

Protection for Plant Varieties in Europe

Whilst patent protection from the European Patent Office for individual plant varieties is excluded by Article 53(b) EPC, it is possible to obtain plant variety rights in Europe under the UPOV (International Union for the Protection of New Varieties of Plants) provisions by applying to the Community Plant Variety Office. In order to obtain plant variety protection in Europe, there are several requirements which must be met by the variety.

Novelty

The variety must be novel and thus must not have been sold or otherwise disposed of to another for exploitation with the breeder's consent within the European Union earlier than one year before the date of the application or outside the European Union earlier than four years (or in the case of trees or vines six years) prior to the date of application. Reasonable precautions should have been taken by the applicant to ensure sales or comparable disposals have not taken place earlier than allowed. However, there are exclusions to novelty destroying disposals e.g. disposals for statutory purposes, for production or storage or testing if not with commercial intent or at an officially recognised exhibition.

Distinct, uniform and stable

The variety must be distinct, uniform and stable.

With regard to distinctiveness, the variety must be distinct compared to any other variety whose existence is common knowledge on the date of application, by virtue of expression of characteristics (i.e. a morphological or physiological characteristic). Common general knowledge extends to varieties that are entered in an official register, that are the object of a national or Community plant variety right (PVR), that are marketed or that have an entry in a reference collection or a precise description in a publication.

For a variety to be considered as uniform, expression of the characteristic which makes the variety distinct over other known varieties as well as in respect of other characteristics specific to the variety description, should be uniform.

In order to be considered as stable, the variety should remain unchanged after repeated propagation.

Procedure for obtaining a Community PVR

An application consisting of an application form, technical questionnaire, proposal for a variety denomination and designation of procedural representative (if applicant is not based in European Union) should be filed at the Community Plant Variety Office. (National applications can be made at national offices if rights in only particular states are required).

A technical examination will be carried out for distinctiveness, uniformity and stability, if the application meets the official requirements. An examining authority will be selected and plant material will need to be submitted. Testing of the plant material is then carried out (an interim report may be issued at the end of each growing period where there is more than one growing period for the variety). If a technical examination has already been carried out on the variety in a country of the European Union or in a UPOV state, then that report may be considered sufficient for a decision on the application to be made.

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Protection provided by a Plant Variety Right

Generally, a Community PVR prevents a third party without the authorisation of the PVR holder from producing/ reproducing a variety, conditioning a variety for the purpose of propagation, offering a variety for sale, selling a variety or carrying out other marketing of the variety, exporting or importing a variety from or into the Community or stocking a variety for any of these purposes. There are however some exemptions/exceptions to these general rights. A Community PVR may last until the end of the 25th calendar year (or for trees and vines until the end of the 30th calendar year) following the year of grant.

Further advice

For further advice please contact us at Dehns using the details provided below.



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