AGRICULTURAL INTELLECTUAL PROPERTY PROTECTION IN THAILAND

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Experiences:
- Associate Judge: Central Intellectual Property and International Trade Court (10 yrs.)
- Commissioner: Plant Variety Protection Committee (6 yrs.) & Plant Committee (4 yrs.)
- Specialist: Agricultural Geographic Indication (4 yrs.)
- Research Investigator: Agriculture-related Intellectual Property (16 yrs.)
Thailand: agriculture economy

Agriculture sector:
40% population

Agriculture:
25% total export value
Current Policy:

- innovation economy
INTELLECTUAL PROPERTY

= Novel uniqueness

~ idea creativity & community specialty
FACT

Valuable *invention*: difficult
Financial *return*: more difficult

THUS

Intellectual Property Right (IPR) Protection
Principle of IPR Protection

exclude public to exercise some form of rights in exchange of getting novel uniqueness to the market
Most of IPR Protection

Territorial
IPR in Thailand

Balance between owners’ rights and public interest
1909:

sections of Criminal Law establish a system for trademark protection
July 17, 1931

Berne Convention for the Protection of Literary and Artistic Works

1941

Trademark & Commercial Trademark Act 1941
Trade Related Aspects of Intellectual Property (TRIPs) Agreement
Non-member:

- International Convention for the Protection of New Varieties of Plants (UPOV convention)
- International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)
CURRENT POLICY
- creativity-based economy
Protection of Agriculture-related IP

- Trademarks
- Patents and petty patents
- Copyrights
- Geographical indication
- Trade secrets
- Plant variety protection
Trademark

mark, trademark, service marks, certification marks and collective marks

used in connection with merchandizes for goodwill and reputation
Plant cultivar name or produce/product brand can be renewed if actively used in commerce
Patents & Petty Patents

Invention patent
- New, inventive step & industrial application

Design patent
- New design for industry

Petty patent
- New & industrial application
Farming process, manufacturing process, machinery, tool, merchandize design, package design

Invention patent 20 years
Design patent 10 years
Petty patent/utility models 6 years + 2 @
Unpatentable

1) computer programs;
2) inventions which may harm public order or morality, public health, or welfare;
3) natural form of microorganisms and their components comprise animals and/or plants, or extracts from animals or plants;
4) processes of diagnosis, treatment, or remedy used in curing animal diseases
Copyright

Literary works, artistic works, and computer software

creators of original works of physical expressions of ideas
Geographical indication (GI)

name, symbol, or any other things used to call, or used instead of, geographic origin

specific characteristics, quality, or reputation to geographic origin

community specialty
Prohibition for GI

- Be a generic name of good that will use the geographical indication
- Contrary to public order, morality or public policy.
For a foreign GI, explicit evidence that such GI is protected under the law of such country and has been used continuously until the date of filing an application for registration in Thailand.
Trade secrets

- trade information not yet publicly known/ accessible
- commercial values from its secrecy
- appropriate measures to maintain secrecy
Acts not Considered Infringement

- Disclosure or use of trade secrets, innocently
- Independent discovery
- Reverse engineering
Plant variety protection

*sui generis* system

1978 UPOV convention + Convention on Biological Diversity

sensible return of investment on new cultivars to small breeders
Plant variety

- New plant variety
- Local domestic plant variety
- Wild plant variety
- General domestic plant variety
รายการบัตรที่ชื่นชอบของนวม พ.ร.บ.ครูครอฟ พ.ศ.2542 ของคุณโชคบุตร ทรงพานิช ที่บางสูบ ได้รับอนุญาตให้จำหน่ายได้ในปีพ.ศ.2559

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Multiple protection

- machineries -> trade mark + patents
- breeders -> trade mark + plant variety protection
- local communities -> GI+ and trade secret
- members -> trade mark
- green house/ irrigation control program -> copyright only
# Measures

<table>
<thead>
<tr>
<th></th>
<th>TM</th>
<th>Patent</th>
<th>Petty</th>
<th>Copy R</th>
<th>GI</th>
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<td>✓</td>
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<td>other</td>
</tr>
</tbody>
</table>

Faculty of Agriculture, KASETSART UNIVERSITY
Additional Measures

- special material
- counterfeit-proof mark
- embedment
- single cross / male-sterile

http://www.securityhologram.com/
## Types of IP protection

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TM: Trademark
Patent
Petty P
Copy R
GI
TS
PBR
Other
Effective Enforcement of IPRs

Central Intellectual Property and International Trade Court (CIPITC)
CIPITC

- criminal prosecution
- civil enforcement
- border measures
- anti-counterfeiting online
Prosecution

‑ Criminal -> most popular
‑ Civil
Criminal action

**Strength**

a) cheaper and faster  
b) assisting to secure evidence of infringement for a future civil action
Weakness

a) evidence of infringement  
b) corruption of some enforcement officers  
c) insufficiently trained enforcement authorities  
d) small fines and lack of hindrance  
e) lack of liability on landlord/space-owner
Civil prosecution

Strength

a) possibility to obtain permanent injunction and monetary compensation

b) possibility to request preliminary injunction -> add pressure on the defendant
Weakness

a) Lengthier and costlier
b) Necessity of strong evidence
c) Difficulty to enforce if defendant has insufficient assets or declares bankruptcy.
Government Enforcement

National Intellectual Property Center for Enforcement (NICE):
25 government agencies
keeps track of infringement cases, court decisions, and individuals with repeated offenses
IPR holders actively monitor the places where piracy occurs. CIPITC issues tough penalties, such as imprisonment.
CONCLUSION
Thailand

Agriculture-related intellectual property can be protected in various forms.

IP infringer can face both criminal and civil law suits.

Large commercial enterprises deploy additional measures on their agriculture intellectual property.