

## Plant Breeders' Rights

The Patents Act does not provide for protection of new varieties of plants. However, a Plant Breeders' Right, which is available both in South Africa and in most countries across the globe, enables a new variety which has been bred, or discovered and developed, to be protected. In South Africa, a Plant Breeders' Right is obtained in terms of the Plant Breeders' Rights Act, which is administered by the Department of Agriculture.

In order to qualify for protection, a plant variety must satisfy four requirements: namely, it must be new, distinct, uniform and stable (known as the DUS test). In order to satisfy the novelty ("new") requirement, the variety must not have been sold or otherwise disposed of by the breeder either (i) in South Africa for more than one year; or (ii) in another country for more than six years (in the case of vines and trees) or for more than four years (in the case of other plants) prior to the filing of the application for a Plant Breeders' Right. The variety must also be clearly distinguishable from any other variety of the same kind of plant which is known to exist, and must be sufficiently uniform with regard to the characteristics of the variety in question. Finally, these characteristics must remain unchanged after repeated propagation.

On application for a Plant Breeders' Right, a number of formalities (including a technical questionnaire specific for each genus) must be satisfied and the new variety must undergo examination. During examination, plant material is examined in order to ensure that the DUS test requirements are complied with and that the plant material is as described in the technical questionnaire. Thus, examination of slow-growing plants such as trees may take a number of years. If all the requirements are satisfied, the Plant Breeders' Right is granted with the term of protection being calculated from the date of grant.

A breeder is, therefore, not prejudiced if his/her new variety is slow-growing and examination thereof has taken a long time. The duration of a Plant Breeders' Right is 25 years (for trees and vines) or 20 years (for all other plants).

Currently, almost 2000 Plant Breeders' Rights are in force in South Africa, with 317 of these applications having been granted in 2008. The most frequently obtained Plant Breeders' Rights in South Africa are for varieties of roses.

*Plant Breeders' Rights have been, and remain, a powerful tool for large multinationals, smaller nurseries and individual plant breeders, enabling them to secure a piece of the market for their novel varieties for a significant number of years.*

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