ENFORCEMENT OF PBR UNDER UPOV 1991 IN VIETNAM

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OUTLINE OF THE PRESENTATION

➢ HISTORY OF PVP
➢ IMPACT TO AGRICULTURE
➢ ENFORCEMENT OF PBR
Background

- Agricultural country.
- High density of population
- **Improve living standard of the people** – The current main purpose of VN’s Government
- Seed Sector play an important role for the purpose – big contribution of new plant varieties

**HISTORY OF PVP**
Study the real conception of PVP

1995-2000

- Establishing National PVP system and Preparations to join UPOV
- Implementing PVP System under UPOV Convention

- Organizations to implement: PVPO/DUS Test Office
- Drafting Legislation Document (Law, Decree…)

- Operating the system under UPOV Convention
- Exploit the benefits of the system

- Dispatching staffs to Overseas
- Invite Experts from experienced countries and UPOV
- Seminars/Workshops on PVP for relevant persons

Members of UPOV (24th Dec, 2006)

Members of UPOV (74)
Initiating States (15) and Organization (1)
States (23) and Organization (1) in contact with the UPOV Office

The boundaries shown on this map do not imply the expression of any opinion whatsoever on the part of UPOV concerning the legal status of any country or territory, or concerning the delimitation of its frontiers or boundaries.
Organization System

- MARD
  - Procedure for decision to grant PVP Certificate

- DCP
  - Decision and granting PVP Certificates
  - Propagation Material for DUS
  - Notice the Plan for DUS

- APPLICANT
  - Applications (Direct/Post Office/IP Agent)
  - DUS Test report

- PVPO

- NCPT

Legislation on PVP

- IP Law No 50 (2006); Law on revisement of some Article of IP No 50 (2009) (Based on 1991 Acts, UPOV)

- Seed Ordinance (Chapter 4 on PVP)

- Decree No 13 on PVP

- Decree 88
- Decree 105
- Circular 16

- 2001
- 2004
- 2005
Typical for VN’s PVP

- Fully Member of UPOV on 24th December 2016
  - Protect all species from 24th December: Opportunities and challenge
- Member of TPP Agreement
  - “The Parties recognise the importance of a rich and accessible public domain” (Article 18.15)
  - Need to consider on Public Varieties

IMPACT OF PLANT VARIETY PROTECTION
Applications by years 2004 – 2015

Application is increasing

- Number of application increased – Many good new varieties and new species released for farmer
- Good new var. from oversea and new species - farmer have good income
Current situation of Agriculture

- Exporter on agriculture products
- For rice: 5/10 protected varieties are cultivated in biggest area for exporting
- New varieties of flowers (rose, cymbidium...) is introduced to VN by foreign countries

Increasing the income of farmer

- A cuttings of new rose varieties may reach 10 – 15 times more expensive than old Var.
- New variety is introduced in VN
- Farmer have chance to increase their income
Farmer produce under license from Owners

Waiting to the aircraft for exportation

No of species until the year (2004-2015)

Vietnam’s applications: Private and Public sectors

- **Public sector (Government Budget):**
  - Research Institutes
  - Universities
  - Research Centers
    (Central Government and provincial level)
- **Private sector:**
  - Individual
  - VN’s Seed Company
- **Recent years:**
  - MARD did not invest to Public Sector for breeding by traditional methods
Positive impact to SMEs

- Before PVP system established in VN: almost of them are trade company (not interest in RD)
- When PVP system is established:
  - Beginning: they are licensed to exploit PBR from owner (transferred)
  - They develop breeding facility
- Now, many of them have own breeding facility
- Some of them become big with very good breeding facility.

ENFORCEMENT OF PBR
Protection

Exploitation

Infringer

To be permitted

Royalty

Breeder:
Exploitation of the right by them-self

Third party:
Licensing, pay royalty to Breeder

IP Law (Part 5), Custom Law
Civil Law
Criminal Law

Penalties depend on the level
- Administrative (Decree 172)
- Emergent, temporary Measures

Organizations in charge:
- Professional Inspector
- Custom office, police,
- Court, Procuratorate

No of PVP Certificates per total applications

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<tr>
<td>Total Applications</td>
<td>5</td>
<td>18</td>
<td>29</td>
<td>60</td>
<td>99</td>
<td>146</td>
<td>213</td>
<td>251</td>
<td>314</td>
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<td>Granted Certificates (Total)</td>
<td>51</td>
<td>83</td>
<td>136</td>
<td>204</td>
<td>255</td>
<td>359</td>
<td>451</td>
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Specializing in introduction of a new variety

- For the Varieties from Research Institutes:
  - Transferred the right to seed companies
  - Establishing IP Division to exploit the right in some Research Institutes
- The specialization in development new variety make more effective in exploiting new varieties
- Fair Competition in trade: Who invest to the R/D more, they have more benefits for re-investment to R/D

Shortcomings

- Duration from filing application to grant Certificates still long due to technical issues
- For SMEs: Not easy to fulfill Application and relevant document
- There were misunderstand on the assignment of the right and licensing.
- It’s difficult to assess value for the right of Public Varieties in transfer contract.
Transfer the rights of using and assignment

- According to Art. 192, IP Law: “Transfer the rights of using means the permission of Holder of the right of the variety given to other person to conduct one or some acts of his right of the variety”.

- Assignment of the right (Art.194): Means Holder of the Right transfer all the right of the variety to Assignee. The assignee become Owner of PBR.

- For the varieties from Public Research Institutes: Is it easy to access when right of the varieties is assigned to private sector?

Thank you for your attention

- Detail Information:
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