

# Protection of plant varieties

New plant varieties are a key element of modern agriculture, horticulture, and silviculture. They ensure better harvest, higher quality and resistance to pests, and are the most cost-effective way to boost production performance and quality. Furthermore, their use often allows to mitigate the adverse effects of farming on the natural environment. The dynamic progress in obtaining new varieties also applies to ornamental plants, which have substantial economic value in addition to the aesthetic one.

JWP Patent and Trademark Attorneys is one of few entities on the Polish market to offer end-to-end services to the extent of obtaining exclusive rights to plant varieties, their maintenance and protection, as well as enabling effective commercialisation of a new variety.

## What is an exclusive right to a plant variety?

It is the latest and most specialised intellectual property right. The breeder may apply for an exclusive right to a new plant variety if it is distinct, uniform, stable, and new, and its name complies with the requirements stipulated in legal regulations. This concerns all types and species of plants, including arable, domesticated, vegetable, fruit, and ornamental plants, including varieties of trees and grapevine. Plant variety right is hereditary, transferrable, and tradable. Depending on protection strategy, you may apply for the exclusive right applicable nationally or across the entire European Union.

## What you need to know before registering a variety?

In the last 20 years nearly 54 thousand applications for registering new varieties have been filed with the Community Plant Variety Office (CPVO) in order to grant exclusive rights to their breeders. Some of them have already been granted protection, while others enjoy temporary protection only. This means that prior to filing an application it is worth checking whether your variety is already commonly known, which would result in refusal to grant the exclusive right. Equally important is the name of the new variety proposed by the breeder. The name is the variety's distinguishing mark in trading, similar in function to a trademark. It must not mislead a potential recipient.

Conducting an analysis of legal status of registered plant varieties along with assessing the chances for registering the name proposed by the breeder will allow not only to avoid unnecessary costs related to later filing, but also to develop and adopt an optimum protection strategy while taking into account current market conditions.

## How to obtain an exclusive right to a plant variety?

In order to obtain protection, you need to file an application for registering a plant variety in a relevant Plant Variety Office:

- Research Centre for Cultivar Testing (COBORU) in Słupia Wielka near Poznań – the protection covers the territory of Poland;
- Community Plant Variety Office (CPVO) in Angers – the protection covers the entire territory of the European Union;

- in individual national offices of selected states – the protection covers the territory of a given state.

Research Centre for Cultivar Testing (COBORU) will not grant the exclusive right if an application for protection of a given variety has been filed with or is already protected by Community Plant Variety Office (CPVO) in Angers. This means that granting the exclusive right on the territory of the European Union replaces the national application to the protection system.

The breeder who filed an application for granting the right in another member state of the International Union for the Protection of New Varieties of Plants (UPOV) may apply, within 12 months from filing the application, for granting the exclusive right on the territory of Poland and recognising the breeder's right of priority to the variety.

## What is the average length of the procedure (from filing an application to granting the right)?

The average duration of examination of protection application, both before Polish and EU office, ranges from 2 to 3 years and in large part depends on the filing date and type or species of the variety.

In the course of the procedure, the relevant office analyses the proposed name of the variety, its distinctiveness, uniformity, and stability (OWT research). Typically, the research covers two vegetation cycles and may be extended if necessary to determine whether the variety has all the required features. During that time the applicant enjoys temporary protection.

## Why are new plant varieties worth protecting?

Obtaining the exclusive right to a plant variety ensures a use monopoly for the entitled person. It includes, among others:

- production and propagation,
- preparation for propagation,
- offering for sale, sale, and other forms of disposal,
- export and import,
- storage,

of new-variety plants or material from a protected variety set.

Once the exclusive right is granted, all the above activities may be performed only with the entitled



person's consent. A breeder with the exclusive right to a variety may, however, grant a license to another person to exercise the right for a charge.

### **How to effectively commercialise the obtained right to a plant variety?**

Obtaining the exclusive right does not always mean the ability to reap economic benefits from the new plant variety.

For arable plant varieties, in order to produce seed grain and market it, it is necessary to enter the varieties in the national register of varieties and in the community catalogue. This involves an additional administrative procedure, which enables effective commercialisation of the varieties and ensures a fully efficient use of the exclusive right granted by COBORU/CPVO.

### **How to maintain protection and protect the exclusive right to a plant variety?**

The exclusive right is applicable from the date of issue of a decision to grant it and is valid for:

- 30 years – for grapevine, trees, and potato varieties;
- 25 years – for other varieties.

To ensure protection of a registered variety, you need to pay administrative fees for each year of maintenance of the exclusive right. It is also important to monitor the market and respond to cases of breach of law by other entities. In such case it is possible to claim damages as part of civil or criminal proceedings.

### **The JWP team offers:**

- assessment of chances for registering plant varieties and their names,
- preparation of legal opinions concerning chances for registering plant varieties and their names,
- registering plant varieties: as part of a national procedure with Research Centre for Cultivar Testing (COBORU) or as part of community procedure with Community Plant Variety Office (CPVO) in Angers,
- monitoring the research on distinctiveness, uniformity and stability of a variety (OWT research) and the research on economic value of a variety (WGO),
- conducting the process of registration of national plant varieties before relevant foreign offices,
- renewals of exclusive rights to plant varieties in Poland and the European Union, making changes to national and community registers,
- conducting proceedings concerning entries to the national register of varieties and the community catalogue,
- conducting dispute proceedings before the Community Plant Variety Office and Court of Justice of the European Union,
- drawing up warning letters in cases concerning plant varieties,

- conducting proceedings concerning plant varieties before administrative courts (Provincial Administrative Courts, Supreme Administrative Court),
- advising Clients in specific situations related to plant varieties and helping them develop the right strategy of action,
- conducting civil and penal proceedings before common courts concerning breaches of exclusive rights to plant varieties.

### **■ Experts**



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