



Information

DOVE
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PLANT BREEDERS' RIGHTS - AN OUTLINE FOR THE NEWCOMER

FIRST CONSIDERATIONS

When considering whether to apply for plant variety protection (Plant Breeders' Rights) you first need to decide if the variety is worthwhile protecting. It makes sense to discover if the variety is capable of commanding a large enough place in the market to give a return on the investment and cover ongoing costs (PBR and legal fees, administration and marketing expenses, etc). There is always an element of luck in predicting the likely market uptake, but well planned research can keep this unfortunate element to a minimum. If other firms in the industry think the product has serious commercial potential and the marketing plan is sound your decision will be far easier to make. Of course, having professional nurseries firmly committed to the uptake and marketing of the product is clearly the best basis from which to proceed.

An application must be made by:

- a) the person who bred or discovered the variety
- b) his successor in title
- c) through an agent which will be accepted if the agent has written authority from the applicant to act on his behalf (PVS11 form which is available from Defra).

APPLYING FOR PLANT BREEDERS' RIGHTS

The job of applying for rights is that of the Breeder. The application is made to the Plant Variety Rights Office, which is headed by an officer appointed by Ministers and known as the Controller. The breeder is asked to complete an Application Form and Technical Questionnaire giving a full description of the plant and details of how the variety was derived. Application forms can be obtained from, and should be returned to:

Plant Variety Rights Office
White House Lane
Huntingdon Road
Cambridge CB3 0LF
Tel: (01223) 342350
Fax: (01223) 279036

All the questions on the form must be answered, and all applications must be accompanied by correct payment. The Controller may request that the breeder produce such documents, records, illustrations etc and reproductive and other plant material as required for the continuation of trials. Once an application for rights has been accepted, the Controller will make arrangements to carry out such tests and examinations as he considers necessary for the purpose of determining whether the variety is:

- a) **DISTINCT** clearly distinguishable by one or more important characteristic from all other varieties whose existence is a matter of common knowledge at the time of application.
- b) **UNIFORM** sufficiently uniform or homogeneous with regard to the particular features of its sexual reproduction or vegetative propagation.
- c) **STABLE** must remain true to its description after repeated reproduction or propagation.

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Hence the term "DUS testing"

The Controller will decide the duration of these tests and examinations, but in most cases they are likely to last for a minimum of 2 years.

GRANTING OF PLANT BREEDERS' RIGHTS

Once the Controller is satisfied that the appropriate conditions have been met, he will grant Plant Breeders' Rights to the applicant upon payment of the appropriate fee for the species concerned. This fee is payable before the issue of the document constituting evidence of plant breeders' rights.

RENEWAL OF RIGHTS

Plant Breeders' Rights will only remain in force so long as the holder of the rights, or a person acting on his behalf, pays a renewal fee annually during the term of the rights. If the renewal fee has not been paid within 7 days from the due date notice will be given of the proposal to terminate rights.

NAMING

At some stage a name needs to be proposed for the variety concerned. There are guidelines for naming and if a name does not comply with these the Controller may reject it. Until a name had been proposed the Controller is not obliged to process the application, in fact, if the Controller gives notice and a name has not been suggested it may lead to the application being abandoned. An applicant may substitute a name for one already proposed or approved, this is dependant upon the applicant proving there are valid reasons for the substitution, the name conforming to prescribed rules and the appropriate fee being paid.

If the Controller accepts a name (either original or substitute) it is advertised in the *Plants Varieties and Seeds Gazette*.

Any person may object to the name on the following grounds:

- It is the same as, or so closely resembles the name of another plant variety of the same class that it could deceive or cause confusion
- It is likely to deceive or cause confusion as to the characteristics or value of the plant, or the identity of the breeder.
- It does not conform with international usage as to the naming of cultivated plants.
- It is the same as, or likely to be confused with a trade mark (registered or applied for) or a trade name used in respect of:
 - a) reproductive material of any kind
 - b) products of the plant variety concerned or of another plant variety of the same class.
- It is liable to cause offence or is otherwise objectionable.

After rights are granted the plant variety may not be sold under any name other than its registered one. The exception to this is that a trade name or mark may be used in connection with the registered name, providing the two names are juxtaposed and the registered name is clearly recognisable. This applies both during and after the period for which the plant breeders' rights are exercisable. These provisions do not apply to reproductive material intended for export.

REGISTER

The Controller keeps a register of plant varieties, including their names, for which applications have been made or granted. Anyone can inspect this register and a copy is available upon request from the Plant Variety Rights Office.

Any holder of Plant Breeders' Rights who has changed his name or address must apply to the Controller for an amendment to the register.

ADVICE ON PLANT BREEDERS' RIGHTS MATTERS

The Plant Breeders' Rights Office will give enquirers any help it can by way of general information about Plant Breeders' Rights and the procedures of the office. It does not, however, undertake to:

- a) give legal advice or opinions on any subject connected with the law as to plant breeders rights
- b) examine or express opinions on the eligibility of varieties as subjects for application of plant breeders' rights
- c) express any opinion on agreements or other documents before they are filed in connection with formal opinions.

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It is not within the power of the Controller to comply with requests for financial assistance to obtain plant breeders' rights or to reduce or remiss any of the fees.

FALSE REPRESENTATIONS

It is an offence for any person to knowingly make a false claim that he is entitled to exercise any plant breeders' rights, or rights derived from plant breeders' rights. This is true whether or not the variety in respect of which the claim is made is the subject of plant breeders' rights. The penalty for such an offence is a fine not exceeding £1,000.

EUROPEAN PLANT BREEDERS' RIGHTS

The scope of the rights granted under the European title is much wider than that currently available under the UK title. The cost of obtaining European Plant Breeders' Rights is naturally higher than the UK single country fees, but it does offer a very comprehensive form of protection to the Breeder. If production is likely to be carried out in several Member States EU protection is more economical than multiple national titles. It is important to consider the value of this where the countries are likely to produce the plants for export. Another point that you should bare in mind is that if you opt solely for an EU title and at any stage relinquish it, you can not then apply for a national title. You can, however, maintain national titles behind the EU protection and revert to these if you abandon the EU title. National titles held in this way are effectively dormant, since the EU Grant takes precedence.

A word of warning - if you wish to keep this option open, you must have your national rights granted before the European rights, so the timing is very important.

More details on European Breeders' Rights can be obtained form the Plant Variety Rights Office.

BARB & THE SERVICE IT OFFERS TO BREEDERS

BARB is an organisation working on behalf of Breeders who are its Members. It issues licences, collects the royalties due and monitors fair competition in terms of royalty declaration by its licensees. The actual creation of market interest and the generation of volume sales are the job of the Breeder himself.

BARB is an unincorporated non-profit making Association. Its Members are all Breeders or their agents who are holders of Plant Breeders' Rights, or operate those rights on behalf of another Breeder. It is they who fund the running of the organisation, the object of which is to offer licences on behalf of Holders of Rights to growers wishing to take up their protected varieties on an administratively easy and economic system for both.

For more information please contact:

Ian Kennedy
General Secretary
B.A.R.B.
17 Wren Centre
Westbourne Road
EMSWORTH
Hants PO10 7SU
Tel: (01243) 389532
Fax: (01243) 389509
E-mail: info@barb.org.uk

GENETIC FINGERPRINTING

A service is available to check both the parentage and source of plant material where a dispute may arise. This process is not definitive but can be used as part of the evidence in case.

Contact:

Department of Plant Genetics and Breeding
Centre for Agricultural Research
Burg. Van Gansberghelaan
109, 9820
Merelbeke
Belgium

The use of AFLP (amplified fragment length polymorphism) for detecting Essentially Derived Varieties (EDV) and frauds is demonstrated on 3 case studies. Fifteen bud sports of *Rhododendron simsii* hybrid cultivar Hellmut Vogel, 2 *Rosa* varieties and 2 clones of *Phalaenopsis*, all alleged EDVs or frauds were analysed by AFLP. In the case of Hellmut Vogel, AFLP with 6 primer combinations proved that some bud sports were EDVs and therefore not proper varieties. The 2 *Rosa* varieties had identical fingerprints, thus revealing a fraud in the registration of parents for new variety Y. *Phalaenopsis* clones L and J were identified with 3 primer combinations as different but closely related

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clones. It is concluded that AFLP is an appropriate technique for the determination of genetic conformity as proof for disputed EDVs or fraud.

THE MARKETING OF ORNAMENTAL PLANT PROPAGATING MATERIAL REGULATIONS 1999.

This regulation places obligations on the part of propagators to state, in the documentation of the plant passport, if the plant material being sold is subject to Plant Variety Rights. This regulation also covers quality issues covering the maintenance of purity and varietal identity for these plants.

INDEPENDENT ORGANISATIONS

There are several independent companies who will register and place plants with overseas agents for you as a service. These people are sometimes linked to nurseries and can even offer sales of the product for you. Such contacts are:

Genesis

Peter Dealtry, Genesis, 9 Portland Street, King's Lynn, Norfolk PE30 1PB
E-mail: genco@dial.pipex.com

PlantHaven

Geoff Needham, PlantHaven, PO Box 927, Carrboro, North Carolina, 27510, USA
E-mail: geoff@planthaven.com

PlantHaven, Inc specializes in introducing plants to the North American market and handles the whole process from initial evaluations, placement, promotion and royalty administration. They are independent: only working for the breeder or the breeder's own agent. On the international front, PlantHaven is associated with similar agencies worldwide. We meet regularly to exchange "best practice" ideas and we are able to synchronise patent and PBR applications to best effect. The agencies and their territories are:

Genesis - UK and others in EU
Plantipp - Benelux, Germany
Plantes du Monde - France
Royalagro - Spain
Plants Management - South Africa
Plants Management - Australia
PlantNetowrk - Japan.

The magazine PLANTS offer a wide distribution of information for new plant introductions. Available by subscription or on-line at www.plants-magazine.com

Contact details for Plant Variety Protection Offices in UPOV Member States are as follows:

Argentina

Instituto Nacional de Semillas (INASE)
Secretaría de Agricultura, Ganadería y Pesca
Ministerio de Economía y Obras y Servicios
Públicos
Avda. Paseo Colón 922 – 3. Piso
1063 Buenos Aires
Tel: (54-11) 4349 24 97
Fax: (54-11) 4349 24 17
E-mail: inase@sagyp.mecon.ar

Australia

Registrar
Plant Breeders' Rights Office
PO Box 858
Canberra
A.C.T. 2601
Tel: (61-2) 6272 3888
Fax: (61-2) 6272 3650
Web page: www.daff.gov.au/agfor/pbr/pbr.html

Austria

Bundesamt und Forschungszentrum für

Landwirtschaft

Sortenschutzamt
Postfach 400
Spargelfeldstrasse 91
A-1226 Wien
Tel: (43-1) 732 16 40 00
Fax: (43-1) 732 16 42 11

Belgium

Ministère des classes moyennes et de l'agriculture
Service de la protection des obtentions végétales
et des catalogues nationaux
Tour WTC/3 – 11ème étage
Avenue Simon Bolivar 30
B-1000 Bruxelles
Tel: (32-2) 208 37 22
Fax: (32-2) 208 37 16

Bolivia

Dirección Nacional de Semillas

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Secretaría Nacional de Agricultura y Ganadería
Avda. 6 de Agosto 2006
Edif. V. Centenario
Castilla 4793
La Paz
Tel: (591-2) 391 953 / 391 608
Fax: (591-2) 391 953 / 391 608
E-mail: semillas@mail.entelnet.bo

Brazil

Serviço Nacional de Proteção de Cultivares –
SNPC
(National Plant Varieties Protection Service)
Secretaria de Desenvolvimento Rural – SDR
Ministério da Agricultura e do Abastecimento
Esplanada dos Ministérios, Bloco D, Anexo A
Térreo sala 1-12
CEP 70043-90
Brasilia DF
Tel: (55-61) 218 2433/2163/2557/2549/218 24 13
Fax: (55-61) 224 28 42 / 224 5647
E-mail: snpc@agricultura.gov.br

Bulgaria

Patent Office of the Republic of Bulgaria
52 b, Dr. G M Dimitrov blvd.
BG-1113 Sofia
Tel: (359-2) 710 152, 717 044
Fax: (359-2) 708 325

Canada

Plant Breeders' Rights Office
Canadian Food Inspection Agency (CFIA)
3rd Floor, East Court
Camelot Court
59 Camelot Drive
Nepean
Ontario K1A 0Y9
Tel: (1-613) 225-2342
Fax: (1-613) 228-6629

Chile

Ministerio de Agricultura
Servicio Agrícola y Ganadero
Departamento de Semillas
Casilla 1167-21
Santiago de Chile
Tel: (56-2) 696 29 96/698 22 44
Fax: (56-2) 696 64 80

China

The Office for the Protection
of New Varieties of Plants
Ministry of Agriculture
11 Nog Shan Guan Nan Li
Beijing 100026
Tel: (86-10) 641 930 29/641 916 77
Fax: (86-10) 641 930 82/641 916 78
E-mail: cnpvp@agri.gov.cn

Department of Science and Technology
Office for the Protection of New Varieties
of Forest Plants
State Forestry Administration
Hepingli
Beijing 100714
Tel: (86-10) 642 14 714
Fax: (86-10) 642 13 084 / 642 14 904
E-mail: lybxpz@ihw.com.cn
lyjxpz@public.east.cn.net

Colombia

Instituto Comombiano Agropecuario (ICA)
División de Semillas
Calle 37 No. 8-43
Santa Fe de Bogotá
Tel: (57-1) 232 4697./ 232 8643
Fax: (57-1) 232 4695 / 288 4037
E-mail: semilla@impsat.net.co

Czech Republic

Ministry of Agriculture
Department of European Integration
Tesnov 17
117 05 Prague 1
Tel: (420-2) 2181 2472
Fax: (420-2) 2181 2970

Denmark

Plantenyhedsnaevnet
(The Danish Institute of Plant and Soil Science)
Teglvaerksvej 10
Tystofte
DK-4230 Skaelskoer
Tel: (45) 5359 6141
Fax: (45) 5359 0166

Ecuador

Instituto Ecuatoriano de la Propiedad Intelectual
Dirección Nacional de Obtenciones Vegetales
Eloy Alfaro y Amazonas
Edificio MAG, 3^{er} piso
Quito
Tel: (593-2) 566 686/541 852
Fax: (593-2) 562 258
E-mail: sectagro@impsat.net.ec

Finland

Plant Variety Board
Plant Variety Rights Office
Box 232
00171 Helsinki
Tel: (358-9) 160 3316
Fax: (358-9) 160 2443

France

Comité de la protection des obtentions végétales
11 rue Jean Nicot
F-75007
Tel: (33-1) 42 75 93 14
Fax: (33-1) 42 75 94 25

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Germany

Bundessortenamt
Postfach 61 04 40
D-30604 Hannover
Tel: (49-511) 95 66 5
Fax: (49-511) 56 33 62
E-mail: bsa@bundessortenamt.de

Hungary

Hungarian Patent Office
Magyar Szabadalmi Hivatal
Garibaldi-u. 2 – BP 552
H-1370 Budapest
Tel: (36-1) 312 44 00
Fax: (36-1) 311 48 41/331 25 96

Ireland

Controller of Plant Breeders' Rights
Department of Agriculture and Food
Backweston
Leixlip
Co. Kildare
Tel: (353) 1-628 0608
Fax: (353) 1-628 0634
E-mail: backwest@indigo.ie

Israel

Plant Breeders' Rights Council
The Volcani Centre
PO Box 6
Bet-Dagan 50 250
Tel: (972-3) 968 36 69
Fax: (972-3) 968 34 92
E-mail: ilpbr_tu@netvision.net.il

Italy

Ufficio Italiano Brevetti e Marchi
Ministero dell'Industria, del Commercio e
dell'Artigianato
19 via Molise
I-00187 Roma
Tel: (39-06) 47 05 1/488 43 54 (Div. IV)
Fax: (39-06) 47 05 30 35

Japan

Seeds and Seedlings Division
Agricultural Production Bureau
Ministry of Agriculture, Forestry and Fisheries
1-2-1 Kasumigasei – Chiyoda-ku
Tokyo 100
Tel: (81-3) 35 91 05 24
Fax: (81-3) 35 02 65 72

Kenya

Plant Breeders' Rights Office
Kenya Plant Health Inspectorate Service (KEPHIS)
Headquarters
Waiyaki Way
PO Box 49592
Nairobi

Tel: (254-2) 44 40 29/44 40 31
Fax: (254-2) 44 89 40/44 00 87
E-mail: kephis@nbnet.co.ke

Mexico

Servicio Nacional de Inspección
y Certificación de Semillas – SNICS
Secretaría de Agricultura, Ganadería y Desarrollo
Rural
Lope de Vega 125-8, 2 piso
Col. Chapultepec Morales
11570 Mexico D.F.
Tel: (52-5) 203 9427/203 9667
Fax: (52-5) 250 6483

Netherlands

Raad voor het Kwekersrecht
(Board for Plant Breeders' Rights)
Postbus 104
NL-6700 AC Wageningen
Tel: (31-317) 47 80 90
Fax: (31-317) 42 58 67
E-mail: raad.kwekersrecht@rlr.agrp.nl

New Zealand

Commissioner of Plant Variety Rights
Plant Variety Rights Office
PO Box 130
Lincoln
Canterbury
Tel: (64-3) 325 63 55
Fax: (64-3) 325 29 46

Norway

Plantesortsnemnda
(The Plant Variety Board)
Frokontrollen
N-1432 Ås
Tel: (47) 64 94 75 04
Fax: (47) 64 94 02 08

Panama

Dirección General del Registro de
la Propiedad Industrial (DIGERPI)
Ministerio de Comercio e Industrias
Apartado 9658 – Zona 4
Panamá 4
Tel: (507) 227 39 87/227 25 35
Fax: (507) 227 21 39/275 604
E-mail: digerpi@sinfo.net

Paraguay

Ministerio de Agricultura y Ganadería
Dirección de Semillas (DISE)
Gaspar R. de Francia No. 685
c/ Mcal. Estigarribia
San Lorenzo

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Tel: (595) 21 58 22 01
Fax: (595) 21 58 46 45

Poland

Research Centre for Cultivar Testing (COBORU)
63-022 Slupia Wielka
Tel: (48-61) 285 23 41
Fax: (48-61) 285 35 58
E-mail: coboru@bptnet.pl

Portugal

Centro Nacional de Registo
de Variedades Protegidas (CENARVE)
Edificio II da DGPC
Tapada da Ajuda
P-1300 Lisboa
Tel: (351-1) 362 16 07/363 36 01/02
Fax: (351-1) 362 16 06
E-mail: ed2.tapada@dgpc.mailpac.pt

Republic of Moldova

State Commission for Crops Variety Testing
and Registration
Ministry of Agriculture
Bul. Stefan cel Mare 162
CP 1873
2004 Chisinau
Tel: (373-2) 24 62 22
Fax: (373-2) 24 69 21

Russian Federation

State Commission for the Russian Federation
for Selection Achievements Test and Protection
Orlicov per., 1/11
107139 Moscow
Tel: (7-095) 204 49 26
Fax: (7-095) 207 86 26
E-mail: desel@agro.aris.ru
Web site: www.angelfire.com/mis/soundsbyte

Slovakia

Ministry of Agriculture
Dobrovicova 12
812 66 Bratislava
Tel: (421-7) 306 62 90
Fax: (421-7) 306 62 94

Slovenia

Ministrstvo za kmetijstvo, gozdarstvo in prehrano
(MKGP)
Urad RS za varstvo in registracijo sort rastlin
(*Plant Variety Protection and Registration Office*)
Parmova 33
1000 Ljubljana
Tel: (386-61) 136 33 44/136 34 82
Fax: (386-61) 136 33 12
E-mail: UVRSR@gov.si

South Africa

National Department of Agriculture

Directorate: Genetic Resources
PO Box 25322
0031 Gezina
Tel: (27-12) 808 03 65
Fax: (27-12) 808 03 65

Spain

Oficina Espanola de Variedades Vegetales
(OEVV)
Instituto Nacional de Investigación y Tecnología
Agraria y Alimentaria
Ministerio de Agricultura, Pesca y Alimentación
José Abascal, 4-7^a pl.
E-28003 Madrid
Tel: (34-91) 347 66 00
Fax: (34-91) 594 27 68

Sweden

Statens växtsortnämnd
Box 1247
S-171 24 Solna
Tel: (46-8) 783 12 60/783 12 61
Fax: (46-8) 83 31 70

Switzerland

Bundesamt für Landwirtschaft
Büro für Sortenschutz
Mattenhofstr. 5
CH-3003 Bern
Tel: (41-31) 322 25 24
Fax: (41-31) 322 26 34

Trinidad

Controller (Ag)
Intellectual Property Office
Ministry of Legal Affairs
34 Fredrick Street
Port of Spain
Tel: (1-868)625 9972/627 95 67
Fax: (1-868)624 1221
E-mail: Controller.IPOffice@opus.co.tt

Ukraine

State Patent Office of Ukraine
8 Lvov Square
254655 Kiev 53, GSP-655
Tel: (880-44) 212 50 82
Fax: (880-44) 212 34 49

United Kingdom

The Plant Variety Rights Office
White House Lane
Huntingdon Road
Cambridge
CB3 0LF
Tel: (44-1223) 34 23 81
Fax: (44-1223) 34 23 86

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United States of America

The Commissioner of Patents and Trademarks
Patent and Trademark Office
Box 4
Washington, DC 20231
Tel: (1-703) 305 93 00
Fax: (1-703) 305 88 85

The Commissioner
Plant Variety Protection Office
Agricultural Marketing Service
Department of Agriculture
Beltsville, Maryland 20705-2351
Tel: (1-301) 504 55 18
Fax: (1-301) 504 52 91

Uruguay

Instituto Nacional de Semillas (INASE)
Cno. Bertolotti s/n y R-8fkm. 28.8 – Bando –
Canelones
Dirección Postal: Casilla de Correos 7731 –
Pando Canelones
Tel: (598-2) 288 7099
Fax: (598-2) 288 7077
E-mail: inasepre@adinet.com.uy
Web page: www.cgasqye.apc.org/inase

(Not yet a member of UPOV)

European Union

Community Plant Variety Office
PO Box 2141
F-49021 Angers Cedex 02
France
Tel: (33-2) 41 36 84 50
Fax: (33-2) 41 36 84 60

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