

Position Paper on Protection of New Plant Varieties in Asia and the Pacific

Independent document and validity of past documents

This position paper is compiled to address specific Intellectual Property Right (IPR) issues which are unique or particularly critical for the APSA membership countries. Although this paper is an independent document to express our position, any past APSA documents related to IPR issues remain valid.

Importance of IPR on plant varieties in Asia and the Pacific

APSA recognizes that the protection of intellectual property rights is essential for the sound development of the seed industry in the Asia Pacific Region. In particular, the protection of new plant varieties provides incentives for continuing plant breeding, and thus is essential for the improvement of agricultural productivity in the region.

APSA also recognizes that the protection of new plant varieties is essential to achieve the mission of APSA, which is “to improve production and trade of quality seed planting material of agricultural and horticultural crops”.

The seed business is more susceptible to the risk of IPR infringement than many other businesses because:

- Many plant varieties are easily reproduced and propagated
- Seed production and plant propagation are commonly done by 3rd parties and not 100% controlled by the breeder, in comparison to factory-made products.

Therefore, it is essential for breeders to have a viable plant variety protection system to continue breeding activities.

Measures of protection for plant varieties

There are two types of protection for plant varieties, namely, Plant Variety Protection (PVP) and Utility Patents. APSA recognizes that both are legitimate systems and that every country has an option to choose either or both of them as a protection for plant varieties. However, there are only four countries (USA, Australia, Korea and Japan) worldwide which now provide Utility Patents for plant varieties and all four countries also have a well established PVP system as an option to protect plant varieties.

APSA recommends that our members and their respective countries first focus on establishing a viable PVP system before considering Utility Patents for plant varieties.

Endorsement of the UPOV 1991 ACT

Given that the Asia Pacific Region has the largest and fastest growing population in the world, it is critical to have active and sound plant breeding activities for the region to provide adequate nutrition. It should be noted, however, that Asia Pacific is one of the most complex regions in the world in terms of its widely diversified cultures, languages, economies, and ethnic groups. Anything we do to harmonize our actions is a big challenge and involves significant time and efforts.

Nonetheless, APSA is longing for a uniform, simple, cost-effective, and reliable plant variety protection system in the Asia Pacific region. In this sense, APSA endorses the 1991 Act of the UPOV Convention as it provides a uniform and well-balanced system for plant variety protection, ensuring benefits to breeders, farmers and consumers provided that it is fully implemented. Full implementation includes the breeder's exemption, which confers free access to protected varieties for further research and breeding, and the farmer's exemption which authorizes farm saved seeds under specified conditions.

Industry concerns

It is encouraging to note that many of the APSA membership countries have decided to initiate or have already introduced a national PVP system. However, the legislation and establishment of a national system for the implementation of PVP are very slow in some countries. Some countries have legislation enacted, but practical implementation is still not in place after several years. Furthermore, some countries where the PVP law has already been enacted seem to be unable to provide enough incentives for the breeders to utilize it, resulting in a low number of applications by both domestic and foreign breeders. In fact, PVP laws and rules in the Asia Pacific Region vary and mostly are not uniform.

For example:

- Application format varies, depending on the country
- DUS test results are not shared among countries (and possibly, test protocol is different)

As it is difficult for many of the APSA members to access and understand the PVP system in foreign countries, those obstacles resulting from the diversity of the PVP system in the region make it financially and practically impossible for many of the APSA members to apply for PVP protection outside their home country.

APSA is also concerned that some countries are applying special conditions which are not in compliance with the 1991 UPOV Act. For example:

- Benefit sharing clauses as an essential requirement to obtain the PVP

- Broader rights on “Farmer’s privilege” (e.g. farmer can trade farm saved seed)

In this respect, APSA is strongly against any “farmer’s privilege” given that it exceeds the provisions in the 1991 UPOV Act, namely:

- As a compulsory exception of the Breeder’s Right on acts done privately and for non-commercial purposes, therefore, allowing farm saved seed produced by subsistence farmers
- As an optional exception, within reasonable limits and subject to safeguarding of the legitimate interests of the breeder, to permit farmers to use for propagation purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holding, of the protected variety.

PVP and international treaties

In order to avoid confusion, loss of effectiveness and increased bureaucracy, APSA favors a straightforward implementation of UPOV 1991, without any additional requirements from other international treaties like CBD. Each treaty should be implemented for its original intended purpose in its own context and legal environment

Although benefit sharing should be addressed by the APSA membership countries, it should not become a prerequisite for the grant of IPR.

Role of APSA and APSA members

APSA members in their respective countries/regions are encouraged to raise awareness about the importance of the plant variety protection for sustainable plant breeding and for a sound development of the national seed industry.

APSA and its members’ interaction with their respective Ministry of Agriculture and National PVP Office (if any) is critical to facilitate the introduction and implementation of an effective plant variety protection system. In this respect, APSA strongly recommends that each local National Seed Association (NSA) establish an IPR Committee within their organization, and APSA is willing to support NSAs to initiate and/or realize their plan. In the meantime, APSA should strengthen its co-operation with NSAs and relevant international organizations working in the field of intellectual property rights on plant varieties such as UPOV, ISF, etc.

It should be also noted that information dissemination and education about IPR to all parties in the seed industry is an indispensable part to make the whole system work.

Conclusion

Protection of intellectual property rights on plant varieties is not at an ideal state in the Asia Pacific Region and has not achieved the level the seed industry has been seeking. In order to improve the current situation, all related parties should first be aware of the importance of IPR.

A UPOV-based PVP system should be put into force in those countries where PVP itself is not yet available, however, that system should be also “usable” for the breeders in a true sense.

The legal enforcement of PVP should be developed further in countries where the system is available but only a few foreign applications are being made. APSA and its members, with their local government officials, should interact and work together in order to address these problematic issues, overcome the obstacles, and expedite the process.