

Intellectual property rights allow companies engaged in the plant reproduction material sector to obtain the exclusive right to their product. During a certain period of time, companies can levy fees. This income is used to earn back the investment in the product made by the companies and can be used to invest in the development of new varieties. The most important aspects to consider relating to the development and exploitation of plant varieties are mainly Plant Breeders' Rights, Patent Rights and Trademark Rights.

Plant Breeders' Rights

Plant Breeders' Rights can be obtained for each variety of plant that is Distinct, Uniform and Stable. These characteristics are established during the DUS test. A variety must also be new, and have an approved name.

The foundation of Plant Breeders' Rights is formed by the international UPOV Convention, which has currently been adopted by 68 countries. If a company in one of the UPOV countries wishes to apply for Plant Breeders' Rights, the application must always be submitted in the country concerned. The website of the UPOV contains the legislation of the UPOV countries and also the address details of the registration bodies.

Dutch Plant Breeders' Rights is regulated in the Dutch Seeds and Planting Materials Act. Rights are granted by the Board for Plant Varieties. The website of the Board contains information such as which varieties are protected by Dutch Plant Breeders' Rights. Naktuinbouw is responsible for the administrative processing of the applications and is responsible for performing the tests involved in granting Plant Breeders' Rights. The DUS comparison trials are performed under the auspices of Naktuinbouw at the Dutch General Inspection Service for Agricultural Seeds and Seed Potatoes (NAK) for agricultural crops, and for flower bulbs at the Flowerbulb Inspection Service (BKD).

The regulation on Community Plant Variety Rights has been in force since 1994. Based on this regulation, a Plant Breeders' Right holder can obtain the rights in all the member states of the EU with a single application. Applications for European Plant Breeders' Rights can be submitted to the Community Plant Variety Office (CPVO). The website of the CPVO lists all the varieties which are protected by European Plant Breeders' Rights. A variety can either be protected by national or European Plant Breeders' Right.

Plant Breeders' Rights grant the Plant Breeders' Rights holder the exclusive right to matters including the production and reproduction of the plant variety. There are a few exceptions to this right, such as breeders' exemption and farmers' privilege. The breeders' exemption allows plant breeders to freely use protected varieties for the development and exploitation of new varieties, and is therefore of importance for continuing innovation in plant breeding. The farmers' privilege is an optional exception that UPOV members can incorporate in their plant breeders' rights legislation and allows farmers to save and re-use harvested seeds on their own farm. The farmers' privilege only applies to agricultural crops, and in the Netherlands is restricted to just potatoes and cereals. More information can be found on www.eigenzaaizaad.nl (Dutch).

Plantum has made certain agreements with FloraHolland about how to deal with products supplied to the flower auction that infringe on Plant Breeders' Rights and/or trade mark rights.

Patents

In Europe, patents cannot be obtained for individual plant varieties or organic methods. However, a patent can be obtained for traits or methods, whereby the claim can extend to varieties of plants.

Further information about the relationship between Plant Breeders' Rights and Patent Right in the plant reproduction sector.

Trademarks

A trademark serves to indicate the origin of the product. This may be the name of the company, but also a commercial name used to market a variety or series of varieties. The actual name of the variety itself cannot be used, as variety names are used to indicate what kind of plant the product in question is. However, variety names and brand names can be used together. A trademark can be applied for covering the Benelux countries, for the EU (Community Trade Mark) or for many different countries by submitting an international application. The trademark right is valid for 10 years, and can be renewed repeatedly.