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## INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

## COUNCIL

Fifth Extraordinary Session

Geneva, April 29, 1982

CONFORMITY OF THE HUNGARIAN LAWS ON THE PROTECTION OF PLANT VARIETIES  
WITH THE UPOV CONVENTIONDocument prepared by the Office of the UnionIntroduction

1. In a letter dated February 5, which reached the Office of the Union on March 8, 1982, the Minister of Agriculture and Food and the President of the National Office of Inventions of the Hungarian People's Republic asked the Council of UPOV for its advice on the compatibility of the Hungarian laws on the protection of plant varieties with the provisions of the UPOV Convention. That letter is reproduced in Annex I to this document. Three texts were attached to the letter: the Hungarian Law on the Protection of Inventions by Patents (No. II of 1969), reproduced in Annex II to this document; a separate reprint (not reproduced in this document) of Part III (Articles 67 to 71) of that Law, containing the special provisions concerning plant varieties; and an extract from the Decree on the Execution of Law No. II of 1969 on the Protection of Inventions by Patents, reproduced in Annex III to this document.

2. It is recalled that Hungary, not having signed the Revised Act of 1978 of the UPOV Convention (hereinafter referred to as "the 1978 Act") and wishing to become a member of UPOV, has to deposit an instrument of accession according to Article 32(1)(b) of the 1978 Act. Before the instrument of accession can be deposited, Hungary has to ask the Council to advise it in respect of the conformity of its laws with the provisions of the 1978 Act and the decision of the Council embodying its advice has to be positive.

3. It is furthermore recalled that the question of Hungary's becoming a member of UPOV has been discussed on several occasions in recent years.

4. On April 28 and 29, 1977, a symposium, organized by the International Community of Breeders of Asexually Reproduced Ornamentals (CIOFORA), took place in Budapest. The then President of the Council of UPOV, Mr. B. Laclavière, and several other members of the UPOV Council were present as were the Secretary-General and the Vice Secretary-General of UPOV. Following a lecture on the Hungarian plant variety protection law and its compatibility with the UPOV Convention, given by an official of the Hungarian National Office of Inventions--which concluded with the statement that the competent authorities had taken the position that it was desirable for Hungary to adhere to the UPOV Convention--a useful discussion took place.

5. On September 8, 1980, a Hungarian Delegation consisting of Mr. Imre Koncz, Deputy Head of the Agricultural Department at the Ministry of Agriculture and Food, Mr. Antal Erdős, Director in the National Office of Inventions, and Dr. Géza Mesko, Deputy Director in the National Office of Inventions, visited the Office of UPOV, the Swiss Office for Variety Protection (Büro für Sortenschutz) and the Federal Research Station for Agricultural Plant Growing (Eidgenössische Forschungsanstalt für Landwirtschaftlichen Pflanzenbau) in Zürich-Reckenholz.

6. From October 23 to 25, 1980, a UPOV Delegation consisting of Dr. W. Gfeller, President of the Council of UPOV, Dr. D. Böringer, Chairman of UPOV'S Administrative and Legal Committee for several years, and Dr. H. Mast, Vice Secretary-General, paid a visit to Hungary during which lectures were given on UPOV. The UPOV Delegation had the opportunity to visit a number of agricultural institutes in Hungary and met with high officials of the Hungarian Government.

#### Conformity of the Hungarian Legislation with the 1978 Act

7. Legal Basis of the Protection of Plant Varieties in Hungary. The protection of plant varieties is based in Hungary on the Law on the Protection of Inventions by Patents (Number II of 1969)--reproduced in Annex II to this document and hereinafter referred to as "the Law"--and in particular on Articles 67 to 71 thereof, and on the Decree on the Execution of Law No. II of 1969 on the Protection of Inventions by Patents (No. 4/1969. (XII. 28.) OMF-B-IM)--reproduced in part in Annex III to this document and hereinafter referred to as "the Decree." An English translation of the Law was published in the April 1970 issue of "Industrial Property" and of the Decree (earlier translation) in the September 1970 issue of that periodical. In addition, a number of implementing legislative rules, including procedural rules concerning patents and legal remedies under the patent system, are applicable. As shown by the drafting of a number of provisions of both the Law and the Decree, it was already the intention of Hungary, when revising its patent legislation in 1969, to align the Hungarian legislation to the UPOV Convention of 1961.

8. Form of Protection. Hungary protects plant varieties as "biological inventions" under the form of a patent (see Article 6 of the Law). Special provisions exist, however, for such patents for plant varieties (as well as for patents for animal breeds) in Articles 67 to 71 of the Law. As far as the form of protection is concerned, the Hungarian legislation is in conformity with the 1978 Act.

9. Botanical Genera and Species Which Must or May Be Protected. Hungarian plant variety patents may be obtained for all botanical genera and species without exception. Thus, unlike most UPOV member States, Hungary does not take advantage of the possibilities to grant protection only for a selected number of genera and species. Hungarian practice is in conformity with Article 4(1) of the 1978 Act.

10. Conditions Required for Protection. Plant varieties are patentable in Hungary if they are new, homogeneous and relatively stable (Article 6(2) of the Law). The requirements concerning novelty, homogeneity and relative stability are to be laid down by special regulations "which take the scientific developments into consideration" (Article 67 of the Law). Rule 31 of the Decree shows that in the Hungarian legislation the term "new" is sometimes used for what most UPOV member States would call "distinct." That Rule specifies that "a plant variety is new [distinct] if it differs, in respect of its morphological, physiological and other features, by at least one essential characteristic from the varieties already known." This definition is in conformity with Article 6(1)(a) of the 1978 Act which, contrary to the parallel provision in the original version of 1961 of the Convention, no longer refers specifically to morphological and physiological characteristics. The definition of homogeneity in Rule 31(2) of the Decree, which states that "a plant variety is homogeneous if the essential characteristics of its individuals--having regard to the particular features of its sexual reproduction and vegetative propagation--are identical," follows very closely the comparable

provision in Article 6(1)(c) of the 1978 Act. As far as stability is concerned, the Law uses the expression "relatively stable"--instead of the word "stable" used in Article 6(1)(d) of the 1978 Act--but the definition in Rule 31(3) of the Decree shows that there is no real difference between the Hungarian legislation and Article 6(1)(d) of the 1978 Act: Rule 31 of the Decree states that "a plant variety is relatively stable if its essential characteristics, during either the natural or artificial reproduction or multiplication--or reproduction cycle--are true to the description."

11. Article 6 of the Law also permits that plant variety patents may be granted for processes for obtaining plant varieties, provided that the varieties so obtained are new, homogeneous and relatively stable. The protection of processes for obtaining plant varieties is not expressly mentioned in the 1978 Act, but is not, on the other hand, excluded by it.

12. The condition that the variety must be given a denomination is covered in Rule 34(3) of the Decree which states that "the new plant variety shall be given a denomination which shall at the same time be regarded [as] the name of the variety." The Decree also states that "for justified reasons, the National Office of Inventions may oblige the applicant to change the variety denomination, particularly where the denomination is liable to mislead or to cause confusion." Further rules are contained in the Hungarian Trademark Law and the Decree on the Execution of that law, in particular the rule that the protected variety denomination may not be used as a trademark for the same or similar products. The other detailed obligations under Article 13, in particular the obligation to use the variety denomination when marketing the variety, will be observed in Hungary too, since according to Hungarian constitutional law, all self-executing provisions in a treaty to which Hungary is a party become part of the law and if there is any difference between the national, internal law and the provisions of such treaty, including the case where such treaty provisions provide for matters not provided for in the national law, the provisions of the treaty are applicable.

13. Neither the Law nor the Decree contains specific rules on the exclusion from protection of varieties already offered for sale or marketed in Hungary or for longer than four (or six) years abroad (see Article 6(1)(b)(ii) of the 1978 Act). However, there is no doubt that the treaty provisions will be applied on the basis of the constitutional principle mentioned in the preceding paragraph.

14. Scope of Protection. Article 68 of the Law contains the necessary rules on the scope of protection. That Article states that the owner of a patent granted for plant variety "shall have the exclusive right--within the limits set by legislation--to produce for commercial purposes, to sell, or to put on the market, the sexual or asexual propagating material of the new plant variety--as such--or to grant a license to any third party for such activities." That corresponds to the requirements provided for under Article 5(1) of the 1978 Act. Article 68(2) of the Law goes beyond the minimum protection required by that sentence when providing, as do the laws of some of the present UPOV member States, that "only with the permission of the patentee may the propagating material of the protected plant be exported to foreign countries in which protection for plants similar to the protection specified by this Law does not exist." Such a provision appears to be covered by Article 5(4) of the 1978 Act.

15. Rule 32(2) of the Decree stipulates--in agreement with the first sentence of Article 5(3) of the 1978 Act--that "the effect of patent protection shall not extend to the use of the propagating material, as initial source, for scientific purposes or for the creation of other new varieties." It follows from the constitutional principle mentioned in paragraph 12, above, that the repeated use of a protected variety as a parent of a hybrid variety will--as required under the said Article 5(3)--require the authorization of the breeder.

16. Official Examination. Rule 33 of the Decree provides for an official examination ("experimental production"). Such examination is to be conducted on behalf of the National Office of Inventions by "an organ designated by the Ministry of Agriculture and Food." The applicant has to make available, at

the request of the designated organ, "the propagating material deriving from the prescribed period of vegetation, at the specified time and place, and in the determined quantity," unless he requests a period of at least four years from the time of filing to furnish further proof of "the patentability of the propagating material and the plant variety" (Rule 33(5) of the Decree). In the case of applications for which the priority of an earlier application in another UPOV member State is claimed (Article 12 of the 1978 Act), the four years period will be computed, by virtue of the constitutional principle mentioned in paragraph 12, above, from the expiration of the priority period.

17. Access to Protection. The Law contains no rules on reciprocity. Applications may be made by foreigners of any nationality, as, for example, under United Kingdom law. This goes beyond the minimum rules of the 1978 Act. There is no reason to doubt that Hungary grants the same treatment in other respects to foreign applicants as to its nationals.

18. Period of Protection. According to Article 12 of the Law, the period of protection is computed from the date on which the application for protection is filed rather than from the date on which protection is granted, as provided for in Article 8 of the 1978 Act. The period in the Hungarian Law is, however, 20 years rather than 15 or 18 years (the minimum periods required by Article 8 of the 1978 Act), so that, for all practical purposes, the protection will not end earlier under the Hungarian Law than under the 1978 Act. Where, however, in any given case, this would not be true, the protection will, under the constitutional principle mentioned in paragraph 12, above, last until required by the Revised Act.

19. Right of Priority. The right of priority (Article 12 of the 1978 Act) is provided for under Article 43 of the Law.

20. Restrictions in the Exercise of the Rights Protected. Articles 21 to 24 of the Law contain rules on the grant of compulsory licenses and on the exploitation of the patent for national defense purposes. The rules appear to be in conformity with Article 9 of the 1978 Act.

21. Nullity and Forfeiture of the Rights Protected. According to Article 32 of the Law, inter alia, the patent in respect of a plant variety which has lost its uniformity or "relative" stability may be "annulled" (and not just "become forfeit"). However, the effect of the annulment does not go back to the date on which the application was filed or the patent was granted but only to the date from which the factors giving rise to the annulment began (Rule 35 of the Decree). If, for example, in the annulment procedure it is proved that the variety lost its homogeneity three years earlier, the annulment will be retroactive as from the beginning of those three years. Such qualified annulment is believed to be in agreement with Article 10(2) and (3)(a) of the 1978 Act.

22. Appropriate Legal Remedies. The Minister of Agriculture and Food and the President of the National Office of Inventions, in their request of February 5, 1982 (see Annex I to this document), have drawn attention to the fact that plant varieties are also governed by the general rules of the patent law including the rules on legal remedies. According to those rules (see Article 57 of the Law), the following decisions of the National Office of Inventions may be reviewed: granting of the patent; declaring the patent protection to have expired; revoking of a patent; ruling on non-infringement (that means a declaration that a certain product or activity does not fall under the scope of protection of a particular patent). Court proceedings for the review of such decisions, and of those in respect of infringement cases, will be under the exclusive jurisdiction of the Metropolitan Court of Budapest, the Supreme Court being the Court of final instance (Article 58 of the Law). It also lies in the competence of that Court to decide, inter alia, on what constitutes adequate compensation for the working of a compulsory license and to fix the compensation to be paid, if not previously agreed, when a variety is exploited for the needs of national defense. Hungary thus fulfills the requirements of Article 30(1)(a) of the 1978 Act.

23. Special Authority. The special authority to be entrusted with the protection of new varieties is the National Office of Inventions. That Office may be assisted by an organ designated by the Ministry of Agriculture and Food (see paragraph 16 above). The Hungarian legislation is thus in conformity with Article 30(1)(b) of the 1978 Act.

24. Informing the Public. The publications issued by the National Office of Inventions ensure that the public is sufficiently informed, as required by Article 30(1)(c) of the 1978 Act.

25. Conclusion. The Hungarian legislation is in conformity with the 1978 Act.

26. The Council is invited:

(i) to take a positive decision on the conformity of the Hungarian laws with the provisions of the 1978 Act, as provided for under Article 32(3) of that Act, and

(ii) to authorize the Secretary-General to inform the Government of the Hungarian People's Republic of its decision.

P.S. The competent Hungarian authority confirmed in writing on April 1, 1982, that it had examined this document and that it agreed with its content.

[Annexes follow]

0012

C(Extr.)/V/2

## ANNEX I

MINISTER  
OF AGRICULTURE AND FOOD

PRESIDENT  
OF THE NATIONAL OFFICE  
OF INVENTIONS

Budapest, February 5, 1982  
500-UP/G-63

Dr. Arpad Bogsch  
Secretary-General  
International Union for the Protection  
of New Varieties of Plants /UPOV/  
G e n e v a

Dear Secretary-General Bogsch,

The Hungarian People's Republic intends hereby to accede to the International Convention for the Protection of New Varieties of Plants.

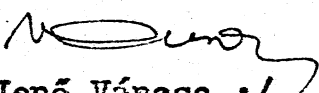
In accordance with Article 32 /3/ of the Convention, we ask for the advice of the Council of the Union if the Hungarian laws on the protection of plant varieties are compatible with the provisions of the Convention.

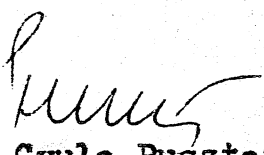
The English translation of the underlying Hungarian patent law provisions in force is herewith attached. We wish to call the attention that - in addition to the special provisions - plant varieties are also governed by the general rules of the patent law /for example, the order of procedure, legal remedy, as well as the rights and obligations related to protection/.



We would be very much obliged to you if you would submit our request to the Council for the purpose of having its advice.

Yours sincerely,

  
/: Jenő Váncsa :/  
Minister  
of Agriculture and Food

  
/: Dr. Gyula Pusztai :/  
President  
of the National Office  
of Inventions

Enclosures: 3

- Patent Law No. II of 1969,
- Provisions of the Law concerning plant varieties,
- Rules on the execution of the Law concerning plant varieties.

[Annex II follows]

Reproduced from Industrial Property, April 1970, pp. 112-121

## LEGISLATION

### HUNGARY

#### Law on the Protection of Inventions by Patents

(No. II of 1969) \*

#### PART I

##### Inventions and Patents

##### CHAPTER I

##### Subject of Patent Protection

##### Article 1

##### *Patentable Inventions*

Any solution which is new, represents progress, is of a technical nature, and is capable of practical application, is a patentable invention.

##### Article 2

##### *Novelty*

A solution is new if it has not been made available to the public to such an extent that it can be carried out by a person skilled in the art.

##### Article 3

##### *Progress*

A solution represents progress in comparison with the given state of the art if it satisfies needs which remained unsatisfied before or if it satisfies needs more advantageously than before.

##### Article 4

##### *Technical Nature*

A solution is of a technical nature if it brings about a change in the product or the manufacturing process.

##### Article 5

##### *Practical Applicability*

A solution is capable of practical application if it can be carried out repeatedly with the same result.

##### Article 6

##### *Patent Protection*

(1) The applicant shall be granted patent protection for his invention if:

- (a) the invention satisfies the requirements prescribed in Articles 1 to 5 of the Law at the date of priority (Article 43) and if it is not excluded from patent protection under the terms of paragraph (3);
- (b) the application complies with the formal requirements prescribed by this Law.

(2) Plant varieties and animal breeds and the processes for obtaining them shall be patentable if the variety or breed is new, homogenous and relatively stable (Article 67).

- (3) The invention cannot be granted patent protection if:
- (a) it relates to a medicine, a product produced chemically or, with the exception of cases mentioned under paragraph (2), food used for human or animal consumption; the process by which they are manufactured shall be patentable;
  - (b) the use thereof is contrary to law or socially accepted morals, unless trade in such products is merely restricted by law;
  - (c) the subject matter thereof is identical with that of a patent having an earlier date of priority; where identity is only partial, a patent may be granted with the appropriate limitations.

## CHAPTER II

### Rights and Obligations Deriving from an Invention and from Patent Protection

#### Article 7

##### *Personal Rights of the Inventor*

(1) The inventor is the person who created the invention. So long as a final court judgement does not rule to the contrary, the person named as such in the application filed at the National Office of Inventions with the earlier date of priority shall be presumed to be the inventor.

(2) The inventor shall be entitled to be named as such in the documents concerning the patent.

(3) The inventor shall be entitled to institute proceedings under the Civil Code against anybody disputing his quality of inventor or infringing his other personal rights deriving from the invention.

(4) Prior to the publication effected during the course of the patent application procedure, the invention may only be disclosed with the consent of the inventor or his successor in title.

#### Article 8

##### *Right to a Patent*

(1) The right to a patent shall belong to the inventor or his successor in title.

(2) So long as a final court judgement or another decision by an authority does not rule to the contrary, the person having filed a patent application at the National Office of Inventions with the earliest date of priority shall be considered the person in whom the right is vested.

(3) If two or more persons have jointly made an invention, the right to a patent shall belong to them, or their successors in title, jointly. If two or more persons have created the invention independently of each other, the right to a patent shall belong to the inventor, or his successor in title, who filed the application at the National Office of Inventions with the earliest date of priority.

#### Article 9

##### *Employee Inventions*

(1) An employee invention is an invention made by a person who, either on the basis of his employment or by virtue of other legal relations, is under obligation to develop solutions in the field of the invention.

(2) The right to a patent for an employee invention shall belong to the employer or the person entitled by other legal relations (hereinafter referred to as "the employer"). If the employer does not claim the patent or the invention, and gives his consent, the inventor or his successor in title may dispose of the invention.

(3) Disputes concerning the question whether an invention is an employee invention shall be settled by the court.

(4) The inventor of an employee invention shall be entitled to remuneration which shall be fixed by separate regulation.

#### Article 10

##### *Establishing Patent Protection*

(1) Patent protection shall be established by the publication of the patent application; the effect of protection shall be retroactive to the date of application.

(2) Protection arising out of the publication shall be provisional. It shall become definitive with the granting of the patent to the applicant.

#### Article 11

##### *Effects of Patent Protection*

(1) On the basis of patent protection, the owner of the patent (hereinafter referred to as "the patentee") shall have, as provided for by legislation, the exclusive right to work the invention or to grant a license of exploitation to another person. The exclusive right of working shall include systematic manufacture and exploitation as well as putting the subject of the invention on the market within the framework of economic activity.

(2) If the patent has been granted for a process, its effects shall extend to the products obtained directly by means of such process.

(3) The patentee shall be obliged to work the invention in the manner and to the extent required in order to satisfy the needs of national economy, or to grant a license to another person for that purpose. In the event of non-fulfilment of that obligation, the patent may be exploited under a compulsory license (Article 21).

#### Article 12

##### *Duration of Patent Protection*

(1) Definitive patent protection shall have a duration of twenty years beginning on the date of filing of the application.

(2) During the period of patent protection, annual patent fees, to be fixed by a special regulation, shall be payable. These fees shall be due each year on the date corresponding to the date of filing.

(3) Any annual fee may also be paid within a period of grace of six months beginning on the date when it became due, together with a surcharge fixed by the relevant regulation.

#### Article 13

##### *Scope of Patent Protection*

The scope of patent protection shall be determined by the claims (Article 41(2)). Claims may only be interpreted on the basis of the description and drawings.

#### Article 14

##### *Limitations of Patent Protection*

(1) Any person who, in the territory of the country, before the date of priority, was, in good faith and within the framework of his economic activities, already systematically manufacturing or using the subject of the invention or had made serious preparations with a view to doing so, shall have a right of prior use. Patent protection shall have no effect against a person entitled to a right of prior use, to the extent that such manufacture, use or preparations are concerned. The right to prior use (working) shall only be transferable with the undertaking or the production unit to which it belongs.

(2) Where reciprocity exists, the effects of patent protection shall not extend to means of movement and transport which are in transit in the territory of the country and to foreign goods which are not intended to be put on the market in the country.

#### Article 15

##### *Transfer of Rights*

(1) Rights deriving from an invention and from patent protection, with the exception of personal rights, may be transferred, assigned, or restricted.

(2) Transfer by contract may be invoked against a third party who acquired his right in good faith and for a consideration only if the transfer is recorded in the Patent Register.

#### Article 16

##### *Joint Patent Application and Joint Patent*

(1) Where there are two or more patentees for the same patent, each joint patentee may dispose of his share only. If a share is alienated, the other joint patentees shall have a right of pre-emption.

(2) Each joint patentee may also exploit the patent by himself, but he must give appropriate remuneration to the other joint patentees, in proportion to their shares.

(3) Joint patentees may only jointly grant a license to a third party for the exploitation of the patent. A judicial decision may be substituted for consent under the general rules of civil law (Civil Code, Article 5(3)).

(4) In case of doubt, the shares of joint patentees shall be equal. If one of the joint patentees renounces patent protection (Article 31), the rights of the other joint patentees shall cover his share in proportion to their shares.

(5) Each joint patentee may take steps, also individually, in order to maintain and protect the patent right. Costs concerning the patent are to be acquitted by the joint patentees in proportion to their shares. If one of the joint patentees, despite being notified, does not acquit the cost charged to him, the joint patentee bearing the cost may claim the transfer of the share of the joint patentee who did not fulfil his obligation.

(6) The provisions concerning patents in joint ownership shall apply to joint patent applications as well.

#### CHAPTER III

##### *Contracts of Exploitation*

#### Article 17

##### *Conclusion of Contracts of Exploitation*

(1) On the basis of a contract of exploitation (contract granting a license under a patent) the patentee grants a license for the exploitation of the invention; in exchange, the user is under obligation to pay royalties.

(2) A contract of exploitation may be invoked against a third party who acquired his right in good faith and for a consideration only if it is recorded in the Patent Register.

#### Article 18

##### *Rights and Obligations of the Parties*

(1) The patentee shall guarantee, for the duration of the contract of exploitation, that third parties shall have no right in the patent which would prevent or limit its exploitation. This guarantee shall be subject to the same rules as those applying to a vendor for the transfer of his right of ownership, with the difference that the user, instead of withdrawing, may rescind the contract with immediate effect.

(2) The contract of exploitation shall cover all points of the patent claims and every mode of exploitation to any extent whatever, without limitation in time or space. However, a right of exploitation under a license contract shall be exclusive only if expressly stipulated.

(3) The patentee shall inform the user of any rights deriving from the patent, as well as of important circumstances. Nevertheless, he shall be obliged to transfer technical know-how for the carrying out (working) of the invention only if this has been expressly agreed.

(4) The license may be assigned by the user to a third party only with the express consent of the patentee.

(5) The patentee shall be obliged to ensure maintenance of the patent.

#### Article 19

##### *Expiration of the Contract of Exploitation*

(1) The contract of exploitation shall expire, with effect for the future, when the period of its duration comes to an end or if certain specified circumstances occur.

(2) If the patent ceases to exist with retroactive effect to its origin, the user may claim only the portion of the royalties he paid that was not covered by the useful results derived from the exploitation of the invention.

#### Article 20

##### *Effect of the Provisions Relating to Contracts of Exploitation*

(1) The parties, by mutual consent, may lay down terms that differ from the provisions relating to contracts of exploitation, where this is not prohibited by legislation.

(2) Matters relating to contracts of exploitation and not covered by this Law shall be governed by the provisions of the Civil Code.

## CHAPTER IV

## Compulsory Licenses. Exploitation by the State

## Article 21

*Compulsory License for Non-Working of the Patent*

If the patentee, within four years from the date of filing of the patent application, or within three years from the grant of the patent, whichever period last expires, has not worked the invention in the territory of the State to the extent and in the way required to meet the needs of the national economy, or if he has not undertaken serious preparations or has not granted a license for that purpose, an enterprise in the country may apply for and receive a compulsory license, unless the patentee justifies the failure in question.

## Article 22

*Compulsory License in the Case of Dependent Patents*

If the patented invention cannot be exploited without infringing another patent, a compulsory license to the extent necessary for exploitation shall be granted under the patent impeding exploitation.

## Article 23

*Common Provisions on Compulsory Licenses.*

(1) The application for a compulsory license shall establish that the requirements for a compulsory license are complied with, namely, that

- (a) the patentee was unwilling to grant a license on his own for exploitation of the patent, even under appropriate conditions, and that
- (b) exploitation of the invention to the required extent is ensured.

(2) A compulsory license, unless renounced or cancelled, shall be in effect until the expiration of patent protection; it may be granted with or without limitations. Compulsory licenses shall be non-exclusive; they shall be recorded in the Patent Register.

(3) The patentee shall receive adequate compensation for the compulsory license, which shall be fixed, failing agreement between the parties, by the court.

(4) The holder of a compulsory license shall have the same right as the patentee in regard to the maintenance of the patent and the exercise of the rights deriving from protection.

(5) A compulsory license may only be assigned or transferred with the enterprise (production unit) concerning which it was granted. The holder of a compulsory license may not grant a license for exploitation.

(6) The holder of a compulsory license may renounce his compulsory license at any time. If, within one year from the definitive grant of the compulsory license, the holder thereof does not start exploitation, the patentee may claim modification or cancellation of the compulsory license.

## Article 24

*Exploitation for the Needs of National Defense*

(1) The President of the National Office of Inventions may, on the request of the Minister of National Defense, order

that any filed or patented invention shall be exploited for the needs of national defense.

(2) Such exploitation shall give rise to compensation, the amount of which, failing agreement, shall be fixed by the court.

## CHAPTER V

## Infringement of Inventions and Patents

## Article 25

*Infringement of an Invention*

Where the subject of a patent application or of a patent has been taken unlawfully from the invention of another person, the injured party or his successor in title may claim partial or total assignment of the patent application or of the patent.

## Article 26

*Patent Infringement*

(1) Any person who unlawfully exploits an invention under patent protection commits patent infringement.

(2) The patentee may, according to the circumstances of the case, have recourse to the following civil remedies:

- (a) request that the fact of infringement be declared by the court;
- (b) request an injunction in order to stop the infringement and enjoin the infringer to discontinue the infringement;
- (c) demand satisfaction from the infringer by way of a declaration, or by other appropriate means; if necessary, the declaration shall be made public by the infringer or at his expense;
- (d) demand restitution of the enrichment obtained by infringement of the patent;
- (e) request the court to order the seizure of the instruments used for the infringement and of the infringing products.

(3) The court may rule, according to the circumstances of the case, that the instruments and products seized be divested of their infringing character or be auctioned according to court procedure; in the latter case the court shall fix the sum to be collected.

(4) If the patent infringement has caused material damage, damages shall be payable under the relevant provisions of the Civil Code.

## Article 27

*Rights of the Applicant and of the User in the Event of Patent Infringement*

(1) An applicant whose invention benefits from provisional protection may also institute proceedings for patent infringement; the proceedings shall be deferred, however, until the decision to grant the patent has become final.

(2) In the event of patent infringement, the user may call upon the patentee to take appropriate action in order to put a stop to the infringement. If the patentee, within thirty days from the notification, fails to take action, the user recorded in the Patent Register may institute proceedings, in his own name, for patent infringement.

### Article 28

#### *Decision of Non-Infringement*

(1) Any person who fears that proceedings for patent infringement will be instituted against him, may, prior to the institution of such proceedings, request a decision ruling that the product manufactured or intended to be manufactured by him, or the process applied or intended to be applied, does not infringe a particular patent specified by him.

(2) A definitive decision of non-infringement bars the institution, on the basis of the patent concerned, of infringement proceedings in respect of the same product or process.

### CHAPTER VI

#### *Expiration of Patent Protection*

### Article 29

#### *Expiration of Provisional Patent Protection*

Provisional patent protection (Article 10(2)) shall expire with retroactive effect to the date of origin if:

- (a) the application is definitively rejected;
- (b) in the case of deferred examination, if such examination is not requested within the period of four years prescribed by this Law (Article 47(3)) or is not ordered ex officio;
- (c) the annual fees have not been paid, even during the period of grace (Article 12(3));
- (d) the applicant surrenders his rights.

### Article 30

#### *Expiration of Definitive Patent Protection*

Definitive patent protection shall expire,

- (a) when the period of protection comes to an end, on the day following the date of expiration;
- (b) if the annual fees have not been paid, even during the period of grace (Article 12(3)), on the day following the date when the fee became due;
- (c) if the patentee surrenders his patent, on the day following receipt of the surrender, or on an earlier date specified by the person surrendering the patent;
- (d) if the patent is declared null and void, with retroactive effect to the date of filing of the application (Article 32(1)).

### Article 31

#### *Surrender of Patent Rights*

(1) The applicant, appearing in the list of published patent applications, or the patentee listed in the Patent Register, may surrender his patent rights by written declaration addressed to the National Office of Inventions. If the surrender affects the rights of third parties based on legislation, on decisions of an authority, on a license contract recorded in the Patent Register, or if proceedings are recorded in the Patent Register, it shall only take effect with the consent of the parties concerned.

(2) It shall also be possible to surrender certain claims of the patent.

### Article 32

#### *Nullity of and Limitations on Patents*

(1) The patent shall be declared null and void with retroactive effect to its origin if: —

- (a) the subject of the patent does not satisfy the requirements laid down in Article 6(1)(a);
- (b) the description does not satisfy the legal requirements (Article 41).

(2) Where conditions of nullity exist only partially, the patent shall be limited accordingly.

(3) Nullity, as well as limitation, shall be recorded in the Patent Register and published in the Official Gazette of the National Office of Inventions.

### PART II

#### *Procedure in Patent Matters*

### CHAPTER VII

#### *General Regulations for Procedure before the National Office of Inventions*

### Article 33

#### *Powers of the National Office of Inventions*

The National Office of Inventions shall be empowered to:

- (a) grant patents;
- (b) declare that patent protection has expired;
- (c) pronounce a patent null and void;
- (d) pronounce non-infringement;
- (e) interpret the description in a patent;
- (f) deal with matters concerning the maintenance and registration of patents.

### Article 34

#### *Application of the General Provisions on Administrative Procedure*

(1) The National Office of Inventions shall proceed in patent matters, with the exceptions prescribed in this Law, by applying Law No. IV of 1957 on the General Provisions on Administrative Procedure. In the cases specified in special legislation, the National Office of Inventions shall take decisions in sittings in chambers.

(2) The National Office of Inventions may <sup>not</sup> retract or modify its decisions on patent matters taken on merits. Its decisions may not be invalidated or changed by a supervisory authority; they shall be without appeal.

(3) A decision in patent matters taken by the National Office of Inventions may be changed by the court, in conformity with the provisions of Article 57.

### Article 35

#### *Access to the Files*

(1) Until the publication of the patent application, only the applicant, his representative, or the expert or the body called upon to give an expert opinion shall have access to the files, be allowed to make copies or be allowed to participate in the procedure. The inventor shall have access to the files and may make remarks even if he is not the applicant.

(2) Proceedings before the National Office of Inventions shall be public only if there is an adverse party participating.

(3) The President of the National Office of Inventions may order, on the request of the competent Minister and in the interest of national defense, that the patent application shall be dealt with as a State secret. In that case, publication of the application, grant of the patent, and printing of the description shall be waived; the other proceedings relative to the patent shall also be qualified as a State secret.

#### Article 36

##### *Power of Attorney*

(1) The National Office of Inventions may order the party, where warranted, to give power of attorney to a patent attorney in order to represent him, jointly or alone.

(2) An alien shall be obliged to give power of attorney to an attorney-at-law, a patent attorney or other qualified person, having domicile in the country, in order to represent him in proceedings before the National Office of Inventions.

#### Article 37

##### *Registration of Patent Matters*

(1) The National Office of Inventions shall keep a list of published patent applications as well as a Register concerning patents and the rights relative thereto; all proceedings and other circumstances concerning published patent applications and patents shall be recorded therein.

(2) Any right relative to patent protection may be invoked against a third party who acquired his right in good faith and for a consideration, only if it is recorded in the list or Register.

(3) Information shall be recorded in the list of published patent applications or in the Patent Register only on the basis of definitive decisions of the National Office of Inventions or of a court.

(4) The Patent Register shall be accessible to anyone; copies of the information it contains shall be available on request.

(5) All decisions and all facts the publication of which is prescribed by legislation shall be published in the *Official Gazette* of the National Office of Inventions.

#### Article 38

##### *Restoration of Rights*

In patent proceedings — unless prohibited by legislation — a request for the restoration of rights may be submitted within fifteen days from the unobserved time limit, or the last day of the unobserved period.

#### Article 39

##### *Use of Languages*

In patent proceedings, documents in foreign languages may also be submitted; the National Office of Inventions may however, require a translation into the Hungarian language.

### CHAPTER VIII

#### Patent Application Procedure

#### Article 40

##### *Patent Application*

(1) The procedure for the grant of a patent shall begin with the filing of a patent application with the National Office of Inventions.

(2) The patent application shall consist of the claim, the description of the invention, and other relevant documents. Detailed regulations concerning the formalities to be complied with in patent applications shall be published, by the President of the National Office of Inventions, in the *Official Gazette* in the form of an announcement.

(3) Rights can only be based on an application which contains at least the name and address of the applicant as well as a description of the essential features of the invention (Article 41(1)). The description can also be made by reference to a priority document.

#### Article 41

##### *Description*

(1) The description shall make it possible for a person skilled in the art to carry out the invention on the basis of the description and drawings.

(2) At the end of the description one or more claims shall define, in accordance with other parts of the description, the scope of the protection applied for.

#### Article 42

##### *Unity of Invention*

In any patent application, patent protection may only be sought for a unitary invention. More than one invention may only be included in a single application if the subjects thereof are directly linked to each other.

#### Article 43

##### *Priority*

(1) The date of priority giving rise to a right of priority shall be:

- (a) generally, the day on which the application (priority by application) or the amendment extending the scope of protection (priority by amendment) arrived at the National Office of Inventions;
- (b) in the cases defined by special legislation, the filing date of the foreign application (convention priority);
- (c) in the cases determined by an announcement of the President of the National Office of Inventions published in the *Official Gazette*, the day of the exhibition of the invention (priority by exhibition).

(2) The order of priority of applications which arrived on the same day shall be determined by their serial number in the list of applications.

(3) Different claims may have different priorities.

(4) The priority defined in paragraph (1)(b) and (c) can only be claimed by a person who has submitted his declaration



of priority simultaneously with the patent application. Nevertheless, the document justifying the priority shall be submitted, on pain of loss of the right of priority, within three months of the filing of the application.

(5) If the applicant, on request or on his own initiative, divides his patent application, all divisional applications shall have the original date of filing as their filing date and may also retain, where applicable, the right of priority.

#### Article 44

##### *Formal Examination of the Patent Application*

(1) The National Office of Inventions shall, in all cases, undertake an examination of the patent application in order to ascertain whether it complies with the requirements prescribed in Article 40(2) and (3).

(2) If the patent application is so incomplete that no right can be based on it (Article 40(3)), the application shall be rejected without further procedure.

(3) If the patent application does not comply with the requirements prescribed in Article 40(2), the applicant shall be so notified and invited to remedy the insufficiencies. If the notification produces no result, the patent application shall be rejected.

#### Article 45

##### *Scope of the Examination of the Substance of the Patent Application*

The National Office of Inventions shall examine the substance of the patent application in regard to the following points:

- (a) whether the subject of the application is of a technical nature and capable of practical application;
- (b) whether the subject of the application is eligible for patent protection under Article 6(3)(a) or (b);
- (c) whether the description and patent claims comply with legal requirements;
- (d) whether the invention is unitary;
- (e) whether the application benefits from the claimed right of priority;
- (f) whether the subject of the application is new and represents progress;
- (g) whether there is no other patent application or patent relating to the same invention and having an earlier right of priority.

#### Article 46

##### *Complete Examination*

Before the patent application is published, the National Office of Inventions shall undertake a complete examination including points (a) to (g) of Article 45:

- (a) if the applicant so requests;
- (b) with regard to the field in respect of which the President of the National Office of Inventions, acting with the consent of the competent Minister, orders a complete examination in an announcement published in the *Official Gazette*;
- (c) if the National Office of Inventions otherwise orders a complete examination ex officio.

#### Article 47

##### *Deferred Examination*

(1) In the absence of the conditions set forth in Article 46, the National Office of Inventions shall undertake an examination of the application prior to publication only as regards points (a) to (e) of Article 45.

(2) The next stage of the deferred examination (subsequent examination) shall include examination of the requirements set forth in points (f) and (g) of Article 45.

(3) Subsequent examination shall be ordered by the National Office of Inventions within the period of four years from the publication of the patent application at the request of any person; it may also be ordered ex officio. Subsequent examination shall begin three months after publication of the order of the National Office of Inventions in the *Official Gazette*.

#### Article 48

##### *Procedure of Examination as to Substance*

(1) If the examination as to substance reveals insufficiencies, the applicant shall be so notified and invited to remedy the insufficiencies; depending on the character of the latter, the application shall be divided or a declaration made.

(2) If the National Office of Inventions finds, at the expiration of the time limit fixed, that the patent application does not comply with the requirements of the examination, because insufficiencies have not been remedied, the division or the declaration not having been made, or despite these, it shall reject the application with the exception of the case mentioned in paragraph (3).

(3) If a patent application relating to the same subject and having an earlier priority date has also been filed, until the procedure relating to it is terminated, the other procedure shall be stayed.

(4) If proceedings have been instituted in order to settle the right to a patent application, the patent procedure shall be stayed until such proceedings are definitively terminated.

(5) If an employer who has filed an application in respect of an employee's invention does not remedy the insufficiencies or does not make the declaration requested, despite repeated notifications, his attitude shall be regarded as signifying his consent that the inventor may dispose of his invention. In such a case, the inventor shall be notified to remedy the insufficiencies or to make the declaration within a new, appropriately fixed time limit. If he enters the procedure, it shall be continued with his participation.

#### Article 49

##### *Amendment and Division*

(1) The applicant shall be entitled to amend the description (claims) and drawings; once the decision ordering publication has become definitive, the amendment may not broaden the scope of protection.

(2) If the applicant has claimed patent protection for two or more inventions in one application, he may divide his application.



## Article 50

*Publication*

(1) If the patent application complies with the requirements of the examination, the National Office of Inventions shall order publication of the patent application. If there is reason to do so — on the request of the applicant or ex officio — publication may be postponed.

(2) If the decision ordering publication becomes definitive, the essential features of the application shall be published in the next issue of the *Official Gazette* of the National Office of Inventions.

(3) After publication, any person shall have access to the patent application and its annexes and copies may be obtained by paying a fee.

## Article 51

*Opposition*

(1) In the case of deferred examination, within three months of the announcement of the subsequent examination or, in the case of a complete examination, within three months of publication, any person may file, with the National Office of Inventions, opposition to the grant of the patent, invoking non-compliance with the requirements listed in points (a) to (g) of Article 45.

(2) If, by the end of the period of time granted for opposition, opposition to the patent application has been filed, an opposition procedure shall be opened in order to clarify the positions of the opponent and of the applicant. The decision regarding grant of the patent shall be taken on the basis of the results obtained.

(3) If the opposition is rejected, the patent application procedure shall be continued ex officio. No agreement may be entered into during the course of the procedure.

(4) The losing party shall be enjoined to pay the costs of the procedure; the opponent may be enjoined to pay the costs only if there was obviously no basis for his opposition.

## Article 52

*Grant of Patent*

(1) Depending on the results of the examination as to substance and of any opposition procedure, the National Office of Inventions shall grant a patent in respect of the subject of the application, or it shall reject the application.

(2) The patentee shall receive a patent document from the National Office of Inventions. To the document shall be appended the printed description and drawings. The grant of the patent shall be recorded in the Patent Register and published in the *Official Gazette* of the National Office of Inventions.

## CHAPTER IX

## Procedure in the National Office of Inventions in Matters of Granted Patents

## Article 53

*Declaration of Expiration of Patent Protection*

Expiration of patent protection under Article 29 and items (a) to (c) of Article 30 shall be pronounced by a decision of

the National Office of Inventions; it shall be recorded in the list of published applications or in the Patent Register, whichever applies, and published in the *Official Gazette* of the Office.

## Article 54

*Revocation Procedure*

(1) Any person may request the revocation of a patent. The request, together with the documents in proof, shall be filed at the National Office of Inventions with a copy for each patentee plus one additional copy. The request shall state the grounds (Article 32(1)) upon which it is based: the originals of the documents in proof or certified copies thereof shall be appended to the request.

(2) The National Office of Inventions shall forward the request for revocation with its appendices to the patentee and shall invite him to make a statement. Following the written preparatory work, the National Office of Inventions shall pronounce its decision on revocation in a hearing.

(3) If the request for revocation has been refused, the procedure may be continued ex officio. No agreement may be entered into during the course of the procedure.

(4) The losing party shall be enjoined to pay the cost of the revocation procedure.

## Article 55

*Procedure for a Decision on Non-Infringement*

(1) The petitioner shall submit his request for a decision on non-infringement to the National Office of Inventions, together with a description of the product manufactured or to be manufactured, or of the process applied or to be applied and an indication of the patent in question. The National Office of Inventions shall pronounce its decision on non-infringement in a hearing.

(2) The costs of the procedure for a decision on non-infringement shall be borne by the petitioner.

## Article 56

*Interpretation of the Description*

In the event of controversy concerning the interpretation of the patent description, the National Office of Inventions shall, at the request of the competent court or other authority, give an expert opinion.

## CHAPTER X

## Court Procedure in Patent Cases

## Article 57

*Review of Decisions Taken by the National Office of Inventions*

(1) On request, the court may review the decisions of the National Office of Inventions taken with regard to:

- (a) granting a patent;
- (b) declaring patent protection to have expired;
- (c) revoking a patent;
- (d) ruling on non-infringement.

(2) Any person who took part, as a party, in the proceedings at the National Office of Inventions may request that the

decision be reviewed; the public prosecutor may also request that the decision be reviewed.

(3) The period within which such a request shall be submitted shall be thirty days from the day on which the party was notified of the decision.

(4) The request shall be submitted either to the National Office of Inventions or to the court. The National Office of Inventions shall forward the request, together with the documents of the patent, within eight days.

#### Article 58

##### *Jurisdiction*

(1) Court proceedings for the review of decisions taken by the National Office of Inventions shall be under the exclusive jurisdiction of the Metropolitan Court of Budapest.

(2) The Supreme Court shall be competent to deal with appeals lodged against decisions of the Metropolitan Court of Budapest.

#### Article 59

##### *Composition of the Court*

In such proceedings, the bench of the Metropolitan Court of Budapest shall consist of three professional judges, two of whom shall possess a superior technical, or equivalent, qualification.

#### Article 60

##### *Application of the Provisions of the Code of Civil Procedure*

(1) In cases involving requests for the review of a decision on a patent, the Court shall proceed in accordance with the rules of "non-contentious" civil procedure, subject to the exceptions mentioned in this Chapter. The public prosecutor shall enjoy all rights which he otherwise has under such procedure.

(2) The court of first instance shall take evidence in accordance with provisions of the Code of Civil Procedure and shall conduct a trial. If the case can be settled on the basis of documentary evidence, the court may take a decision without a trial, but the party, on request, shall be heard.

(3) The decision taken by the said court shall be subject to appeal before the court of second instance in accordance with the provisions of the Code of Civil Procedure; that court may also take evidence within certain limits.

#### Article 61

##### *Incompatibility*

(1) In addition to the persons listed in Articles 13 to 15 and 21 of the Code of Civil Procedure, no one shall consider the case and shall act as judge if he

(a) participated in taking the decision at the National Office of Inventions;

(b) is a relative, former husband or wife — as stated by Article 13(2) of the Code of Civil Procedure — of a person mentioned under (a) above.

(2) The provisions of paragraph (1) shall also apply to court reporters and experts.

#### Article 62

##### *Restoration of Rights*

The provisions of Article 38 shall apply to claims for the restoration of rights in "non-contentious" proceedings of the court.

#### Article 63

##### *Representation*

In addition to the persons listed in Article 67(1) of the Code of Civil Procedure, patent attorneys may also act as representatives.

#### Article 64

##### *Decisions*

(1) If the court changes a decision taken in a patent case, the court judgement shall replace the decision of the National Office of Inventions.

(2) The court shall invalidate the decision and order the National Office of Inventions to start a new procedure if a person against whom incompatibility can be invoked participated in the taking of the decision or if important rules of procedure were infringed during the procedure which cannot be remedied by the court.

#### Article 65

##### *Review to Safeguard Legality*

As to the review to safeguard legality, the provisions of the Code of Civil Procedure shall apply, provided that final decisions dismissing a patent application, declaring a patent protection to have expired, pronouncing a patent null, or limiting a patent, cannot be repealed on merits, and that the Supreme Court shall be restricted to a ruling of infringement of the law.

### CHAPTER XI

#### Patent Litigation

#### Article 66

##### *Jurisdiction*

(1) Court proceedings concerning the grant, modification or revocation of a compulsory license, fixing the amount of damages for exploitation, the establishment of a right of prior working of the patent, and proceedings for patent infringement shall be under the exclusive territorial and material jurisdiction of the Metropolitan Court of Budapest.

(2) In such proceedings, the bench of the Metropolitan Court of Budapest shall be composed as prescribed in Article 59.

(3) In the court proceedings referred to in paragraph (1), the provisions of the Code of Civil Procedure shall apply, as well as the provisions of Articles 61 and 63 of this Law.

(4) In any other patent litigation not mentioned in paragraph (1), the courts of *comitats* (or the Metropolitan Court) or the economic commission of arbitration shall proceed in accordance with the general rules.

## PART III

Special Provisions Concerning Plant Varieties  
and Animal Breeds

## Article 67

*Requirements for Protection of Plant Varieties by Patents*

The requirements concerning the novelty, homogeneity and relative stability of plant varieties shall be laid down by special regulations which shall take the scientific developments into consideration.

## Article 68

*Effect of Protection of Plant Varieties by Patents*

(1) On the basis of a patent granted for a plant variety, the patentee shall have the exclusive right — within the limits set by legislation — to produce for commercial purposes, to sell, or to put on the market, the sexual or asexual propagating material of the new plant variety — as such — or to grant a license to any third party for such activities.

(2) Only with the permission of the patentee may the propagating material of the protected plant be exported to foreign countries in which protection for plants similar to the protection specified by this Law does not exist.

## Article 69

*Examination of the Substance of Applications Concerning Plant Varieties*

The National Office of Inventions shall examine the substance of the application in regard to the following points:

- (a) whether the subject of the application is not excluded from patent protection under Article 6(3)(a) and (b);
- (b) whether the description and the patent claims comply with the legal requirements;
- (c) whether the invention is unitary;
- (d) whether the application benefits from the claimed right of priority;
- (e) whether the subject of the application is new, homogeneous and stable;
- (f) whether there is no other patent application or patent relating to the same plant, and having an earlier right of priority.

## Article 70

*Application of the General Provisions*

Otherwise, the provisions of Chapters I to XI shall apply *mutatis mutandis* to plant varieties and with the following additions:

- (a) if the invention concerning a plant variety was elaborated with a State organ (research or training institute, State enterprise or State farm, etc.), the rights of invention shall be vested in the State of Hungary and shall be exercised by the Minister of Agriculture and Food or by an organ designated by him;
- (b) the patented plant variety may only be put into public production after having been certified by the State.

## Article 71

*Application of the Provisions on Plant Varieties to Animal Breeds*

The provisions of Articles 67 to 70 shall apply *mutatis mutandis* to animal breeds.

## PART IV

## Final Provisions

## Article 72

- (1) This Law shall enter into force on January 1, 1970.
- (2) Simultaneously with the entry into force of this Law, the following shall be repealed:
  - the provisions of Law XXXVII/1895 on patented inventions still in force, legislation completing and amending that Law; provisions concerning patents of Laws XI/1911, LV/1912, XII/1913, XXXV/1920, XVII/1932 as well as the provisions implementing that legislation;
  - Decree Law No. 8/1949 on the amendment of certain legislative provisions on patents, trademarks, and industrial designs;
  - paragraph (3) of Article 11 of Law III/1952, defined by Law VIII/1957, Article 14 of Decree Law No. 5/1958.
- (3) In the legislation passed before November 1, 1949, concerning trademarks, and industrial designs, the competence of the Department of Applications of the Patent Tribunal shall be taken over by the National Office of Inventions; the jurisdiction of the Judicial Department shall pass to the Metropolitan Court of Budapest, the bench of which shall be as defined by the present Law.
- (4) The Government shall be authorized to issue regulations on the remunerations for inventions, as well as on the fulfilment of international obligations.
- (5) Provisions on the certification by the State of plant varieties and animal breeds shall be laid down by the Government.
- (6) The President of the National Committee of Technical Development and the Minister for Justice shall be authorized to issue, by decree and in cooperation with the President of the National Office of Inventions, transitional provisions concerning the entry into force of this Law and other rules of implementation.
- (7) The Minister for Justice shall be authorized to issue, in cooperation with the President of the National Committee of Technical Development and with the President of the National Office of Inventions, detailed rules on court procedure in patent cases, as well as regulations concerning the qualifications of the members of the bench dealing with cases concerning the protection of industrial property.

## ANNEX III

Extract from the Decree  
on the Execution of Law No. II of 1969  
on the Protection of Inventions by Patents  
(No. 4/1969. (XII.28) OMFBI-IM)

Rules relating to the special provisions  
in the above Law concerning  
Plant Varieties and Animal Breeds

## Rule 31

## /to Article 67/

/1/ A plant variety is new if it differs, in respect of its morphological, physiological and other features, by at least one essential characteristic from the varieties already known.

/2/ A plant variety is homogeneous if the essential characteristics of its individuals - having regard to the particular features of its sexual reproduction and vegetative propagation - are identical.

/3/ A plant variety is relatively stable if its essential characteristics, during either the natural or artificial reproduction or multiplication - or reproduction cycle - are true to the description.

## Rule 32

## /to Article 68/

/1/ Propagating material shall be considered the whole plant, seed or other part of the plant capable of reproduction.

/2/ The effect of patent protection shall not extend to the use of the propagating material, as initial source, for scientific purposes or for the creation of other new varieties.

Rule 33

/to Article 69/

/1/ The patentability of the plant variety shall be decided by the National Office of Inventions on the basis of experimental production.

/2/ The experimental production in the territory of the country shall be ordered by the National Office of Inventions and shall be conducted by an organ designated by the Ministry of Agriculture and Food.<sup>18</sup>

/3/ The applicant shall, at the invitation of the designated organ, make available the propagating material deriving from the prescribed period of vegetation, at the specified time and place, and in the determined quantity.

<sup>18</sup> Position No. 22 of the National Office of Inventions /issue No. 3 of the Official Gazette, 1971/:

22/ For the certification of the homogeneity and stability of plant varieties and animal breeds, experimental production shall be ordered only in the case if there are no data available thereon.

/4/ If the applicant has submitted the new plant variety or its propagating material to chemical, irradiation or other treatment, he shall notify the National Office of Inventions thereof.

/5/ For furnishing proofs relative to the patentability of the propagating material and the plant variety, the applicant shall, at his request, be accorded a time limit of at least four years from the filing date.

/6/ The applicant may inspect the result of the experimental production and may also be invited to do so by the organ conducting the production.

/7/ The expenses of the experimental production shall be borne by the applicant.

#### Rule 34

#### /to Article 70/

/1/ In one patent application protection may be applied only for one plant variety.

/2/ The specification shall contain at least the clear-cut description of the plant variety applied for, which permits of the recognition of the distinguishing morphological and physiological characteristics.

/3/ The new plant variety shall be given a denomination which shall at the same time be regarded the name of the variety. For justified reasons, the National Office of Inventions may oblige the applicant to change the variety denomination, particularly where the denomination is liable to mislead or to cause confusion.

/4/ For the purposes of annexes to the patent specification to be printed, the patentee shall, at the invitation of the National Office of Inventions, file the required number of photographs.

#### Rule 35

#### /to Article 70/

The patent granted for the plant variety, in addition to the cases specified in Article 32 of the Patent Law, shall be declared null and void - with retroactive effect to the occurrence of the motive of nullification - if the plant variety has lost its homogeneity and relative stability. The patentee is obliged to furnish proofs of the existence of homogeneity and relative stability.

#### Rule 36

#### /to Article 71/

The provisions of Rules 31 to 35 shall apply *mutatis mutandis* to animal breeds.