



PROTECTING PLANT VARIETIES IN BRAZIL — WITHOUT IP LAW

There is increasing demand for plant variety protection in Brazil. Renata Campello Afonso of Luiz Leonardos & Advogados reports.

Are plants patentable under Brazilian industrial property law? This is a question frequently asked by those seeking to protect new varieties of plants.

Brazilian Industrial Property Law No. 9,279 of May 14, 1996 bars natural living beings, in whole or in part, as well as any biological material, when found in nature or isolated, from being protected by patents. The only exception is for transgenic microorganisms.

Although Brazilian IP law foresees that transgenic microorganisms can be afforded with patent protection, its definition of transgenic microorganism (bacteria, mildews, yeasts, fungi, viruses, etc) does not extend to transgenic plants, cells or even seeds.

In fact, plant parts, including plant cells and seeds, are not entitled to receive patent

protection, even if genetically modified.

Nevertheless, while plant varieties are not patentable according to Brazil's IP law, they may be protected under the Brazilian Plant Variety Protection (PVP) Law, which was enacted in 1997 and has incorporated the provisions of the 1978 revisions to the International Union for the Protection of New Varieties of Plants (UPOV) Convention.

The PVP law established the creation of the National Plant Varieties Protection Service (SNPC), which is the competent authority for granting protection to plant varieties and is under the authority of Brazil's Ministry of Agriculture and Supply. The PVP law regulates the protection of new plant varieties and essentially derived plant varieties of any plant genus or species, as well as plant varieties that

have already been offered for sale before the date of application, provided that some conditions are cumulatively met.

The term of protection of a plant variety is 15 years from the granting of the provisional protection certificate, except for grapevines, fruit, forest and ornamental trees, whose term of protection lasts 18 years.

The scope of protection encompasses the vegetative reproduction/multiplication material of the whole plant, ensuring to its owner the right for commercial reproduction in Brazil. In the same way, the PVP law foresees that third parties are prevented, during the period of protection, from producing the plant variety propagation material for the purpose of sale, as well as from commercialising or offering it for sale, without the authorisation of the right owner.

Table 1: PVP applications per year (according to groups of culture)

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	
Forest	0	0	0	0	0	5	1	0	0	5	11	9	3	4	9	18	23	9	7	
Forager	0	0	0	0	1	2	3	4	2	1	6	4	1	12	5	15	13	16	2	
Fruit	0	0	0	2	2	1	5	10	5	6	6	9	25	12	30	23	28	23	5	
Oleraceous	0	1	0	0	0	3	2	15	7	2	14	19	11	13	15	17	35	34	19	
Ornamental	0	0	0	0	0	7	5	62	50	47	85	54	83	73	112	53	50	83	12	
Large cultures (except soybean)	0	47	62	50	45	50	52	67	46	74	40	46	78	46	89	72	71	88	25	
Soybean	7	66	60	28	52	25	54	54	77	52	57	66	42	79	64	117	106	91	19	
Total	7	114	122	80	100	93	122	212	187	187	219	207	243	239	324	315	326	344	89	3,530

Source: SNPC

Table 2: Certificates granted per year (according to groups of culture)

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	
Forest	0	0	0	0	0	2	3	1	0	0	14	2	7	6	2	11	24	5	7	
Forager	0	0	0	0	0	1	3	3	1	2	3	7	2	0	8	8	11	14	5	
Fruit	0	0	0	0	3	2	1	10	4	5	4	3	6	10	6	32	10	8	2	
Oleraceous	0	0	0	0	0	2	1	8	10	5	4	11	7	4	12	10	7	20	4	
Ornamental	0	0	0	0	0	2	7	4	51	52	37	69	29	79	54	38	68	23	12	
Large cultures (except soybean)	0	16	66	40	44	55	49	59	41	55	46	34	53	50	42	79	59	48	38	
Soybean	0	47	39	34	41	34	58	36	43	65	34	47	56	34	48	54	94	86	17	
Total	0	63	105	74	88	98	122	121	150	184	142	173	160	183	172	232	273	204	85	2,629

Source: SNPC

As far as the property rights are concerned, the PVP law foresees some situations in which the breeder's rights will not be deemed infringed, known as breeder's exceptions.

The situations are: i) the reservation and planting of seeds for personal use, in their own establishment; ii) the use or sale, as food or raw material, of the product obtained from their own plantation, except for reproduction purposes; iii) the use of the plant variety as a source of variation in genetic improvement or scientific research; and iv) the multiplication of seeds by a small rural producer for donation or exchange, given some conditions.

However, the PVP law also foresees exceptions to the above-mentioned exclusions, specifically related to the cultivation of sugar cane, in which case the producer must obtain authorisation from the owner of the right on the plant variety in order to multiply a vegetative material, even if it is for its own use.

In addition, PVP law defines the sanctions applicable to the infringer of the rights on a protected plant variety and foresees the possibility of the protected plant variety being subject to a compulsory licence.

According to the data provided by SNPC and shown in Table 1, since 2007 it has seen a considerable growth in the number of filings of new PVP applications.

From the 3,530 PVP applications filed between

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1997 and April 2015, 2,629 plant varieties certificates were granted (Table 2). There are 492 pending applications being analysed.

With the growing demand for PVP, there has been a constant increase in the investments in agricultural research and development, making Brazil a strategic country in agribusiness.

Therefore, even though the IP rights related to plant varieties may not be protected in Brazil by the Brazilian IP law, the PVP law is proving to be an effective tool for those seeking protection. ■



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