



TEXAS A&M AGRI LIFE RESEARCH

"Protecting germplasm & variety
intellectual property and
commodity group research
funding"

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RISK VS. RETURN



Each type of plant material has

- its own potential value
- Its own likelihood of being adopted by industry

Different IP protection strategies have

- different costs
- different appeal to industry

Decisions about IP protection need to consider these factors

PUBLIC VS. PROTECTED VARIETIES

- Public varieties are not subject to statutory protection and thus their use is not restricted.
- Protected varieties are subject to legal protection, allowing the variety owner to maintain control of purity/quality and marketing of the variety.



WHY PROTECT PLANT MATERIALS?

Some plant materials will not reach the public without some form of legal protection.

Some benefits of protection are:

- Obtaining returns to research programs
- Facilitating industry relationships
- Maintaining competitiveness and quality

TYPES OF PROTECTION

- Hybrid: inherent biological protection for F1s
- Contractual: terms of an agreement
- Statutory:
 - Plant Variety Protection Certificates (USDA)
 - Plant Patents (DOC)
 - Utility Patents (DOC)
 - Seed Deposit type
 - Trait type
 - Trademarks



DECIDING WHAT PROTECTION AND COMMERCIAL STRATEGY TO USE

Consider:

- Form of protection available
- Enforcement of protection
- Industry size and focus
- Valuation



PVP CRITERIA

- Novel (based on first seed sale)
- Distinct (unique trait(s))
- Uniform (predictable, describable variations)
- Stable (essential characteristics maintained when reproduced)



PVP APPLICATION REQUIREMENTS

- Distinguish from an existing variety
- Provide statement of uniformity and stability over production periods
- Detailed pedigree, breeding method, and selection criteria
- Provide supporting statistical data
- Variety name clearance
- Seed sample for deposit



UNIQUE ASPECTS OF PVP

Exemptions:

- For research - Seed may be used for breeding and research by others without owner permission
- For farm/crop use - Seed may be produced and saved for personal farm use without owner permission



PLANT PATENT RIGHTS

- Affords owner right to exclude others from asexually reproducing, selling, importing or otherwise using protected plant or its parts
- Protects a single plant and asexual progeny (not sports or mutants thereof)
- Protection term: 20 years
- Introduced as patent option in 1930
- Issued and administered by USPTO



COMMERCIAL LICENSES

- Grants a company the exclusive or non-exclusive right to market and sell the protected variety
- Grant may be limited to a defined commercial application or geographical region
- Contains financial considerations paid to A&M
- Contains performance diligence requirements

UTILITY PATENT SUBJECT MATTER

- Any new, useful, and non-obvious
 - (a) machine,
 - (b) process,
 - (c) manufacture, or
 - (d) **composition of matter**, or
 - (e) any improvements thereof
- Since 1980, plants and other living organisms classify under “compositions of matter.”

