Experience on Essentially Derived Varieties in Japan

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The holder of the breeder’s right for a registered variety shall also have an exclusive right to exploit varieties described in following items, the scope of which shall be the same as the right which the breeders of the said varieties would, if obtained a variety registration, be granted. In this case, the proviso of paragraph (1) of this Article shall apply mutatis mutandis.

Provision on Breeder’s Right over Essentially Derived Varieties

The Plant Variety Protection and Seed Act (Act No. 83 of May 29, 1998)
Article 20 (Effects of the Breeder’s Right)

(1) The holder of a breeder’s right shall have an exclusive right to exploit, in the course of business, the variety which is registered and varieties which, by the expressions of the characteristics, are not clearly distinguishable from the registered variety.

(2) The holder of the breeder’s right for a registered variety shall also have an exclusive right to exploit varieties described in following items, the scope of which shall be the same as the right which the breeders of the said varieties would, if obtained a variety registration, be granted. In this case, the proviso of paragraph (1) of this Article shall apply mutatis mutandis.

Provision of Essentially Derived Variety on PVP and Seed Act

2(i) varieties which are bred by changing parts of the expressions of the characteristics of the registered variety while retaining the expressions of its essential characteristics using such methods as selection of a mutant, backcrossing, transformation by genetic engineering or other methods specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries and which are clearly distinguishable from the initial registered variety by the expressions of the characteristics;

Methods

- Selection of mutant
- Backcrossing
- Transformation by genetic engineering
- Cell fusion (asymmetrical fusion only)

-- Ordinance of MAFF, Article 15
The judgment whether variety B is EDV of variety A or not is left to the court’s decision.

--Guidance of PVP and Seed Act

New Variety B
Definition of EDV

(i) varieties which are bred by changing parts of the expressions of the characteristics of the registered variety while retaining the expressions of its essential characteristics using such methods as selection of a mutant, backcrossing, transformation by genetic engineering or other methods specified by the Ordinance of the Ministry of Agriculture, Forestry and Fisheries and which are clearly distinguishable from the initial registered variety by the expressions of the characteristics;

Japan’s Experience on Examination for Registration

Appeal to the Court - None

Question raised by a breeder - In 2010, a breeding company K received an advise from its partner company in the Netherlands that there was no need to register every variety which was considered as EDV, if it had registered the parent varieties.
- K inquired MAFF about the actual condition of regulations on the EDV.
- MAFF explained the notion of EDVs as follows.

Notion of EDVs
Explanation in “Guidance of PVP and Seed Act”
- Whether a given variety is a EDV of a protected variety is a matter to be taken care of among respective breeders (Final decision to be made by the court).
- However, certain examples which may be considered as EDVs are provided.

1. Enhancement of disease resistance
2. Differences in flower color
3. Earliness in ripening
4. Change in plant type or height
Examples in “Guidance book on PVP and Seed Act”

1. Enhancement of disease resistance

<table>
<thead>
<tr>
<th>Genotype</th>
<th>Parent</th>
<th>Recurrent parent</th>
<th>Backcrossing times</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pi-i, Pi-k</td>
<td>Magarikei780</td>
<td>SASANISHIKI</td>
<td>6</td>
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<tr>
<td>Pi-a, Pi-km</td>
<td>TSUYUAKE</td>
<td>SASANISHIKI</td>
<td>5</td>
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<tr>
<td>Pi-a, Pi-z</td>
<td>FUKUNISHIKI</td>
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<td>5</td>
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<td>Pi-a, Pi-ta2</td>
<td>Magarikei737</td>
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<td>8</td>
</tr>
<tr>
<td>Pi-a, Pi-b</td>
<td>Magarikei872</td>
<td>SASANISHIKI</td>
<td>6</td>
</tr>
</tbody>
</table>

Oryza sativL. (Rice) : SASANISHIKI BL

Pyrus pyrifolia (Burm.f.) Nakai var. culta (Mak.) Nakai (Japanese Pear): GOLD NIJISEIKI : 2932

Example in “Guidance book on PVP and Seed Act”

2. Difference in flower color

STALLION YELLOW : 6279

Chrysanthemum x morifolium Ramat

Difference of Characteristics: the color of flower only
- Selection of mutant from STALLION, 63 out of 66 characteristics are the same of the original variety.
- Mutants chosen in the field of applicant in the Netherlands.

ALBART HEIJN WHITE : 6278

Difference of Characteristics: the color of flower only
- Selection of mutant from ALBART HEIJIN, 62 out of 65 characteristics are the same of original variety.
- Mutants developed by irradiation

3. Change in flowering time

There is no real example variety.

4. Change in growth habit

Rosa L. (Rose) : TSURU PEACE

Difference of Characteristics: change in growth habit only
- Selection of vine mutant from PEACE, 58 out of 69 characteristics are the same of original variety.