

別紙 4

報告番号	※	第	号
------	---	---	---

主 論 文 の 要 旨

論文題目

THE INTERPLAY BETWEEN THE SYSTEMS OF PATENTS
AND PLANT VARIETY PROTECTION: THEIR IMPACTS ON
PLANT INVENTIONS – LESSONS FOR THAILAND

氏 名

THONGMEENSUK Saliltorn

論 文 内 容 の 要 旨

Plant breeding has recently been accepted as a branch of scientific enterprise because of its swift scientific development. As plant breeding techniques have been greatly enhanced, the pressure to extend the protection of intellectual property rights to plant innovations is on the rise. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) does not obligate its members to provide intellectual property protection on plants and plant-related inventions nor force them to provide patent protection for plant varieties. However, since its adoption, there has been an increasing number of bilateral and regional agreements, putting unprecedented pressure on their parties to adopt the TRIPS-plus standard of IPRs protection. This includes the requirements for the adoption of a plant patent system or to conform with sui generis plant variety protection system under the 1991 International Convention for the Protection of New Varieties of Plants (the 1991 UPOV Convention).

On the other hand, in order to create plant innovations, the breeding process needs access to the broadest range possible of existing germplasm due to the fact

that plant innovation is a sequential and cumulative innovation where continued progress depends largely upon the access and preservation of a robust public domain. Since plant innovations are distinctive from other kinds of inventions, many scholars believe that plant intellectual property laws must be specifically designed.

Under the current situation, none of the traditional paradigms of intellectual property mechanisms provided by the TRIPs Agreement are developed specifically to address the issue of plant intellectual property protection and neither of them seems to be ideally suitable for plants. Also, the large majority of developing countries believe the systems of plant intellectual property rights are inappropriate for them as their adoption may become a threat to food security, a major impediment to research and development in public sectors and a contrast to the ongoing conventional practices of farmers.

Under the pressure from developed countries to provide intellectual property rights on plants, the main goal of this research is to design the most appropriate statutory model for Thailand to preserve and maintain their self-supporting agriculture while enabling them to be gradually modernized. In finding an appropriate model, it analyzes international legal mechanisms, namely, the TRIPS Agreement, the 1991 UPOV Convention and the FAO International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). Also, it makes a comparative analysis on the practices of India, the United States and the European Union. These jurisdictions were chosen as they use different mechanisms to protect the intellectual property rights of plant breeders and to address farmers' rights. India adopted a sui generis system for the protection of

breeders' rights and farmers' rights. The United States allows concurrent protection of both patents and plant breeders' rights. As for the European Union, since plant variety is not patentable, there exists some interface problems in practice.

This research poses the hypothesis that developing countries should be encouraged to adopt patents on plants and plant-related inventions only on the condition that the special interface provisions between the patent system and plant variety protection system have been established. Furthermore, the 1991 UPOV Convention should not be considered as "the only" effective sui generis system for plant variety protection. Moreover, the adoption of an indirect benefit-sharing concept as initiated by the ITPGRFA should be encouraged, instead of a monetary benefit-sharing mechanism. As for Thailand, this research suggests the overhaul of its intellectual property protection for plants, including the introduction of plant patents, the amendment of the current plant variety protection systems, and the establishment of mechanisms to prevent cumulative protection between both systems.