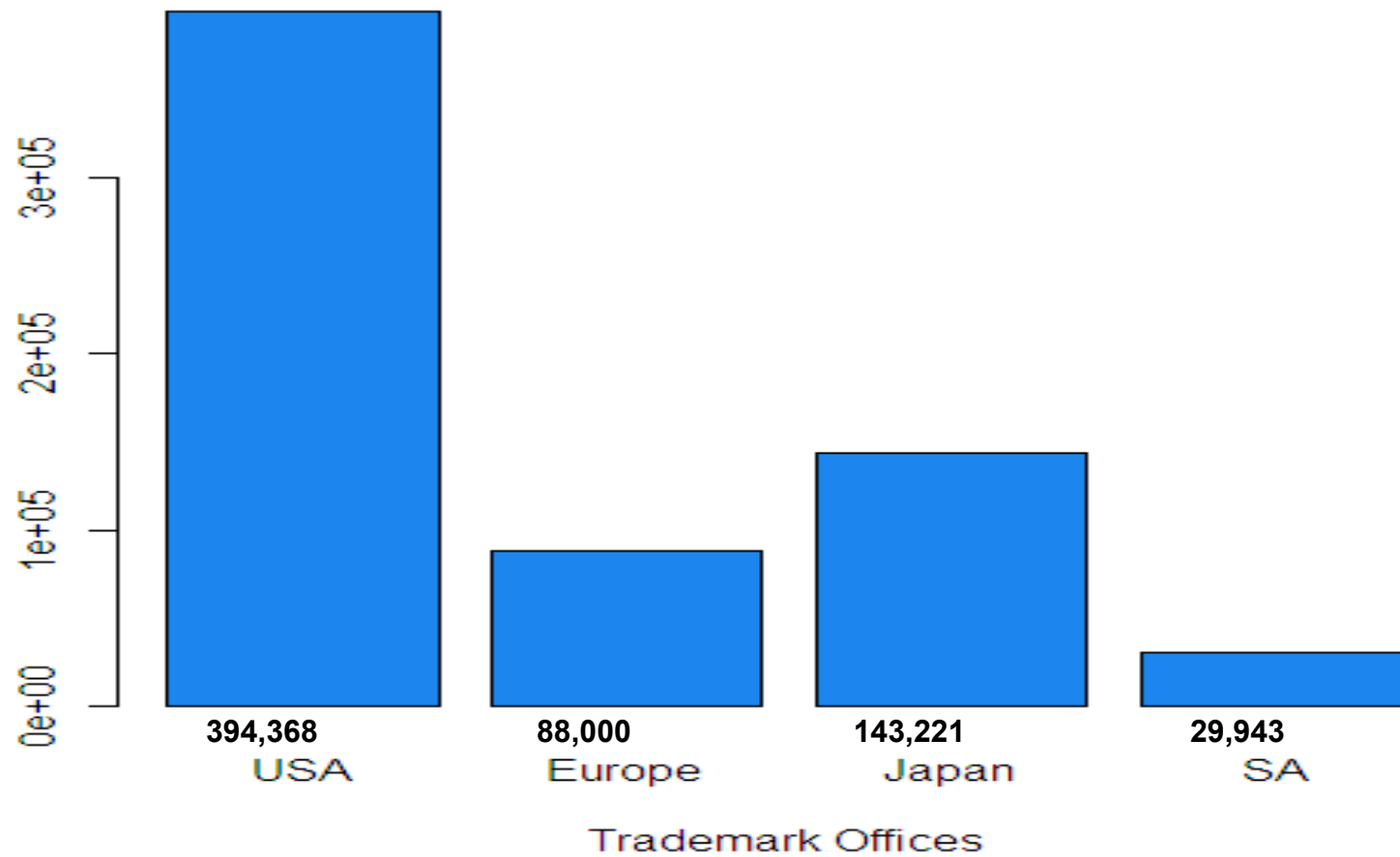
The Intellectual Property Building Block

- Patents
- Trade Marks
- Designs
- Copyright
- Plant Breeders' Rights
- Confidential Information and Trade Secrets

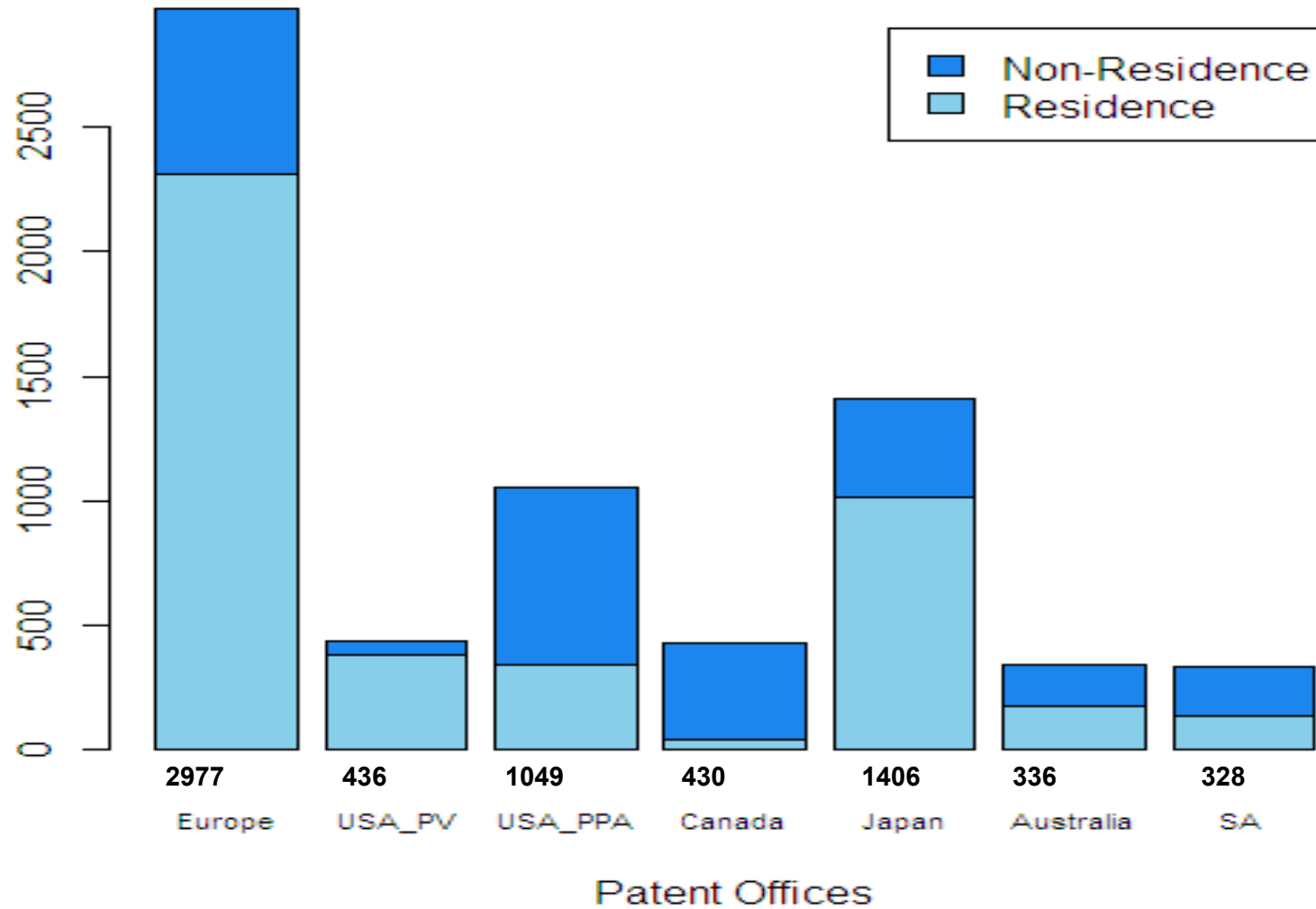
Patent Applications in 2007



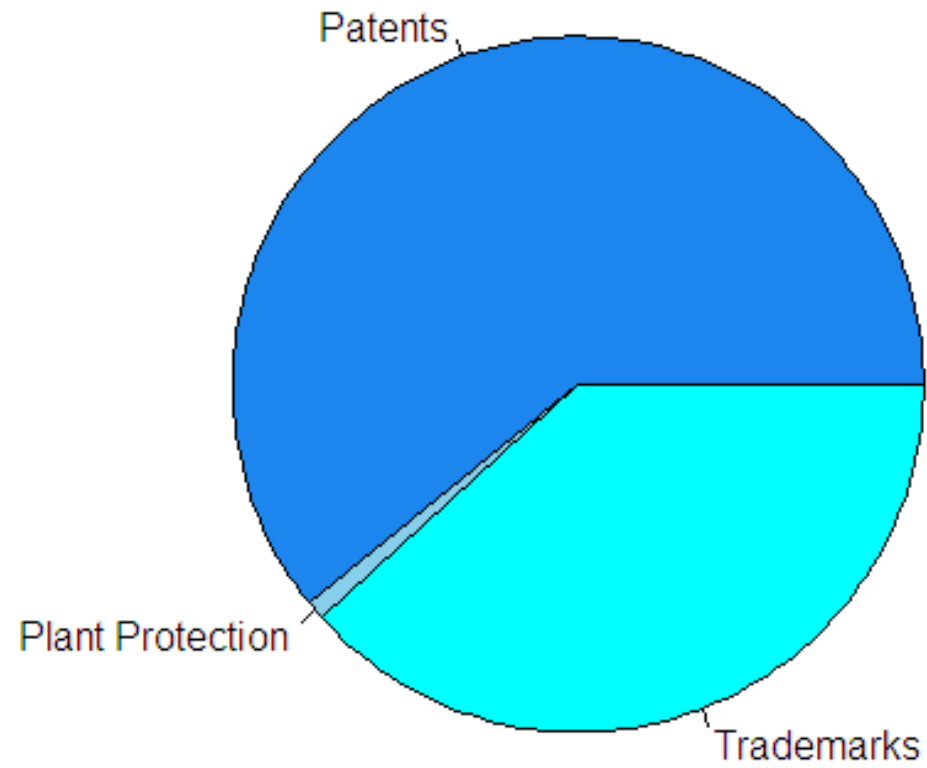
Trademark Applications in 2007



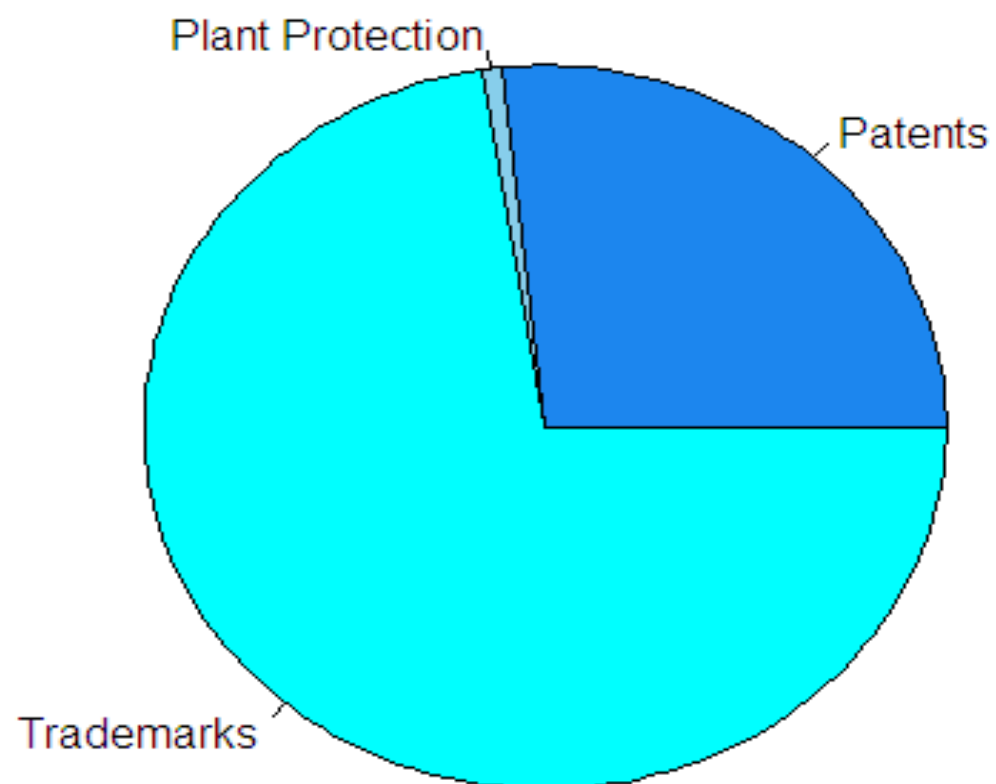
Plant Protection Applications in 2007



International Applications in 2007



South African Applications in 2007



Cost to file Patents vs. PBR applications

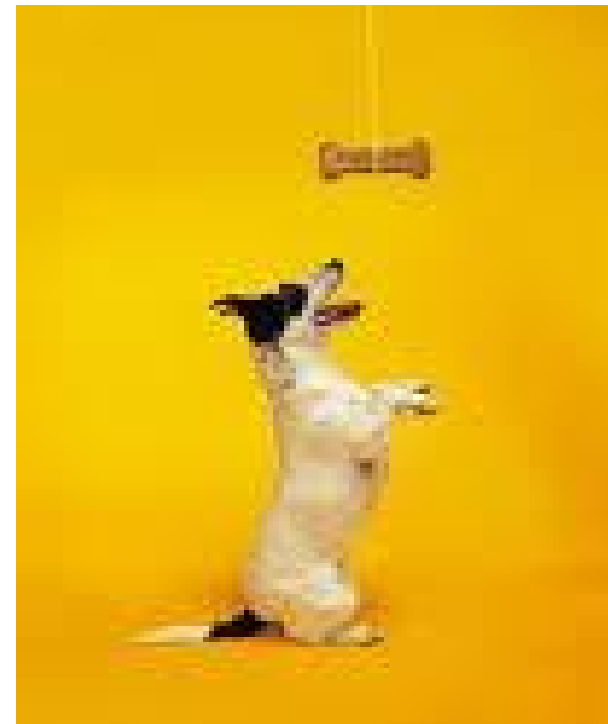
1,8 million PCT applications: ± R 90 billion

12 000 PBR applications: ± R 300 million

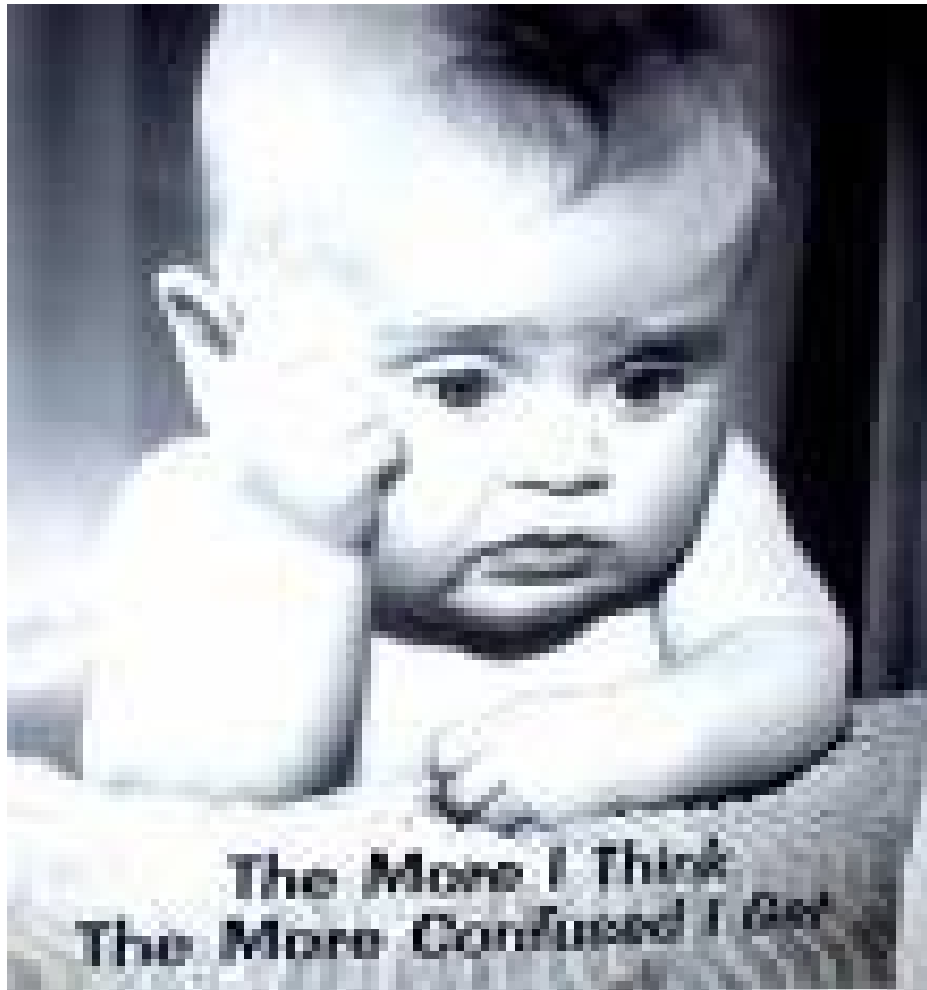
Or .3% of the PCT Costs

Estimated loss of Airlines resulting from the
Iceland Puff: ± R 12 billion

Patent Protection (PBR Protection) – The Philosophy



Trade Mark Protection – The Philosophy



The World Is Changing

1. Globalization: new markets – new producers – new products – new connections.
2. Consolidation: Tough times of the little ones?
3. Technology: Traditional breeding marries high-tech.

1. The World is Changing – Globalization

New markets – new producers – new products

- China, Russia and others – the new markets.
- China, India, East Africa, East Asia – the new producers.
- Strawberries in winter time, grapes in summer, passion-fruit-juice wherever you want.
- Fruits to drink and flowers to eat – everything at any time.

2. The World Is Changing - Consolidation

- Consolidation with the aim of building large units and an economy of scale takes place in any industry – also in the breeding business.
- Can we / should we try to stop this process in our business?
- How can we support both large and small companies in their business related to plant innovation?

3. The World Is Changing - Technology

Traditional breeding marries high-tech

- New techniques.
- The application of new chemicals and other mutagens allows a fast development of new varieties.
- Biotechnology more and more plays a significant role in the development of new varieties and traits.
- How can we create a fair and balanced IP-environment for all players in the game?

3. The World Is Changing - Technology

One word to Biotechnology

The European Patent Office says*: The three most likely transformations and overlapping facets of the technology revolution that will dominate the first half of this century are genetics (biotechnology), nanotechnology and robotics

(*EPO: Scenarios for the future, How might IP regimes evolve by 2025).

These technologies are mentioned in the same breath with the pill, television, antibiotics, cell-phones and the internet.

The World Is Changing

What might be the key to cope with all these challenges, chances and changes?

Innovation and its proper IP protection.

Commercial Uses of IP

- Insurance (foot in the door)
- Protection (monopoly)
- Licensing opportunities (guaranteed income stream)
- Value perception (share price goes UP)
- Create barriers (thickening)
- Ammunition (Trolls)

Challenges For The Patent System

- Huge backlogs at major patent offices.
- Costs.
- Overly strong protection.
- System overly complex.
- Harmonisation of patent laws.
- Language barriers.
- Traditional Knowledge Issues.
- A call for the balance to be restored.
- Complexity of inventions increase.

Obtaining “improved” Plant Breeders’ Rights “Protection” in the next two decades??

It is not going to change !!

**You will have to use what is available and look at
supplemental protection/mechanisms to stay ahead of
the game**

Supplemental Protection

- Trade Marks – Pink Lady.
- Contractual.
- Co-operation agreements.
- Confidential information and trade secrets.

A World Perspective on IP through PBR protection.....

- Understand the market forces.
- Know the end consumer.
- Be innovative in all areas.
- Understand the potential and limitations of IP protection.
- Use IP protection appropriately. Having watertight protection is not always essential or possible.
- Learn from the patent system. Leverage from IP Rights

Depending on the angle of your vantage point the perspective can be different - There is unfortunately not a one-size-fits-all option available



Thank you

Bastiaan Koster

Von Seidels

Tel + 27 (0)21 5262800

E mail bkoster@vonseidels.com