

Plant Variety Protection Background and Benefits to the Tribes

Plant Variety Protection (PVP) is a type of intellectual property protection (similar to patents) for new plant varieties that has benefits to both the seed developer and society as a whole. This protection enables the breeder to market the variety exclusively for 20 years (25 years for trees and vines). The PVP certificate is awarded after an examination shows that it is new, distinct uniform and stable. AMS administers the PVP Act through the PVP Office. Since 1970, the PVP Office has issued more than 9,000 certificates of protection.

In the U.S., there are 3 types of intellectual property protection that breeders can obtain for new plant varieties:

- PVP (for seed and tuber propagated plants);
- Plant Patents (for asexually propagated plants except for tubers) and
- Utility Patents (for any type of plant showing utility).

PVP is granted by USDA PVP Office whereas Plant and Utility Patents are granted by the U.S. Patent and Trademark Office (PTO) within the Commerce department. Plant breeders will often apply for both a PVP and Utility Patent for the same variety, but PVP (also referred to as plant breeder's rights) is the only form of intellectually recognized intellectual property protection granted in the U.S.

To apply for PVP, an applicant must show the variety is:

- o New (sold for less than 1 year in the U.S. or less than 4 years in a foreign country),
- o Distinct from all other varieties,
- o Uniform (all plants look alike), and
- o Stable (reproduces true to type).

Also

- the variety must be bred, or, discovered and developed.
- the plants must be sexually reproducible.
- the applicant must deposit the variety germplasm (seeds or in vitro samples for potatoes) at a public depository where it is held secure until the PVP expires and then is made available to the public free of charge.

Anyone (backyard gardener, farmer, university professor, seed breeder) can apply for PVP because the application process is breeder focused, user friendly, and doesn't require an attorney to file the application.

The fee for U.S. PVP filing and examination is \$4,382 with an additional \$768 for certificate issuance. The PVPO examining staff review applications and make a determination (usually taking 6 months to 2 years) if the variety is new, distinct, uniform, and stable. A PVP certificate is then issued granting the variety owner exclusive rights to prohibit others from exploiting their variety.

In the U.S., the typical process for filing PVP involves the breeder gathering all the information about their varieties and filing a PVP application package. In other countries, the government

either conducts trials and makes an assessment of DUS (distinct, uniform, and stable) or allows the breeder to conduct the DUS trial and sends PVP Examiners to view and assess the trial.

PVP creates an incentive and promotes progress in agriculture by providing protection in the form of intellectual property rights to developers of new and distinct seed-reproduced and tuber-propagated plants ranging from farm crops to flowers. PVP encourages the development of new varieties and makes them available to the public when the protection has expired.

PVP benefits the Tribes by:

- Providing a user friendly internationally recognized process where tribe members can obtain intellectual property protection for varieties that they breed, develop, or discover/develop.
- Allowing tribal members to develop new varieties from protected varieties under a breeder exemption (this is prohibited with patents)
- Allows tribal members to save (but not sell) PVP seed for replanting on their own field (this is also prohibited with patents)
- Having varieties become publically available after the protection expires – seed is distributed at no charge from the USDA’s National Center for Genetic Resources Preservation in Colorado.
- Providing an avenue for a protected variety open to public use if authorized by the Secretary of Agriculture.
- Encouraging tribal members to become representatives to the PVP Advisory Board so they can provide direction to the PVP Office.

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