

## Basic Patentability Standards

- Utility
- Novelty
- Non-obviousness
- Written Description
- Enablement
- Definiteness



## Utility Patents to Plants

- Possible to protect:
  - Modified plant genes, proteins, products
  - Transgenic plants phenotype (*i.e.*, observable characteristics)
  - Class of varieties with specific traits
  - Plant variety
  - Plant parts – cells, tissues, etc.
  - Methods of producing or using plants/varieties



## Utility Patents

- 20 years protection from date of filing
- Right to exclude others from making, using, selling, offering for sale, and importing the claimed invention
- Effective only within the United States, U.S. territories, and U.S. possessions
- Requires maintenance fees



## Utility v. Plant Patents

- An invention may support both a utility patent and a plant patent if the claims are not identical.
- Utility Patent may be useful if the invention is not limited to a particular variety or where method claims are desired.
- Plant Patent may be useful where it is difficult to meet the written description or enablement requirements of a utility patent.

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## PLANT VARIETY PROTECTION

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### Plant Variety Protection Act (PVPA)

- Plant Variety Protection Office (PVPO), USDA
- Encourages the development of new varieties of sexually reproduced plants
- Provides protection to those who breed, or discover and develop them
- Applies to plants:
  - **Sexually (seed) reproduced**
  - **Tuber propagated**
  - **F1 hybrids**

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## Requirements for Plant Variety Protection under PVPA

A Variety must be:

- **New** (available less than 1 year in the US; less than 4 years in a foreign country)
- **Distinct** from all other varieties
- **Uniform** (all plants look alike)
- **Stable** (reproduces true to type)

*\*Applicant submits evidence for NDUS*



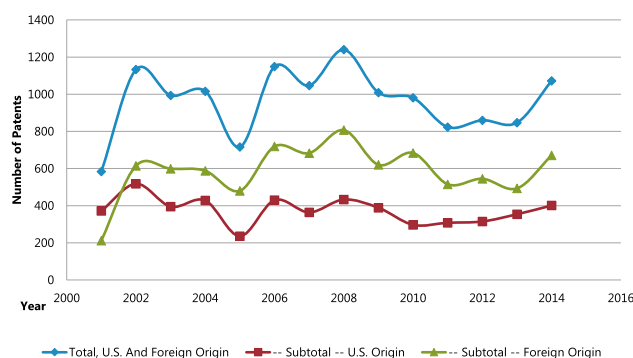
## Statistics



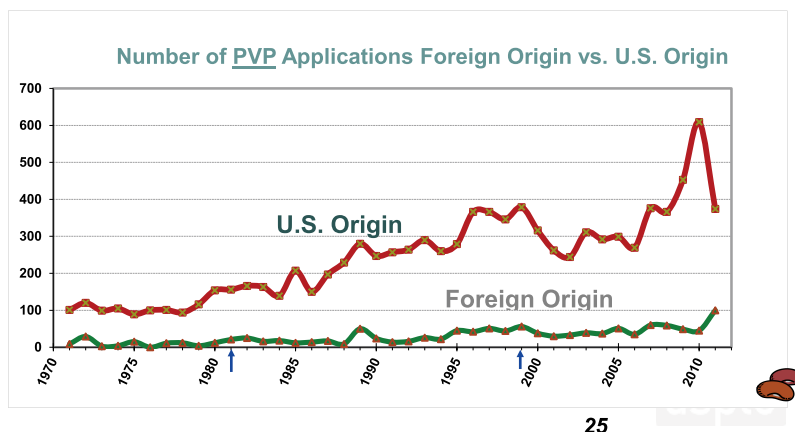
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## New Plant Varieties--Plant Patents

Granted Plant Patents  
2001-2014



## ↑ New Plant Varieties



## Granted Plant Patents

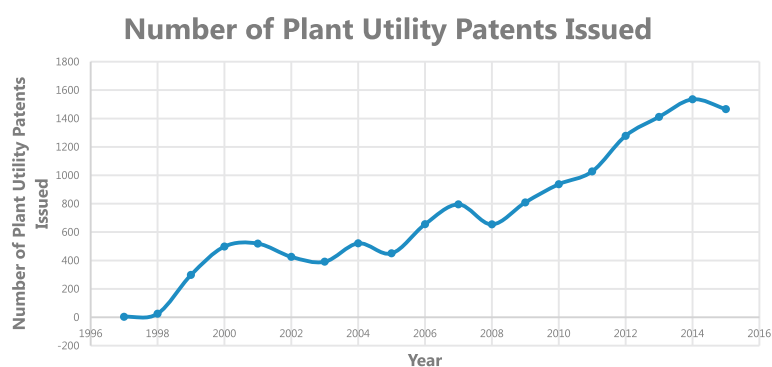
All years, up to 2014

Total 18,076

Top 3 Foreign Countries	
Netherlands	3,095
Germany	2,154
Japan	918
Examples of Asia Countries	
India	51
Thailand	38
Indonesia	26
Chinese Taipei	18
South Korea	11
China	9

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## ↑ New Plant Varieties and Technologies



Note: Data above was obtained from the USPTO's PALM system, and reflects plant utility patents issued during these years for the following USPC class and subclasses:

- 435/410-431, 453, 468-470
- 800/260-323.3

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## UPOV

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**UPOV: INDEPENDENT  
INTERGOVERNMENTAL ORGANIZATION**

**The International Convention for the  
Protection of New Varieties of Plants**  
established in 1961

**The International Union for the  
Protection of New Varieties of Plants**

**Union internationale pour la protection des  
obtentions végétales**

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## UPOV

**The International Convention for the Protection  
of New Varieties of Plants**  
1961 revised 1972, 1978, 1991

**The International Union for the Protection of  
New Varieties of Plants**

Inter-governmental Organization  
based in Geneva, Switzerland

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# The mission of UPOV

- is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.
  - The UPOV Convention provides the basis for members to encourage plant breeding by granting breeders of new plant varieties an intellectual property right: the breeder's right.

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**UPOV** INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Deutsch Español Français Other

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ABOUT UPOV MEMBERSHIP UPOV SYSTEM PVP DATA & STATISTICS MEETINGS NEWS

**DL Courses: registration open**

**Welcome**

The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organization with headquarters in Geneva (Switzerland).

UPOV was established by the International Convention for the Protection of New Varieties of Plants. The Convention was adopted in Paris in 1961 and it was revised in 1972, 1978 and 1991.

UPOV's mission is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.

**Quick Links**

- Introduction to UPOV
- Situation in UPOV
- Benefits of UPOV
- UPOV Collection
- Test Guidelines
- Distance Learning Course
- Seminars & Symposia
- Ashiro Rindo story
- FAQs

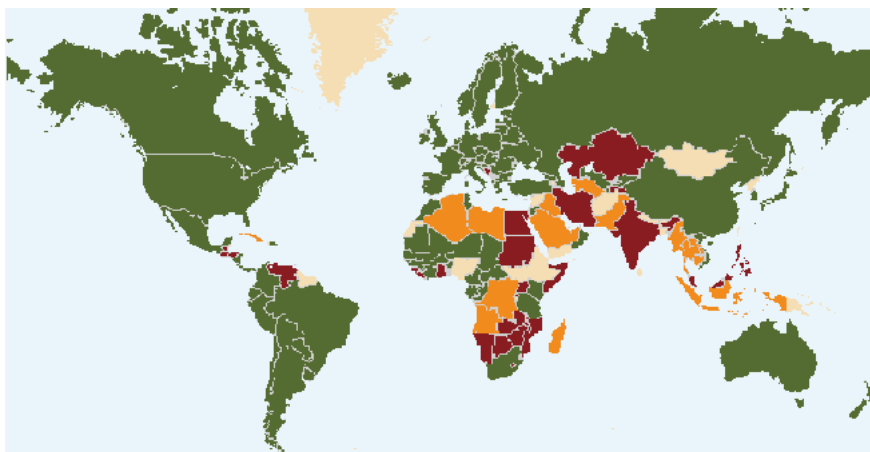
GENIE Database

UPOV Lex

Plant Variety Database (PLUTO)

**News & Upcoming Events**

## UPOV status in 2016



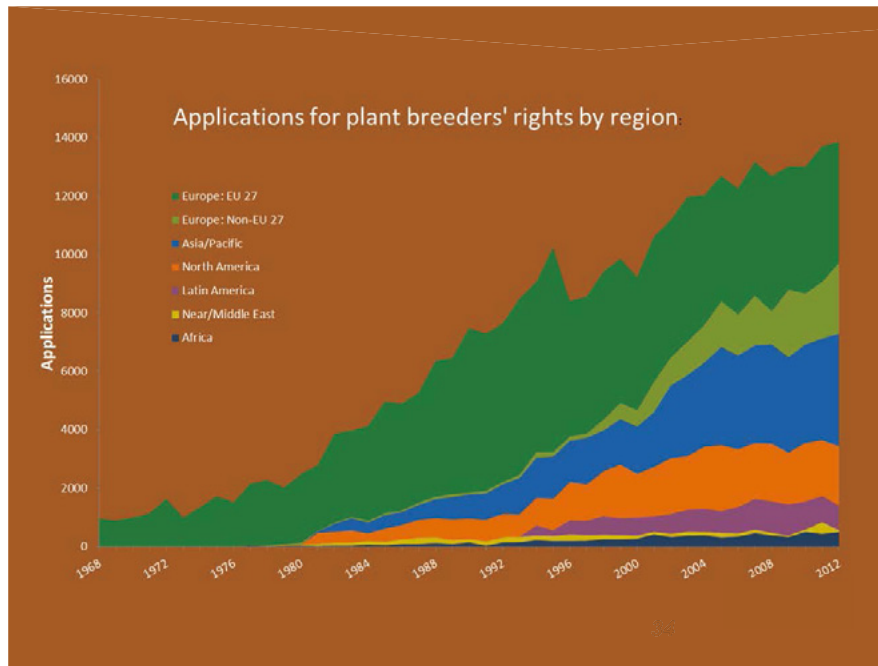
**Members of UPOV (74) covering 93 States**

**Initiating States (15) and Organization (1)**

**States (23) and Organization (1) in contact with the UPOV Office**

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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



- <http://www.uspto.gov/web/offices/pac/plant/index.html>
- <http://www.uspto.gov/web/offices/pac/utility/utility.htm>
- <http://www.ams.usda.gov/PVPO>
- <http://www.upov.int/portal/index.html.en>

THANK YOU!