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Illinois Foundation Seeds, Inc.



# Benefits of IP Protection Systems for PVP in the USA

## 美国PVP知识产权 保护体系之优势

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# Plant Protection Laws

## 植物保护法

- ◆ Encourages Investment in Development鼓励在开发上投入
- ◆ Protects Company's Product and Farmers保护公司的产品和农民
- ◆ Creates Opportunities to Innovate for the Future创造为未来创新的机遇
- ◆ Allows a Company to Receive Value for Innovation允许公司接受创新价值
- ◆ Time Value Limited有限的时间价值
- ◆ Enables Competitive Access允许竞争性准入
- ◆ Creates More Value for Farmers为农民创造更多价值

# Intellectual Property Protected in a Seed Corn Bag

## 玉米种子袋中受到保护的知识产权

- ◆ Genetics - PVP, Patents and Contracts  
遗传学-PVP、专利及合同
- ◆ Breeding Technologies - Contract and Patents  
育种技术-合同及专利
- ◆ Herbicide and Insecticide Traits – Patents  
除草剂和杀虫剂性状-专利
- ◆ Seed Treatments – Patents  
种子处理-专利
- ◆ Brands – Trademarks  
品牌-商标

# Types of Protection

## 保护类型

- ◆ Plant Patent Act 植物专利法
  - 35 U.S.C. § § 161-164
- ◆ Plant Variety Protection Act 植物品种保护法
  - 7 U.S.C. § § 2321 et seq.等
- ◆ Utility Patent to a Plant 对一种植物的发明专利
  - 35 U.S.C. § § 101 et seq.等(102, 103, 112)

# Overview of U.S. Plant Variety Protection Act (PVPA)



## 美国植物品种保护法(PVPA)概览

- ◆ Encourages the development of new varieties of sexually reproduced plants.  
鼓励培育有性繁殖植物的新品种
- ◆ Provides protection to those who breed, develop, or discover them.  
对育种、培养或发现新植物品种的人士给予保护
- ◆ What is Eligible for Protection? 有资格受到保护的對象为何?
  - Sexually (seed) reproduced 有性(种子)繁殖
  - Tuber Propagated 块茎繁殖
  - F1 Hybrids can be protected F1 杂交植物可以受到保护

# To Be Eligible for PVP a Variety Must Be:要成为PVP的保护对象，植物品种必须：



- ◆ **New** (available less than 1 year in the US; less than 4 years in a foreign country)  
新颖性(在美国投放市场的时间不到1年； 在国外不到4年)
- ◆ Clearly **Distinct** from all other varieties  
与其他所有品种明显**不同**
- ◆ **Uniform** (all plants look alike)  
一致性(所有植物看上去相同)
- ◆ **Stable** (reproduces true to type)  
稳定性(繁殖成同亲本一样的类型)

# PVP Exemptions

## PVP豁免



- ◆ Farmers Exemption: Save for use of farm but NO transfer to others for reproductive purposes.

农民豁免：留给农场使用，但不转让给其他人用作繁殖目的。

- ◆ Research Exemption: Others can use the variety in plant breeding or other research.

研究豁免：其他人可以在植物育种或其他研究中使用该品种。



# PVP Certificate Holder Responsibilities

## PVP证书持有人的责任

- ✓ Replenish seed sample when requested.  
需要时补充种子样本。
- ✓ Inform the PVP Office of changes in name and/or address of the certificate holder or contact person.  
证书持有人或联系人名称和/或地址变更时通知PVP办公室。
- ✓ Use variety name, even after certificate expires.  
使用品种名称，即使证书已经过期。
- ✓ Include the version of PVP Act on labels.  
在标签上包含PVP法案的版本。
- ✓ Notify the public that the variety is protected using appropriate language.  
使用适当的语言告知公众该品种受到保护。



# PVP Protest Proceedings, Priority Contests, and Appeals

## PVP抗议程序、优先竞争和上诉



- ◆ Protest – opposition by any person to the granting of PVP while the application is pending and within the first 5 years following issuance.  
抗议-在申请未决时以及颁发后第一个5年以内有任何人反对PVP授予
- ◆ Priority Contest – PVP process for determining the question of priority between two or more parties claiming development or discovery of the same novel variety.  
优先竞争- PVP程序，用以确定声称培育或发现了同一新品种的两方或多方之间优先问题
- ◆ Reconsideration / Appeal to the Commissioner – reconsideration following an adverse action by a PVP examiner.  
再审/向专利局长申诉-不利行为之后由PVP检察官再审
- ◆ Appeal to Secretary – reconsideration to the Secretary following a denial by the Commissioner.  
向部长申诉-被专利局长拒绝后向部长提出再审

# U.S. PVP Key Distinctions

## 美国PVP主要区别



- ◆ PVPA
  - 7 U.S.C. 2327  
Dept. of Agriculture / AMS  
农业部/AMS
- ◆ Requirements要求
  - New (may be obvious), distinct, uniform (based on commercial standards for the crop), stable.  
新的(可能是明显的)、不同、一致(基于作物的商业标准)、稳定
  - Must be bred, or, discovered and developed.  
必须被育种, 或者, 被发现和培养
  - Plants must be sexually reproducible.  
植物必须是有性繁殖的
- ◆ Definition of Novelty新颖性的定义
  - One year of first sale in USA; or four years of first sale in another UPOV country.  
在美国首度销售一年; 或在另一个UPOV国家首度销售4年
- ◆ Claims主张
  - Single variety only may be claimed.  
只能主张单一品种
- ◆ Enforcement执行
  - Litigation rarely required.  
几乎不需要诉讼
- ◆ Extent of Protection保护范围
  - An owner has the right to exclude others from selling or marketing; conditioning for sale, reproducing; importing or exporting; or using the variety to produce a hybrid. Only the variety disclosed (and essentially-derived varieties) is protected.  
所有人有权阻止他人从事销售或营销; 分期付款销售、繁殖; 进口或出口; 或使用该品种产出杂交品种。只有被披露的品种(和实质性派生品种)才受到保护。

# U.S. PVP Key Distinctions

## 美国PVP主要区别



- ◆ Public Usage公共使用  
Section 44 of the PVPA allows for the Secretary of Agriculture to declare a protected variety open to public use, when the Secretary determines that such declaration is necessary.  
PVPA第44条允许农业部长宣布某受保护品种对公共使用开放（当部长认为有此必要时）。
- ◆ Duration of Protection保护期限  
20 years from issuance date (25 years for vines and trees) Protected while application is pending (provisional protection).  
申请未决情况下自颁布之日起20年(藤本植物和树木25年) 受保护(临时保护)
- ◆ Cost of Protection保护费用  
Minimum - \$5,150 for filing, examination, and issuance. No maintenance fees.  
最低- \$5,150, 用于申报、审查和颁发。无维护费用。
- ◆ Average Application Processing Time  
受理申请的平均时间  
Two years from date of filing to issuance, typical range varies from 3 months to 4 years.  
从申请到颁发两年, 通常3到4年不等。
- ◆ Availability of Deposited Propagation Material  
保存的繁殖材料的可得性  
Seeds, and in vitro samples for potatoes stored at the NSSL are available only with applicant's permission through PVPO; publicly available after certificate expires.  
保存在NSSL的种子和马铃薯体外实验样本只有在申请人得到PVPO批准后可得; 证书过期后可公开获得。

# U.S. PVP Key Distinctions

## 美国PVP主要区别



- ◆ Taxa Excluded排除的分类  
Fungi, bacteria and the plant variety must be reproduced via sexual seeds or tubers.  
真菌、细菌和植物品种必须通过有性种子或块茎繁殖。
- ◆ Priority优先级  
First to file in USA or another UPOV country.  
首先在美国或另一UPOV国家申报
- ◆ Enablement启用
  - Seeds (and in vitro material for potato ) or parents of hybrids are sent to the NCGRP; after 20 years material is available to the public.  
种子(和马铃薯体外实验材料)或杂交植物的亲本要送往NCGRP; 20年后, 材料向公众开放
- ◆ Variety name required.规定的品种名称
- ◆ Plant parts (flowers and fruit) are protected under the 1994 PVPA.  
植物组成部分(花朵和果实)受到1994 PVPA保护。
- ◆ Essentially derived plants are protected under the 1994 PVPA.  
实质性派生植物受到1994 PVPA保护。

# PVP Act versus Regulations

## PVP法案与条例

- ◆ PVP Act PVP法案
  - Statutory 法令  
Approved by Congress + signed into Law.  
国会批准+签署成为法律  
Interpreted by the courts.  
由法院解释
- ◆ Regulations & Rules of Practice 条例&实施细则
  - PVP office operational guidelines for PVPA.  
针对PVPA的PVP办公室操作指南  
All publicly reviewed and available for comments.  
全部接受公开审查和评议  
Includes Fee changes.  
含费用变更

# PVP Act – Key Regulations

## PVP法案-主要条例

- ◆ PVP Board PVP委员会
- ◆ PVP Application Requirements PVP申请要求
- ◆ Seed deposit 种子保存
- ◆ Time limits to respond to PVPO 答复PVPO的时限
- ◆ Examination, Abandonment, Denial, Reconsideration  
审查、放弃、否决、再审
- ◆ Certified Seed Option 经过认证的种子选项
- ◆ Fees 费用
- ◆ Protest Proceedings 抗议程序
- ◆ Appeals to the Secretary 向部长申诉

# Conclusion结论

- ◆ Genetics is the key to value.  
遗传学是价值的关键
- ◆ Traits will cycle out - Genetics will evolve.  
性状将会循环淘汰变化-遗传学将会演变
- ◆ Traits and technologies will continue to help unlock additional genetic value.  
性状和技术将继续有助于发现更多的遗传价值
- ◆ Innovation is important for the future.  
创新对于未来发展至关重要
- ◆ Seed is key to food, feed, fiber and fuel.  
种子是粮食、饲料、纤维与燃料的核心基础



**THANK YOU**  
**感谢诸位**



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