



IPR Issues Related to Propagation of Ornamentals

(*Pooja Sahu and Mayank Parihar)

Odisha University of Agriculture and Technology, Bhubaneshwar, Odisha

*Corresponding Author's email: poojasahujai143@gmail.com

The creations of human intellect, such as creative concepts, inventions, industrial models, trademarks, songs, literature, symbols, names and brands are referred to as intellectual property. Other types of property rights are not different from intellectual property rights. They enable the owner to reap the full rewards of his or her product, which began as an idea that evolved and became clear. Additionally, they give him/her the right to stop others from utilizing, trading or tampering with his/her product without first obtaining consent. In fact, he or she has the right to sue them to make them stop and pay damages.

Intellectual property law

1. Copy right
2. Patents
3. Trademark
4. Industrial design right
5. Utility models
6. Geographical indication
7. Trade secrets
8. Trade names
9. Layout design of integrated circuits
10. Protection of undisclosed information
11. Control of anti competitive practices

Aspects of IPR

- The World Trade Organization (WTO) is in charge of ensuring that intellectual property is traded sustainably, which necessitates protecting the goods and procedures used in cutting-edge technological advancements.
- In order to protect plant varieties, the Uruguay Round of Multi-national Trade Negotiations signed the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement. This agreement can be used in conjunction with patents, effective sui generis, or both.
- The legal rights governing the use of works created by humans are known as intellectual property rights, or IPRs.
- Copy rights, trade marks, geographical indications, layout designs, trade secrets, and patents are among the IPRs covered by the Trade Related Aspects of Intellectual Property Rights (TRIPS), which is divided into seven sections totaling 73 articles.

Copy right: It is applied for only expressed materials in the form of print, paint, tape recording, video recording etc.

Trade marks: A word, phrase, symbol, device or any combination of these that is used by a manufacturer or retailer to identify products and set them apart from those made or sold by

third parties is known as a trade mark. It enhances the marketing of a breeder's plants and maintains the breeder's exposure and reputation. Some of the industry's most successful trademarks are Flower Fields, Winners and My Favorite, which denote a source as well as a group of plants that undergo a selection process.

Specific uses of trade marks in floral industry

- To distinguish between plants that come from a specific breeder, breeding program or plant selection program.
- To determine a group of plants that share traits such as disease resistance, length of bloom, flower size or plant habit.
- To designate a source nursery or grower.
- To recognize a product that bears the 'Collective Mark' registration of a consortium of growers.
- To designate a certification mark that denotes a certain degree of testing or approval. Determining which specific service is regarded as a "Service Mark."
- To serve as a single cultivar's marketing name. For annuals, for instance, marketing terms such as "superization," "silent introduction," or "silent replacement" are employed.

Patents

There are three types of patents:

- (a) Plant Patent
- (b) Design Patent
- (c) Utility Patent

Elements of the specification for a plant patent

- ✓ The title of the invention
- ✓ Cross- Reference to related application
- ✓ Statement as the rights to invention made under federally sponsored
- ✓ Research and development
- ✓ Background of the invention
- ✓ Summary of the invention
- ✓ Botanical description of the plant
- ✓ Claim
- ✓ Abstract of the disclosure

Design Patent: It protects the ornamental elements (manufacturer, toys, and souvenirs). A design patent has a 14-year limited duration.

Utility Patent: The most popular patent that businesses and academic institutions use to protect their results of research and development. It encompasses any novel and practical method, apparatus, manufactured good, material composition or novel and practical enhancement thereof. It is employed to protect inventions pertaining to topics other than the dissemination or application of novel varieties. Most utility patents are awarded to protect inbred lines, hybrids, and their seeds, variants, mutants and minimally modified hybrids. Breeding techniques and modified gene constructs are also covered by utility patents.

Ornamental Plants Patented in India

- Mohini - a cultivar of rose from IARI New Delhi has been patented by a company in USA.
- Dr. H.B. Singh - a cultivar of bougainvella from IIHR Bangalore has been patented as Krishna by a company in Australia.
- NBRI Lucknow has patented several cultivars of Chrysanthemum in USA.
- IHBT Palampur has patented 10 cultivars of Gladiolus in USA.
- KSG'S Farm and nursery Bangalore has patented cultivars of Aglaonema in USA.

Global Organization Association with the Protection of Plant Varieties

1. UPOV

- The first international convention for the protection of new plant varieties was held in 1961 in Paris, France
- International union for the protection of new plant varieties, Geneva, Switzerland.
- Geneva revised this convention in 1972, 1978, and 1991.

A new variety should fulfill the following conditions for protection under UPOV

1. **Novelty:** The variety must not have been marketed, sold or otherwise given to third parties for more than a year in the state where protection is requested or for more than four years in any other state without the breeder's permission.
2. **Distinctiveness:** The variety needs to be distinguishable from other varieties by one or more key features.
3. **Uniformity:** The variety's essential characteristics must be sufficiently uniform, subject to any expected variation resulting from the unique feature of its mode of propagation.
4. **Stability:** The essential characteristics remain unchanged after repeated propagation.

2. DUS

- Novelty, distinctness, uniformity, and stability (DUS) will be the requirements for the new variety to be eligible for protection under the act.
- For trees and vines, the act's protection will last for 18 years; for other plants and existing varieties, it will last for 15 years.
- 49 agricultural crops, including three ornamental ones—roses, chrysanthemums, and orchids—have been identified by India as being prioritized for DUS testing.
- Rose and Chrysanthemum are available at IHR Bangalore, NBRI Lucknow, and IARI New Delhi.
- Orchids (Sikkim, Gangtok, NRC orchid).

3. CPOV

- The Agers, France Community Plant Varieties Office was founded in 1994.
- It provides 25–30 years of protection for new plant varieties across 25 European territories.
- Approximately 61.5% (13370) of the 26165 applications that the CPOV processed between 1995 and 2016 were from overseas.
- The approximately 18000 people who benefited from the protected rights, approximately 58.9% (10717) are ornamentals.

4. CIOPORA

- This organization's primary goal is to increase members' awareness of the issue surrounding the defense of their creative rights (varieties) and to raise those rights' profile.

IPR Issues Related to Propagation Materials

There are many IPR issue propagation materials

- Propagation materials can be multiplied.
- Propagation materials can also be limited or controlled by others.
- Will provide propagation materials that can be marked and sold.
- Exporting propagation materials across international borders.
- Planning to import propagation materials from outside.
- Will use propagation materials to discover and develop new varieties.
- When propagation materials are used for other purposes, such as breeding, private or non-commercial applications, or just for experiments.

Propagation Material

- ✓ Seed, as well as any other plant material or vegetative plant parts meant for the production and propagation of particular plant varieties.
- ✓ The service inspects fruit and crop plants, samples lots for certification, and analyzes the quality of seeds using propagation material certification.
- ✓ A seed, a whole plant or a vegetative portion of a plant (grafts, stocks, shoots, portions of rootstocks, tubers etc.) meant for the propagation of a particular variety is referred to as propagation material.

There are many IPR issue propagation materials

1. Bulbs- Tuberose, Tulip & Lily
2. Buds- Rose
3. Cuttings- Chrysanthemum, Bougainvillea
4. Tissue culture- Orchids
5. Tubers- Dahlia
6. Rooted cuttings –Orchids
7. Suckers- Gerbera