

Plant Variety Registration in South Korea

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Protection of Plant in Korea

- As a member state of UPOV, Korea protects plant varieties through the registration of **Plant Variety Rights (PVRs)**. All types of plant varieties are protected under the Plant Variety Protection Act and Seed Industry Act.
- PVR protection is granted after formality and documentary examination and DUS testing. Submission of a sample is required, and understanding local practice would greatly help the applicant have their PVR successfully granted. Once granted, the right holder may enjoy the PVR for 20 years or 25 years.
- In Korea, a plant can also be protected as a **patent**. Patentable subject matters include methods of breeding, transgenic plants, plant parts, and new varieties of plant.
- In addition to the registration of variety denomination, a commercial name for plant variety can be registered as a **trademark**.
- Please see our **Comments** regarding the maximum protection of plant varieties in Korea.

Protectable Plant Varieties

- **All plants**, including hybrid varieties, whether reproducing sexually or asexually, are eligible for plant variety protection (PVP).
- **Examples** of eligible plants are:

Type	Examples	Term of Protection (years)
Food Crops	<i>Rice, Bean, Potato</i>	20
Vegetables	<i>Carrot, Strawberry, Cabbage</i>	20
Forage Crops	<i>Clover, Rye</i>	20
Flowers	<i>Rose, Pansy, Ranunculus</i>	20
Cash Crops	<i>Tobacco, Peanut, Sesame</i>	20
Mushrooms	<i>Enokitake, Oyster mushroom</i>	20
Aquatic Plants	<i>Wakame, Nori</i>	20
Fruit Trees	<i>Apple, Blueberry, Banana</i>	25
Forest Trees	<i>Pine, Ginkgo</i>	25

How to Apply

- The following **documents and information** are required:

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- (a) Name, address, and nationality of applicant(s) and breeder(s)
 - (b) Variety denomination and botanical taxon
 - (c) Priority information, if applicable
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- (d) Breeding scheme/history and explanation
 - (e) Variety characteristics chart of the subject variety and a similar variety (including location and date of characteristics test, and the tester's name)
 - (f) Technical questionnaires (including distinctive characteristics, uniformity and stability of the variety compared to a similar variety)
 - (g) Photos of the subject and a similar variety (both of biological entity and population thereof)
 - (h) Power of Attorney
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- (i) Declaration stating that propagating material will be submitted by a designated date according to the authority's request (for **vegetative** plants)
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- A **local agent** is required for foreign applicants having no address in Korea.
- **One-year priority** is available based on an earlier application filed in a foreign country.

Requirements

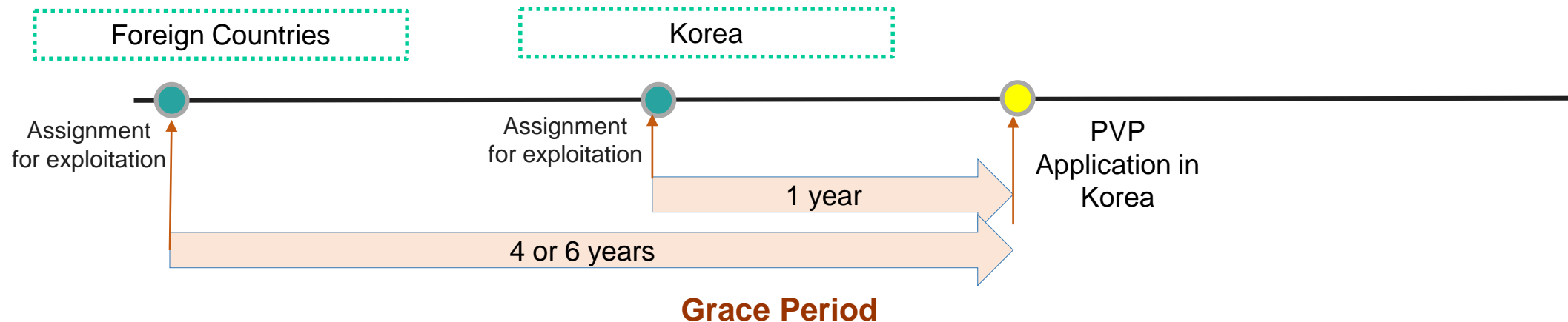
- In order to obtain a plant variety protection, the plant variety must have Novelty, satisfy the Distinctness, Uniformity, and Stability (*DUS*) requirements, and have appropriate Denomination.
 - **Novelty** is determined based on the commercial exploitation of the propagating material or harvested materials thereof.
 - **Distinctness** is acknowledged if the variety is clearly distinguishable from any other known varieties by one or more botanical characteristics.
 - **Uniformity** is fulfilled if the plant characteristics are consistent from plant to plant within the variety.
 - **Stability** is fulfilled if the plant characteristics are genetically fixed and therefore remain the same from generation to generation, or after a cycle of reproduction in the case of hybrid varieties.
 - **Denomination** must be distinguishable from that for any other known plant variety of the same botanical genus or species.

Novelty and Grace Period

- **Novelty and Grace period**

A variety is regarded as novel if, at the date of filing the PVP application, propagating material or harvested material thereof has not been assigned, for purposes of exploitation, by or with the breeder's consent or agreement, within the following periods in specific territories:

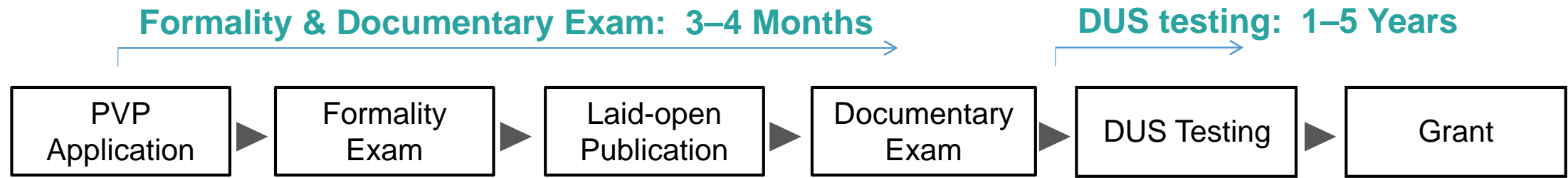
- **1 year** within the territory of Korea.
- **4 years** in other territories (**6 years** for **fruit trees** or **forest trees**)



- **Exceptions**

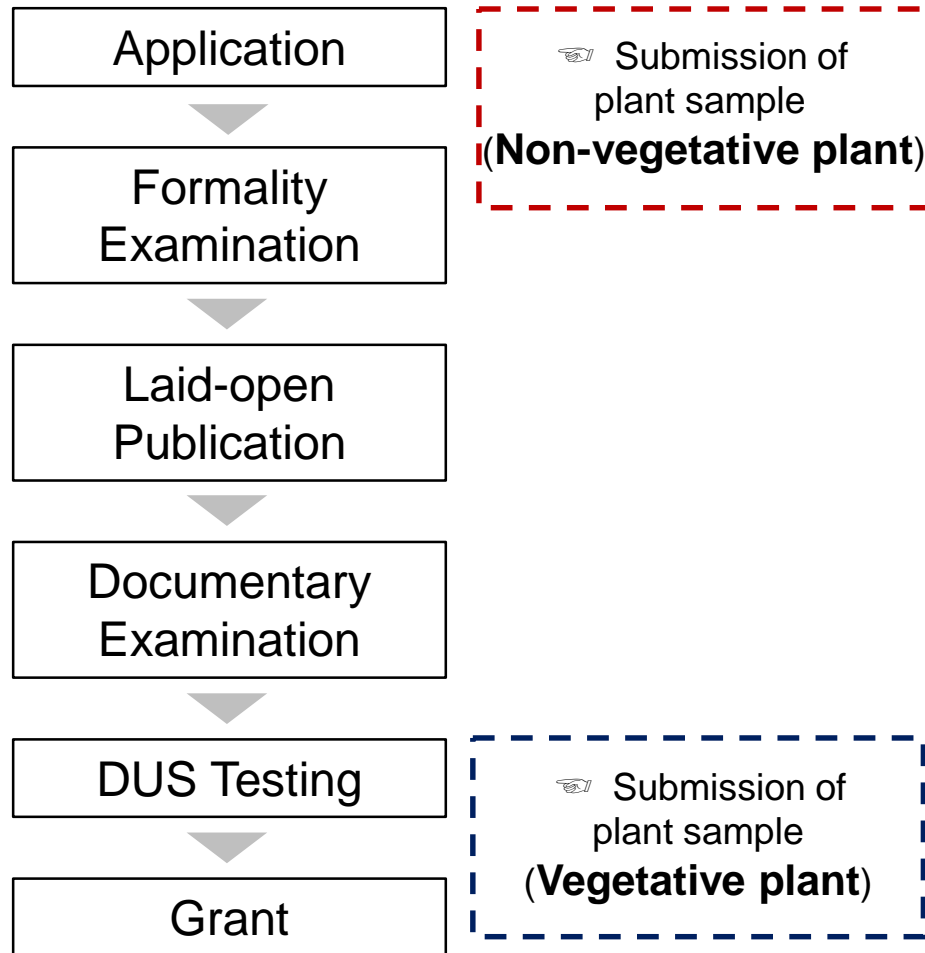
There are certain circumstances where assignment does not destroy the novelty of the plant variety, including assignment of the propagating material of a misappropriated plant variety or harvested material thereof, *etc.*

Examination



- **Formality Examination:** A formal **effective filing date** is granted after passing the formality examination with regard to the description of the variety in the application, POA, and payment of prescribed fees. The application is then laid-open published in the Plant Varieties Gazette.
- **Documentary Examination:** Subsequently, examination is carried out with regard to i) *the novelty requirement*, ii) *the claimed priority (if any)*, and iii) *the suitability of the variety denomination*. The F/D examination is normally completed within **3 to 4 months** from the filing date.
- **DUS testing** is **mandatory** since foreign DUS test reports are not generally accepted. Testing can take approximately **1 to 5 years** depending on the species.

Submission of Plant Sample



- **For non-vegetative plants**, propagating material must be submitted to the authority at the time of filing the PVP application (e.g., kale, rice).
 - If a plant sample is received after the date of the application, the date of application will be deemed to be the date of receipt of the plant sample.
- **For vegetative plants**, declaration must be submitted at the time of filing, and then the propagating material must be i) submitted to the authority's field, or ii) planted in the applicant's fields by a date designated in accordance with the authority's plan for DUS testing (e.g., ranunculus bulbs, fruit trees).

Protection

- **Term of Protection**

- The term of protection is **20** years from the date of registration (**25** years for perennial plants such as fruit trees or forest trees).

- **Scope of Protection**

- A. The right holder has an exclusive right to exploit the protected variety, *i.e.*, acts of propagating, producing, assigning, exporting, importing, or offering for sale or lease of **propagating material** of the protected variety.
- B. The right extends to **harvested material** obtained through the *unauthorized* use of propagating material of the protected variety, or products obtained *directly* from such harvested material.
- C. The rights under A. and B. **also apply** to 1) essentially derived varieties (EDV) derived from the protected variety; 2) varieties not clearly distinguishable from the protected variety, and 3) varieties whose production requires repeated use of the protected variety.

- **Provisional Protection**

- Provisional protection is available at or after the time of **laid-open publication**.

Protection

● Exceptions to Breeder's Right

- In Korea, PVP rights do not extend to **i)** acts done privately and for non-commercial purposes, **ii)** acts done for experimental purposes, and **iii)** acts done for the purpose of breeding other varieties (**Research exemption, etc.**)
- For certain crops, farmers or fishermen may be permitted to use, for propagating purposes on their own holdings, the product of the harvest which they have obtained by planting or cultivating the protected variety on their own holdings (**Farmer's Privilege**)
- PVP rights do not extend to *propagating material* of the protected variety, which has been sold or marketed by the right holder or authorized licensees, *harvested material* obtained therefrom, or *products produced directly* from such harvested material (except for acts of propagating or exporting said material for propagation) (**Exhaustion of PVP Right**)

● Infringement & Remedies

The right holders or exclusive licensees can seek **civil** remedies (injunction or damages) and/or **criminal** remedies for the following acts:

- Any acts covered by the scope of protection done without authorization
- Using a variety denomination identical or similar to a denomination of a protected variety, for another variety of the same genera or species

Patent

- In Korea, plants can also be protected as a **patent** if they satisfy the patentability requirements, such as novelty, inventiveness, and description requirements (enablement, support, clarity).
- Unlike PVP rights, **methods of breeding, methods of growing, transgenic plants, and plant parts** can be sought as patent rights.
- **Examples** of protectable patent claims are as follows:
 1. *Rice having characteristics L, M, ...*
 2. *Rice having characteristics a, b, c ..., wherein it was deposited under KATC _____.*
 3. *A method for breeding rice having characteristics A, B, and C, ..., comprising steps of crossing the parent plants A and B, and harvesting hybrid rice.*
 4. *A cell or tissue culture of a monocotyledon transformed with DNA of SEQ ID No. 1.*
 5. *Propagating material of a transgenic plant having increased yield relative to a control plant, wherein a nucleic acid encoding the OOO polypeptide of SEQ ID No. 1 are introduced and overexpressed therein.*
 6. *A new plant variety of Brassica oleracea L. var. capitata obtained from hybridization of the parent plant A with the parent plant B, and having characteristics A, B, ... (e.g., red color, ___% of anthocyanin, etc.).*

Trademark

- **Variety denominations** are registered and protected in Korea under the KPVPA and KSIA. When a trademark is filed or registered, an identical or similar name cannot be registered as a variety denomination. If a variety denomination is registered or pending in application abroad, it is required to use the same denomination in Korea.
- When a variety denomination is registered, a third party cannot sell, distribute, export, or import the propagating materials for the variety thereof by fraudulently denominating the registered name to plants other than the protected variety.
- For **trademarks**, the variety name may not be registered as a trademark in Korea.
 - When the variety denomination is registered, an identical or similar name cannot be registered as a trademark.
 - When the variety denomination is not yet registered, i) a name widely known as a plant variety name or ii) a name that may mislead the consumer may not be registered as a trademark.
- Since trademarks can be renewed permanently and have a broader scope of designated goods, it is recommended that an applicant register a **commercial name** (brand name or marketing name; one that is different from the denomination of the plant variety) as a trademark in addition to the variety denomination.

Our Comments

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- When filing a PVP application in Korea, we recommend **initiating the filing** of the application, **including the import of plant samples, well before the expiry date of the grace period** for novelty, for the following reasons:
 - During the **formality** examination, if the examiner considers that the filed documents or information are insufficient, he/she may issue an order to supplement necessary documents and information. In such cases, the *effective filing date will be delayed* to the date of receipt of the supplemented documents or information.
 - For **non-vegetative plants**, late arrival of plant samples may result in a *delay* in the *effective filing date*, which may have an adverse effect on the recognition of novelty.
 - For **vegetative plants**, the applicant is required to submit plant samples by the designated deadline after filing the application. If the applicant fails to comply with this order, the *application* procedure can be *invalidated*.
 - Further, recent practice of the examining authority requires that the plant samples must be *present* in Korea *at the time of filing* of the PVP application. As such, during the formality examination, the examiner may request submission of a Quarantine Inspection Certificate of Imported Plant issued by the Korean Animal and Plant Quarantine Agency.

Our Comments

- Import of plant samples to Korea may involve **quarantine** procedures, which can take weeks (e.g., strawberry, rice) or one or two years (e.g., trees).
 - If propagating materials of plant varieties fall under "the importation-prohibited plants" pursuant to the Korean Plant Quarantine Act (e.g., seedlings of vines), submission of plant samples may be difficult or impossible. Thus, it is advisable to check this quarantine issue as a preliminary matter when one wishes to pursue a PVP application in Korea. If quarantine becomes an obstacle to a PVP application, it would be more important to pursue patents for the applicant's new varieties.

2

- When an applicant files applications for **both** PVP and a patent, it is advisable to **file the patent application first**.
 - A PVP application is published immediately after filing (within about 1 month from the filing date), and earlier publication of PVP application may destroy the novelty of the plant patent.
 - In contrast, a patent application is published after about 18 months from the filing date, and such publication would not necessarily affect the novelty of a PVP application, as long as it does not involve "assignment" of propagating material or harvested material of the variety.

Our Comments

3

- We recommend filing a commercial name different from the denomination as a trademark.
 - When a commercial name for a variety is registered as a **trademark**, it must be carefully managed so as **not to become a generic/common name** for the variety. If it becomes a generic name, trademark rights cannot be enforced, or the registration of the trademark can be invalidated.
 - If it takes some time to prepare the plant sample, a **variety denomination** can be filed as a *trademark* prior to filing of a PVP application as a **provisional measure** just to secure the protection of the variety denomination. The trademark application or registration can be withdrawn later to prevent rejection of the variety denomination at the time of documentary examination of the PVP application.

This presentation has been prepared for informational purposes only and does not constitute legal advice. If you have any questions about the content, please contact us at hanol@hanollawip.com or minson@hanollawip.com. We would be happy to answer your questions.

Thank You!



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