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Plant Variety Protection (PVP)/ Plant Breeder's Rights (PBR)

Introduction

The plant variety protection scheme in Japan is much the same as the Plant Breeder's Rights (PBR) in Australia. In Japan, the scheme is called PVP (Plant Variety Protection) rather than PBR. Both countries conform with the 1991 Act of the international convention on the protection of new varieties of plants (UPOV 1991) and accordingly there is a high degree of harmonization of the scope of protection offered; the types of plants that can be protected (including a designated list of mushrooms); and the criteria used to judge whether a new variety is registrable or not.

An Australian PBR application can form the basis of an application in Japan, though in addition to the formal paperwork, it may also be necessary to submit samples of the variety for further testing.

How long is the protection?

From June 2005, perennial plants (woody plants such as fruit trees, forest trees, ornamental trees, etc) are protected in Japan for 30 years from the date of registration. Other plant varieties are protected for 25 years. In Australia, tree and vine varieties can be protected for 25 years and other varieties for 20 years from the date of granting.

A holder of a variety right must pay an annual fee in order to maintain the right.

The protection available under the PVP legislation may also be overlapped with Japan's patent system. Whilst an intending PVP registrant may seek patent protection for the breeding *process* (if novel and non-obvious) of a plant (including

varieties not clearly distinguishable from it) a dual protection strategy requires part of the PVP protection to be foregone. The *propagating material* (such as seeds and seedlings) produced from the registered plant cannot come within the protective scope of the PVP if the holder also has a patent for the relevant reproduction process specific to that same plant. This applies not only while the patent is in force but during the ten years after it expires for perennial plants - or five years for other plants. If you are considering dual patent/PVP protection you would be well advised to carefully consider your options with your legal adviser.

Where do I apply?

An application for PVP must be made in Japanese and submitted to the Ministry of Agriculture, Forestry and Fisheries. An English version website on the application process, including application forms and fees, can be found at <http://www.hinsyu.maff.go.jp/>.

Electronic filing is also available from the Ministry of Agriculture, Forestry and Fisheries website <http://www.maff.go.jp/j/denmado/index.html>.

What should be in the application form?

It is the obligation of the applicant to conduct inspections on the characters of the candidate variety, collect necessary data for written descriptions, and take various photographs of the variety. All of these have to be done before submitting an application form.



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An application must include:

1. Application form.
2. Description sheet (including characteristics tables).
3. Photographs of the candidate variety (three copies of each photograph).
4. Seeds/cuttings (for plants) or Spawn (for mushrooms).

In addition, the following are required where applicable:

5. Power of attorney (when applying through an agent).
6. Document verifying derived entitlement (assignment, etc).
7. Document verifying nationality (for foreign breeders).
8. A certified copy of priority document (for claiming priority right).
9. Other information such as trial data, etc. (optional).

Australian businesses should note that applications must be submitted by a Japanese representative agency with a power of attorney. Where documents are prepared in a language other than Japanese, a Japanese translation is required.

Further application details may be found at <http://www.hinsyu.maff.go.jp/>.

How long will the process take to have a PBR granted?

After the application is received and the application fee is paid, the application will be assessed for a suitable denomination and novelty. Where the denomination of the variety is not appropriate a new denomination must be proposed. For novelty to be satisfied neither propagating or harvested material of the variety can have been transferred in the course of business prior to the filing date of the application for more than one year in Japan or for more than four years overseas (six years in case of perennial plants). Once these conditions are satisfied details of the application are published.

The application then proceeds to substantive examination. The examination process will generally take several years. In some instances, for example where the variety has been successfully examined by another UPOV member country, the substantive examination may be based on an official test report from that country.

The Examination authority will decide on how the test should be conducted for each application, mainly depending on the genera or species of the candidate variety and other factors.

When can I enforce my rights?

After the publication of the application, the applicant is entitled to provisional protection. The applicant may claim compensation against the infringer as long as the applicant has provided written warning to the infringer. Compensation will be calculated from the time of the warning notification.

The National Centre for Seed and Seedlings has appointed a Plant Variety Protection Adviser to assist applicants on infringement matters including:

- providing consultation and advice on measures against infringement of PVR,
- collecting and providing information on infringement of PVR, and
- conducting examination to determine the identity of varieties based on requests from right holders.

Further Information

Ministry of Agriculture, Forestry and Fisheries,
Plant Variety Protection
<http://www.hinsyu.maff.go.jp/english/index.htm>

National Centre for Seed and Seedlings details
http://www.ncss.go.jp/index_e.html

UPOV website
www.upov.int/



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The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organization with headquarters in Geneva, Switzerland.

UPOV was established by the International Convention for the Protection of New Varieties of Plants, was adopted in Paris in 1961 and most recently revised in 1991. The Convention protects new varieties of plants as an intellectual property right.

Disclaimer:

This information is intended to help the reader gain a basic understanding of some IP concepts. It is not designed to provide legal, business or other relevant professional advice. IP Australia recommends that you seek independent legal, business or other relevant specialist advice as necessary. This fact sheet has been developed in conjunction with Hodgkinson McInnes Patents.

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