



Australian Government

IP Australia

# Protecting Your Plant Variety Overseas

## Introduction

This is a brief guide to some of the issues involved in applying for PBR protection in a foreign country. PBR may be called Plant Variety Rights (PVR) or Plant Variety Protection (PVP) however they are effectively the same.

## General Considerations

Before you apply for PBR in a foreign country, you should consider the following:

- Australia belongs to the **International Convention for the Protection of New Varieties of Plants (UPOV)**. There are some 65 member countries of this Convention, including all major industrial countries and our key trading partners (a list of UPOV members is available from <http://www.upov.int/export/sites/upov/en/about/members/pdf/pub423.pdf>).
- PBR registration systems are broadly the same in each of the UPOV member countries. Some differences may arise in the scope of protection and the administrative procedures in applying for and progressing an application.
- Not every UPOV member protects every species.
- Usually you can use the Australian application as the basis for an application in another UPOV member country.
- If the receiving office of a foreign country does not use English as an official language, you will have to translate all documents and correspondence into an official language used by that office. The use of the standard UPOV forms, where applicable, can avoid much of the translation expense.
- In some countries, you have to use the services of a local agent if you are not a resident of that country. In others you may be required to provide an address in that country for service of documents. In these cases it may be possible to arrange for a friend or business contact to then forward correspondence to you in Australia.
- The fees for obtaining and maintaining a PBR vary from country to country.

## Applying for a PBR Overseas

Generally you have to apply for PBR in each foreign country in the same way as you have to in Australia.

Currently there are two exceptions. For example it is possible to apply for protection in the European Community (EC) – this single application provides potential PBR protection in all EC countries (currently 27). Regional protection is also available in 16 African countries that are affiliated under the African Intellectual Property Organisation (OAPI).

If you make an application in a foreign country within 12 months of your Australian application, you may be able to claim the date on which you lodged your Australian application as the priority date of your application. This provides for an added time of protection and avoids the need to distinguish your variety from others that have been developed in the intervening period.

UPOV members are obliged to treat Australian applicants in the same way as their own nationals – ie no special rules (other than the possible need for an agent) can be applied.

## Foreign Applications

In very broad terms, to apply for PBR in a



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foreign country you will need to research the local procedures (links are available from <http://www.upov.int/en/about/links.htm>) and complete the relevant foreign forms. You may be able to file the application directly with the receiving office of the foreign country, though the services of an agent in that country may be required by law. Some applicants prefer to use agents even if there is no requirement.

It is worth noting that you can appoint an agent solely to administer your PBR application. There is no requirement that they are also appointed to act as your commercial agent in exploiting the variety.

UPOV members offer special concessions in regard to commercialising the variety before an application is lodged. With the exception of asexually propagated plants in the USA, members allow the variety to have been sold for up to 4 years outside the jurisdiction (6 years for trees and vines).

If in your foreign application you intend to claim a priority date on the basis of the Australian application, you will be required to provide a copy of the Australian application within a period of not less than three months. However, provided it does not delay the filing of the foreign application, it may be convenient to attach a certified copy of the Australia application to the foreign filing forms.

If English is not an official language used by the receiving office of the country, you will need to supply a translation of the basic documentation in an official language used by that office.

You can obtain certified copies of your Australian application by writing to the PBR Registrar. The postal address is PO Box 200 Woden ACT 2606. The fee for each certified copy is \$50. [Fees effective as at 30 May 2008]

The PBR Office of IP Australia does not provide application forms, receive applications, or receive fees, for or on behalf of receiving offices in other countries. It does not give advice or assistance on prosecuting applications in foreign countries. You will need to ask the foreign receiving offices to send you details of their requirements for registering PBR in their

country.

If you are considering applying for a PBR overseas, you should also consider seeking advice from an IP professional. In addition to patent attorneys (listed in the Yellow Pages Directory) there is a list of Qualified Persons published on the IP Australia website (<http://www.ipaustralia.gov.au/pdfs/plantbreed/qlist2.doc>) that may also be able to provide practical advice.

For your convenience, the addresses of some of the more commonly used foreign industrial property offices are:

#### China

Plant Variety Protection Office  
Building 20  
Maizidian Street  
Beijing 100026

#### European Community

Community Plant Variety Office  
P.O. Box 10121  
49021 Angers Cedex 02  
France

#### Netherlands

Raad voor Plantenrassen  
(Board for Plant Varieties)  
Postbus 27  
NL-6710 BA Ede

#### New Zealand

Commissioner of Plant Variety Rights  
Plant Variety Rights Office  
P.O. Box 30687  
Lower Hut 5040

#### United States of America

(sexually reproduced species)  
The Commissioner  
Plant Variety Protection Office  
Agricultural Marketing Service  
Department of Agriculture  
Beltsville, Maryland 20705-2351

(asexually reproduced species)  
The Director of the U.S. Patent and Trademark  
Office (USPTO)  
Mail Stop International Relations  
P.O. Box 1450  
Alexandria, VA 22313-1450