

PLANT VARIETY PROTECTION

GAZETTE AND NEWSLETTER

No. 103 July 2010



UPOV

INTERNATIONAL UNION
FOR THE PROTECTION
OF NEW VARIETIES OF PLANTS

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GAZETTE

NEW MEMBERS OF UPOV

OMAN*

On October 22, 2009, the Government of Oman deposited its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, with the Secretary-General of UPOV.

Oman became the sixty-eighth member of the Union. According to the notification deposited with the Secretary-General together with the instrument of accession, protection is available to the genera and species listed below:

The Convention entered into force for Oman one month after the deposit of its instrument of accession, i.e. on November 22, 2009. On that date,

SCIENTIFIC NAMES	ENGLISH NAMES
Fam. Gramineae	
<i>Triticum aestivum</i>	Bread Wheat
<i>Triticum turgidum var. durum</i>	Durum Wheat
<i>Hordeum vulgare</i>	Barley
<i>Avena sativa</i>	Oat
<i>Zea mays</i>	Corn or Maize
<i>Sorghum bicolor</i>	Sorghum
<i>Pennisetum purpureum</i>	Elephant Grass
<i>Pennisetum typhoides</i>	Pearl Millet
<i>Saccharum officinarum</i>	Sugarcane
Fam. Leguminosae	
<i>Medicago sativa</i>	Alfalfa
<i>Vigna unguiculata var. sinensis</i>	Fodder cowpea
<i>Phaseolus radiatus</i>	Mungbean
<i>Cicer arietinum</i>	Chickpea
<i>Trigonella foenum graecum</i>	Fenugreek
<i>Prosopis cineraria</i>	Ghaf
Fam. Alliaceae	
<i>Allium cepa</i>	Onion
<i>Allium sativum</i>	Garlic
Fam. Palmaceae	
<i>Phoenix dactylifera</i>	Date palm
<i>Cocus nucifera</i>	Coconut
Fam. Rutaceae	
<i>Citrus aurantifolia</i>	Lemon (Key lime)
<i>Citrus limettoides</i>	Sweet Lime
<i>Citrus sinensis</i>	Citrus

* Pursuant to Article 34(3) of the 1991 Act of the UPOV Convention, any State which is not a member of the Union and any intergovernmental organization shall, before depositing its instrument of accession, ask the Council of UPOV to advise it in respect of the conformity of its laws with the provisions of the UPOV Convention. If the decision embodying the advice is positive, the instrument of accession may be deposited. The positive advice of the Council of UPOV concerning the Sultanate of Oman is contained in paragraph 8 of document C/43/17 based on document C/43/14 (http://www.upov.int/en/documents/c/index_c43.htm).

SCIENTIFIC NAMES	ENGLISH NAMES
Fam. Anacardiaceae	
<i>Mangifera indica</i>	Mango
Fam. Musaceae	
<i>Musa spp.</i>	Banana
Fam. Malvaceae	
<i>Gossypium spp.</i>	Cotton
Fam. Solanaceae	
<i>Lycopersicon esculentum</i>	Tomato
<i>Solanum tuberosum</i>	Potato
<i>Nicotiana tabaccum</i>	Tobacco
Fam. Convolvulaceae	
<i>Ipomoea batatas</i>	Sweet Potato
Fam. Pedaliaceae	
<i>Sesamum indicum</i>	Sesame
Fam. Umbellifera	
<i>Daucus carota</i>	Carrot
Fam. Cucurbitaceae	
<i>Cocumis sativus</i>	Cucumber
<i>Cucumis melo var. chito</i>	Melon
<i>Lagenaria vulgaris</i>	Lagenaria
Fam. Moraceae	
<i>Ficus carica</i>	Common Fig
Fam. Puniceaceae	
<i>Punica granatum</i>	Pomegranate
Fam. Rhamnaceae	
<i>Zizyphus spinachristi</i>	Nabka or Christ-thorn
Fam. Bursaeceae	
<i>Boswellia sacara Fluenc</i>	Frankincense
Fam. Vitaceae	
<i>Vitis spp.</i>	Grape
Fam. Rosaceae	
<i>Prunus ameriaca</i>	Apricot
<i>Prunus amygdalus</i>	Almond
<i>Prunus spp.</i>	Peach
Fam. Rubiaceae	
<i>Coffea arabica</i>	Arabian Coffee
Fam. Iridaceae	
<i>Crocus sativa</i>	Saffron

ACCESSION TO THE 1991 ACT OF THE UPOV CONVENTION

SLOVAK REPUBLIC

On May 12, 2009, the Government of the Slovak Republic deposited its instrument of accession to the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

The Slovak Republic has been a member of UPOV since January 1, 1993.

The 1991 Act entered into force for the Slovak Republic on June 12, 2009, one month after the deposit of its instrument of accession.

According to the notification deposited with the Secretary-General together with the instrument of accession, protection is available to all genera and species.

EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES

LITHUANIA

The Office of the Union received a notification concerning the extension of the list of genera and species eligible for protection approved by the Order No. 3D-466 of the Minister of Agriculture of the

Republic of Lithuania of 29 June 2009 (Official Journal, 2009, No. 80-3353).

No.	Plant Genera (Botanical name)	Plant Species (Common name)	
		in Latin	in English
1	2	3	4
Agricultural Plants			
Cereals			
1.	<i>Avena</i> L.	<i>Avena sativa</i> L.	Oat
2.	<i>Fagopyrum</i> Mill.	<i>Fagopyrum esculentum</i> Moench	Buckwheat
3.	<i>Hordeum</i> L.	<i>Hordeum vulgare</i> L.	Barley
4.	<i>Panicum</i> L.	<i>Panicum miliaceum</i> L.	Common millet
5.	<i>Secale</i> L.	<i>Secale cereale</i> L.	Rye
6.	<i>Triticum</i> L.	<i>Triticum aestivum</i> L.	Wheat
7.	x <i>Triticosecale</i> Wittm.	x <i>Triticosecale</i> Wittm.	Tricale
Potato			
8.	<i>Solanum</i> L.	<i>Solanum tuberosum</i> L.	Potato
Beet			
9.	<i>Beta</i> L.	<i>Beta vulgaris</i> L.	Fodder beet
Oil and Fibre Plants			
10.	<i>Brassica napus</i> L.	<i>Brassica napus</i> L. (partim)	Swede rape
11.	<i>Brassica rapa</i> L.	<i>Brassica rapa</i> L. var. <i>silvestris</i> (Lam.) Briggs	Turnip rape
12.	<i>Carthamus</i> L.	<i>Carthamus tinctorius</i> L.	Safflower
13.	<i>Carum</i> L.	<i>Carum carvi</i> L.	Caraway
14.	<i>Linum</i> L.	<i>Linum usitatissimum</i> L.	Flax, linseed
15.	<i>Sinapis</i> L.	<i>Sinapis alba</i> L.	White mustard
Fodder plants			
16.	<i>Agrostis</i> L.	<i>Agrostis capillaris</i> L.	Brown top
		<i>Agrostis gigantea</i> Roth.	Red top
		<i>Agrostis stolonifera</i> L.	Creeping bent
17.	<i>Alopecurus</i> L.	<i>Alopecurus pratensis</i> L.	Meadow foxtail
18.	<i>Brassica</i> L.	<i>Brassica napus</i> L. var. <i>napobrassica</i> (L.) Rchb.	Swede
19.	<i>Bromus</i> L.	<i>Bromus inermis</i> (Leyss.) Holub	Smooth brome
20.	<i>Dactylis</i> L.	<i>Dactylis glomerata</i> L.	Cocksfoot
21.	<i>Festuca</i> L.	<i>Festuca arundinacea</i> Schreber	Tall fescue
		<i>Festuca ovina</i> L.	Sheep's fescue
		<i>Festuca pratensis</i> Hudson	Meadow fescue
		<i>Festuca rubra</i> L.	Red fescue
22.	x <i>Festulolium</i>	X <i>Festulolium</i>	Festulolium
23.	<i>Lolium</i> L.	<i>Lolium x boucheanum</i> Kunth	Hybrid rye grass
		<i>Lolium multiflorum</i> Lam	Italian rye grass
		<i>Lolium perenne</i> L.	Perennial ryegrass
24.	<i>Lotus</i> L.	<i>Lotus corniculatus</i> L.	Bird's foot trefoil
25.	<i>Lupinus</i> L.	<i>Lupinus angustifolius</i> L.	Blue Lupin
26.	<i>Medicago</i> L.	<i>Medicago lupulina</i> L.	Tefoil
		<i>Medicago sativa</i> L.	Lucerne
		<i>Medicago x varia</i> T. Martyn	Lucerne

No.	Plant Genera (Botanical name)	Plant Species (Common name)	
		in Latin	in English
1	2	3	4
27.	<i>Onobrychis</i> Mill.	<i>Onobrychis viciifolia</i> Scop.	Common sainfoin
28.	<i>Pisum</i> L.	<i>Pisum sativum</i> L. (Partim)	Field pea
29.	<i>Phacelia</i> Juss.	<i>Phacelia tanacetifolia</i> Benth.	California bluebell
30.	<i>Phalaris</i> L.	<i>Phalaris arundinacea</i> L.	Reed Canary grass
31.	<i>Phleum</i> L.	<i>Phleum pratense</i> L.	Timothy
32.	<i>Poa</i> L.	<i>Poa compressa</i> L.	Flattened meadowgrass
		<i>Poa nemoralis</i> L.	Wood meadowgrass
		<i>Poa palustris</i> L.	Swamp meadowgrass
		<i>Poa pratensis</i> L.	Smooth-stalked meadowgrass
33.	<i>Raphanus</i> L.	<i>Raphanus sativus</i> L. var. <i>oleiformes</i> Pers.	Fodder radish
34.	<i>Trifolium</i> L.	<i>Trifolium hybridum</i> L.	Alsike clover
		<i>Trifolium pratense</i> L.	Red clover
		<i>Trifolium repens</i> L.	White clover
35.	<i>Vicia</i> L.	<i>Vicia faba</i> L.	Field bean
		<i>Vicia sativa</i> L.	Common vetch
Vegetables			
36.	<i>Allium</i> L.	<i>Allium cepa</i> L.	Onion
		<i>Allium fistulosum</i> L.	Welsh Onion
		<i>Allium sativum</i> L.	Garlic
		<i>Allium schoenoprasum</i> L.	Chives
37.	<i>Pium</i> L.	<i>Apium graveolens</i> L.	Celery
38.	<i>Beta</i> L.	<i>Beta vulgaris</i> L. var. <i>conditiva</i> Alef.	Beetroot
39.	<i>Brassica</i> L.	<i>Brassica oleracea</i> L. convar. <i>capitata</i> (L.) Alef. Var. <i>alba</i> DC	White Cabbage
40.	<i>Capsicum</i> L.	<i>Capsicum annuum</i> L.	Pepper
41.	<i>Coriandrum</i> L.	<i>Coriandrum sativum</i> L.	Coriander
42.	<i>Cucumis</i> L.	<i>Cucumis sativus</i> L.	Cucumber, gherkin
43.	<i>Daucus</i> L.	<i>Daucus carota</i> L.	Carrot
44.	<i>Lycopersicon</i> Mill.	<i>Lycopersicon esculentum</i> Mill.	Tomato
45.	<i>Phaseolus</i> L.	<i>Phaseolus vulgaris</i> L.	French bean
46.	<i>Raphanus</i> L.	<i>Raphanus sativus</i> L.	Radish
Fruit Trees			
47.	<i>Cydonia</i> Mill.	<i>Cydonia oblonga</i> Mill.	Quince
48.	<i>Fragaria</i> L.	<i>Fragaria ananassa</i> Duch.	Strawberry
		<i>Fragaria vesca</i> L.	Wild strawberry
49.	<i>Malus</i> Mill.	<i>Malus domestica</i> Borkh.	Apple
50.	<i>Prunus</i> L.	<i>Prunus avium</i> L.	Sweet cherry
		<i>Prunus cerasus</i> L.	Cherry
		<i>Prunus domestica</i> L.	Plum
51.	<i>Pyrus</i> L.	<i>Pyrus communis</i> L.	Pear
52.	<i>Ribes</i> L.	<i>Ribes nigrum</i> L.	Black currant
		<i>Ribes rubrum</i> L.	Red currant
		<i>Ribes sylvestris</i> Lam.	White currant
		<i>Ribes uva-crispa</i> L.	Gooseberry
53.	<i>Rubus</i> L.	<i>Rubus idaeus</i> L.	Raspberry
54.	<i>Vaccinium</i> L.	<i>Vaccinium angustifolium</i> Aiton	Swamp blueberry
53.	<i>Rubus</i> L.	<i>Rubus idaeus</i> L.	Raspberry
54.	<i>Vaccinium</i> L.	<i>Vaccinium angustifolium</i> Aiton	Swamp blueberry
Grapevine			
55.	<i>Vitis</i> L.	<i>Vitis</i> L. sp.	Grapevine
Ornamentals			
56.	<i>Asarina</i> L.	<i>Asarina erubescens</i> L.	Creeping snapdragon
57.	<i>Begonia</i> L.	<i>Begonia x tuberhybrida</i> Voss	Hybrid tuberous begonia
58.	<i>Dianthus</i> L.	<i>Dianthus caryophyllus</i> L.	Carnation
		<i>Dianthus chinensis</i> L.	Carnation
59.	<i>Gladiolus</i> L.	<i>Gladiolus communis</i> L.	Gladiolus
60.	<i>Paeonia</i> L.	<i>Paeonia lactiflora</i> Pall.	Peony
61.	<i>Tulipa</i> L.	<i>Tulipa gesnerana</i> L.	Tulip

REPUBLIC OF MOLDOVA

According to Governmental Decision of July 3, 2007, protection is extended to all genera and species, including hybrids between genera and species.

REPUBLIC OF KOREA

According to Ordinance No. 2009-28 of May 1, 2009, the protection provided by the Law on Seed Industry extends to all genera and species, with the exception of the following six groups:

COMMON NAME	BOTANICAL NAME
Strawberry	<i>Fragaria</i> spp.
Raspberry	<i>Rubus allegheniensis</i> Porter <i>Rubus coreanus</i> Miq. <i>Rubus lociniatus</i> Willd <i>Rubus thyrsoides</i>
Mandarin	<i>Citrus unshiu</i> Marc.
Blueberry	<i>Vaccinium angustifolium</i> Aiton <i>Vaccinium corymbosum</i> L. <i>Vaccinium formosum</i> Andrews <i>Vaccinium myrtilloides</i> Michx. <i>Vaccinium myrtillus</i> L. <i>Vaccinium simulatum</i> Small <i>Vaccinium virgatum</i> Aiton
Cherry	<i>Prunus avium</i> L. <i>Prunus cerasus</i> L. <i>Prunus^x gondouinii</i> (Poit. & Turpin) Rehder.
Seaweed	All crops

SOUTH AFRICA

On April 15, 2009, the Office of the Union received a notification concerning the extension of the list of genera and species eligible for protection and

administered by the Directorate: Genetic Resources of the Department of Agriculture.

1		2	3	4
Kind of Plant		Category	Period of Plant Breeder's Right (Year)	Period of sole Right (Year)
Botanical Name	Common Name			
<i>Allium sativum</i> L.	Garlic	A	20	5
<i>Cyperus</i> L. (All spp.)	Sedge	A	20	5
<i>Dracæana</i> . (All spp.)	Dracæana	A	20	5
<i>Hermannia</i> L. (All spp.)	Doll's roses	B	25	8
<i>Polygala</i> L. (All spp.)	Milkwort; snakeroot	B	25	8
<i>Verbascum</i> L. (All spp.)	Mullein	A	20	5

SOUTH AFRICA (continued)

On April 22, 2009, the Office of the Union received a notification concerning the extension of the list of genera and species eligible for protection and

administered by the Directorate:Genetic Resources of the Department of Agriculture.

BOTANICAL NAME
<i>Actinidia</i> Lindley (All spp.)
<i>Crocoshia</i> Planchon (All. spp.)
<i>Dahlia</i> Cav. (All spp.)
<i>Lagerstroemia indica</i> L..
<i>Searsia</i> F.A. Barkley (All spp.)

On December 17, 2009, the Office of the Union received a notification concerning the extension of the list of genera and species eligible for protection

and administered by the Directorate:Genetic Resources of the Department of Agriculture.

BOTANICAL NAME	COMMON NAME
<i>Abelmoschus</i> Medik. (All spp.)	Gumbo, Lady's fingers
<i>Acorus</i> L. (All spp.)	Sweet flag
<i>Ageratina</i> Spach (All spp.)	Ageratina
<i>Allium sativum</i> L.	Garlic
<i>Artemisia</i> L. (All spp.)	Artemisia
<i>Bauhinia</i> L. (exclud. <i>B. purpurea</i> and <i>B. variegata</i>)	Bauhinia; Orchid tree
<i>Carex brunnea</i> Thunb.	Greater brown sedge
<i>Coleostephus</i> Cass. (All spp.)	Coleostephus
<i>Crambe abyssinica</i> Hochst. Ex R.E.Fr.	Abyssinian-kale; Crambe
<i>Crinum</i> L. (All spp.)	Cape lily
<i>Cyperus</i> L. (All spp.)	Sedge
<i>Delosperma</i> N.E.Br. (All spp.)	Delosperma
<i>Dierama</i> C.Kch (All spp.)	Wandflower
<i>Dietes</i> Salisb. ex Klatt (All spp.)	Fortnight lily; African Iris
<i>Draceana</i> L. (All spp.)	Draceana
<i>Eucomis</i> L'Her. (All spp.)	Pineapple lily
<i>Ferraria</i> Burm. ex Mill. (All spp.)	Ferraria
<i>Gaillardia x grandiflora</i> hort. ex Van Houtte	Blanket Flower
<i>Glandularia</i> J.F.Gmel (All spp.)	Glandularia
<i>Goniolimon</i> Boiss. (All spp.)	Goniolimon
<i>Hermannia</i> L. (All spp.)	Doll's roses
<i>Heteranthemis</i> Schott (All spp.)	Heteranthemis
<i>Heuchera</i> L. (All spp.)	Coral bells
<i>Hypoxis</i> L. (All spp.)	Yellow star; Star lily; African potato
<i>Ilex dimorphophylla</i> Koidz	Holly
<i>Kniphofia</i> Moench (All spp.)	Poker plant
<i>Kunzea</i> Reichb. (All spp.)	Burgan, White tea tree
<i>Ledebouria</i> Roth. [including <i>Drimiopsis</i> Lindl. & Paxton and <i>Resnova</i> Van der Merwe (All spp.)	Ledebouria
<i>Leucanthemum</i> Mill.	Leucanthemum

SOUTH AFRICA (continued)

BOTANICAL NAME	COMMON NAME
<i>Moraea</i> Mill. (All spp.)	Butterfly iris
<i>Polygala</i> L. (All spp.)	Milkwort; snakeroot
<i>Psylliostachys</i> (Jaub. & Spach) Nevsk (All spp.)	Psylliostachys
<i>Rhodohypoxis</i> Nel. (All spp.)	Rose grass
<i>Scadoxus</i> Raf. (All spp.)	Blood lily
<i>Schizocarphus</i> Van der Merwe (All spp.)	Schizorcaphus
<i>Selago</i> L. (All spp.)	Selago
<i>Sideroxylon ineme</i> L.	Milkwood
<i>Stachytarpheta</i> Vahl. (All spp.)	Stachytarpheta
<i>Tanacetum</i> L. (All spp.)	Tanacetum
<i>Veltheimia</i> Gled. (All spp.)	Veltheimia
<i>Verbascum</i> L. (All spp.)	Mullein

VIET NAM

On October 4, 2008, the Office of the Union received a notification concerning the extension of the list of genera and species eligible for protection and

administered by the Plant Variety Protection Office of the Ministry of Agriculture and Rural Development (MARD).

ENGLISH	LATIN NAME
1. Ficus	<i>Ficus</i> L. (<i>Ficus costata</i> Ait.; <i>Ficus Benjamina</i> L.; <i>Ficus carica</i> L.)
2. Grass	<i>Pennisetum americanum</i> (L.) Leeke; <i>Pennisetum purpureum</i> Schumach)
3. Fiber Tea	(<i>Ampelopsis cantoniensis</i> (hook. et Arn.) Planch.
4. Sweet Potato	<i>Ipomoea batatas</i> L.
5. Apricot	<i>Prunus armeniaca</i> L.
6. Guava	<i>Psidium guava</i> L.
7. Euphorbia	<i>Euphorbia pulcherrima</i> Willd. ex Klotzsch and the varieties are crossed between them
8. Lotus	<i>Lotus corniculatus</i> L.; <i>Lotus pedunculatus</i> Cav.; <i>Lotus uliginosus</i> Schkuhr.; <i>Lotus tenuis</i> Waldst. et Kit. ex Willd.; <i>Lotus subbiflorus</i> Lag.)
9. Longan	<i>Dimocarpus Longan</i> L.
10. Litchie	<i>Litche Chinensis</i> L.
11. Cymbidium	<i>Cymbidium</i> Sw.
12. Amaranth	<i>Amaranthus</i> L.
13. Lettuce	<i>Lactuca sativa</i> L.
14. Radish	<i>Raphanus sativus</i> L.
15. Peach	<i>Prunus persica</i> (L.) Batsch

LEGISLATION

EUROPEAN UNION

COMMISSION REGULATION (EC) 874/2009*

of 17 September 2009

establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights [1], and in particular Article 114 thereof,

Whereas:

(1) Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office [2] has been substantially amended several times [3]. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) Regulation (EC) No 2100/94 (the basic Regulation) creates a new Community system of plant variety rights, whereby a plant variety right is valid throughout the Community.

(3) Such a system should be carried out in an effective manner by the Community Plant Variety Office (the Office), which is assisted by Examination Offices in conducting the technical examination of the plant varieties concerned and which may avail itself of the services of designated national agencies or one of its own sub-offices established for that purpose. In that regard, it is indispensable to define the relationship between the Office and its own sub-offices, the Examination Offices and national agencies.

(4) A fee for the conduct of the technical examination should be paid by the Office to the Examination Offices on the basis of full recovery of costs incurred. Uniform methods for the calculation of the costs should be established by the Administrative Council.

(5) Decisions of the Office may be appealed against before its Board of Appeal. Provisions on the procedure of the Board of Appeal should be adopted. Further Boards of Appeal may be established, if necessary, by the Administrative Council.

(6) Examination reports made under the responsibility of authorities of a Member State or a third country which is a member of the International Union for the Protection of New Varieties of Plants (UPOV) should be considered a sufficient basis for decision.

(7) The use of electronic means for the filing of applications, objections or appeals and the service of documents by the Office should be permitted. Moreover, the Office should be given the possibility to issue certificates for Community plant variety rights in electronic form. Publication of information regarding Community plant variety rights should also be possible by electronic means. Finally, the electronic storage of files relating to proceedings should be allowed.

(8) The President of the Office should be empowered to determine all necessary details with respect to the use of electronic means of communication or storage.

* Text provided by the European Union. As published in Official Journal L 251, 24/09/2009 P. 0003-0028

(9) Certain provisions of Articles 23, 29, 34, 35, 36, 42, 45, 46, 49, 50, 58, 81, 85, 87, 88 and 100 of the basic Regulation already explicitly provide that detailed rules shall or may be drawn up for their implementation. Other detailed rules should be drawn up for the same purpose if clarification is required.

(10) The entry into effect of a transfer of a Community plant variety right or a transfer of an entitlement thereto should be defined in the rules relating to the entries in the Registers.

(11) The Administrative Council of the Community Plant Variety Office has been consulted.

(12) The rules provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plant Variety Rights,

HAS ADOPTED THIS REGULATION:

TITLE I

PARTIES TO PROCEEDINGS, OFFICE AND EXAMINATION OFFICES

CHAPTER I

Parties to proceedings

Article 1

Parties to proceedings

1. The following persons may be party to proceedings before the Community Plant Variety Office, hereinafter referred to as “the Office”:

- (a) the applicant for a Community plant variety right;
- (b) the objector referred to in Article 59(2) of Regulation (EC) No 2100/94, hereinafter referred to as “the basic Regulation”;
- (c) the holder or holders of the Community plant variety right, hereinafter referred to as “the holder”;
- (d) any person whose application or request is a prerequisite for a decision to be taken by the Office.

2. The Office may allow participation in the proceedings by any person other than those referred to in paragraph 1 who is directly and individually concerned, upon written request.

3. Any natural or legal person as well as any body qualifying as a legal person under the law applicable to that body shall be considered a person within the meaning of paragraphs 1 and 2.

Article 2

Designation of parties to proceedings

1. A party to proceedings shall be designated by his name and address.

2. Names of natural persons shall be indicated by the person's family name and given names. Names of legal persons as well as companies or firms shall be indicated by their official designations.

3. Addresses shall contain all the relevant administrative information, including the name of the State in which the party to proceedings is resident or where his seat or establishment is located. Only one address should preferably be indicated for each party to proceedings; where several addresses are indicated, only the address mentioned first shall be taken into account, except where the party to proceedings designates one of the other addresses as an address for service.

The President of the Office shall determine the details concerning the address including any relevant details of other data communication links.

4. Where a party to proceedings is a legal person, it shall also be designated by the name and address of the natural person legally representing the party to proceedings by virtue of the relevant national legislation. The provisions of paragraph 2 shall apply mutatis mutandis to such natural person.

The Office may permit derogations from the provisions of the first sentence of the first subparagraph.

5. Where the Commission or a Member State is party to proceedings, it shall communicate a representative for each proceeding in which it takes part.

Article 3
Languages of parties to proceedings

1. A language, being an official language of the European Union, chosen by a party to proceedings for use in the document first submitted to the Office and signed for the purpose of submission shall be used by the party to proceedings until a final decision is delivered by the Office.

2. If a party to proceedings files a document signed for that purpose by him in any other official language of the European Union than that to be used pursuant to paragraph 1, the document shall be deemed to have been received when the Office holds a translation thereof, provided by other services. The Office may permit derogations from this requirement.

3. If, in oral proceedings, a party uses a language other than the official language of the European Union used by the competent members of the staff of the Office, by other parties to proceedings, or by both, being the language to be used by him, he shall make provision for simultaneous interpretation into that official language. If no such provision is made, oral proceedings may continue in the languages used by the competent members of the staff of the Office and by other parties to the proceedings.

Article 4
Languages in oral proceedings and in the taking of evidence

1. Any party to proceedings and any witness or expert who gives evidence in oral proceedings may use any of the official languages of the European Union Communities.

2. Should the taking of evidence referred to in paragraph 1 be allowed at the request of a party to proceedings, then, should a party to proceedings, a witness or expert be unable to express himself adequately in any of the official languages of the European Union, he may be heard only if the party who made the request makes provision for interpretation into the languages used jointly by all parties to proceedings or, in the absence thereof, by the members of the staff of the Office.

The Office may permit derogations from the first subparagraph.

European Union

3. Statements made by the members of the staff of the Office, by parties to proceedings, witnesses or experts in one of the official languages of the European Union during oral proceedings or taking of evidence shall be entered in the minutes in the language used. Statements made in any other language shall be entered in the language used by the members of the staff of the Office.

Article 5
Translation of documents of parties to proceedings

1. If a party to proceedings files a document in a language other than an official language of the European Union, the Office may require a translation of the documents received to be made by the party to the proceedings into the language to be used by that party or by the competent members of the staff of the Office.

2. Where a translation of a document is to be filed or is filed by a party to proceedings, the Office may require the filing, within such time as it may specify, of a certificate that the translation corresponds to the original text.

3. Failure to file the translation referred to in paragraph 1 and the certificate referred to in paragraph 2 shall lead to the document being deemed not to have been received.

CHAPTER II
The Office

Section 1
Committees of the Office

Article 6
Qualification of members of the Committees

1. The Committees referred to in Article 35(2) of the basic Regulation shall, at the discretion of the President of the Office, be composed of technical or legally qualified members, or both.

2. A technical member shall hold a degree, or shall be qualified by recognised experience, in the field of plant science.

Commission Regulation (EC) No 874/2009

3. A legally qualified member shall be a graduate in law or qualified by recognised experience in the field of intellectual property or plant variety registration.

Article 7 Decisions of the Committee

1. A Committee shall, besides taking the decisions referred to in Article 35(2) of the basic Regulation, deal with:

- the non-suspension of a decision pursuant to Article 67(2) of the basic Regulation,
- interlocutory revision pursuant to Article 70 of the basic Regulation,
- the restitutio in integrum pursuant to Article 80 of the basic Regulation, and
- the award of costs pursuant to Article 85(2) of the basic Regulation and Article 75 of this Regulation.

2. A decision of the Committee shall be taken by a majority of its members.

Article 8 Power of individual members of the Committees

1. The Committee shall designate one of its members as rapporteur on its behalf.

2. The rapporteur may in particular:

- (a) perform the duties under Article 25 and monitor the submission of reports by the Examination Offices, referred to in Articles 13 and 14;
- (b) pursue the procedure within the Office, including the communication of any deficiencies to be remedied by a party to proceedings and the setting of time limits; and
- (c) ensure a close consultation and exchange of information with the parties to the proceedings.

Article 9 Role of the President

The President of the Office shall ensure the consistency of decisions taken under his authority.

He shall in particular lay down the conditions under which decisions on objections lodged pursuant to Article 59 of the basic Regulation, and also decisions pursuant to Articles 61, 62, 63 or 66 of that Regulation, are taken.

Article 10 Consultations

Members of the staff of the Office may use, free of charge, the premises of national agencies designated pursuant to Article 30(4) of the basic Regulation, and those of Examination Offices referred to in Articles 13 and 14 of this Regulation, for holding periodical consultation days with parties to proceedings and third persons.

Section 2 Boards of Appeal

Article 11 Boards of Appeal

1. For the purpose of deciding on appeals from the decisions referred to in Article 67 of the basic Regulation, a Board of Appeal is established. If necessary, the Administrative Council may, on a proposal from the Office, establish more Boards of Appeal. In that event, it shall determine the allocation of work between the Boards of Appeal thus established.

2. Each Board of Appeal shall consist of technical and legally qualified members. Article 6(2) and (3) shall apply mutatis mutandis. The chairman shall be a legally qualified member.

3. The examination of an appeal shall be assigned by the chairman of the Board of Appeal to one of its members as rapporteur. Such assignment may include, where appropriate, the taking of evidence.

4. Decisions of the Board of Appeal shall be taken by a majority of its members.

Article 12 Registry attached to a Board of Appeal

1. The President of the Office shall attach a registry to the Board of Appeal; members of the staff of the Office shall be excluded from the registry if they

have participated in proceedings relating to the decisions under appeal.

2. The employees of the registry shall in particular be responsible for:

- drawing up the minutes of oral proceedings and taking evidence pursuant to Article 63 of this Regulation,

- apportioning costs pursuant to Article 85(5) of the basic Regulation and Article 76 of this Regulation, and

- confirming any settlement of costs referred to in Article 77 of this Regulation.

CHAPTER III Examination Offices

Article 13

Designation of an Examination Office referred to in Article 55(1) of the basic Regulation

1. When the Administrative Council entrusts the competent office in a Member State with responsibility for technical examination, the President of the Office shall notify the designation to such office, hereinafter referred to as “the Examination Office”. It shall take effect on the day of issue of the notification by the President of the Office. This provision shall apply mutatis mutandis to the cancellation of the designation of an Examination Office, subject to Article 15(6) of this Regulation.

2. A member of the staff of the Examination Office taking part in a technical examination shall not be allowed to make any unauthorised use of, or disclose to any unauthorised person, any facts, documents and information coming to their knowledge in the course of or in connection with the technical examination. They shall continue to be bound by this obligation after the termination of the technical examination concerned, after leaving the service and after the cancellation of the designation of the Examination Office concerned.

3. Paragraph 2 shall apply mutatis mutandis to material of the plant variety which has been made available to the Examination Office by the applicant.

4. The Office shall monitor compliance with paragraphs 2 and 3 and shall decide on the exclusion of or objections raised to members of the staff of Examination Offices in accordance with Article 81(2) of the basic Regulation.

Article 14

Designation of an Examination Office referred to in Article 55(2) of the basic Regulation

1. Where the Office intends to entrust agencies with responsibility for the technical examination of varieties in accordance with Article 55(2) of the basic Regulation, it shall transmit an explanatory statement on the technical suitability of such agencies as an Examination Office to the Administrative Council for consent.

2. Where the Office intends to establish its own sub-office for the technical examination of varieties in accordance with Article 55(2) of the basic Regulation, it shall transmit an explanatory statement on the technical and economic appropriateness of establishing such a sub-office for that purpose and on the siting of such sub-office to the Administrative Council for consent.

3. When the Administrative Council gives its consent to the explanatory statements referred to in paragraphs 1 and 2, the President of the Office may notify such designation to the agencies referred to in paragraph 1, or may publish the designation of a sub-office as referred to in paragraph 2 in the Official Journal of the European Union. It may be cancelled only with the consent of the Administrative Council. Article 13(2) and (3) shall apply mutatis mutandis to the members of the staff of the agency referred to in paragraph 1 of this Article.

Article 15

Procedure for designation

1. The designation of an Examination Office shall be effected by a written agreement between the Office and the Examination Office providing for the performance of the technical examination of plant varieties by the Examination Office and for the payment of the fee referred to in Article 58 of the basic Regulation. In the case of a sub-office referred to in Article 14(2) of this Regulation, the designation

shall be by internal rules on working methods issued by the Office.

2. The effect of the written agreement shall be such that acts performed or to be performed by members of the staff of the Examination Office in accordance therewith shall be considered, as far as third parties are concerned, to be acts of the Office.

3. Where the Examination Office intends to avail itself of the services of other technically qualified bodies in accordance with Article 56(3) of the basic Regulation, such bodies shall be named in the written agreement with the Office. Article 81(2) of the basic Regulation and Article 13(2) and (3) of this Regulation shall apply *mutatis mutandis* to the staff members concerned, who shall sign a written undertaking to observe confidentiality.

4. The Office shall pay the Examination Office a fee for the conduct of the technical examination, on the basis of full recovery of costs incurred. The Administrative Council shall determine uniform methods for calculating the costs and the uniform constituents of the costs, which shall apply to all designated Examination Offices.

5. The Examination Office shall periodically submit to the Office a breakdown of the costs of the technical examination performed and of the maintenance of the necessary reference collections. In the circumstances set out in paragraph 3, a separate auditing report of the bodies shall be submitted to the Office by the Examination Office.

6. Any cancellation of designation of an Examination Office may not take effect prior to the day on which revocation of the written agreement referred to in paragraph 1 takes effect.

TITLE II SPECIFIC PROCEEDINGS BEFORE THE OFFICE

CHAPTER I Application for a Community plant variety right

Section 1 Actions of the applicant

Article 16 Filing of the application

1. An application for a Community plant variety right shall be filed at the Office, at the national agencies designated or the sub-offices established pursuant to Article 30(4) of the basic Regulation.

Where the application is filed at the Office it may be filed in paper format or by electronic means. Where it is filed at the national agencies or sub-offices it shall be filed in paper format in duplicate.

2. The information sent to the Office in accordance with Article 49(1)(b) of the basic Regulation shall contain:

- particulars for identifying the applicant and, where appropriate, his procedural representative,
- the national agency or sub-office at which the application for a Community plant variety right was filed, and
- the provisional designation of the variety concerned.

3. The Office shall make available the following forms free of charge:

- (a) an application form and a technical questionnaire, for the purposes of filing an application for a Community plant variety right;
- (b) a form for forwarding the information referred to in paragraph 2, indicating the consequences of any failure of the forwarding.

4. The applicant shall fill in and sign the forms provided for in paragraph 3. Where the application is submitted by electronic means it shall comply with

the second subparagraph of Article 57(3) as regards the signature.

Article 17 Receipt of the application

1. Where a national agency designated pursuant to Article 30(4) of the basic Regulation or a sub-office established thereunder, receives an application, it shall forward to the Office, together with the application to be forwarded in accordance with Article 49(2) of the basic Regulation, a confirmation of receipt. The confirmation of receipt shall include the file number of the national agency or sub-office, the number of forwarded documents and the date of receipt at the national agency or sub-office. A copy of the forwarded receipt shall be issued to the applicant by the national agency or sub-office.

2. Where the Office receives an application from the applicant direct or via a sub-office or a national agency, it shall, without prejudice to other provisions, mark the documents making up the application with a file number and the date of receipt at the Office and shall issue a receipt to the applicant. The receipt shall include the file number of the Office, the number of documents received, the date of receipt at the Office and the date of application within the meaning of Article 51 of the basic Regulation. A copy of the receipt shall be issued to the national agency or sub-office via which the Office has received the application.

3. If the Office receives an application via a sub-office or national agency more than one month after its filing by the applicant, the "date of application" within the meaning of Article 51 of the basic Regulation may not be earlier than the date of receipt at the Office, unless the Office establishes on the basis of sufficient documentary evidence that the applicant has forwarded an information to it in accordance with Article 49(1)(b) of the basic Regulation and Article 16(2) of this Regulation.

Article 18 Conditions laid down in Article 50(1) of the basic Regulation

1. If the Office finds that the application does not comply with the conditions laid down in Article 50(1) of the basic Regulation, it shall notify to the applicant the deficiencies it has found, stating that only such

date as sufficient information remedying those deficiencies is received shall be treated as the date of application for the purposes of Article 51 of that Regulation.

2. An application complies with the condition laid down in Article 50(1)(i) of the basic Regulation only if date and country of any first disposal within the meaning of Article 10(1) of that Regulation are indicated, or if, in the absence of such disposal a declaration is made that no such disposal has occurred.

3. An application complies with the condition laid down in Article 50(1)(j) of the basic Regulation only if the date and the country given in any earlier application for the variety are, to the best of the applicant's knowledge, indicated in respect of:

- an application for a property right in respect of the variety, and

- an application for official acceptance of the variety for certification and marketing where official acceptance includes an official description of the variety,

in a Member State or a Member of the International Union for the Protection of New Varieties of Plants.

Article 19 Conditions referred to in Article 50(2) of the basic Regulation

1. If the Office finds that the application does not comply with the provisions of paragraphs 2, 3 and 4 of this Article or with Article 16 of this Regulation, it shall apply Article 17(2) hereof, but shall require the applicant to remedy the deficiencies it has found within such time limit as it may specify. Where those deficiencies are not remedied in good time the Office shall without delay refuse the application, pursuant to Article 61(1)(a) of the basic Regulation.

2. The application shall contain the following details:

(a) the nationality of the applicant, if he is a natural person, and his designation as party to proceedings referred to in Article 2 of this Regulation and, if he is not the breeder, the name and address of the breeder;

(b) the Latin name of the genus, species or subspecies to which the variety belongs, and the common name;

(c) the characteristics of the variety which, in the applicant's opinion, are clearly distinguishable from other varieties, such other varieties being named (if appropriate) as reference varieties for testing;

(d) breeding, maintenance and propagation of the variety, including information on:

- the characteristics, the variety denomination or, in the absence thereof, the provisional designation, and the cultivation of any other variety or varieties the material of which has to be used repeatedly for the production of the variety, or

- characteristics which have been genetically modified, where the variety concerned represents a genetically modified organism within the meaning of Article 2(2) of Directive 2001/18/EC of the European Parliament and of the Council [4];

(e) the region and the country in which the variety was bred or discovered and developed;

(f) date and country of any first disposal of varietal constituents or harvested material of the variety, for the purposes of assessing novelty in accordance with Article 10 of the basic Regulation, or a declaration that such disposal has not yet occurred;

(g) the designation of the authority applied to and the file number of the applications referred to in Article 18(3) of this Regulation;

(h) existing national plant variety rights or any patent for the variety operating within the Community.

3. The Office may call for any necessary information and documentation, and, if necessary, sufficient drawings or photographs for the conduct of the technical examination within such time limit as it shall specify.

4. Where the variety concerned represents a genetically modified organism within the meaning of Article 2(2) of Directive 2001/18/EC, the Office may require the applicant to transmit a copy of the written attestation of the responsible authorities stating that a technical examination of the variety

under Articles 55 and 56 of the basic Regulation does not pose risks to the environment according to the norms of that Directive.

Article 20 Claiming priority

If the applicant claims a right of priority for an application within the meaning of Article 52(2) of the basic Regulation, which is not the earliest of those to be indicated pursuant to the first indent of Article 18(3) of this Regulation, the Office shall state that a priority date can only be given to such earlier application. Where the Office has issued a receipt including the date of filing of an application which is not the earliest of those to be indicated, the priority date notified shall be considered void.

Article 21 Entitlement to a Community plant variety right during proceedings

1. When the commencement of an action against the applicant in respect of a claim referred to in Article 98(4) of the basic Regulation has been entered in the Register of Applications for Community plant variety rights, the Office may stay the application proceedings. The Office may set a date on which it intends to continue the proceedings pending before it.

2. When a final decision in, or any other termination of, the action referred to in paragraph 1 has been entered in the Register of Applications for Community plant variety rights, the Office shall resume proceedings. It may resume them at an earlier date, but not prior to the date already set pursuant to paragraph 1.

3. Where entitlement to a Community plant variety right is validly transferred to another person for the purposes of the Office, that person may pursue the application of the first applicant as if it were his own, provided that he gives notice to this effect to the Office within one month of the entry of final judgment in the Register of Applications for Community plant variety rights. Fees due pursuant to Article 83 of the basic Regulation and already paid by the first

applicant shall be deemed to have been paid by the subsequent applicant.

Section 2 Conduct of the technical examination

Article 22 Decision on test guidelines

1. Upon proposal of the President of the Office, the Administrative Council shall take a decision as to test guidelines. The date of the decision and the species concerned by it shall be published in the Official Gazette referred to in Article 87.

2. In the absence of a decision of the Administrative Council as to test guidelines, the President of the Office may take a provisional decision thereon. The provisional decision shall lapse on the date of the decision of the Administrative Council. Where the provisional decision of the President of the Office deviates from the decision of the Administrative Council, a technical examination started prior to the decision of the Administrative Council shall not be affected. The Administrative Council may decide otherwise, if circumstances so dictate.

Article 23 Powers vested in the President of the Office

1. Where the Administrative Council takes a decision on test guidelines, it shall include a power whereby the President of the Office may insert additional characteristics and their expressions in respect of a variety.

2. Where the President of the Office makes use of the power referred to in paragraph 1, Article 22(2) shall apply *mutatis mutandis*.

Article 24 Notification by the Office of the Examination Office

In accordance with Article 55(3) of the basic Regulation, the Office shall transmit copies of the following documents relating to the variety to the Examination Office:

(a) the application form, the technical questionnaire and each additional document submitted by the

applicant containing information needed for the conduct of the technical examination;

(b) the forms filled out by the applicant pursuant to Article 86 of this Regulation;

(c) documents relating to an objection based on the contention that the conditions laid down in Articles 7, 8 and 9 of the basic Regulation have not been met.

Article 25 Cooperation between the Office and the Examination Office

The staff of the Examination Office responsible for the technical examination and the rapporteur designated in accordance with Article 8(1) shall cooperate in all phases of a technical examination. Cooperation shall cover at least the following aspects:

(a) the monitoring of the conduct of the technical examination, including the inspection of the locations of the test plots and the methods used for the tests by the rapporteur;

(b) without prejudice to other investigations by the Office, information from the Examination Office about details of any previous disposal of the variety; and

(c) the submission by the Examination Office to the Office of interim reports on each growing period.

Article 26 Form of the examination reports

1. The examination report referred to in Article 57 of the basic Regulation shall be signed by the responsible member of the staff of the Examination Office and shall expressly acknowledge the exclusive rights of disposal of the Office under Article 57(4) of that Regulation.

2. The provisions of paragraph 1 shall apply *mutatis mutandis* to any interim reports to be submitted to the Office. The Examination Office shall issue a copy of each interim report direct to the applicant.

Article 27

Other examination reports

1. An examination report on the results of any technical examination which has been carried out or is in the process of being carried out for official purposes in a Member State by one of the offices responsible for the species concerned pursuant to Article 55(1) of the basic Regulation may be considered by the Office to constitute a sufficient basis for decision, provided that:

(a) the material submitted for the technical examination has complied, in quantity and quality, with any standards that may have been laid down pursuant to Article 55(4) of the basic Regulation;

(b) the technical examination has been carried out in a manner consistent with the designations by the Administrative Council pursuant to Article 55(1) of the basic Regulation, and has been conducted in accordance with the test guidelines issued, on general instructions given, pursuant to Article 56(2) of that Regulation and Articles 22 and 23 of this Regulation;

(c) the Office has had the opportunity to monitor the conduct of the technical examination concerned; and

(d) where the final report is not immediately available, the interim reports on each growing period are submitted to the Office prior to the examination report.

2. Where the Office does not consider the examination report referred to in paragraph 1 to constitute a sufficient basis for a decision, it may follow the procedure laid down in Article 55 of the basic Regulation, after consulting the applicant and the Examination Office concerned.

3. The Office and each competent national plant variety office in a Member State shall give administrative assistance to the other by making available, upon request, any examination reports on a variety, for the purpose of assessing distinctiveness, uniformity and stability of that variety. A specific amount shall be charged by the Office or the competent national plant variety office for the submission of such a report, such amount being agreed by the offices concerned.

4. An examination report on the results of a technical examination which has been carried out or is in the process of being carried out for official purposes in a third country which is Member of the International Union for the Protection of New Varieties of Plants may be considered by the Office to constitute a sufficient basis for decision, provided the technical examination complies with the conditions laid down in a written agreement between the Office and the competent authority of such third country. Such conditions shall at least include:

(a) those related to the material, as referred to in point (a) of paragraph 1;

(b) that the technical examination has been conducted in accordance with the test guidelines issued, or general instructions given, pursuant to Article 56(2) of the basic Regulation;

(c) that the Office has had the opportunity to assess the suitability of facilities for carrying out a technical examination for the species concerned in that third country and to monitor the conduct of the technical examination concerned; and

(d) those related to the availability of reports, as laid down in point (d) of paragraph 1.

Section 3

Variety denomination

Article 28

Proposal for a variety denomination

The proposal for a variety denomination shall be signed and shall be filed at the Office, or, if the proposal accompanies the application for a Community plant variety right filed at the national agency designated or the sub-office established pursuant to Article 30(4) of the basic Regulation, in duplicate.

The Office shall make available, free of charge, a form for the purposes of proposing a variety denomination.

Where the proposal for a variety denomination is submitted by electronic means it shall comply with the second subparagraph of Article 57(3) of this Regulation as regards the signature.

Article 29
Examination of a proposal

1. Where the proposal does not accompany the application for a Community plant variety right or where a proposed variety denomination cannot be approved by the Office, the Office shall without delay communicate this to the applicant, shall require him to submit a proposal or a new proposal and shall indicate the consequences of failure to do so.

2. Where the Office establishes at the time of receipt of the results of the technical examination pursuant to Article 57(1) of the basic Regulation that the applicant has not submitted any proposal for a variety denomination, it shall without delay refuse the application for a Community plant variety right in accordance with Article 61(1)(c) of that Regulation.

Article 30
Guidelines for variety denomination

The Administrative Council shall adopt guidelines establishing uniform and definitive criteria for determining impediments to the generic designation of a variety denomination referred to in Article 63(3) and (4) of the basic Regulation.

CHAPTER II
Objection

Article 31
Filing of objections

1. Objections under Article 59 of the basic Regulation shall contain:

- (a) the name of the applicant and the file number of the application to which the objection is lodged;
- (b) the designation of the objector as a party to proceedings as set out in Article 2 of this Regulation;
- (c) if the objector has appointed a procedural representative, his name and address;

(d) a statement on the contention referred to in Article 59(3) of the basic Regulation on which the objection is based, and on particulars, items of evidence and arguments presented in support of the objection.

2. If several objections in respect of the same application for a Community plant variety right are filed, the Office may deal with those objections in one set of proceedings.

Article 32
Rejection of objections

1. If the Office finds that the objection does not comply with Article 59(1) and (3) of the basic Regulation or Article 31(1)(d) of this Regulation or that it does not provide sufficient identification of the application against which objection is lodged, it shall reject the objection as inadmissible unless such deficiencies have been remedied within such time limit as it may specify.

2. If the Office notes that the objection does not comply with other provisions of the basic Regulation or of this Regulation, it shall reject the objection as inadmissible unless such deficiencies have been remedied prior to the expiry of the objection periods.

CHAPTER III
Maintenance of Community plant variety rights

Article 33
Obligations of the holder under Article 64(3)
of the basic Regulation

1. The holder shall permit inspection of material of the variety concerned and of the location where the identity of the variety is preserved, in order to furnish the information necessary for assessing the continuance of the variety in its unaltered state, pursuant to Article 64(3) of the basic Regulation.

2. The holder shall be required to keep written records in order to facilitate verification of appropriate measures referred to in Article 64(3) of the basic Regulation.

Article 34

Technical verification of the protected variety

Without prejudice to Article 87(4) of the basic Regulation, a technical verification of the protected variety shall be conducted in accordance with the test guidelines duly applied when the Community plant variety right was granted in respect of that variety. Articles 22 and 24 to 27 of this Regulation shall apply mutatis mutandis to the Office, the Examination Office and to the holder.

Article 35

Other material to be used for a technical verification

When the holder has submitted material of the variety in accordance with Article 64(3) of the basic Regulation, the Examination Office may, with the consent of the Office, verify the submitted material by inspecting other material which has been taken from holdings where material is produced by the holder, or with his consent, or taken from material being marketed by him, or with his consent, or taken by official bodies in a Member State by virtue of their powers.

Article 36

Amendments of the variety denominations

1. Where the variety denomination has to be amended in accordance with Article 66 of the basic Regulation, the Office shall communicate the grounds thereof to the holder, shall set up a time limit within which the holder must submit a suitable proposal for an amended variety denomination, and shall state that, should he fail to do so, the Community plant variety right may be cancelled pursuant to Article 21 of that Regulation.

2. Where the proposal for an amended variety denomination cannot be approved by the Office, the Office shall without delay inform the holder, shall again set a time limit within which the holder must submit a suitable proposal, and shall state that, should he fail to comply, the Community plant variety right may be cancelled pursuant to Article 21 of the basic Regulation.

3. Articles 31 and 32 of this Regulation shall apply mutatis mutandis to an objection lodged pursuant to Article 66(3) of the basic Regulation.

4. Where the proposal for an amendment of a variety denomination is submitted by electronic means it shall comply with the second subparagraph of Article 57(3) as regards the signature.

CHAPTER IV

Community licences to be granted by the Office

Section 1

Compulsory licences pursuant to Article 29 of the basic Regulation

Article 37

Applications for a compulsory licence

1. The application for a compulsory licence pursuant to Article 29(1), (2) and (5) of the basic Regulation shall contain:

(a) the designation of the applicant and the opposing holder of the variety concerned as parties to proceedings;

(b) the variety denomination and the plant species of the variety or varieties concerned;

(c) a proposal for the type of acts to be covered by the compulsory licence;

(d) a statement setting out the public interest concerned, including details of facts, items of evidence and arguments presented in support of the public interest claimed;

(e) in the case of an application referred to in Article 29(2) of the basic Regulation, a proposal for the category of persons to which the compulsory licence shall be granted, including, as the case may be, the specific requirements related to that category of persons;

(f) a proposal for an equitable remuneration and the basis for calculating the remuneration.

2. The application for a compulsory licence referred to in Article 29(5a) of the basic Regulation shall contain:

(a) the designation of the applicant holding a patent right and the opposing holder of the variety concerned as parties to proceedings;

(b) the variety denomination and the plant species of the variety or varieties concerned;

(c) a certified copy of the patent certificate showing the number and claims of the patent for a biotechnological invention and the granting authority of the patent;

(d) a proposal for the type of acts to be covered by the compulsory licence;

(e) a proposal for an equitable remuneration and the basis for calculating the remuneration;

(f) a statement setting out why the biotechnological invention constitutes significant technical progress of considerable economic interest compared with the protected variety, including details of facts, items of evidence and arguments in support of the claim;

(g) a proposal for the territorial scope of the licence, which may not exceed the territorial scope of the patent referred to in point (c).

3. The application for a cross-licence referred to in the second subparagraph of Article 29(5a) of the basic Regulation shall contain:

(a) the designation of the applicant holding a patent right and the opposing holder of the variety concerned as parties to proceedings;

(b) the variety denomination and the plant species of the variety or varieties concerned;

(c) a certified copy of the patent certificate showing the number and claims of the patent for a biotechnological invention and the granting authority of the patent;

(d) an official document showing that a compulsory licence for a patented biotechnological invention has been granted to the holder of the plant variety right;

(e) a proposal for the type of acts to be covered by the cross-licence;

(f) a proposal for an equitable remuneration and the basis for calculating the remuneration;

(g) a proposal for the territorial scope of the cross-licence, which may not exceed the territorial scope of the patent referred to in point (c).

4. The application for a compulsory licence shall be accompanied by documents evidencing that the applicant has applied unsuccessfully to obtain a contractual licence from the holder of the plant variety right. Should the Commission or a Member State be the applicant for a compulsory licence pursuant to Article 29(2) of the basic Regulation, the Office may waive this condition in the case of force majeure.

5. A request for a contractual licence shall be considered unsuccessful within the meaning of paragraph 4 if:

(a) the opposing holder has not given a final reply to the person seeking such right within a reasonable period; or

(b) the opposing holder has refused to grant a contractual licence to the person seeking it; or

(c) the opposing holder has offered a licence to the person seeking it, on obviously unreasonable fundamental terms including those relating to the royalty to be paid, or on terms which, seen as a whole, are obviously unreasonable.

Article 38

Examination of the application for a compulsory licence

1. Oral proceedings and the taking of evidence shall in principle be held together in one hearing.

2. Requests for further hearings shall be inadmissible except for those requests based on circumstances which have undergone change during or after the hearing.

3. Before taking a decision, the Office shall invite the parties concerned to come to an amicable settlement on a contractual licence. If appropriate, the Office shall make a proposal for such an amicable settlement.

Article 39

Tenure of a Community plant variety right during the proceedings

1. If the commencement of an action in respect of a claim referred to in Article 98(1) of the basic Regulation against the holder has been entered in the Register of Community Plant Variety Rights, the Office may suspend the proceedings on the grant of a compulsory licence. It shall not resume them prior to the entry in the same Register of the final judgment upon, or any other termination of, such action.

2. If a transfer of the Community plant variety right is binding on the Office, the new holder shall enter the proceedings as a party thereto, upon request of the applicant, if that applicant has unsuccessfully requested the new holder to grant him a licence within two months of receipt of communication from the Office that the name of the new holder has been entered in the Register of Community Plant Variety Rights. A request from the applicant shall be accompanied by sufficient documentary evidence of his vain attempt and, if appropriate, of the conduct of the new holder.

3. In the case of an application referred to in Article 29(2) of the basic Regulation, the new holder shall enter the proceedings as a party thereto. Paragraph 1 of this Article shall not apply.

Article 40

Contents of the decision on the application

The written decision shall be signed by the President of the Office. The decision shall contain:

- (a) a statement that the decision is delivered by the Office;
- (b) the date when the decision was taken;
- (c) the names of the members of the committee having taken part in the proceedings;
- (d) the names of the parties to the proceedings and of their procedural representatives;
- (e) the reference to the opinion of the Administrative Council;

(f) a statement of the issues to be decided;

(g) a summary of the facts;

(h) the grounds on which the decision is based;

(i) the order of the Office; if need be, the order shall include the stipulated acts covered by the compulsory licence, the specific conditions pertaining thereto and the category of persons, including where appropriate the specific requirements relating to that category.

Article 41

Grant of a compulsory licence

1. The decision to grant a compulsory licence pursuant to Article 29(1), (2) and (5) of the basic Regulation shall contain a statement setting out the public interest involved.

2. The following grounds may in particular constitute a public interest:

(a) the protection of life or health of humans, animals or plants;

(b) the need to supply the market with material offering specific features;

(c) the need to maintain the incentive for continued breeding of improved varieties.

3. The decision to grant a compulsory licence pursuant to Article 29(5a) of the basic Regulation shall contain a statement setting out the reasons why the invention constitutes significant technical progress of considerable economic interest. The following grounds may in particular constitute reasons why the invention constitutes significant technical progress of considerable economic interest compared to the protected plant variety:

(a) improvement of cultural techniques;

(b) improvement of the environment;

(c) improvement of techniques to facilitate the use of genetic biodiversity;

(d) improvement of quality;

(e) improvement of yield;

(f) improvement of resistance;

(g) improvement of adaptation to specific climatological and/or environmental conditions.

4. The compulsory licence shall be non-exclusive.

5. The compulsory licence may not be transferred otherwise than together with that part of an enterprise which makes use of the compulsory licence, or, in the circumstances set out in Article 29(5) of the basic Regulation, together with the assignment of the rights of an essentially derived variety.

Article 42

Conditions pertaining to the person to whom a compulsory licence is granted

1. Without prejudice to the other conditions referred to in Article 29(3) of the basic Regulation, the person to whom the compulsory licence is granted shall have the appropriate financial and technical capacity to make use of the compulsory licence.

2. Compliance with the conditions pertaining to the compulsory licence and laid down in the decision thereon shall be considered a "circumstance" within the meaning of Article 29(4) of the basic Regulation.

3. The Office shall provide that the person to whom a compulsory licence is granted may not bring a legal action for infringement of a Community plant variety right unless the holder has refused or neglected to do so within two months after being so requested.

Article 43

Category of persons satisfying specific requirements pursuant to Article 29(2) of the basic Regulation

1. Any person intending to make use of a compulsory licence who comes under the category of persons satisfying specific requirements referred to in Article 29(2) of the basic Regulation shall declare his intention to the Office and to the holder by registered letter with advice of delivery. The declaration shall include:

(a) the name and address of that person as laid down for parties to proceedings pursuant to Article 2 of this Regulation;

(b) a statement on the facts meeting the specific requirements;

(c) a statement setting out the acts to be effected; and

(d) an assurance that that person has the appropriate financial resources as well as information about his technical capacity, to make use of the compulsory licence.

2. Upon request, the Office shall enter a person in the Register of Community Plant Variety Rights if such person has fulfilled the conditions relating to the declaration referred to in paragraph 1. Such person shall not be entitled to make use of the compulsory licence prior to the entry. The entry shall be communicated to that person and the holder.

3. Article 42(3) shall apply mutatis mutandis to a person entered in the Register of Community Plant Variety Rights pursuant to paragraph 2 of this Article. Any judgment, or other termination, of the legal action in respect of the act of infringement shall apply to the other persons entered or to be entered.

4. The entry referred to in paragraph 2 may be deleted on the sole ground that the specific requirements laid down in the decision on the grant of a compulsory licence or the financial and technical capacities established pursuant to paragraph 2 have undergone change more than one year after the grant of the compulsory licence and within any time limit stipulated in that grant. The deletion of the entry shall be communicated to the person entered and the holder.

Section 2

Exploitation rights pursuant to Article 100(2) of the basic Regulation

Article 44

Exploitation rights pursuant to Article 100(2) of the basic Regulation

1. A request for a contractual non-exclusive exploitation right from a new holder, as referred to in Article 100(2) of the basic Regulation, shall be

made, in the case of the former holder within two months, or in the case of a person having enjoyed an exploitation right within four months, of receipt of notification from the Office that the name of the new holder has been entered in the Register of Community Plant Variety Rights.

2. An application for an exploitation right to be granted pursuant to Article 100(2) of the basic Regulation shall be accompanied by documents supporting the unsuccessful request referred to in paragraph 1 of this Article. The provisions of Article 37(1)(a), (b), (c) and (5), Article 38, Article 39(3), Article 40 except letter (f), Article 41(3) and (4) and Article 42 of this Regulation shall apply *mutatis mutandis*.

TITLE III PROCEEDINGS BEFORE THE BOARD OF APPEAL

Article 45 Contents of the notice of appeal

The notice of appeal shall contain:

- (a) the designation of the appellant as a party to appeal proceedings in accordance with Article 2;
- (b) the file number of the decision against which the appeal is lodged and a statement as to the extent to which amendment or cancellation of the decision is sought.

Article 46 Receipt of the notice of appeal

Where the Office receives a notice of appeal, it shall mark it with a file number of the appeal proceedings and the date of receipt at the Office and shall notify the appellant of the time limit for setting out the grounds of the appeal; any omission of such notice may not be pleaded.

Article 47 Participation as a party to the appeal proceedings

1. The Office shall promptly transmit a copy of the notice of appeal marked with the file number and the date of its receipt to the parties to proceedings having participated in the proceedings before the Office.

2. The parties to proceedings referred to in paragraph 1 may intervene as parties to the appeal proceedings within two months of transmission of a copy of the notice of appeal.

Article 48 Role of the Office

1. The body of the Office referred to in Article 70(1) of the basic Regulation and the chairman of the Board of Appeal shall ensure by internal preparatory measures that the Board of Appeal can examine the case immediately after its remittal; the chairman shall in particular select the two other members in accordance with Article 46(2) of that Regulation and shall designate a rapporteur, prior to the remittal of the case.

2. Prior to the remittal of the case, the body of the Office referred to in Article 70(1) of the basic Regulation shall promptly transmit a copy of the documents received by a party to the appeal proceedings to the other parties to the appeal proceedings.

3. The President of the Office shall provide for the publication of the information referred to in Article 89, prior to the remittal of the case.

Article 49 Rejection of the appeal as inadmissible

1. If the appeal does not comply with the provisions of the basic Regulation and in particular Articles 67, 68 and 69 thereof or those of this Regulation and in particular Article 45 thereof, the Board of Appeal shall so inform the appellant and shall require him to remedy the deficiencies found, if possible, within such period as it may specify. If the appeal is not rectified in good time, the Board of Appeal shall reject it as inadmissible.

2. Where an appeal is lodged against a decision of the Office against which an action under Article 74 of the basic Regulation is likewise lodged, the Board of Appeal shall forthwith submit the appeal as an action to the Court of Justice of the European Communities, with the consent of the appellant; if the appellant does not consent, it shall reject the appeal as inadmissible. In the case of the submission of an appeal to the Court of Justice,

such an appeal shall be deemed to have been lodged with the Court of Justice as at the date of receipt at the Office under Article 46 of this Regulation.

Article 50 Oral proceedings

1. After the remittal of the case, the chairman of the Board of Appeal shall, without delay, summon the parties to the appeal proceedings to oral proceedings as provided for in Article 77 of the basic Regulation and shall draw their attention to the contents of Article 59(2) of this Regulation.

2. The oral proceedings and the taking of evidence shall in principle be held in one hearing.

3. Requests for further hearings shall be inadmissible except for requests based on circumstances which have undergone change during or after the hearing.

Article 51 Examination of appeals

Unless otherwise provided, the provisions relating to proceedings before the Office shall apply to appeal proceedings *mutatis mutandis*; parties to proceedings shall in that regard be treated as parties to appeal proceedings.

Article 52 Decision on the appeal

1. Within three months after closure of the oral proceedings, the decision on the appeal shall be forwarded in writing, by any means provided for in Article 64(3), to the parties to the appeal proceedings.

2. The decision shall be signed by the chairman of the Board of Appeal and by the rapporteur designated pursuant to Article 48(1). The decision shall contain:

(a) a statement that the decision is delivered by the Board of Appeal;

(b) the date when the decision was taken;

(c) the names of the chairman and of the other members of the Board of Appeal having taken part in the appeal proceedings;

(d) the names of the parties to the appeal proceedings and their procedural representatives;

(e) a statement of the issues to be decided;

(f) a summary of the facts;

(g) the grounds on which the decision is based;

(h) the order of the Board of Appeal, including, where necessary, a decision as to the award of costs or the refund of fees.

3. The written decision of the Board of Appeal shall be accompanied by a statement that further appeal is possible, together with the time limit for lodging such further appeal. The parties to the appeal proceedings may not plead the omission of that statement.

TITLE IV GENERAL PROVISIONS RELATING TO PROCEEDINGS

CHAPTER I Decisions, communications and documents

Article 53 Decisions

1. Any decision of the Office is to be signed by and to state the name of the member of staff duly authorised by the President of the Office in accordance with Article 35 of the basic Regulation.

2. Where oral proceedings are held before the Office, the decisions may be given orally. Subsequently, the decision in writing shall be served on the parties to proceedings in accordance with Article 64.

3. Decisions of the Office which are open to appeal under Article 67 of the basic Regulation or to direct action under Article 74 thereof shall be accompanied by a statement of that appeal or direct action if possible, together with the time limits provided for

lodging such appeal or direct action. The parties to proceedings may not plead the omission of that statement.

4. Linguistic errors, errors of transcription and patent mistakes in decisions of the Office shall be corrected.

Article 54

Certificate for a Community plant variety right

1. Where the Office grants a Community plant variety right, it shall issue, together with the decision thereon, a certificate for the Community plant variety right as evidence of the grant.

2. The Office shall issue the certificate for the Community plant variety right in whichever official language or languages of the European Union is requested by the holder.

3. On request, the Office may issue a copy to the person entitled if it establishes that the original certificate has been lost or destroyed.

Article 55 Communications

Unless otherwise provided, any communication by the Office or an Examination Office shall include the name of the competent member of the staff.

Article 56 Right of audience

1. If the Office finds that a decision may not be adopted in the terms sought, it shall communicate the deficiencies noted to the party to the proceedings and shall require him to remedy those deficiencies within such time limit as it may specify. If the deficiencies noted and communicated are not remedied in good time, the Office shall proceed to take its decision.

2. If the Office receives observations from a party to proceedings, it shall communicate those observations to the other parties to the proceedings and shall require them, if it considers it necessary, to reply within such time limit as it may specify. If a reply is not received in good time, the Office shall disregard any document received later.

Article 57

Documents filed by parties to proceedings

1. Any documents filed by a party to proceedings shall be submitted by post, personal delivery or electronic means.

The details concerning electronic submissions shall be determined by the President of the Office.

2. The date of receipt of any document filed by parties to proceedings shall be deemed to be the date on which a document is in fact received on the premises or in the case of a document filed by electronic means, when the document is received electronically by the Office.

3. With the exception of annexed documents, any documents filed by parties to proceedings must be signed by them or their procedural representative.

Where a document is submitted to the Office by electronic means, it shall contain an electronic signature.

4. If a document has not duly been signed, or where a document received is incomplete or illegible, or where the Office has doubts as to the accuracy of the document, the Office shall inform the sender accordingly and shall invite him to submit the original of the document signed in accordance with paragraph 3, or to retransmit a copy of the original, within a time limit of one month.

Where the request is complied with within the period specified, the date of receipt of the signed document or of the retransmission shall be deemed to be the date of the receipt of the first document. Where the request is not complied with within the period specified, the document shall be deemed not to have been received.

5. Such document as must be communicated to other parties to proceedings as well as to the Examination Office concerned, or documents relating to two or more applications for a Community plant variety right or an exploitation right, shall be filed in a sufficient number of copies. Missing copies shall be provided at the expense of the party to the proceedings.

The first subparagraph shall not apply to documents submitted by electronic means.

Article 58
Documentary evidence

1. Evidence of final judgments and decisions, other than those of the Office, or other documentary evidence to be submitted by parties to proceedings, may be furnished by submitting an uncertified copy.

2. Where the Office has doubts as to the authenticity of the evidence referred to in paragraph 1, it may require submission of the original or a certified copy.

CHAPTER II
Oral proceedings and taking of evidence

Article 59
Summons to oral proceedings

1. The parties to proceedings shall be summoned to oral proceedings provided for in Article 77 of the basic Regulation and their attention shall be drawn to paragraph 2 hereof. At least one month's notice of the summons dispatched to the parties to proceedings shall be given unless the parties to proceedings and the Office agree on a shorter period.

2. If a party to proceedings who has duly been summoned to oral proceedings before the Office does not appear as summoned, the proceedings may continue without him.

Article 60
Taking of evidence by the Office

1. Where the Office considers it necessary to hear the oral evidence of parties to proceedings or of witnesses or experts, or to carry out an inspection, it shall take a decision to that effect, stating the means by which it intends to obtain evidence, the relevant facts to be proved and the date, time and place of hearing or inspection. If oral evidence from witnesses and experts is requested by a party to proceedings, the decision of the Office shall state the period of time within which the party to proceedings filing the request must make known to

the Office the names and addresses of the witnesses and experts whom the party to proceedings wishes to be heard.

2. At least one month's notice of a summons dispatched to a party to proceedings, witness or expert to give evidence shall be given unless the Office and they agree to a shorter period. The summons shall contain:

(a) an extract from the decision referred to in paragraph 1, indicating in particular the date, time and place of the investigation ordered and setting out the facts regarding which parties to proceedings, witnesses and experts are to be heard;

(b) the names of the parties to proceedings and particulars of the rights which the witnesses or experts may invoke under the provisions of Article 62(2), (3) and (4);

(c) a statement that the party to proceedings, witness or expert may ask to be heard by the competent judicial or other authority in his country of domicile and a request that he inform the Office within a time limit to be fixed by the Office whether he is prepared to appear before it.

3. Before a party to proceedings, a witness or an expert may be heard, he shall be informed that the Office may request the competent judicial or other authority in his country of domicile to re-examine his evidence on oath or in some other binding form.

4. The parties to proceedings shall be informed of the hearing of a witness or expert before a competent judicial or other authority. They shall have the right to be present and to put questions to the testifying parties to proceedings, witnesses and experts, either through the intermediary of the authority or direct.

Article 61
Commissioning of experts

1. The Office shall decide in what form the report to be made by an expert whom it appoints shall be submitted.

2. The mandate of the expert shall contain:

- (a) a precise description of his task;
- (b) the time limit laid down for the submission of the report;
- (c) the names of the parties to the proceedings;
- (d) particulars of the rights which he may invoke under Article 62(2), (3) and (4).

3. For the purposes of the expert's report, the Office may require the Examination Office having conducted the technical examination of the variety concerned to make available material in accordance with instructions given. If necessary, the Office may also require material from parties to proceedings or third persons.

4. The parties to proceedings shall be provided with a copy and, where appropriate, a translation of any written report.

5. The parties to proceedings may object to an expert. Articles 48(3) and 81(2) of the basic Regulation shall apply *mutatis mutandis*.

6. Article 13(2) and (3) shall apply *mutatis mutandis* to the expert appointed by the Office. When appointing the expert, the Office shall inform him of the requirement of confidentiality.

Article 62

Costs of taking evidence

1. The taking of evidence may be made conditional upon deposit with the Office, by the party to proceedings who requested that such evidence be taken, of a sum to be quantified by the Office by reference to an estimate of the costs.

2. Witnesses and experts who are summoned by and who appear before the Office shall be entitled to appropriate reimbursement of expenses for travel and subsistence. An advance may be granted to them.

3. Witnesses entitled to reimbursement under paragraph 2 shall also be entitled to appropriate compensation for loss of earnings, and experts unless members of the staff of the Examination

Offices, to fees for their work. Those payments shall be made to the witnesses after the taking of evidence and to the experts after they have fulfilled their duties or tasks.

4. Payments of amounts due pursuant to paragraphs 2 and 3 and in accordance with the details and scales laid down in Annex I shall be made by the Office.

Article 63

Minutes of oral proceedings and of taking of evidence

1. Minutes of oral proceedings and of the taking of evidence shall record the essentials of the oral proceedings or of the taking of evidence, the relevant statements made by the parties to proceedings, the testimony of the parties to proceedings, witnesses or experts and the result of any inspection.

2. The minutes of the testimony of a witness, expert or party to proceedings shall be read out or submitted to him so that he may examine them. It shall be noted in the minutes that this formality has been carried out and that the person who gave the testimony approved the minutes. Where his approval is not given, his objections shall be noted.

3. The minutes shall be signed by the employee who drew them up and by the employee who conducted the oral proceedings or the taking of evidence.

4. The parties to proceedings shall be provided with a copy and, where appropriate, a translation of the minutes.

CHAPTER III

Service

Article 64

General provisions on service

1. In proceedings before the Office, any service of documents to be made by the Office on a party to proceedings shall take the form of the original document, of an uncertified copy thereof or a computer print-out. Documents emanating from other parties to proceedings may be served in the form of uncertified copies.

2. If a procedural representative has been appointed by one or more parties to proceedings, service shall be made on him in accordance with the provisions of paragraph 1.

3. Service shall be made:

(a) by post in accordance with Article 65;

(b) by delivery by hand in accordance with Article 66;

(c) by public notice in accordance with Article 67; or

(d) by electronic means or any other technical means in accordance with the second subparagraph.

The President of the Office shall determine the details concerning service by electronic means.

4. Documents or copies thereof containing actions for which service is provided for in Article 79 of the basic Regulation shall be served by registered letter with advice of delivery served by postal means; it can also be served by electronic means to be determined by the President of the Office.

Article 65 Service by post

1. Service on addressees not having their domicile or their seat or establishment within the Community and who have not appointed a procedural representative in accordance with Article 82 of the basic Regulation shall be effected by posting the documents to be served by ordinary letter to the addressee's last address known to the Office. Service shall be deemed to have been effected by posting even if the letter is returned as undeliverable.

2. Where service is effected by registered letter, whether or not with advice of delivery, this shall be deemed to have been delivered to the addressee on the tenth day following its posting, unless the letter has failed to reach the addressee or has reached him on a later day; in the event of any dispute, it shall be for the Office to establish that the letter has reached its destination or to establish the date on which the letter was delivered to the addressee, as the case may be.

3. Service by registered letter, whether or not with advice of delivery, shall be deemed to have been effected even if the addressee refuses to accept the letter or to acknowledge receipt thereof.

4. Where service by post is not covered by paragraphs 1, 2 and 3, the law of the State on the territory of which the service is made shall apply.

Article 66 Service by hand delivery

On the premises of the Office, service of a document may be effected by delivery by hand to the addressee, who shall on delivery acknowledge its receipt. Service shall be deemed to have taken place even if the addressee refuses to accept the document or to acknowledge receipt thereof.

Article 67 Public notice

If the address of the addressee cannot be established, or if service in accordance with Article 64(4) has proved to be impossible even after a second attempt by the Office, service shall be effected by public notice, to be issued in the periodical publication referred to in Article 89 of the basic Regulation. The President of the Office shall determine details as to the issue of a public notice.

Article 68 Irregularities in service

If the Office is unable to prove that a document which has reached the addressee has been duly served, or if provisions relating to its service have not been observed, the document shall be deemed to have been served on the date established by the Office as the date of receipt.

CHAPTER IV Time limits and interruption of proceedings

Article 69 Computation of time limits

1. Time limits shall be laid down in terms of full years, months, weeks or days.

2. Time limits shall run from the day following the day on which the relevant event occurred, the event being either an action or the expiry of another time limit. Unless otherwise provided, the event considered shall be the receipt of the document served, where the action consists in service.

3. Notwithstanding the provisions of paragraph 2, the time limits shall run from the 15th day following the day of publication of a relevant action, where the action is either the public notice referred to in Article 67, a decision of the Office unless served to the relevant person, or any action of a party to proceedings to be published.

4. When a time limit is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred; where the relevant subsequent month has no day bearing the same number the time limit shall expire on the last day of that month.

5. When a time limit is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred; where the relevant subsequent month has no day bearing the same number the period shall expire on the last day of that month.

6. Where a time limit is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.

Article 70 Duration of time limits

Where either the basic Regulation or this Regulation specifies a time limit to be determined by the Office, such a time limit shall be not less than one month and not more than three months. In certain special cases, the time limit may be extended by up to six months upon a request presented before the expiry of such time limit.

Article 71 Extension of time limits

1. If a time limit expires on a day on which the Office is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, ordinary mail is not delivered in the locality in which the Office is situated, the time limit shall extend until the first day thereafter on which the Office is open for receipt of documents and on which ordinary mail is delivered. The days referred to in the first sentence shall be as stated and communicated by the President of the Office before the commencement of each calendar year.

2. If a time limit expires on a day on which there is a general interruption or a subsequent dislocation in the delivery of mail in a Member State or between a Member State and the Office, the time limit shall be extended until the first day following the end of the period of dislocation or interruption in the delivery of mail for parties to proceedings having their domicile or seat or establishment in the Member State concerned or having appointed procedural representatives with a seat in that State. Should the Member State concerned be the State in which the Office is located, this provision shall apply to all parties to proceedings. The duration of the period of interruption or dislocation shall be as stated and communicated by the President of the Office.

As regards documents submitted by electronic means, the first subparagraph shall apply *mutatis mutandis* in cases where there is an interruption of the connection of the Office to the electronic means of communication.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to the national agencies, or the sub-offices designated, pursuant to Article 30(4) of the basic Regulation as well as to the Examination Offices.

Article 72 Interruption of proceedings

1. Proceedings before the Office shall be interrupted:

(a) in the event of the death or legal incapacity of the applicant for, or holder of, a Community plant variety right or of the applicant for an exploitation right to be granted by the Office or of the person

entitled to enjoy such exploitation right, or of the procedural representative of any of those parties; or

(b) in the event of a supervening legal impediment to such person's continuation of proceedings before the Office, due to some action taken against his property.

2. When the necessary particulars in respect of the identity of the person authorised to continue proceedings as party thereto or procedural representative have been entered in the relevant register, the Office shall inform such person and the other parties that the proceedings shall be resumed as from the date to be determined by the Office.

3. The time limits in force shall begin afresh as from the day on which proceedings are resumed.

4. The interruption of proceedings shall not affect the pursuit of the technical examination or verification of the variety concerned by an Examination Office where the relevant fees have already been paid to the Office.

CHAPTER V Procedural representatives

Article 73 Designation of a procedural representative

1. Any designation of a procedural representative shall be communicated to the Office. The communication shall contain the name and address of the procedural representative; Article 2(2) and (3) shall apply *mutatis mutandis*.

2. Without prejudice to Article 2(4), the communication referred to in paragraph 1 shall also identify as such any employee of the party to proceedings. An employee may not be designated as a procedural representative within the meaning of Article 82 of the basic Regulation.

3. Failure to comply with the provisions of paragraphs 1 and 2 shall lead to the communication being deemed not to have been received.

4. A procedural representative whose mandate has ended shall continue to be considered as procedural representative until the termination of his mandate has been communicated to the Office. Subject to any provisions to the contrary contained therein, a mandate shall however, terminate *vis-à-vis* the Office upon the death of the person who conferred it.

5. If there are two or more parties to proceedings acting in common, which have not notified a procedural representative to the Office, the party to the proceedings first named in an application for a Community plan variety right or for an exploitation right to be granted by the Office or in an objection shall be deemed to be designated as the procedural representative of the other party or parties to the proceedings.

Article 74 Credentials of procedural representatives

1. Where the appointment of a procedural representative is notified to the Office, the necessary signed credentials shall be presented for inclusion in the files within such period as the Office may specify unless otherwise provided. If the credentials are not filed in due time, any procedural step taken by the procedural representative shall be deemed not to have been taken.

2. Credentials may cover one or more proceedings and shall be filed in the corresponding number of copies. General credentials enabling a procedural representative to act in all the proceedings of the party giving the credentials may be filed. A single document embodying the general credentials shall be sufficient.

3. The President of the Office may determine the contents of, and make available, forms for credentials, including the general credentials referred to in paragraph 2, free of charge.

CHAPTER VI

Apportionment and determination of costs

Article 75

Awards of costs

1. A decision as to costs shall be dealt with in the decision on the revocation or cancellation of a Community plant variety right, or the decision on the appeal.

2. In the case of an award of costs pursuant to Article 85(1) of the basic Regulation, the Office shall set out that award in the statement of the grounds of the decision on the revocation or cancellation of a Community plant variety right, or the decision on the appeal. The parties to proceedings may not plead the omission of that indication.

Article 76

Determination of costs

1. A request for the determination of costs shall be admissible only if the decision has been taken in respect of which the determination of costs is required and if, in the event of an appeal against such decision, the Board of Appeal has decided upon that appeal. A bill of costs, with supporting documents, shall be attached to the request.

2. Costs may be determined once their credibility is established.

3. Where one party to proceedings incurs the costs of another party to the proceedings, it shall not be required to reimburse any costs other than those referred to in paragraph 4. Where the successful party to proceedings is represented by more than one agent, adviser or advocate, the losing party shall bear the costs referred to in paragraph 4 for one such person only.

4. The costs essential to proceedings shall cover:

(a) costs of witnesses and experts paid by the Office to the witness or expert concerned;

(b) expenses for travel and subsistence of a party to proceedings and an agent, adviser or advocate duly designated as a procedural representative

before the Office, within the relevant scales applicable to witnesses and experts laid down in Annex I;

(c) remuneration of an agent, adviser or advocate duly designated as the procedural representative of a party to proceedings before the Office, within the scales laid down in Annex I.

Article 77

Settlement of costs

In the event of a settlement of costs referred to in Article 85(4) of the basic Regulation, the Office shall confirm such settlement in a communication to the parties to the proceedings. Where such communication confirms also a settlement as to the amount of costs to be paid, a request for the determination of costs shall be inadmissible.

TITLE V

INFORMATION GIVEN TO THE PUBLIC

CHAPTER I

Registers, public inspection and publications

Section 1

The Registers

Article 78

Entries related to proceedings and to Community plant variety rights, to be entered in the Registers

1. The following "other particulars" referred to in Article 87(3) of the basic Regulation shall be entered in the Register of Applications for Community Plant Variety Rights:

(a) date of publication where such publication is a relevant event for the computation of time limits;

(b) any objection, together with its date, the name and address of the objector and those of his procedural representative;

(c) priority data (date and State of the earlier application);

(d) any institution of actions in respect of claims referred to in Article 98(4) and Article 99 of the basic Regulation as to entitlement to the Community plant variety right, and the final decision in, or of any other termination of, any such action.

2. The following “other particulars” referred to in Article 87(3) of the basic Regulation shall be entered in the Register of Community Plant Variety Rights, upon request:

(a) the giving of a Community plant variety right as a security or as the object of any other rights in rem; or

(b) any institution of actions in respect of claims referred to in Article 98(1) and (2) and Article 99 of the basic Regulation and relating to the Community plant variety right, and the final decision in, or of any other termination of, any such action.

3. The President of the Office shall decide upon the details of the entries to be made and may decide upon further particulars to be entered in the Registers for the purpose of the management of the Office.

The President of the Office shall determine the form of Registers. The Registers may be maintained in the form of an electronic database.

Article 79

Entry of transfer of a Community plant variety right

1. Any transfer of Community plant variety rights shall be entered in the Register of Community Plant Variety Rights on production of documentary evidence of the transfer, or of official documents confirming the transfer, or of such extracts from those documents as suffice to establish the transfer. The Office shall retain a copy of those pieces of documentary evidence in its files.

The President of the Office shall determine the form in and the conditions under which those pieces of documentary evidence are to be retained in the files of the Office.

2. The entry of a transfer may be refused only in the event of failure to comply with the conditions laid down in paragraph 1 and in Article 23 of the basic Regulation.

3. Paragraphs 1 and 2 shall apply to any transfer of an entitlement to a Community plant variety right for which an application has been entered in the Register of Applications for Community Plant Variety Rights. The reference to the Register of Community Plant Variety Rights shall be understood as a reference to the Register of Applications for Community Plant Variety Rights.

Article 80

Conditions for entries in the Registers

Without prejudice to other provisions of the basic Regulation or of this Regulation, a request for an entry or a deletion of an entry in the Registers may be made by any interested person. The request shall be made in writing, accompanied by supporting documents.

Article 81

Conditions for specific entries in the Registers

1. Where a Community plant variety right applied for or granted is concerned by bankruptcy or like proceedings, an entry to this effect shall be made, free of charge, in the Register for Community Plant Variety Rights at the request of the competent national authority. This entry shall also be deleted at the request of the competent national authority, free of charge.

2. Paragraph 1 shall apply *mutatis mutandis* to the institution of actions in respect of claims referred to in Articles 98 and 99 of the basic Regulation and the final decision in, or of any other termination of, any such action.

3. Where varieties are identified respectively as initial and essentially derived, a request for entry by all the parties to proceedings may be made jointly or separately. In the event of a request from only one party to proceedings, the request shall be accompanied by sufficient documentary evidence

of the actions referred to in Article 87(2)(h) of the basic Regulation to replace the request of the other party.

4. Where the entry of a contractual exclusive exploitation right or of a Community plant variety right given as security or as the subject of rights in rem is requested, such request shall be accompanied by sufficient documentary evidence.

Article 82

Public inspection of the Registers

1. The Registers shall be open for public inspection on the premises of the Office.

Access to the Registers and the documents held therein shall be granted under the same terms and conditions as apply to the access to documents held by the Office within the meaning of Article 84.

2. On-the-spot inspection of the Registers shall be free of charge.

The production and delivery of extracts from the Registers in any form that requires the processing or manipulating of data other than the mere reproduction of a document or parts thereof shall be subject to the payment of a fee.

3. The President of the Office may provide for public inspection of the Registers on the premises of national agencies, or sub-offices designated, pursuant to Article 30(4) of the basic Regulation.

Section 2

Keeping of documents, public inspection of documents and varieties grown

Article 83

Keeping of the files

1. Documents, either in the form of originals or copies relating to proceedings shall be kept in files, a file number being attached to such proceedings, except for those documents relating to the exclusion of, or objection to, members of the Board of Appeal, or to the staff of the Office or the Examination Office concerned, which shall be kept separately.

2. The Office shall keep one copy of the file referred to in paragraph 1 (file copy) which shall be

considered the true and complete copy of the file. The Examination Office may keep a copy of the documents relating to such proceedings (examination copy), but shall ensure delivery of those originals which the Office does not hold.

3. The original documents filed by parties to the proceedings which form the basis of any electronic files may be disposed of after a period following their reception by the Office.

4. The President of the Office shall determine the details as to the form in which the files are to be kept, the period during which files are to be kept and the period referred to in paragraph 3.

Article 84

Access to documents held by the Office

1. The Administrative Council shall adopt the practical arrangements for access to the documents held by the Office, including the Registers.

2. The Administrative Council shall adopt the categories of documents of the Office that are to be made directly accessible to the public by way of publication, including publication by electronic means.

Article 85

Inspection of the growing of the varieties

1. A request for inspection of the growing of the varieties shall be addressed in writing to the Office. With the consent of the Office, access to the test plots shall be arranged by the Examination Office.

2. Without prejudice to Article 88(3) of the basic Regulation, general access to the test plots by visitors shall not be affected by the provisions of this Regulation, provided that all grown varieties are coded, that appropriate measures against any removal of material are taken by the Examination Office entrusted and are approved by the Office, and that all necessary steps are taken to safeguard the rights of the applicant for, or holder of, a Community plant variety right.

3. The President of the Office may lay down the details of the procedure for the inspection of the growing of the varieties, and may review the safeguards to be provided under paragraph 2.

Article 86
Confidential information

For the purpose of keeping information confidential, the Office shall make available, free of charge, forms to be used by the applicant for a Community plant variety right in order to request the withholding of all data relating to components as referred to in Article 88(3) of the basic Regulation.

Section 3
Publications

Article 87
Official Gazette

1. The publication to be issued at least every two months pursuant to Article 89 of the basic Regulation shall be called the Official Gazette of the Community Plant Variety Office (hereinafter the Official Gazette).
2. The Official Gazette shall also contain the information entered in the Registers pursuant to Article 78(1)(c) and (d), Article 78(2) and Article 79.
3. The President of the Office shall determine the manner in which the Official Gazette is published.

Article 88
Publication of applications for exploitation rights to be granted by the Office and decisions thereon

The date of receipt of an application for an exploitation right to be granted by the Office and of delivery of the decision on such application, the names and addresses of the parties to proceedings and the form of order sought, or decided upon, shall be published in the Official Gazette. In the case of a decision to grant a compulsory licence, the contents of such decision shall likewise be published.

Article 89
Publication of appeals and decisions thereon

The date of receipt of a notice of appeal and of delivery of the decision on such appeal, the names and addresses of the parties to the appeal proceedings and the form of order sought, or decided upon, shall be published in the Official Gazette.

CHAPTER II
Administrative and legal cooperation

Article 90
Communication of information

1. Information to be exchanged in accordance with Article 90 of the basic Regulation shall be communicated directly between the authorities referred to in that provision.
2. The communication of information referred to in Article 91(1) of the basic Regulation by or to the Office may be effected through the competent plant variety offices of the Member States, free of charge.
3. Paragraph 2 shall apply *mutatis mutandis* to the communication of information referred to in Article 91(1) of the basic Regulation effected to or by the Examination Office. The Office shall receive a copy of such communication.

Article 91
Inspection by or via courts or public prosecutors' offices of the Member States

1. The inspection of files under Article 91(1) of the basic Regulation shall be of copies of the files issued by the Office exclusively for that purpose.
2. Courts or public prosecutors' offices of the Member States may, in the course of proceedings before them, lay the documents transmitted by the Office open to inspection by third parties. Such inspection shall be subject to Article 88 of the basic Regulation; the Office shall not charge any fee for it.
3. The Office shall, at the time of transmission of the files to the courts or public prosecutor's offices of the Member States, indicate the restrictions to which the inspection of documents relating to applications for, or to grants of Community plant variety rights is subject pursuant to Article 88 of the basic Regulation.

Article 92
Procedure for letters rogatory

1. Each Member State shall designate a central authority which will undertake to receive letters rogatory issued by the Office and to transmit them to the court or authority competent to execute them.

2. The Office shall draw up letters rogatory in the language of the competent court or authority or shall attach to such letters a translation into that language. 657. 3. Subject to paragraphs 4 and 5, the competent court or authority shall apply its own law as to the procedures to be followed in executing such requests. In particular, it shall apply suitable coercive measures in accordance with its law.

4. The Office shall be informed of the time when, and the place where, the enquiry or other legal measures is to take place and shall inform the parties to proceedings, witnesses and experts concerned.

5. If so requested by the Office, the competent court or authority shall permit the attendance of the staff of the Office concerned and allow them to question any person giving evidence, either directly or through the competent court or authority.

6. The execution of letters rogatory shall not give rise to any charge of fees or to costs of any kind. Nevertheless, the Member State in which letters rogatory are executed shall have the right to require the Office to reimburse any fees paid to experts and interpreters and the costs arising from the procedure under paragraph 5.

TITLE VI
FINAL PROVISIONS

Article 93
Regulation (EC) No 1239/95 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

Article 94
Entry into force

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 September 2009.

For the Commission
Androulla Vassiliou
Member of the Commission

[1] OJ L 227, 1.9.1994, p. 1.

[2] OJ L 121, 1.6.1995, p. 37.

[3] See Annex II.

[4] OJ L 106, 17.4.2001, p. 1.

ANNEX I

1. The compensation payable to witnesses and experts in respect of travel and subsistence expenses provided for in Article 62(2) shall be calculated as follows:

1.1. Travel expenses:

For the outward and return journey between the domicile or seat and the place where oral proceedings are held or where evidence is taken:

(a) the cost of the first-class rail transport including usual transport supplements shall be paid where the total distance by the shortest rail route does not exceed 800 km;

(b) the cost of the tourist-class air transport shall be paid where the total distance by the shortest rail route exceeds 800 km or the shortest route requires a sea-crossing.

1.2. Subsistence expenses shall be paid equal to the daily subsistence allowance of officials as laid down in Article 13 of Annex VII to the Staff Regulations of Officials of the European Communities.

1.3. When a witness or expert is summoned to proceedings at the Office he shall receive with the summons a travel order containing details of those amounts payable under points 1.1 and 1.2, together with a request form covering an advance on expenses. Before an advance can be paid to a witness or expert his entitlement must be certified by the member of the staff of the Office who ordered the evidence to be taken or, in the case of appeal proceedings, the chairman of the responsible Board of Appeal. The request form must therefore be returned to the Office for certification.

2. The compensation payable to witnesses in respect of loss of earnings provided for in Article 62(3) shall be calculated as follows:

2.1. If a witness is required to be absent for a total period of 12 hours or less, the compensation for loss of earnings shall be equal to one sixtieth of the basic monthly salary of an employee of the Office at the lowest step of grade AD 12.

2.2. If a witness is required to be absent for a total period of more than 12 hours, he shall be entitled to payment of further compensation equal to one sixtieth of the basic salary referred to in point 2.1 in respect of each further period of 12 hours which is commenced.

3. The fees payable to experts provided for in Article 62(3) shall be determined, case by case, taking into account a proposal by the expert concerned. The Office may decide to invite the parties to proceedings to submit their comments on the amount proposed. Fees may be paid to an expert only if he produces evidence by supporting documents that he is not a member of the staff of an Examination Office.

4. Payments to witnesses or experts for loss of earnings or fees under points 2 and 3 shall be made following certification of the entitlement of the witness or expert concerned by the member of the staff of the Office who ordered the evidence to be taken or, in the case of the appeal proceedings, the chairman of the responsible Boards of Appeal.

5. The remuneration of an agent, adviser or advocate acting as a representative of a party to proceedings as provided for in Article 76(3) and Article 76(4)(c) shall be borne by the other party to proceedings on the basis of the following maximum rates:

(a) in the case of appeal proceedings except for the taking of evidence which involves the examination of witnesses, opinions by experts or inspection: EUR 500;

(b) in the case of taking of evidence in appeal proceedings which involves the examination of witnesses, opinions by experts or inspection: EUR 250;

(c) in the case of proceedings for revocation or cancellation of a Community plant variety right: EUR 250.

ANNEX II

Repealed Regulation with list of its successive amendments

Commission Regulation (EC) No 1239/95 (OJ L 121, 1.6.1995, p. 37)
 Commission Regulation (EC) No 448/96 (OJ L 62, 13.3.1996, p. 3)
 Commission Regulation (EC) No 2181/2002 (OJ L 331, 7.12.2002, p. 14)
 Commission Regulation (EC) No 1002/2005 (OJ L 170, 1.7.2005, p. 7)
 Commission Regulation (EC) No 355/2008 (OJ L 110, 22.4.2008, p. 3)

ANNEX III

Correlation table

Regulation (EC) No 1239/95 | This Regulation |
 Articles 1 to 14 | Articles 1 to 14 |
 Article 15(1), (2) and (3) | Article 15(1), (2) and (3) |
 Article 15(4) | — |
 Article 15(5) and (6) | Article 15(5) and (6) |
 Articles 16 to 26 | Articles 16 to 26 |
 Article 27(1), first to fourth indents | Article 27(1) (a) to (d) |
 Article 27(2) and (3) | Article 27(2) and (3) |
 Article 27(4), first to fourth indents | Article 27(4) (a) to (d) |
 Articles 28 to 40 | Articles 28 to 40 |
 Article 41, first sentence | Article 41(1) |
 Article 41(1) to (4) | Article 41(2) to (5) |
 Articles 42 to 64 | Articles 42 to 64 |
 Article 65(2) to (5) | Article 65(1) to (4) |
 Articles 66 to 92 | Articles 66 to 92 |
 722. Article 93(1) | Article 15(4) |
 Article 93(2) and (3) | — |
 Article 94 | — |
 Article 93 |
 Article 95 | Article 94 |
 Annex | Annex I |
 — | Annexes II and III |.

HUNGARY

ACT XXXIII of 1995 on the Protection of Inventions by Patents, as last amended by Act XXVII of 2009

PART V PROTECTION OF PLANT VARIETIES

Chapter XIII PLANT VARIETIES AND PROTECTION OF PLANT VARIETIES

General provisions Article 105

For the purposes of this Act:

(a) *plant variety*: a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions of protection are fully met, can be

1. defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
2. distinguished from any other plant grouping by the expression of at least one of the said characteristics, and
3. considered as a unit with regard to its suitability for being propagated unchanged;

(b) *propagating material*: *entire plants, seeds or other parts of plants suitable for growing the whole plant or for producing it in any other way.*

Object of plant variety protection Article 106

- (1) Plant variety protection shall be granted for varieties that are distinct, uniform, stable and new.
- (2) Varieties of all botanical genera and species, including hybrids between general or species, may form the object of plant variety protection.

(3) The variety shall be deemed to be distinct if it is clearly distinguishable, by the expression of the characteristics resulting from a given genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge at the date of priority. The existence of another variety shall in particular be deemed to be a matter of common knowledge from the date of filing of the application if

- (a) it was already object of plant variety protection or entered in an official register of plant varieties;
- (b) an application for the granting of plant variety protection or for state registration was filed, provided that the application leads to the granting of plant variety protection or to the entering of the said variety in the official register of plant varieties.

(4) The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, its individuals are sufficiently uniform in the expression of those characteristics which are included in the examination of distinctness, as well as any others used for the variety description.

(5) The variety shall be deemed to be stable if the expression of the characteristics which are included in the examination for distinctness as well as any others used for the variety description, remain unchanged after repeated propagation or in the case of a particular cycle of propagation at the end of each such cycle.

(6) The variety shall be deemed to be new if the propagating or harvested material of the variety has not been sold or otherwise disposed of to others by or with the consent of the breeder [Article 108(1)] or his successor in title, for purposes of exploitation of the variety

* Translation provided by the Hungarian Authorities. The amendments to the Act entered into force on August 1, 2009.

(a) in the country earlier than one year before the date of priority,

(b) abroad earlier than four years or, in the case of trees or of vines, earlier than six years before the date of priority.

Plant varieties eligible for protection
Article 107

(1) Plant variety protection shall be granted to a plant variety if

(a) it satisfies the requirements laid down in Article 106;

(b) the plant variety has been given a variety denomination meeting the requirements of paragraph (2); and

(c) the application therefore complies with the requirements laid down by this Act.

(2) The plant variety must be given a variety denomination suitable for identification. A variety denomination shall, in particular, not be suitable for identification

(a) if it designates an existing variety of the same plant species or of a closely related species or can be confused with it;

(b) if its use would infringe the earlier rights of others;

(c) if it is liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeders;

(d) if it consists solely of figures except where this is an established practice for designating varieties;

(e) if its use would be contrary to public policy or morality.

Breeder of the plant variety and entitlement to
plant variety protection
Article 108

(1) Breeder is the person who bred, or discovered and developed a variety.

(2) The right to plant variety protection shall belong to the breeder or to his successor in title.

(3) On the basis of this Act, an applicant may obtain plant variety protection if

(a) he is of Hungarian nationality or has his domicile or seat in the country;

(b) he is a national of a State or of a Member State of an international organization party to the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as the "UPOV Convention"), or has his domicile or seat in such a State.

(4) In addition to the cases laid down in paragraph (3), plant variety protection may also be obtained on the basis of other international treaties or subject to reciprocity. In the matter of reciprocity, the standpoint of the President of the Hungarian Patent Office shall be decisive.

(5) *In any other matters pertaining to the moral rights of the breeder, to the right to plant variety protection, to service and employee plant varieties and to the remuneration of the breeder, the provisions of Article 7(2) to (7), Article 8(2) to (4) and Articles 9 to 17 shall apply mutatis mutandis.*

Rights conferred by plant variety protection
Article 109

(1) Plant variety protection shall confer on the holder of plant variety protection (hereinafter referred to as "the holder") the exclusive right to exploit the variety.

(2) On the basis of the exclusive right of exploitation, the holder shall be entitled to prevent any person not having his consent from the following acts in respect of the propagating material of the protected variety:

(a) production or reproduction (multiplication),

(b) conditioning for the purpose of propagation,

(c) offering for sale,

(d) selling or other marketing,

(e) exporting,

(f) importing,

(g) stocking for any of the purposes mentioned in (a) to (f).

(3) The provisions of paragraph (2) shall also apply to harvested material obtained through the unauthorized use of propagating material of the protected variety or to products made directly from such harvested material through the unauthorized use of the harvested material, unless the holder has had reasonable opportunity to exercise his right in relation to the said propagating or harvested material.

(4) The provisions of paragraphs (2) and (3) shall also apply in relation to varieties

(a) which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;

(b) which are not clearly distinguishable in accordance with Article 106(3) from the protected variety;

(c) whose production requires the repeated use of the protected variety.

(5) For the purposes of paragraph (4)(a), a variety shall be deemed to be essentially derived from another variety ("the initial variety") when

(a) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,

(b) it is clearly distinguishable in accordance with Article 106(3) from the initial variety; and

(c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(6) The exclusive right of exploitation shall not extend to

(a) acts done privately or not involved in an economic activity;

(b) acts done for experimental purposes relating to the plant variety;

(c) acts done for the purpose of breeding other varieties, and, except where the provisions of paragraph (4) apply, acts referred to in paragraphs (2) and (3) in respect of such other varieties.

(7)–(8) [repealed]

Claim to remuneration arising from
plant variety protection
Article 109/A

(1) The farmer may exploit the product of the harvest in his own holding without the permission of the holder for the purposes of propagation – other than the hybrids and synthetic plant varieties – which he obtained by sowing in his own holding the seed or tuber (hereinafter referred to together as the "seed") of the plant variety being under plant variety protection and belonging to plant species specified in paragraph (2). With respect to this exploitation – with the exception defined in paragraph (4) – the holder is entitled to a equitable remuneration.

(2) Paragraph (1) shall be applied to the following agricultural plant species:

(a) Fodder plants:

1. Chickpea milkvetch – *Cicer arietinum* L.
2. Yellow lupin – *Lupinus luteus* L.
3. Lucerne – *Medicago sativa* L.
4. Field pea – *Pisum sativum* L. (partim)
5. Bertian clover – *Trifolium alexandrinum* L.
6. Persian clover – *Trifolium resupinatum* L.
7. Field bean – *Vicia faba*
8. Common vetch – *Vicia sativa* L.

(b) Cereals:

1. Oats – *Avena sativa*
2. Barley – *Hordeum vulgare* L.
3. Rice – *Oryza sativa* L.
4. Canary grass – *Phalaris canariensis* L.

5. Rye – *Secale cereale* L.
6. Triticale – *X Triticosecale* Wittm.
7. Wheat – *Triticum aestivum* L. emend. Fiori et Paol.
8. Durum wheat – *Triticum durum* Desf.
9. Spelt wheat – *Triticum spelta* L.

(c) Potatoes:

1. Potatoes – *Solanum tuberosum*

(d) Oil and fibre plants:

1. Swede rape – *Brassica napus* L. (partim)
2. Turnip rape – *Brassica rapa* L. (partim)
3. Linseed with the exclusion of flax. – *Linum usitatissimum*

(3) For the purposes of this Act:

- (a) own holding: any holding or part of an estate which is actually used by the farmer to grow plants, irrespectively to the fact whether it is his own property or uses it on other legal grounds;
- (b) farmer: any natural person, legal person or organization without legal personality who or which is engaged in growing arable crops.

(4) The obligation to pay a remuneration defined in paragraph (1) shall not be applied to any farmer who is engaged in growing arable crops in less than 20 hectares, or, in the case of potatoes, in less than 1 hectare.

(5) The rights specified in this article and in Article 109/B may be exercised by the holders individually or through their organization. The organization of the holders may proceed exclusively on behalf of those members or other holders who have given a written authorization to the organization to do so. If the holder has given a written authorization to an organization he may not proceed individually to claim remuneration. When enforcing the claims under Article 109/C and 114/C, the rules of Chapter V of the Code of Civil Procedure shall be applied for the legal representation performed by the organization of the holders.

(6) The obligation to pay a remuneration defined in paragraph (1) is effective from the date on which

the farmer actually exploits the product of the harvest for the purposes of propagation in the fields.

(7) The extent and payment of the remuneration is governed by the agreement between the holder and the farmer. The holders may conclude the agreement – in respect of the members of the farmers' organizations – with the farmers' organizations as well.

(8) In the absence of the agreement under paragraph (7)

(a) the basis of the remuneration is the seed quantity recommended by the holder for the propagation of the respective plant variety multiplied by the size of the field indicated by the farmer under Article 109/B (3) (c); the extent of the remuneration is 50 % of the level of the licence fee included in the price of the sealed seed with the lowest propagation degree of the respective plant variety, applied to the quantity determined above;

(b) the term of payment reasonable under the circumstances of the case and the method of payment is determined by the written invitation of the holder addressed to the farmer, directly or through the organization of the farmers representing the addressee; the farmer is notified of the extent of the remuneration defined in subparagraph (a) by the holder in this invitation.

(9) In respect of each plant variety, the recommended sowing quantity under subparagraph (a) of paragraph (8) and the extent of the licence fee applied to a quantity unit shall be published upon the initiative of the holder by the ministry led by the minister responsible for agricultural policy in its official gazette annually, before their respective sowing periods. With the exception of the case specified in paragraph (7), if this publication has not occurred the remuneration may not be claimed through public authorities.

Article 109/B

(1) For the purposes of claiming the remuneration under Article 109/A (1), if such data are included in its records, the authority for plant growing– upon request, against the payment of the costs, in case of proving the entitlement – provides the following

data to the holder of the plant variety being under protection and belonging to plant species specified in Article 109/A (2):

(a) the name, propagation degree and the quantity propagated of the plant varieties being under protection in favour of the holder, belonging to the plant species specified in Article 109/A (2), controlled in the holding of the farmers – not belonging to the circle of farmers specified in Article 109/A (4) – being engaged in producing seeds and, as well as the name of the respective farmers and the address of their holding;

(b) the name of the plant varieties processed by the seed processors, belonging to the plant species specified in Article 109/A (2) and being under protection in favour of the holder, as well as the quantity of the processed raw seed.

(2) For the purposes of claiming the remuneration under Article 109/A (1), if such data are included in its records, the agency responsible for agriculture and rural development – upon request, against the payment of the costs, in case of proving the entitlement – provides the following data to the holder of the plant variety being under protection and belonging to plant species specified in Article 109/A (2):

(a) the name of the farmers notifying the growing of plant species specified in Article 109/A (2), not belonging to the circle of farmers specified in Article 109/A (4), as well as the address of their holding;

(b) the overall size of the field used by the farmer defined in sub-paragraph (a), indicating the size of the field exploited for each plant variety.

(3) For the purposes of claiming the remuneration under Article 109/A (1), any farmer who – based on the data under paragraph (1) or other data – may be deemed to have performed an exploitation under Article 109/A (1) is obliged to deliver the following data to the holder – upon his request – within the reasonable time limit defined by the holder:

(a) the name of plant varieties belonging to the plant species specified in Article 109/A (2), being under protection in favour of the holder and whose

harvested product he exploited in his own holding for the purposes of propagation;

(b) in case of plant varieties under sub-paragraph (a) the quantity, the seal number of the seed bearing a seal, purchased and exploited in the given economic year and indication of the size of the field where it has been sowed;

(c) indication of the size of the field where the harvested product of the plant varieties under sub-paragraph (a) has been sowed;

(d) the name and address of the person(s) processing the product of the harvest of plant varieties under sub-paragraph (a) for the purposes of exploitation under Article 109/A (1).

(4) For the purposes of claiming the remuneration under Article 109/A (1), the seed processor – upon the written request of the holder – is obliged to give information about the quantity processed for the purposes of sowing of the harvested product of the plant variety belonging to some of the plant species specified in Article 109/A (2), being under protection in favour of the holder, as well as about the name and address (place of business) of the persons for whom he has fulfilled this activity of processing.

(5) Providing of data specified in paragraphs (3) and (4) may be required in respect of the given economic year and of that year or those years of the preceding three years in respect of which the farmer had not provided the data to the holder previously. Any farmer obliged to provide data under paragraph (3) shall prove the data under sub-paragraph (b) of paragraph (3) related to the quantity of the purchased and exploited seed bearing a seal by certified documents as well.

(6) In his request under paragraphs (3) and (4) the holder is obliged to give his name and address and the names of plant varieties being under protection in his favour. In his request under paragraph (3) he shall explain upon what data he supposed that the farmer had made exploitation under Article 109/A (1). Upon request of the farmer or the processor, the entitlement shall be proved.

(7) The holder may submit the request under paragraphs (3) and (4) to the farmers or to the seed processors – in case of an agreement to this end – through their organizations as well.

Article 109/C

(1) In case of the entire or partial failure – in spite of a repeated invitation – to provide data specified in Article 109/B (3) and (4), or in case of providing false data, the holder may claim the provision or correction of data specified in Article 109/B (3) and (4).

(2) If the authenticity of the data provided is disputed, the burden of proof shall be on the farmer.

Exhaustion of the exclusive right of exploitation conferred by plant variety protection Article 110

(1) The exclusive right of exploitation conferred by plant variety protection shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 109, paragraph (4), which has been sold or otherwise marketed by the holder or with his consent in the territory of the European Economic Area, or any material derived from the said material.

(2) The exclusive right of exploitation shall extend to acts referred to in paragraph (1) if such acts involve further propagation of the variety in question, or involve an export of such material of the variety which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety referred to in paragraph (1) belongs, except where the exported material is for final consumption purposes.

(3) For the purposes of paragraphs (1) and (2), material means propagating material, harvested material and any product made directly from the harvested material.

Term of plant variety protection Article 111

Definitive plant variety protection shall have a term of 25 years or, in the case of vines and trees, a term of 30 years, from the date of the grant of the protection.

Maintenance of plant variety protection Article 111/A

(1) Maintenance fees, to be determined by specific legislation, shall be paid for each year of the duration of plant variety protection.

(2) In respect of the maintenance and the maintenance fee of plant variety protection, the provisions related to the maintenance and the maintenance fee of patent protection shall apply *mutatis mutandis*.

Remuneration of the breeder of the plant variety Article 112

The breeder of the plant variety shall be entitled to a remuneration (remuneration for the breeder) under the provisions relating to remuneration for inventions (Article 13).

Maintenance of the plant variety, use of variety denominations Article 113

(1) The holder shall be required to maintain the plant variety during the period of plant variety protection.

(2) When a variety is offered for sale or is marketed, it shall be permitted to associate a trademark, a geographical indication or other similar indication with the registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

(3) When a variety is offered for sale or marketed, the registered variety denomination must be used, even after the lapse of plant variety protection, except where such use would infringe the earlier rights of others.

Other rights and obligations deriving from plant varieties and plant variety protection Article 114

(1) *Rights deriving from plant varieties and plant variety protection may not be transferred to any person who cannot be granted plant variety protection under the provisions of Article 108(3) and*

(4) In any other matters pertaining to the succession in title, the provisions of Article 25 shall apply *mutatis mutandis*.

(2) If, after the grant of plant variety protection, the holder of plant variety protection obtained a Community plant variety right [Article 115(b)] for the same variety, he will be exempt from paying the annual fees until the lapse of the Community plant variety right. If the Community plant variety right lapses before the expiry of the term of plant variety protection, the holder may request re-establishment of the plant variety protection in accordance with the provisions of Article 115/B.

(3) With respect to the establishment of plant variety protection, the limitations of protection, the joint right to plant variety protection and joint plant variety protection, the provisions of Articles 18, 21 and 26 shall apply *mutatis mutandis*.

Exploitation contracts Article 114/A

With respect to contracts of exploitation of plant varieties (plant variety license contracts), the provisions of Articles 27 to 30 shall apply *mutatis mutandis*.

Compulsory licenses Article 114/B

(1) If a patented invention cannot be exploited without infringing a plant variety protection (hereinafter referred to as the “dominant plant variety protection”), a compulsory license shall be granted, on request and to the extent necessary for the exploitation of the variety according to the dominant plant variety protection, to the holder of the dependent patent, provided that the invention claimed in the dependent patent involves significant technical progress of considerable economic interest compared with the variety claimed in the dominant plant variety protection.

(2) In any other matters pertaining to the compulsory licenses granted for the exploitation of the protected plant varieties, the provisions of Articles 31, 32(2) and 33 shall apply *mutatis mutandis*.

Infringement of plant varieties and of plant variety protection Article 114/C

(1) An infringement of the plant variety protection is committed by any person who

(a) illegitimately exploits the plant variety being under protection;

(b) does not fulfil the obligation to pay remuneration prescribed in Article 109/A (1).

(2) In respect of infringement of plant variety and plant variety protection, the provisions of Articles 34 to 36 shall apply *mutatis mutandis*.

Revocation of plant variety protection Article 114/D

(1) Plant variety protection shall be revoked *ex tunc* if

(a) the subject matter of the plant variety protection does not satisfy the requirements laid down in Article 106(3) and (6);

(b) the grant of plant variety protection has been essentially based upon information and documents furnished by the breeder or his successor in title and the conditions laid down in Article 106(4) and (5) were not complied with at the time of the grant of plant variety protection;

(c) the plant variety protection has been granted to a person who is not entitled to it under the Act, unless it is transferred to the person who is so entitled.

(2) Should the request for revocation be rejected by a final decision, a new procedure for the revocation of the same plant variety protection on the same grounds may not be instituted by any person.

Cancellation of plant variety protection and of variety denomination Article 114/E

(1) Plant variety protection shall be cancelled – with retroactive effect to the date of instituting proceedings for cancellation or to the date at which

the conditions for cancellation have already existed, whichever is earlier – if, after the grant of protection, the conditions laid down in Article 106(4) and (5) are no longer fulfilled.

(2) In addition to the cases referred to in paragraph (1), plant variety protection shall be cancelled – with retroactive effect to the date of instituting proceedings for cancellation – if the holder, after being requested to do so and within a prescribed period,

(a) does not provide the authority with the documents or other means necessary for verifying the maintenance of the variety;

(b) does not request the registration of another variety denomination complying with the conditions laid down in Article 107(2), where the previous denomination is cancelled after the grant of plant variety protection.

(3) The registered variety denomination shall be cancelled if the holder, after being requested to do so and within a prescribed period, does not verify that it fulfils the conditions laid down in Article 107(2). If after the cancellation of the variety denomination the holder files a request which contains a variety denomination complying with the conditions laid down in Article 107(2), the new variety denomination shall be registered.

(4) Should the request for cancellation of the plant variety protection or of the variety denomination be rejected by a final decision, a new procedure for cancellation of the same plant variety protection or of the same variety denomination on the same grounds may not be instituted by any person.

Other provisions concerning lapse of
plant variety protection
Article 114/F

In any other matters pertaining to the lapse of plant variety protection, the provisions of Articles 38 to 41 and 43 shall apply *mutatis mutandis*, except that definitive plant variety protection shall also lapse, in addition to the cases laid down in Article 39, if the plant variety protection is cancelled, with retroactive effect to the date of instituting proceedings for cancellation or at the date at which the conditions for cancellation have already existed.

Chapter XIV

PROCEDURES BEFORE THE HUNGARIAN PATENT OFFICE IN MATTERS OF PLANT VARIETY PROTECTION

General provisions governing procedures concerning plant variety protection Article 114/G

(1) The Hungarian Patent Office shall have competence in the following matters of plant variety protection:

(a) grant of plant variety protection,

(b) decision on the lapse and the restoration of plant variety protection,

(c) revocation of plant variety protection,

(d) cancellation of plant variety protection and of variety denomination,

(e) keeping the registers of applications for plant variety protection and of protected plant varieties, including any particulars pertaining to their maintenance,

(f) official information on matters of plant variety protection.

(2) Experimental testing relating to the conditions laid down in Article 106(3) to (5) shall be carried out in the territory of the country by an authority (examination authority) designated by specific legislation.

(3) At the hearing, the Hungarian Patent Office shall proceed and shall take its rulings in procedures for revocation and for cancellation in the form of a board consisting of three members. The board shall take its decisions on a majority.

(4) With respect to *restitutio in integrum*, the provisions of Article 49 shall apply, with the proviso that *restitutio in integrum* shall be excluded:

(a) in the event of failing to comply with the time limit prescribed for filing the declaration of priority

[Article 114/L(2)], or with the time limit of 12 months fixed for claiming priority,

(b) in the event of failing to comply with the time limits prescribed for filing a request for *restitutio in integrum* and a request for continuation of the procedure [Article 48(3) and Articles 49(1) and (2)];

(c) in the event of failing to comply with the time limit of three months prescribed for filing a request for the re-establishment of plant variety protection [Article 115/B(1)].

(5) The language of procedures concerning plant variety protection shall be Hungarian, the declaration of novelty of the variety and the provisional description of the variety shall be made in Hungarian and the common name of the species shall be given in Hungarian. In any other matters pertaining to the use of languages, the provisions of Article 52(2) shall apply *mutatis mutandis*.

(6) Prior to the publication of the application for plant variety protection, the examination authority may also inspect the files. After publication until the grant of protection, only the applicant, his representative, the expert, the body called upon to give an expert opinion and the examination authority may inspect the provisional description of the variety. In any other matters pertaining to the access to files, the provisions of Article 53 shall apply *mutatis mutandis*.

(7) In the absence of a provision of this Act to the contrary, the Hungarian Patent Office may withdraw or modify its decisions – terminating the procedure – taken in the following matters only if a request for review is made and only until such request is transmitted to the court:

- (a) grant of plant variety protection;
- (b) decision on the lapse and the restoration of plant variety protection,
- (c) revocation of plant variety protection;
- (d) cancellation of plant variety protection;
- (e) cancellation of variety denomination;
- (f) re-establishment of plant variety protection.

(8) In the absence of a provision of this Act to the contrary, the Hungarian Patent Office may withdraw or modify its decision – terminating the procedure – taken in the matters referred to in paragraph (7)(c) to (e) on the basis of a request for review only if it establishes that its decision infringes legislation or if the parties request unanimously the modification or withdrawal of the decision.

(9) In issues not regulated in paragraphs (1) to (8), the provisions of Chapter VII shall apply *mutatis mutandis* to general provisions governing procedures concerning plant variety protection, except that plant variety protection matters shall not be managed electronically.

Registration relating to plant variety protection,
information to the public
Article 114/H

(1) The Hungarian Patent Office shall keep a Register of Applications for Plant Variety Protection and a Register of Protected Plant Varieties which shall contain all facts and circumstances concerning plant variety protection. With respect to the Register of Applications for Plant Variety Protection and the Register of Protected Plant Varieties as well as entries in both Registers, the provisions of Article 54(2) to (5) and Article 55 shall apply *mutatis mutandis*, except that any reference to the title of the invention in this Act shall mean the variety denomination, the common name and the Latin name of the species.

(2) With respect to information to the public relating to applications for plant variety protection and plant variety protection, the provisions of Article 56 shall apply *mutatis mutandis*, except that any reference to the title of the invention in this Act shall mean the variety denomination, the common name and the Latin name of the species.

(3) In compliance with the relevant provisions of the UPOV Convention, the Hungarian Patent Office shall inform the States and intergovernmental organisations party to the UPOV Convention of the submission, registration and cancellation of variety denominations and of any new variety denomination registered after cancellation.

Procedure for the grant of plant variety protection;
Filing of applications for plant variety protection
and its requirements
Article 114/I

(1) The procedure for the grant of plant variety protection shall begin with the filing of an application with the Hungarian Patent Office.

(2) The application for plant variety protection shall contain a request for the grant of plant variety protection, a declaration of novelty of the variety, the definitive description containing the result of the experimental testing relating the conditions laid down in Article 106(3) to (5), the variety denomination, the common name and Latin name of the species and, if necessary, other relevant documents.

(3) Detailed formal requirements to be complied with by applications for plant variety protection shall be laid down by specific legislation.

(4) An application for plant variety protection shall be subject to the payment of a filing fee determined by specific legislation; the fee shall be payable within two months after the date of filing.

(5) Where the documents making up the application have been prepared in a foreign language, the provisional description in Hungarian language and the Hungarian name of the species shall be filed within four months after the date of filing.

(6) Until publication, the applicant may withdraw the application for plant variety protection in compliance with the provisions of Article 41. The Hungarian Patent Office shall take note of the withdrawal by an order.

Date of filing
Article 114/J

(1) The filing date of an application for plant variety protection shall be the date on which the application filed with the Hungarian Patent Office contains at least:

(a) an indication that plant variety protection is sought,

(b) indications identifying the applicant or permitting contacts with the applicant;

(c) a provisional description of the variety, even though it does not comply with other requirements,

(d) the provisional variety denomination,

(e) the common name and the Latin name of the species.

(2) In place of filing the provisional description of the variety, reference to a priority document shall suffice to accord a date of filing for the application.

Unity; Division of the application for
plant variety protection
Article 114/K

(1) An application for plant variety protection may seek protection for one plant variety only.

(2) If the applicant has claimed protection for more than one plant variety in one application, he may divide the application, retaining the date of filing and any earlier priority, if any, until such time as the experimental testing has begun. In any other matters pertaining to division, the provisions of Article 73(2) and (3) shall apply.

Priority
Article 114/L

(1) The date establishing priority shall be:

(a) generally, the date of filing of the application for plant variety protection,

(b) in the cases defined by the UPOV Convention, the date of filing of the foreign application.

(2) Priority under paragraph (1)(b) shall be claimed on the date of filing of the application for plant variety protection. The document establishing priority shall be filed within four months after the date of filing of the application.

(3) On the basis of other international treaties or subject to reciprocity and on conditions laid down in the UPOV Convention and in paragraph (2), priority may also be claimed if the application has

been filed in a State or with an intergovernmental organization not party to the UPOV Convention. In the matter of reciprocity, the standpoint of the President of the Hungarian Patent Office shall be decisive.

Examination on filing Article 114/M

(1) Following the filing of an application for plant variety protection, the Hungarian Patent Office shall examine whether

- (a) the application satisfies the requirements for according a date of filing (Article 114/J),
- (b) the filing fee has been paid [Article 114/I(4)],
- (c) the provisional description of the variety in Hungarian language and the Hungarian name of the species have been filed [Article 114/I(5)].

(2) *In the course of the examination following the filing of the application, the Hungarian Patent Office shall proceed by applying the provisions of Article 66(1) to (3) and (10) mutatis mutandis.*

(3) If the filing fee has not been paid or the provisional description of the variety in Hungarian language or the Hungarian name of the species has not been filed, the Hungarian Patent Office shall invite the applicant to rectify the irregularities within the period specified by this Act [Article 114/I(4) and (5)]. Failing to comply with the said invitation, the application shall be considered withdrawn.

Communication of certain data Article 114/N

Concerning the application for plant variety protection, the Hungarian Patent Office shall publish the official information under Article 67.

Examination as to formal requirements Article 114/O

If an application for plant variety protection satisfies the requirements examined under Article 114/M(1), the Hungarian Patent Office shall examine whether the formal requirements of Article 114/I(2) and (3) have been satisfied. In the course of this, it shall

proceed by applying the provisions of Article 68(2) to (4) *mutatis mutandis*.

Publication, observations Article 114/P

(1) With respect to the publication of the application for plant variety protection, the provisions of Article 70 shall apply *mutatis mutandis*, except that at the request of the applicant the application may be published at an earlier date if it satisfies the requirements examined under Article 114/M(1).

(2) After publication any person may file an observation with the Hungarian Patent Office in the procedure for the grant of plant variety protection to the effect that the plant variety or the application therefor does not comply with any of the requirements for protection laid down in this Act. In any other matters pertaining to observations, the provisions of Article 71(2) and (3) shall apply *mutatis mutandis*.

Substantive examination of applications for plant variety protection Article 114/R

(1) The substantive examination of the application carried out by the Hungarian Patent Office shall ascertain whether

- (a) the plant variety meets the requirements of Article 106(3) to (6),
- (b) the plant variety has been given a variety denomination meeting the requirements of Article 107(2),

(c) the application for plant variety protection complies with the requirements laid down in this Act.

(2) The conditions laid down in Article 106(3) to (5) shall be assessed in the course of the procedure for state registration or on the basis of the results of experimental testing carried out for the purposes of the procedure concerning plant variety protection.

(3) The results of experimental testing carried out by a competent foreign authority may be taken into consideration with the consent of such authority. If the applicant files the result of an experimental testing carried out by a foreign authority, the

Hungarian Patent Office shall forward the result of the testing together with the consent of the foreign authority to the examination authority [Article 114/G(2)]. When using the results of experimental testing, the examination authority shall proceed on the basis of provisions laid down by specific legislation.

(4) The costs of experimental testing shall be borne by the applicant.

(5) The applicant may file the results of experimental testing with the Hungarian Patent Office within four years from the date of priority or within three months from the notification of the results of experimental testing, whichever expires later.

(6) If the results of experimental testing are not filed within three months preceding the expiration of four years from the date of priority, the Hungarian Patent Office shall invite the applicant to rectify the irregularity within the time limit fixed in paragraph (5) or to verify that the results of experimental testing have not yet been communicated. Failure to comply with the said invitation, the applicant shall be considered to have surrendered the provisional plant variety protection.

(7) If the application for plant variety protection does not meet the requirements examined under paragraph (1), the applicant shall be invited, according to the nature of the objection, to rectify the irregularities, to submit comments or to divide the application. In the course of this, the Hungarian Patent Office shall proceed by applying the provisions of Article 76(2) to (4) *mutatis mutandis*.

Information to the examination authority Article 114/S

(1) Simultaneously with the communication of certain data of the application for plant variety protection (Article 114/N), the Hungarian Patent Office shall transmit copies of the documents indicated in Article 114/J(1) to the examination authority. Copies of documents relating to matters of plant variety protection and necessary for performing the tasks of the examination authority shall also be sent subsequently.

(2) If the procedure for the grant of plant variety protection ends without the grant of protection, the Hungarian Patent Office shall inform the examination authority thereof by sending it the copy of the decision terminating the procedure.

Grant of plant variety protection Article 114/T

(1) If the plant variety and the application therefor meet all the requirements of the examination [Article 114/R(1)], the Hungarian Patent Office shall grant plant variety protection for the subject matter of the application.

(2) The grant of plant variety protection together with the variety denomination shall be recorded in the Register of Protected Plant Varieties [Article 114/H(1)], and official information shall be published thereon in the official journal of the Hungarian Patent Office (Article 56). The date of the grant of plant variety protection shall be the date of the ruling on the grant. The Hungarian Patent Office shall inform the examination authority of the grant of plant variety protection and of the registration of the variety denomination by sending it the ruling on the grant.

(3) After the grant of plant variety protection, the Hungarian Patent Office shall issue a certificate to which the definitive description of the variety shall be annexed.

Other procedures concerning plant variety protection Article 114/U

(1) Any person may institute proceedings for revocation or cancellation of plant variety protection or for cancellation of variety denomination against the holder of plant variety protection. Under Article 114/D(1)(c), only that person may request revocation of plant variety protection who is entitled to it.

(2) In any other matters pertaining to other procedures concerning plant variety protection, the provisions of Articles 79 to 81 shall apply *mutatis mutandis*.

Chapter XIV/A

COURT PROCEEDINGS IN CASES OF PLANT VARIETY PROTECTION

Provisions concerning court proceedings in plant variety protection Article 114/V

With respect to court proceedings concerning plant variety protection, the provisions of Chapters XI and XII shall apply *mutatis mutandis*, with the proviso that decisions referred to in Article 53/A(3) shall be regarded as decisions referred to in Article 114/G(7).

Chapter XIV/B

PROVISIONS CONCERNING THE SYSTEM OF COMMUNITY PLANT VARIETY RIGHTS

General provisions Article 115

For the purposes of this Act:

- (a) *Community plant variety regulation*: Council Regulation (EC) No. 2100/94 on Community plant variety rights;
- (b) *Community plant variety rights*: plant variety rights referred to in Article 1 of the Community plant variety regulation;
- (c) *application for a Community plant variety right*: an application for the grant of a Community plant variety right filed on the basis of the Community plant variety regulation.

Forwarding applications for Community plant variety rights Article 115/A

(1) For the forwarding, according to Article 49(2) of the Community plant variety regulation, of applications for Community Plant Variety Rights filed with the Hungarian Patent Office, a forwarding fee prescribed by specific legislation shall be payable on filing the application.

(2) If the fee for forwarding the application for a plant variety right has not been paid, the Hungarian Patent

Office shall invite the applicant to rectify the irregularity. The Hungarian Patent Office shall forward the application for a plant variety right after the payment of the fee.

Re-establishment of plant variety protection Article 115/B

(1) In the case of the lapse of a Community plant variety right, the holder of the plant variety protection – having regard to Article 92(2) of the Community plant variety regulation – may request re-establishment of the plant variety protection from the Hungarian Patent Office within three months from the lapse of the Community plant variety right.

(2) The holder shall be required to prove in the request for the re-establishment of plant variety protection the fact and date of the lapse of the Community plant variety right, and to pay, within two months from the filing of the request, the proportionate part of the annual fee applicable in the year of the lapse of the Community plant variety right together with the annual fee applicable in the subsequent year.

(3) If the request for the re-establishment of plant variety protection does not comply with the requirements laid down in this Act, the holder shall be invited to rectify the irregularities; if the annual fee prescribed in paragraph (2) has not been paid, he shall be invited to make payment within the time limit fixed in paragraph (2). Failing to comply with the said invitation shall result in the request being considered withdrawn.

(4) If the Hungarian Patent Office allows the request for the re-establishment of plant variety protection, the plant variety protection shall be re-established on the day following the lapse of the Community plant variety right.

(5) If the holder does not request re-establishment of the plant variety protection within three months from the lapse of the Community plant variety right, the plant variety protection shall lapse, by virtue of this Act, on the day following the lapse of the Community plant variety right.

Sanctions in the case of the infringement of
Community plant variety rights
Article 115/C

In the case of an infringement of a Community plant variety right – in compliance with the provisions of Part VI of the Community plant variety regulation – the same sanctions and remedies shall apply as in the case of an infringement of plant variety right granted by the Hungarian Patent Office on the basis of this Act.

KYRGYZSTAN

LAW OF THE KYRGYZ REPUBLIC ON THE LEGAL PROTECTION OF SELECTION ACHIEVEMENTS*

(Laws of the Kyrgyz Republic, February 27, 2003, No. 46,
March 31, 2005, No. 58, August 8, 2006, No. 155)

Section I.	General provisions	The effects of this Law shall extend to all botanical and zoological genera and species contained in the list approved by the Government of the Kyrgyz Republic.
Section II.	Conditions for protecting a selection achievement and the procedure for applying for the grant of a patent	(KR Law of March 31, 2005, No. 58)
Section III.	Examination of a selection achievement	Section I General provisions
Section IV.	The registration of a selection achievement and the grant of a patent	Article 1 Basic concepts
Section V.	Authorship rights in a selection achievement	The following concepts are used for the purposes of this Law:
Section VI.	Rights and obligations of the patent holder	Author of a selection achievement (the breeder) – the person whose creative endeavour resulted in the selection achievement;
Section VII.	Protecting the rights of the patent holder	breed – a group of animals which, irrespective of whether it can be protected, possesses genetically determined biological and morphological characteristics and features, some of which are specific to the group and distinguish it from other groups of animals. The breed may consist of male or female individuals or breeding material. The categories of the breed which are protected are: the type, the stud line, the cross line and the family;
Section VIII.	Recognizing a patent as void, early termination of the validity of a patent, renewal of the validity of a patent	
Section IX.	Licences	
Section X.	International cooperation	breed animal – an animal intended for the reproduction of a breed;
Section XI.	Final provisions	breeding material – a breed animal and its gametes or zygotes (embryos);
	This Law regulates the proprietary and personal non-proprietary relationships arising in connection with the breeding or identification (hereinafter “creation”), use and legal protection of selection achievements for which patents are granted by the Kyrgyz Republic.	selection achievement – a plant variety or breed of animal;
		protected selection achievement – a plant variety or animal breed which is entered in the National Register of Protected Selection Achievements;

* Translation provided by the Office of the Union.

variety – a group of plants within the same botanical taxon which is the lowest of the known classes and which, regardless of whether it fully meets the conditions for protection, can be defined by the characteristics of its genotype or combination of genotypes, is distinguished by at least one of its characteristics from other groups of plants in the same botanical taxon, and can be regarded as uniquely suitable for obtaining unaltered whole plants of the variety.

The protected categories of a variety are: the clone, the line, the first generation hybrid and the population;

seeds – the generative and vegetative organs of plants which are used to reproduce the variety;

plant material – wholeplants or parts of plants, seeds, seedlings, bulbs or fruit of different cultures which are intended for propagation or sale for purposes other than the reproduction of the variety;

a counterfeit selection achievement – a selection achievement, the propagation and/or commercial use of which involves an infringement of the exclusive rights of the patent holder.

(KR Law of March 31, 2005 No. 58)

Article 2

Legal protection of a selection achievement

The right to a selection achievement shall be protected by this Law and confirmed by a patent for the selection achievement.

The patent shall certify the authorship of the breeder, the priority of the selection achievement and the exclusive right of the patent holder to use the selection achievement.

The scope of the legal protection which the patent confers on the selection achievement shall be determined by the combination of essential characteristics set down in the description of the selection achievement.

Article 3

State regulation concerning the legal protection of selection achievements

Under this Law the authorized State authority of the Kyrgyz Republic for intellectual property shall implement State policy on the legal protection of selection achievements, consider patent applications for selection achievements, publish them, make a preliminary examination of selection achievements, decide whether to grant or refuse a patent according to the findings of the examination as to novelty, distinctiveness, uniformity and stability, register selection achievements on behalf of the State in the National Register of Protected Selection Achievements of the Kyrgyz Republic (hereinafter – the National Register of Protected Selection Achievements), publish official notices on the protection of selection achievements, grant patents for selection achievements, monitor their maintenance in force and perform other functions in accordance with the Regulations on the authorized State Agency for Intellectual Property, which have been approved by the Government of the Kyrgyz Republic.

See: Regulations on the State Agency for Science and Intellectual Property attached to the Government of the Kyrgyz Republic (Kyrgyzpatent) (approved by a Decision of the Government of the KR of March 15, 2001, No. 100).

For the purpose of dealing with disputes arising in connection with selection achievements, an Appeals Board is established in the authorized State Agency for Intellectual Property. The Regulations on the Appeals Board are adopted by the authorized State Authority for intellectual property.

See: Regulations on the Appeals Board in the State Agency for Intellectual Property of the Government of the Kyrgyz Republic (approved by a Decision of the Board of the State Agency for Intellectual Property of the Government of the Kyrgyz Republic (Kyrgyzpatent) of December 30, 1998, No. 7).

The central State authority for the management of agricultural and water resources shall be responsible for drawing up the List of botanical and zoological genera and species (hereinafter the List), which is approved by the Government of the Kyrgyz Republic.

See: Decision of the Government of the KR of 28 August 1998, No. 572 on the Approval of Lists of Botanical and Zoological Genera and Species of Plants and Animals”

The central State authority for the management of agricultural and water resources shall make proposals to the Government of the Kyrgyz Republic on supplementing the List with new genera and species and on altering the names of genera and species entered in the List. The State Commission on the Testing of Agricultural Plant Varieties, attached to the central State authority for the management of agricultural and water resources (hereinafter Goskomissiya) and the State Inspectorate for Animal Breeding and Pasture Control attached to the central State authority for the management of agricultural and water resources (hereinafter Gospleminspektsiya) are State agencies performing the following functions: testing selection achievements on behalf of the State, by agreement with the authorized State Agency for Intellectual Property, for distinctiveness, uniformity and stability; managing the National Register of Regionally Distributed Varieties within the Kyrgyz Republic and the State book of animal breeds of the Kyrgyz Republic; making decisions to permit the use of a selection achievement in production; and other functions according to the relevant regulations approved by the central State authority on the management of agricultural and water resources. (Laws of the KR of February 27, 2003, No. 46, March 31, 2005, No. 58).

Section II

Conditions for protecting a selection achievement and the procedure for applying for the grant of a patent

Article 4

Conditions for the protection of a selection achievement

A patent shall be granted for a selection achievement which meets the criteria for protection and which relates to botanical and zoological genera and species.

The criteria for protecting a selection achievement shall be:

(1) novelty. The selection achievement shall be considered to be new if on the date when the application for the patent is filed its seeds or breeding material have not been sold or transferred in any other way to other persons for their use by the breeder or by his legal successor, or with their consent:

on the territory of the Kyrgyz Republic – earlier than one year before that date;

on the territory of another State – earlier than four years or, for vines, ornamental timbers or cultivated fruits, earlier than six years before the date in question.

The novelty of the selection achievement shall not be affected if the disposal of any material of the variety or breed by other persons took place before the expiry of the time limits specified in this paragraph:

for the purpose of intentionally causing harm to the applicant;

in the performance of a contract to transfer rights to obtain a patent;

in the performance of a contract whereby a third party makes additional deliveries of material for the propagation of a variety or breed, with the consent of the applicant, on condition that such deliveries take place under the supervision of the applicant;

in the performance of a contract whereby a third party carries out sex testing or laboratory investigations or controlled tests to appraise a variety or breed;

(2) distinctiveness. The selection achievement shall be considered distinctive if it is clearly distinguished from any other generally known selection achievement in existence at the time the application is filed.

The fact of being generally known may be ascertained, in relation to the selection achievement:

- where the invention has become part of common knowledge as a result of its being produced, reproduced or brought to the cultivation stage for propagation or conservation for the above purposes;
- where it has been offered for sale or has been sold, exported or imported;
- where it has been entered in official catalogues or works of reference or is clearly described in any publication or is included in the National Register of Protected Selection Achievements;

(3) 3) uniformity. The selection achievement shall be considered uniform if on the basis of the particular characteristics of its propagation, plants and animals are sufficiently uniform in their characteristics;

(4) stability. The selection achievement shall be considered stable, if its fundamental characteristics remain unaltered after repeated propagation or, in the case of a special propagation cycle, at the end of each such cycle.

(KR Law of March 31, 2005, No. 58)

Article 5
Persons entitled to apply for the grant
of a patent

The right to apply for the grant of a patent (hereinafter the “application”) shall be with the breeder, the employer or their legal successor (hereinafter the “applicant”).

If the selection achievement were created by several persons acting together, they shall have the right to make a joint application.

The application may be filed through a proxy handling matters relating to the grant of a patent on the basis of a power of attorney.

Natural or legal persons of other States having no permanent residence or place of business in the Kyrgyz Republic shall deal with the grant of a patent and its maintenance in force through patent attorneys in the Kyrgyz Republic who are registered

with the authorized State Agency for Intellectual Property, unless otherwise stipulated in an international agreement of the Kyrgyz Republic.

Employees of the authorized State Agency for Intellectual Property or of Goskomissiya or Gospleminspektsiya shall not have the right, during the entire period of their employment in those institutions, to file an application for the grant of a selection achievement patent.

Article 6
A selection achievement created
in the course of employment

If a selection achievement were created while performing professional duties or obligations, the right to apply for the grant of a patent shall lie with the employer, unless otherwise agreed between the breeder and the employer.

A selection achievement shall be deemed to have been created in the course of employment if, at the time of the creation, the breeder was performing duties:

essential to the task he was performing;

specifically imposed on him for the purpose of creating the selection achievement.

If the employer, within four months of the date on which he was notified by his breeder of the creation of the selection achievement, fails to file an application with the authorized State Agency for Intellectual Property or to cede the right to do so to another person, the breeder shall have the right to file an application and to obtain a patent in his own name. In that case the employer shall have the right to use the selection achievement by paying an agreed sum of compensation to the author or patent holder.

If a selection achievement were created by an employee using the experience, equipment, and technical and other resources belonging to the employer, but not while performing his professional duties or carrying out a specific task imposed by the employer, the right to obtain a patent shall lie with the employee. In that case the employer shall

be entitled to priority use of the selection achievement by paying an agreed sum in compensation to the holder of the patent.

Other relationships arising in connection with the creation by an employee of a selection achievement shall be governed by the law of the Kyrgyz Republic.

Article 6-1

A selection achievement created in the course of works performed under a Government contract

If a selection achievement is created while working under a Government contract intended to serve the needs of the Kyrgyz Republic, the right to apply for and receive the grant of a patent for the selection achievement shall lie exclusively with the person carrying out the work (the contractor), unless it is established by the Government contract that the right belongs to the Kyrgyz Republic, on whose behalf the Government contractor is acting.

If according to a Government contract the right to the grant of a patent belongs to the Kyrgyz Republic, the Government contractor may file an application for the grant of a patent within six months of being informed in writing by the person performing the work (the contractor) that a selection achievement has been made which meets the criteria for protection. If within this period the Government contractor does not file an application, the right to the grant of a patent shall lie with the person performing the work (the contractor).

If a patent for a selection achievement created during the performance of work under a Government contract in the service of the Kyrgyz Republic is not obtained by the Government contractor in accordance with the first paragraph of this Article, the holder of the patent shall be bound, when so required by the Government contractor, to grant to such a person or persons as he may name a non-exclusive licence to use the selection achievement concerned for the purposes of works to be done or deliveries of products to be made for the needs of the Kyrgyz Republic.

An author of a selection achievement who is not a patent holder shall be paid a fee by the person who received the patent in accordance with the first

paragraph of this Article. For the payment of the fee, the provisions of Article 22 of this Law shall apply.

(KR Law of August 8, 2006, No. 155)

Article 7

Applying for the grant of a patent

An application for the grant of patent shall be filed with the authorized State Agency for Intellectual Property. The application shall contain:

- (1) a supporting statement;
- (2) a description of the variety or breed:

for plant varieties – a label designating the variety;

for animal breeds – a description of the breed in conformity with the method currently in use for the approbation of farm animals;

- (3) a document confirming that the fixed fee for the filing of the application has been paid or that a waiver of the payment has been granted, or setting out reasons for reducing the amount of the fee.

The requirements for making the application and for the documents to be attached to it are laid down in the Rules on the Compilation, Filing and Consideration of an Application for a Selection Achievement (hereinafter – the Rules), prepared and approved by the authorized State Agency for Intellectual Property.

See: Rules on the Compilation, Filing and Consideration of an Application for the Grant of a Patent for a Selection Achievement (approved by a Decision of the Board of the State Agency for Intellectual Property within the Government of the Kyrgyz Republic (Kyrgyzpatent) of October 30, 1998, No. 6);

Procedure for prosecuting applications for the grant of a patent for a selection achievement (approved by a decision of the KR Kyrgyzpatent of November 7, 2001, No. 8)

The application shall relate to a single selection achievement.

The applicant shall be responsible for the accuracy of the information provided in the application file. The application documents shall be filed in the national or official language. If the documents are filed in another language, a translation in the national or official language shall be attached to the application.

The date on which the application is filed shall be deemed to be the date on which the documents referred to in the first paragraph of this Article are received by the authorized State Agency for Intellectual Property.

The applicant may withdraw the application at any time up to the date on which a decision is received on the grant of the patent.

(KR Laws of March 31, 2005, No. 58, August 8, 2006, No. 155)

Article 8

Name of the selection achievement

The selection achievement shall have a name indicating the genus to which it belongs.

The name of the selection achievement shall make it possible to identify the selection achievement. It shall be brief and distinguishable from the names of existing selection achievements of the same or similar botanical or zoological genus. It shall not consist solely of figures and shall not cause confusion as to the properties, origin or significance of the selection achievement or the identity of the breeder, or run counter to the principles of public morality.

Any person who makes use of the selection achievement shall use the name under which it was entered in the National Register of Protected Selection Achievements.

If the name of the selection achievement does not meet the requirements of this Article, the applicant shall alter it within the time limit set in the Rules. An appropriate fee shall be payable for a change of name of the selection achievement made at the applicant's initiative.

The variety or breed shall be presented in other countries under the name by which it was registered in the National Register of Protected Selection

Achievements. The competent authority of the other country shall register the name supplied for the selection achievement, unless it considers the name to be inadmissible on its territory. In such a case it may require the breeder to submit another name.

Any person who offers the selection achievement protected on that territory for sale, or arranges for its sale in other countries, shall use the name of that selection achievement even after expiry of the period of validity of the patent or of the breeder's right in the achievement, unless such use is prevented, in accordance with the seventh paragraph of this Article, by rights acquired earlier.

Third party rights acquired earlier are unaffected. If by virtue of a prior acquired right the use of any particular name of a variety or breed is prohibited to a person who is bound by the sixth paragraph of this Article to use it, the breeder shall, at the request of the authorized State Agency for Intellectual Property, submit another name for that variety or breed.

(KR Law of March 31, 2005, No. 58)

Article 9

Priority right of a selection achievement

The priority of a selection achievement shall be established on the date when the application for the grant of a patent is filed with the authorized State Agency for Intellectual Property.

If two (or more) applications for the same selection achievement are received by the authorized State Agency for Intellectual Property on the same day, priority shall be established for the application dispatched on the earlier date. If it is found on examination that the applications have the same date of dispatch, the patent may be granted for the application with the earlier number assigned on registration by the authorized State Agency for Intellectual Property.

The priority of a selection achievement may be established by the date of filing of the first application in a foreign country with which the Kyrgyz Republic is linked through a bilateral or multilateral international agreement on the protection of plant

varieties and animal breeds, provided the application reaches the authorized State Agency for Intellectual Property within twelve months of that date.

An applicant wishing to use a priority right based on the first filing shall make a statement to that effect when filing the application with the authorized State Agency for Intellectual Property. Copies of the original application documents, verified by the authority which received them, together with samples or other evidence that the selection achievement which is the subject of both applications is the same, shall be submitted within three months.

The breeder shall have the opportunity, within two years of expiry of the priority or, where the first application has been declined or withdrawn, and sufficient time (following such refusal or withdrawal) to submit to the authorized State Agency for Intellectual Property any necessary information, documents or materials which are required for the purposes of an examination.

Section III Examination of a selection achievement

Article 10 Examination of an application for a selection achievement

The examination of a patent application for a selection achievement shall include a preliminary examination and test of the claimed selection achievement for distinctiveness, uniformity and stability.

(KR Law of March 31, 2005, No. 58)

Article 11 Preliminary examination of an application for a selection achievement

The preliminary examination of an application for a selection achievement shall be carried out within two months of its being filed with the authorized State Agency for Intellectual Property. During the preliminary examination the authorized State Agency for Intellectual Property shall verify that the documents specified in Article 7 of this Law are present and that the name of the selection

achievement meets the requirements of Article 8 of this Law, and ascertains the priority of the selection achievement.

A fee shall be payable for the preliminary examination.

From the date of filing and until being notified that the application has been accepted for consideration by the authorized State Agency for Intellectual Property, the applicant may, on his or her own initiative and on payment of a fee, supplement, correct or clarify the application documents, without altering the substance of the claimed selection achievement for which the grant of a patent is sought.

If the application were filed in breach of the requirements for the formulation and compilation of applications, or if additional materials are required for the purposes of an examination, the applicant shall be sent a request to supply the corrected or missing materials within two months of receiving the request.

If it is found during the preliminary examination that the name of a selection achievement does not meet the established requirements, the applicant shall be notified and invited to provide another name within two months of receipt of the notice.

At the request of the applicant, where proper grounds exist and subject to payment of the appropriate fee, the authorized State Agency for Intellectual Property may permit an extension of up to six months of the time limit for replying to the enquiry or notification referred to in the fourth or fifth paragraphs of this Article.

If the applicant fails to supply the requested materials within the specified time limit, or to alter the name of the selection achievement, or to submit a request for an extension of the fixed time limit, the application shall be deemed to have been withdrawn.

If the result of the preliminary examination is positive, the applicant shall be notified that his application has been accepted for consideration.

(KR law of March 31, 2005, No. 58)

Article 12

Publication of an application for a selection achievement patent

Within four months of the date of completion of the preliminary examination of the application for a selection achievement patent, the authorized State Agency for Intellectual Property shall publish a notice concerning the application in the Official Gazette. The information to be published shall be determined by the authorized State Agency for Intellectual Property. When the information about the application has been made public, any person may have access to the file on it. An appropriate fee shall be payable for access to the file.

Information about the application shall not be published if, before the end of the time limit for its publication, a decision has been made to grant a patent or the application has been withdrawn, or if a decision has been made to refuse the grant of a patent and the possibilities for appealing that decision have been exhausted.

The author of the selection achievement may, if he is not the patent holder, decline to be named as the inventor in the notice published about the application.

Within six months of the date of publication of the application, a claim for novelty presented by any person to the authorized State Agency for Intellectual Property shall be taken into consideration.

The claim shall be submitted by the interested person to the Appeals Board in the form of an objection.

The Appeals Board shall notify the applicant of the receipt of the objection and of its content. If the applicant does not agree with the objection by the interested person, he or she may send reasoned arguments against it to the Appeals Board within one month of being notified.

The objection shall be considered by the Appeals Board within four months of being received. A fee shall be payable for the filing and consideration of an objection sent to the Appeals Board.

The person who submitted the objection and the applicant may both be present when it is considered. If the selection achievement does not meet the requirement of novelty, a decision shall be made to refuse the grant of a patent.

Any of the parties may, in the event of disagreement with a decision of the Appeals Board, lodge a complaint with a court within six months of the decision.

(KR Law of March 31, 2005, No. 58)

Article 13

Temporary legal protection of a selection achievement

An applicant shall be afforded temporary legal protection for a selection achievement for the period from the date on which the application is published until the date when the patent is issued.

Having obtained the patent, the patent holder shall be entitled to compensation from any person having performed without permission, during the period of temporary legal protection of the selection achievement, the acts designated in the first paragraph of Article 24 of this Law.

(KR Law of March 31, 2005, No. 58)

Article 14

Testing a selection achievement for distinctiveness, uniformity and stability

Tests of a selection achievement for distinctiveness, uniformity and stability shall be carried out by Goskomissiya, Gospleminspektsiya or other competent bodies with which the Kyrgyz Republic has bilateral or multilateral agreements on the protection of plant varieties or animal breeds.

A fee shall be payable for tests of varieties.

In appraising a selection achievement for distinctiveness, uniformity and stability, Goskomissiya and Gospleminspektsiya may rely on:

the results of tests carried out under agreements with legal and natural persons in the Kyrgyz Republic

or with competent bodies in foreign countries on the testing of selection achievements with which the Kyrgyz Republic has bilateral or multilateral agreements on the protection of plant varieties or animal breeds;

tests carried out by an applicant or on his behalf in or outside the Kyrgyz Republic.

Goskomissiya or Gospleminspektsiya may require the applicant to supply any necessary information, documents or planting or breeding material, and may propose that the applicant carries out certain tests of the variety or breed.

According to the results of the tests on a selection achievement, Goskomissiya and Gospleminspektsiya shall decide whether the selection achievement meets the conditions for protection, and shall prepare an official description of it.

During the process of technical development and during the validity of the patent, Goskomissiya and Gospleminspektsiya may at any time add to the description.

The authorized State Agency for Intellectual Property, on the basis of the results of the tests for distinctiveness, uniformity and stability, and in the light of the reports and conclusions of Goskomissiya and Gospleminspektsiya, shall decide whether to grant a patent and shall establish its priority, if this has not been done during the preliminary examination, or decide to refuse the grant of a patent.

The applicant may have access to the files used during the examination and may observe the progress of the tests.

The applicant may, within two months of the date of receiving a decision to refuse the grant of a patent, request copies of the materials opposed to the application, and full information concerning the results of the tests performed.

(KR Law of March 31, 2005, No. 58)

Article 15

Challenging a decision to refuse the grant of a patent, and extension of missed time limits

If the applicant does not agree with a decision to refuse the grant of a patent, he or she may, within three months of the date of receiving the decision on the application or the copies he has requested of the materials opposed to the application together with full information on the results of the tests, submit to the Appeals Board an objection to the decision to refuse the grant of a patent.

The objection shall be considered within four months of the date when it reaches the Appeals Board. In the case of complex applications the time limit may be extended by agreement with the applicant. The applicant may be present, either in person or through his or her representative, when the objection is considered.

An appropriate fee shall be payable for submitting an objection to the Appeals Board.

The decision of the Appeals Board may be appealed by the applicant through the courts within six months of its adoption.

Where the time limits specified in the fourth and fifth paragraphs of Article 11 have been missed by the applicant, they may be extended by the authorized State Agency for Intellectual Property where proper grounds exist and subject to the payment of a fee.

A request for the extension of a missed time limit may be submitted by the applicant within six months of its expiry.

(KR Law of March 31, 2005, No. 58)

Section IV

The registration of a selection achievement and the grant of a patent

Article 16

Registration of a selection achievement and grant of a patent

Within two months of a decision on the grant of a patent and the payment of the appropriate fee, the selection achievement shall be registered by the

authorized State Agency for Intellectual Property in the National Register of Protected Selection Achievements.

The fee shall be paid within two months of the date on which the applicant receives the decision on the examination to register the selection achievement, or, if an additional fee is paid, within three months of the date on which this two-month time limit expires.

The procedure for entering and listing information recorded in the National Register of Protected Selection Achievements shall be laid down by the authorized State Agency for Intellectual Property.

See: Annex 8 "Procedure for the conduct of the National Register of Selection Achievements of the Kyrgyz Republic" to the Regulations on National Registers of Intellectual Property Subject Matter in the Kyrgyz Republic (approved by Decree No. 194 of the KR Kyrgyzpatent, May 13, 2004).

A patent for a selection achievement shall be granted to the applicant. If several applicants are named in the application for grant of a patent, the patent shall be granted to the applicant first named in the application, and shall be used by the applicants jointly by agreement among them.

A patent for a selection achievement shall be granted in the name of the Kyrgyz Republic and shall be signed by the chief officer of the authorized State Agency for Intellectual Property.

The format of the patent and the composition of the information contained therein shall be decided by the authorized State Agency for Intellectual Property.

An author of a selection achievement who is not a patent holder shall be issued with a certificate of authorship by the State Agency for Intellectual Property, in accordance with Article 21 of this Law. Corrections of obvious and technical errors shall be made to a patent already granted at the request of the patent holder.

If the patent is lost or damaged the patent holder shall be issued with a duplicate on payment of the appropriate fee.

Article 17 Term of validity of a patent

The term of validity of a patent for a plant variety shall be 20 years from the date of entry of the claimed selection achievement in the State Register of Protected Selection Achievements. For vines, ornamental timbers, cultivated fruits and forestry species, including their sub-species, and for animal breeds, the term of validity of the patent shall be 25 years.

(KR Law of March 31, 2005, No. 58)

Article 18 Maintaining a patent in force

The holder of a patent shall pay an annual fee to maintain the patent in force. The annual fee shall become payable in the first calendar year following the year in which the patent was granted.

Article 19 Publication of the notice concerning a patent

Within two months of the date of entry in the State Register of Protected Selection Achievements, the authorized State Agency for Intellectual Property shall publish a notice of the grant of a patent in the Official Gazette. The authorized State Agency for Intellectual Property shall decide what information is published.

(KR Law of March 31, 2005, No. 58)

Article 20 Patent fees

Fees shall be payable for filing an application for a selection achievement patent, for the examination and grant of a patent for a selection achievement, for maintaining it in force, and for other legally significant acts.

The list of acts for which fees are payable, the amount of the fees and the time limits for payment as well as the grounds for exemption from payment, reduction of the fees or reimbursement of fees, are laid down by the Government of the Kyrgyz Republic.

See: Decision No. 259 of the Government of the Kyrgyz Republic of May 14, 1999 on Approval of the Regulations concerning Fees for the Patenting of Selection Achievements.

Fees shall be payable to the authorized State Agency for Intellectual Property by the applicant, the patent holder or, by agreement with them, by any natural or legal persons.

All funds received in the account of the authorized State Agency for Intellectual Property by way of fees, including currency amounts and payments for services and materials, shall be used by the authorized State Agency for Intellectual Property to defray expenses incurred in carrying out the acts prescribed in the first paragraph of this Article, and also for technical equipment and to devise and develop an automated system, compile a bank of patent information and train staff.

(KR Law of March 31, 2005, No. 58)

Section V

Authorship rights in a selection achievement

Article 21

The author of a selection achievement

The natural person by whose creative endeavour a selection achievement was made shall be recognized as its author. If several individuals took part in the making of the achievement, they shall all be considered co-authors. The procedure for using the rights belonging to co-authors shall be decided by agreement among them.

Persons who made no individual contribution to the creation of a variety or breed and who merely provided the author or authors with technical, organizational or material assistance, or merely enabled the rights in the selection achievement to be formulated, shall not be recognized as co-authors.

Arrogation of the authorship of a breeder and coercion of another person into co-authorship shall be offences under the law of the Kyrgyz Republic.

The author of a selection achievement shall have the right of authorship, which shall be his inalienable non-proprietary right in law and shall be protected without limit of time. Authorship disputes shall be resolved through the courts.

Disputes arising between a patent holder who is not the author of a selection achievement and an author who is not the holder of the patent shall be resolved through the courts.

A certificate of authorship shall be issued to each author by the authorized State Agency for Intellectual Property. The certificate of authorship shall confirm authorship and the right of the author to remuneration from the holder of a patent for the use of a selection achievement.

In the event of the authorship certificate being lost or damaged, the author shall be issued with a duplicate on payment of the appropriate fee.

The format of the certificate of authorship and the information to be shown on it shall be decided by the authorized State Agency for Intellectual Property.

Article 22

Remuneration of an author of a selection achievement who is not the patent holder

An author of a selection achievement who is not the holder of the patent shall be entitled to receive remuneration from the patent holder during the term of validity of the patent for the use of the selection achievement. The amount of the remuneration and the conditions for its payment shall be determined by agreement between the patent holder and the author.

If a variety or breed has been created by several authors, the remuneration shall be apportioned by agreement between them.

If no agreement is reached between the parties on the amount of the remuneration and the arrangements for its payment, the dispute shall be dealt with by the courts.

<p style="text-align: center;">Section VI Rights and obligations of a patent holder</p>	<p>relation to goods produced from a plant material of a protected variety.</p>
<p style="text-align: center;">Article 23 The holder of a patent</p>	<p>The permission of a patent holder is necessary for acts referred to in the second paragraph of this Article performed with seeds or breeding material which:</p>
<p>The right to obtain a patent shall lie with:</p>	
<p>the author (authors) of a selection achievement;</p>	<p>are essentially inherited from the characteristics of a protected variety (the original variety), or breed (the original breed), if such protected varieties or breeds are not in turn selection achievements which essentially inherit the characteristics of other selection achievements;</p>
<p>the employer, in the circumstances defined in Article 6 of this Law;</p>	
<p>their legal successor, including any person who acquired such a right by way of assignment.</p>	
<p style="text-align: center;">Article 24 Rights of a patent holder</p>	<p>are not clearly distinguished from a protected variety or breed;</p>
<p>A patent holder shall have the exclusive right to use a selection achievement.</p>	<p>require repeated use of a protected variety for seeds to be produced.</p>
<p>The exclusive right of a patent holder shall mean the right to perform the following actions with seeds or breeding material of a protected selection achievement:</p>	<p>A selection achievement which essentially inherits the characteristics of another (original) protected selection achievement shall be a selection achievement which, being clearly distinct from the original:</p>
<p>production and reproduction;</p>	<p>inherits the commonest essential characteristics of the original selection achievement or a selection achievement which itself inherits the essential characteristics of the original selection achievement and which retains the fundamental characteristics reflecting the genotype or combination of genotypes of the selection achievement;</p>
<p>bringing to sowing conditions for subsequent propagation;</p>	
<p>offering for sale;</p>	
<p>sale and other means of disposal;</p>	
<p>export from the territory of the Kyrgyz Republic;</p>	<p>corresponds to the genotype or combination of genotypes of the original selection achievement, except for deviations caused by the use of methods such as individual selection from the original variety or breed, a selection of an induced mutant or genetic engineering.</p>
<p>import into the territory of the Kyrgyz Republic;</p>	
<p>storage for the above purposes.</p>	
<p>The right to a patent and the right to use a selection achievement arising from a patent may be transferred by an agreement to assign the patent or a license agreement to any natural or legal person.</p>	<p>(KR Law of March 31, 2005, No. 58)</p> <p style="text-align: center;">Article 25 Acts not recognized as an infringement of the rights of a patent holder</p>
<p>The exclusive right of a patent holder shall also extend to plant materials placed on the market without the permission of the patent holder and in</p>	<p>The following are not recognized as infringing the right of a patent holder:</p>

acts performed for personal and non-commercial purposes;

acts performed for experimental purposes;

acts using the protected variety or breed as original material for creating a new selection achievement and, except for cases provided for in the fifth paragraph of Article 24 of this Law, the acts designated in the second paragraph of Article 24 of this Law, in connection with such selection achievements;

the use of plant material obtained from peasant (small farm) cultivation in the user's own enterprise for a period of two years as seeds for the cultivation of the variety on the territory of that enterprise.

The list of genera and species of plants for which the privilege described in the fifth subparagraph of the first paragraph of this Article applies shall be drawn up by the Government of the Kyrgyz Republic.

(KR Law of March 31, 2005, No. 58)

Article 26

Maintaining a selection achievement

A patent holder shall maintain a variety or breed for the term of validity of the patent in such a way as to preserve the characteristics given in the description of the variety or breed on the date of their entry in the National Register of Protected Selection Achievements.

The patent holder shall, at the request of Goskommissiya, send seeds for control testing and to ensure that conditions are suitable for on-site inspections and, at the request of Gospleminspektsiya, provide unhindered access to the breeding material for checking and approval on the spot.

Section VII

Protecting the rights of a patent holder

Article 27

Liability for infringing the rights of a patent holder

Liability shall be incurred under the law of the Kyrgyz Republic for infringing the rights of a patent holder as defined in this Law.

Claims against an infringer of a patent may also be made by a licensee, if the license agreement so provides.

A natural or legal person who fails to comply with the requirements of this Law in respect of the exclusive rights of a patent holder, or who imports into the Kyrgyz Republic seeds or breeding material or another selection achievement without the permission of the patent holder, shall infringe the patent, and the selection achievement shall be counterfeit.

Selection achievements imported into the Kyrgyz Republic from States in which they have never been protected or have ceased to be protected by law, but are protected under this Law, shall also be deemed to be counterfeit

(KR Law of March 31, 2005, No. 58)

Article 28

Protection of the rights of a patent holder

A patent holder shall be entitled to seek from an infringer:

(a) acknowledgment of the rights of the patent holder;

(b) restitution of the position which existed before the infringement of the right and cessation of the acts which infringe the rights or constitute a threat of infringement;

(c) compensation for loss, including loss of profit;

(d) repayment of any income received by the infringer as a consequence of the infringement of the rights of the patent holder, in lieu of compensation for loss;

(e) the adoption of other measures for the protection of his or her rights, which are provided for in normative legal instruments.

The choice of the measures specified in subparagraphs (c) and (d) of this Article shall be at the discretion of the patent holder.

The patent holder shall be entitled to apply to the courts for the protection of his rights, and also to the competent investigating authorities.

Counterfeit seeds or breeding material shall be subject to compulsory confiscation if so ordered by a court. Confiscated counterfeit seeds and breeding material may be destroyed, except where they are transferred to a patent holder at his request.

Where sufficient data exist concerning an infringement of the rights of a patent holder, the investigating authority or the court shall take steps to locate and seize a selection achievement which is believed to be counterfeit.

Section VIII

Declaring a patent void, early termination of the validity of a patent, renewal of the validity of a patent
(Title of the section in KR Law No 58 of March 31, 2005)

Article 29 Pronouncing a patent void

From the date of publication of a notice concerning a patent, any person may make a reasoned application to the Appeals Board to have a patent declared void. The authorized State Agency for Intellectual Property shall send a copy of the appeal to the patent holder, who shall, within three months of its dispatch, present a reasoned reply. A fee shall be payable for considering an application to have a patent declared void.

The Appeals Board shall take a decision on the matter within six months, unless additional tests are required.

A patent shall be declared void:

if on the date when the patent was granted the selection achievement did not meet the conditions of novelty, distinctiveness, uniformity or stability;

if the person named on the patent as the holder did not have legal grounds for obtaining the patent.

(KR Law of March 31, 2005, No. 58)

Article 30

Early termination of the validity of a patent

The validity of a patent shall be terminated early: if within the prescribed time limit the patent holder has not paid the fee for maintaining the patent in force;

if the patent holder has not complied within the prescribed time limit with a request from Goskommissiya or Gospleminspektsiya to supply seeds, breeding material, documents or other information for ascertaining that a selection achievement should be protected, or has not fulfilled the conditions for an on-site inspection of a selection achievement;

if a selection achievement no longer meets the conditions of uniformity and stability.

The authorized State Agency for Intellectual Property shall publish a notice in the Official Gazette concerning the early termination of the validity of a patent.

(KR Law of March 31, 2005, No. 58)

Article 30-1

Renewal of the validity of a patent Right of subsequent use

The validity of a patent for a selection achievement which has been terminated because the patent fee for the maintenance of the patent in force has not been paid within the specified time limit, may be renewed at the request of the person to whom the patent belonged. Such a request shall be submitted to the authorized State Agency for Intellectual Property within three years for plant varieties, and for vine varieties, ornamental timbers, cultivated fruits and forestry products, including their subspecies, and for animal breeds, within five years of the expiry of the time limit for payment of the above-mentioned patent fee, but before the expiry of the time limit for the validity of the patent established in accordance with this Law. A document confirming payment of the patent fee for the renewal of validity of the patent shall be attached to the request.

The authorized State Agency for Intellectual Property shall publish a notice in its Official Gazette concerning the renewal of the validity of a patent.

Any person who, in the period between the date of termination of the validity of a patent and the date of publication in the Official Gazette of the authorized State Agency for Intellectual Property of a notice concerning the renewal of validity of the patent, has begun to use the patented selection achievement on the territory of the Kyrgyz Republic, or has made the necessary preparations within this period for doing so, shall retain the right to its future use free of charge without extending the scope of such use (the right of subsequent use).

The right of subsequent use may only be transferred to another natural or legal person in connection with a production process in which the selection achievement was used or in which the necessary preparations for doing so were made.

The rights enumerated in the third and fourth paragraphs of this Article do not include the right to issue a licence to any person for the performance of the action concerned.

(KR Law of March 31, 2005, No. 58)

Article 31

Appealing the decisions of the Appeals Board of the authorized State Agency for Intellectual Property

A decision of the Appeals Board to grant or refuse the grant of a patent, or to declare a patent void, may be appealed in the courts within six months of being received by the applicant.

(KR Law of March 31, 2005, No. 58)

Section IX Licenses

Article 32 The licensing agreement

Under a licensing agreement (whether an exclusive or a non-exclusive licence) a patent holder (the licensor) shall transfer the right to the use of a

selection achievement to another person (the licensee) by means of a conditional agreement conferring a range of transferred rights, time limits, territories and arrangements for payment.

In case of the transfer of a non-exclusive license, the licensee is given the right to use the selection achievement for a specified period of time and within the limits of the transferred rights provided for in the licensing agreement. The grant of a non-exclusive licence shall not prevent the licensor from offering licenses to third parties or using the selection achievement himself. The license shall not be transferred by the licensee to third parties. The licensee shall not have the right to grant sub-licenses.

Where an exclusive licence is transferred, the licensee shall be given the exclusive right to use the selection achievement on agreed terms and territories and for an agreed period of time. When granting an exclusive license, the licensor may not use the selection achievement, or grant licenses to third parties on the territory concerned. The licensee shall be entitled, subject to conditions agreed with the licensor, to grant sub-licenses to third parties. Terms in the license agreement which impose on the licensee restrictions not arising from the rights granted to him by the patent, or which are not necessary to maintain the patent, shall be invalid.

A licensing agreement and an agreement to assign a patent shall be subject to registration with the authorized State body for intellectual property, failing which they shall be deemed to be invalid. Notices of the registration shall be published in the Official Gazette. An appropriate fee shall be payable for the registration of a licensing agreement and of an agreement to assign a patent.

See: Rules for the consideration and registration of an agreement to assign a document providing protection for industrial property subject matter, a selection achievement, a licensing agreement conferring rights to their use, or an agreement on the transfer of technology (approved by decision No. 3 of the Board of the KR Kyrgyzpatent, March 26, 1999, No. 3)

(KR Law of March 31, 2005, No. 58)

Article 33 Open licenses

A patent holder may publish a declaration in the Official Gazette of the authorized State Agency for Intellectual Property stating that any person shall be entitled to use his selection achievement, from the date of notification to that effect by the patent holder, subject to making the payment stipulated in the declaration.

The amount of the fee for maintaining a patent in force shall be reduced by 50 per cent from January 1, of the year following the year in which the declaration on the grant of an open license is published.

The authorized State Agency for Intellectual Property shall make an entry in the National Register of Protected Selection Achievements to record the grant of an open license and the amount of the payments.

On a declaration being made by the patent holder, and with the consent of all the holders of an open license, the authorized State Agency for Intellectual Property enters in the National Register of Protected Selection Achievements a record of the termination of validity of an open license.

An appropriate fee shall be payable for filing an application to terminate the validity of an open license and publish in the Official Gazette notices of termination.

Article 34 Compulsory licensing

If within three years of the date on which a patent was granted the patent holder, or a person to whom rights in the patent have been transferred, does not make use of a selection achievement which is of crucial importance for agriculture in the country, does not supply the market with seeds to the necessary extent and refuses to enter into agreements with an interested party, the latter shall be entitled to apply to the court to grant him a compulsory licence for the use of the selection achievement concerned.

In exceptional circumstances (natural disasters, catastrophes etc.), the Government of the Kyrgyz Republic shall be entitled to give permission for the use of a selection achievement without the permission of the patent holder, notifying him as soon as possible and paying the patent holder commensurate compensation, the extent and duration of use of the patented selection achievement being limited to the purposes for which the permission was given. Disputes arising from such use shall be resolved by the courts.

If a patent holder does not prove that there are proper grounds for the failure to use a selection achievement, in granting the licence the court shall define the limits of use, and the amount of the payment to be made and the procedure for making it. The payment shall be set no lower than the cost of the license, which is determined in accordance with established practice.

When granted a compulsory licence, the licensee shall be given the right to use the selection achievement within the scope of the rights of a non-exclusive licence.

The court may order the patent holder to provide the licensee with the reproduced material necessary to make effective use of the compulsory licence, in exchange for a corresponding payment to the patent holder on acceptable terms.

A compulsory licence shall be provided where the following conditions exist:

the applicant for a compulsory licence shall be in a financial, technical and scientific position to make effective use of the rights of a patent holder:

the patent holder has refused to permit the applicant for a compulsory licence to produce or trade in the reproduced material of the protected selection achievement by means adequate for the needs of society, or is not willing to give such permission on acceptable terms;

there are no grounds for the patent holder to refuse to permit use of a selection achievement by the requested method.

The duration of the compulsory licence shall be determined by the court.

A notice of the compulsory licence shall be published in the Official Gazette and recorded in the National Register of Protected Selection Achievements.

An appropriate fee shall be payable by the licensee for the registration and the publication in the Official Gazette of a notice of the grant of a compulsory licence.

(KR Law of March 31, 2005, No. 58)

Section X International cooperation

Article 35

The right to file an application in other States

An applicant may file an application for the protection of a selection achievement with the competent authorities of another State, having notified the authorized State Agency for Intellectual Property accordingly.

Expenditure connected with the protection of rights in selection achievements outside the Kyrgyz Republic shall be borne by the applicant.

(KR Law of March 31, 2005, No. 58)

Article 36

Rights of foreign citizens and legal persons

Foreign citizens and legal persons may make use of the rights specified in this Law on an equal footing with citizens and legal persons of the Kyrgyz Republic, in accordance with the international treaties to which the Kyrgyz Republic is a party or on the basis of the principle of reciprocity.

Article 37

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If international treaties to which the Kyrgyz Republic is a party establish rules other than those contained in this Law, the rules of the international treaty shall prevail.

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(KR Law of March 31, 2005, No. 58)

Article 39

The legal rules for certificates and certificates of authorship for selection achievements registered by the USSR State Committee for Inventions and Innovations

The effect of certificates and certificates of authorship for selection achievements registered with the USSR State Committee for Inventions and Discoveries shall be recognized on the territory of the Kyrgyz Republic. Holders of certificates and authorship certificates for plant varieties where the 20-year time limit has not elapsed, and for vine varieties, ornamental timbers and forestry products, and animal breeds with a 25-year period of protection from the date of filing of the application, shall have the right to request them to be exchanged for patents of the Kyrgyz Republic. The request shall be made to the authorized State Agency for Intellectual Property. The procedure for submitting and considering the requests is laid down in the Rules.

Where applications were filed for the grant of authorship certificates for new varieties or breeds before the entry into force of this Law and where tests have been carried out on them by Goskommissiya or Gosplemingspektsiya and decisions made to permit their use, the applicant shall be given the right to request the grant of a patent of the Kyrgyz Republic for a selection achievement on condition that the selection achievement meets the requirements for protection under this Law.

Applications on which the requests specified in the third paragraph of this Article were filed within the set time limit shall be considered in the manner prescribed in this Law and in the Rules, without subjecting the selection achievement to the requirements of novelty under Article 4 of this Law. Patents of the Kyrgyz Republic for a selection achievement which were granted on requests to exchange certificates or authorship certificates shall take effect from the date of the entry of the selection achievement applied for in the National Register of Protected Selection Achievements and until the expiry of a 20-year time limit for plant varieties, or 25 years' protection from the date of filing the application for vine varieties, ornamental timbers and forestry products, and animal breeds.

(KR Law of March 31, 2005, No. 58)

Article 40.
Transitional provisions

Patents of the Kyrgyz Republic for selection achievements which were granted before the entry into force of this Law shall retain the time limits for validity specified in them.

Where applications for the grant of a patent for a selection achievement were being processed before the entry into force of this Law and positive decisions have been made on them, patents of the Kyrgyz Republic shall be granted for the selection achievement with the following periods of validity: for plant varieties, 30 years from the date of entry of the selection achievement applied for in the National Register of Protected Selection Achievements; and 35 years for vine varieties, woods and ornamental timbers, cultivated fruits and forestry products, including their sub-species, and animal breeds.

Applications for the grant of a patent for selection achievements which were being processed before the entry into force of this Law and on which no decision has been made shall be further considered in accordance with this Law.

(KR Law of March 31, 2005, No. 58)

Article 41.

On the entry into force of this Law

1. This Law shall take effect from the date of its publication.

Published in the newspaper "Erkin-Too" on June 26, 1998, Nos. 81-82

2. The Government of the Kyrgyz Republic shall, within three months from the date of entry into force of this Law:

- approve the List of botanical and zoological species and of plant and animal varieties which are to be protected under this Law.

See: Decision of the Government of the KR of August 28, 1998, No. 572 on the Approval of Lists of Botanical and Zoological Genera and Species of Plants and Animals

- bring its normative legal instruments into conformity with this Law.

The President of the Kyrgyz Republic, A. Akayev

REPUBLIC OF MOLDOVA

LAW ON THE PROTECTION OF PLANT VARIETIES*

N39-XVI of February 29, 2008

Monitorul oficial N99-101/364 of June 6, 2008

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* Translation provided by the Office of the Union.
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Chapter I BASIC PROVISIONS

Article 1

Scope and purpose of the Law

(1) This Law shall govern relations arising out of the creation, legal protection and use of plant varieties of any genera and species.

(2) The purpose of this Law shall be the establishment of a legal framework for the organization and functioning of a system of protection of plant varieties.

Article 2

Legal basis

(1) The legal relations arising out of the creation, legal protection and use of plant varieties shall be governed by the Constitution of the Republic of Moldova, the Civil Code, the Code on Science and

Innovations, the Customs Code, international treaties to which the Republic of Moldova is party, this Law and other normative acts.

(2) If an international treaty to which the Republic of Moldova is party has established norms other than those contained in this Law, then the norms of the international treaty shall be applied.

Article 3

Basic concepts

For the purposes of this Law:

“*breeder*” means a person who created or discovered and improved a variety;

“*variety*” means a plant grouping belonging to the lowest of the known botanical taxa, which irrespective of whether it complies fully with the criteria for the grant of patent protection:

- may be defined by the characteristics of a given genotype or combination of genotypes; the expression of the characteristics of the material of the variety of the said type may be permanent or temporary, and moreover the degree of variability shall be determined by the genotype or combination of genotypes;

- may be distinguished from any other plant grouping by the degree of expression of at least one of the said characteristics;

- may be considered to be reproduced without any alterations as a unified whole in terms of its characteristics;

“*categories of a variety*” means clone, line, or hybrid;

“*material of a variety*” means seeds, whole plants or parts thereof, capable of reproducing whole plants;

“*applicant*” means a natural person or legal entity requesting a plant variety patent;

“*patent owner*” means a natural person or legal entity to whom a plant variety patent belongs;

“*genetically modified organism*” means any living organism which has a new combination of genetic material obtained with the assistance of contemporary biotechnology.

Article 4

Legal protection of a variety

(1) Rights in a variety may be obtained and enforced on the territory of the Republic of Moldova by means of a plant variety patent (hereinafter referred to as "*the patent*"), granted by the State Agency for Intellectual Property in accordance with this Law and sub-regulatory normative acts, and likewise with international treaties in this field, one of the parties to which is the Republic of Moldova.

(2) The scope of the legal patent protection shall be determined by the sum of essential characteristics of the variety, as specified in the official description thereof.

Article 5

Authorities responsible for the legal protection of a variety

(1) The authorities implementing state policy in the area of legal protection of varieties are the State Agency for Intellectual Property (AGEPI) (hereinafter referred to as "*the Agency*"), and the State Commission for the Testing of Plant Varieties (hereinafter referred to as "*the State Commission*"). State policy in the field of the use of new varieties in breeding shall be implemented by the National Council for Plant Varieties.

(2) The Agency is the national department in the field of intellectual property protection and the single authority in the Republic of Moldova which grants legal protection of new plant varieties.

(3) The Agency:

(a) shall develop drafts of legislative and other normative acts in the field of the protection of plant varieties and ratify acts of a procedural nature which are essential for it to perform functions established by Law;

(b) shall register applications for the grant of a patent (hereinafter referred to as "*patent application*") and carry out examinations thereof, grant and grant patents on behalf of the State, publish official data in the Official Gazette of Industrial Property of the Republic of Moldova (hereinafter referred to as "*the Gazette*");

(c) shall maintain the National Collection of Plant Variety Patents and exchange information with international organizations for the protection of plant varieties and with appropriate authorities of other countries;

(d) shall keep the National Register of Plant Variety Patent Applications (hereinafter referred to as "*the National Register of Applications*") and of the National Register of Plant Variety Patents (hereinafter referred to as "*the National Register of Patents*"), and shall establish and confirm the procedure by which they are to be maintained.

(4) The Agency and State Commission shall represent the Republic of Moldova in the International Union for the Protection of New Varieties of Plants (hereinafter referred to as "UPOV"), and also in other international and inter-governmental organizations for the protection of plant varieties, and support bilateral and multilateral cooperation with them in this field.

(5) The State Commission shall be the authority which carries out the testing of plant varieties in its variety testing centers, experimental stations, specialized institutions and laboratories applying methodologies and within the time limits prescribed by international standards, in order to determine their compliance with the conditions of patentability, namely distinctness, uniformity and stability, and also the testing of varieties in order to determine their agronomical value. The State Commission shall maintain the Register of Plant Varieties of the Republic of Moldova (hereinafter referred to as "*the Register of Plant Varieties*"), including varieties approved for cultivation and sale in the Republic of Moldova.

Chapter II

SUBSTANTIVE PATENT LAW

Part 1

Patentability of a variety

Article 6

Conditions of patentability of a variety

(1) A plant variety shall be patentable only where it is:

- (a) distinct;
- (b) uniform;
- (c) stable, and
- (d) new

(1) The variety shall be designated with a denomination in accordance with Article 36.

Article 7 Distinctness

(1) The variety shall be deemed to be distinct if it is clearly distinguishable by the presence of at least one or more relevant features stipulated by a certain genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge at the time of the filing of the patent application with the Agency, or at the time of the requested priority, as applicable.

(2) The distinctness of the variety shall be determined by features which can be displayed and described precisely.

(3) The variety's existence shall be deemed to be a matter of common knowledge if at the application filing date:

(a) it is protected in the Republic of Moldova or in another country and has been entered into the official register of protected varieties;

(b) it has been entered in the Register of Plant Varieties or in similar registers and reference collections of other countries;

(c) a registered application exists for the grant of protection to the variety or for its entry in the Register of Plant Varieties provided that, as a result of the application, protection is granted or the variety is entered in the Register.

Article 8 Uniformity

A variety shall be deemed to be uniform if, taking into account differences arising as a result of the particular features of its propagation, plants of the variety remain sufficiently uniform in the expression of characteristics included in the determination of distinctness of the variety, and also of other characteristics used to describe the variety.

Article 9 Stability

A variety shall be deemed to be stable if its relevant characteristics for the determination of its distinctness and any other features used to describe the variety remain unchanged after repeated propagation, or at the end of each cycle of propagation.

Article 10 Novelty

(1) A variety shall be deemed to be new if at the time of filing of the patent application at the Agency or at the time of the requested priority, material for the propagation of the variety or harvested material of the variety has not been sold or put at the disposal of third parties by the breeder or with his consent for the purposes of commercial exploitation of the variety:

(a) on the territory of the Republic of Moldova, earlier than one year before the filing date of the patent application;

(b) on the territory of other States, earlier than four years, and in the case of trees and vines, earlier than six years before the filing date of the patent application.

(2) The following shall have no bearing on the novelty of a variety as per paragraph (1):

(a) making the material of the variety available to an official body in the context of certain legal obligations, or third parties on the basis of an agreement or in the context of any other legal relations for the purposes of cultivation, reproduction, propagation, conditioning or storing provided that the breeder is not deprived of the exclusive right to dispose of material of the variety, and provided that material of the variety has not been made available for commercial purposes previously, except where such material of the variety was used repeatedly to obtain hybrids and if the material of the hybrid and the harvested material of the hybrid were sold;

(b) disposal of the material of the variety by one company or firm to another company or firm of which it is a subsidiary, or if both companies or firms are

wholly owned by a third company or firm, provided that there was no further disposal;

(c) disposal without reference to the kind of material of the variety or the harvested material of the variety, obtained from plants which have been cultivated for experimental purposes or for the purpose of the creation or discovery and improvement of a variety and which have not been used for fresh reproduction or propagation;

(d) disposal of the material of the variety occurring in the context of the exhibiting of the variety by the breeder at an exhibition which is officially recognized in compliance with the Convention on International Exhibitions;

(e) disposal of the material of the variety in the context of an agreement between the breeder and a third party, according to which the breeder approves the cultivation of seed material under his supervision.

Part 2

Right to request and obtain a patent

Article 11

Right in a patent

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

(2) Where the variety has been created or discovered and improved jointly by two or more breeders, the right in a patent shall belong to them all or to their successors-in-title. The priority of rights in the variety of each of them shall be established by a written contract between the breeders. The same priority shall be applied in cases where one or more breeders discovered the variety, but others improved said variety.

(3) The right in a patent shall likewise belong jointly to a breeder and a certain person (or certain persons) if the breeder and person (or persons) have declared in writing that they have agreed to share such a joint right.

(4) Where the right in a patent belongs jointly to two or more persons in accordance with parts (2) and (3), one person or several of the said persons may, by means of a written statement, confer the others with the right in the patent.

(5) Where two or more persons created or discovered and improved the same variety independently of each other, the right in a patent shall belong to the person whose patent application has the earlier date of filing or priority, assuming it has been granted. This provision is applied only in cases where the first application was published in accordance with Article 44.

(6) In the context of procedures conducted by the Agency, the applicant is the person entitled to a patent.

Article 12

Varieties bred or discovered and improved in the course of employment:

(1) The right in a patent for a variety bred or discovered and improved by a breeder in the performance of an employment contract or research contract shall belong to the employer where the contract between said employer and the breeder has not stipulated otherwise; in this instance, the breeder shall have the right to commensurate remuneration as prescribed by the contract. The amount of remuneration shall be determined depending on the profit obtained as a result of utilizing the variety during the term of validity of the patent to the variety, and on the value of the variety, and shall comprise not less than 15 per cent of this profit, including receipts from the sale of licenses.

(2) A variety shall be deemed to have been bred in the course of employment if, in breeding the variety, the breeder:

(a) performed duties entrusted to him by virtue of his position;

(b) performed duties specifically entrusted to him for the purpose of breeding a new variety;

(c) made use of material or financial means made available to him by the employer or a person who commissioned the breeding of the variety, as well as of knowledge and expertise gained in the performance of professional duties.

(3) Where the employer, within 60 days of having been notified by the breeder of the breeding of the new variety, has not filed an application for a patent or has not assigned his right to file an application to another person, or has not instructed the breeder in writing to keep the newly bred variety secret, the breeder shall acquire the right to file a patent application and to obtain a patent in his own name. The employer shall in that case have a preferential right to be granted a non-exclusive license to use the variety.

(4) Where the employer has obtained a patent to a variety bred in accordance with paragraph (1), the employee shall have a preferential right to obtain a non-exclusive license to use the variety.

(5) Where the parties have not reached agreement regarding the amount of remuneration to which the employee is entitled, or the value of the license, these grants shall be resolved by a court depending upon the contribution of each party to the breeding of the variety and upon its commercial value.

(6) The procedure for the breeding and use of varieties by employees shall be established by the Regulations on Industrial Property Subject Matter, bred as part of employment duties, as approved by the Government.

Article 13

Right to file a patent application

(1) The following shall be entitled to file a patent application:

(a) natural and legal persons domiciled or with a place of business in the Republic of Moldova;

(b) natural and legal persons domiciled or with a place of business on the territory of a State party to relevant international treaties, a party to which is the Republic of Moldova;

(c) natural and legal persons of any other country, provided that said country grants natural and legal persons domiciled or with a place of business in the Republic of Moldova protection for varieties of the same botanical taxon which is equivalent to the protection granted by this Law.

(2) The patent application may be filed by two or more persons complying with the requirements stipulated in paragraph (1). Denial of a patent to one or more breeders shall not extend to the others, where they have acted in accordance with this Law.

Article 14

Patent application filed by a non-competent person

(1) Where it is recognized by a final court judgment prior to the granting of a patent by the Agency that an entity with the right to obtain a patent under Part (1), Article 11, is a person other than the applicant, then that person shall be entitled:

(a) to continue the patent application procedure as if it were his own instead of the applicant within three months of the date of the final court judgment;

(b) where the patent application was withdrawn or refused, to file a fresh patent application for the same variety which retains the filing date of the original application within one month of the date of withdrawal or refusal of the application;

(c) to request withdrawal of the patent application.

(2) The interested party shall present a copy of the court decision to the Agency. The court's decision shall be entered in the National Register of Applications and shall be published in the Gazette.

Part 3

Consequences of patent protection

Article 15

Patent owner's rights

(1) The patent owner shall have the exclusive right in the patent and in the patent-protectable variety, which comprises the right to exploit the variety, the right to manage the patent and variety, and the right to prohibit third parties from performing the following

acts in relation to the material of the patented variety or the harvested material of the variety without prior approval:

- (a) breeding or reproduction (for the purposes of propagation);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other kinds of marketing;
- (e) exporting;
- (f) importing;
- (g) storing for any of the purposes mentioned in items (a) to (f).

(1) The provisions of paragraph (1) shall apply in relation to the harvested material of the protected variety only where it has been obtained by means of unapproved use of the material of the protected variety, except when the patent owner could reasonably benefit from his right in relation to the material of the variety.

(2) The provisions of paragraph (1) shall also be applied in relation to products obtained directly from the material of the protected variety, where these products were obtained by means of unapproved use of the material of the protected variety, and where the patent owner did not have the opportunity to profit from his right in relation to this material.

(3) The provisions of paragraphs (1) to (3) shall likewise apply in relation to varieties:

- (a) which are essentially derived from the protected variety, where the protected variety itself is not an essentially derived variety;
- (b) which are not distinguishable from the protected variety, as stipulated in Article 7;
- (c) the breeding of which requires repeated use of the protected variety.

(5) According to the meaning of item (a) of paragraph (4), a variety shall be deemed to be essentially derived from another variety (hereinafter referred to as “the *initial variety*”), where it:

- (a) is predominantly derived from the initial variety or a variety which, in turn, is predominantly derived from the initial variety;
- (b) is distinguishable from the initial variety in accordance with Article 7;
- (c) conforms to the initial variety to the extent of expression of characteristics that result from the genotype or combination of genotypes of the initial variety, with the exception of differences resulting from selection.

(6) Where there are several owners of the same patent, their mutual relations in relation to the use of the protected variety shall be determined by agreement between them. Where no such agreement exists, each of the patent owners shall be fully entitled to use the variety at his own discretion, and to institute patent infringement proceedings against any person who uses the variety without the approval of the patent co-owners, but shall not be entitled to renounce the patent without notification of same, or to enter into license agreements or agreements on the assignment of rights without their consent.

(7) Enforcement of the patent owner’s rights may not infringe any public authority directive adopted due to moral principles or for the purposes of securing public order, public security, the protection of the health and life of people, animals or plants, the protection of the environment, the protection of industrial or commercial property or for the purposes of safeguarding competition, trade and agricultural production.

Article 16

Limitation of patent owner’s rights

The right of a patent owner shall not extend to acts performed for:

- (a) private, non-commercial purposes;
- (b) scientific research and experiments;

(c) the breeding or discovery and improvement of other varieties, as well as to acts specified in paragraphs (1) to (3) of Article 15, in relation to these other varieties, except where the provisions of paragraph (4), Article 15 shall apply.

Article 17

Expiry of patent owner's rights

The rights of the patent owner shall not extend to actions in relation to the material of the protected variety, or a variety to which the provisions of paragraph (4), Article 15 shall apply, and which was produced by a breeder or with his consent, where such actions:

(a) are not intended for the subsequent propagation of the variety, except where such propagation was envisaged in the context of the sale of the corresponding material;

(b) are not connected with the export of the material of the variety, enabling propagation of the variety in a country in which varieties of the botanical genus or species are not protected, except the export of material for the purposes of consumption.

Article 18

Use of a variety denomination

(1) Any person offering or assigning to third parties for commercial purposes the material of a protected variety, or a variety to which the provisions of paragraph (4), Article 15 shall apply, must use the denomination of the variety conferred to it in accordance with Article 36. The denomination of a variety must be easily recognizable and reproducible in writing.

(2) A person undertaking actions specified in paragraph (1) in relation to any material of the variety must specify the denomination of the variety at the request of any authority, customer or person demonstrating a legitimate interest.

(3) The provisions of paragraphs (1) and (2) shall be valid even after the expiry of patent protection.

Article 19

Limitation of use of a variety denomination

(1) The patent owner may not use the right granted to him in relation to a designation identical to the denomination of the protected variety, in order to prohibit the free use of said denomination in relation to the variety even after the expiry of patent protection.

(2) A third party may use the right granted to him in respect of a designation identical to the denomination of the protected variety, in order to prohibit the free use of this denomination only where said right was granted before the conferral of the denomination under Article 36.

(3) The denomination conferred on a variety patented in the Republic of Moldova or a UPOV member State, or any other denomination with which the denomination of the variety might be confused, may not be used on the territory of the Republic of Moldova in relation to another variety of the same or closely related species or the material of this other variety.

Part 4

Period of validity and termination of patent protection

Article 20

Term of validity of patent protection

(1) The term of validity of patent protection for a plant variety shall be up to 25 years or, in the case of varieties of vines, potatoes and trees, up to 30 years from the publication date of information in the Gazette regarding the grant of the patent.

(2) On the request of the patent owner, the term of patent protection may be extended for a further five years following the expiry of the terms specified in paragraph (1).

Article 21

Annulment of a patent

A patent may be annulled where:

(a) On the date of grant of the patent, the conditions stipulated in Articles 7 or 10 had not been satisfied;

(b) The grant of the patent was based on data and documents provided by the applicant, and as at the date of the grant of the patent, the conditions specified in Articles 8 or 9 had not been satisfied;

(c) The patent was granted to a person who was not entitled to it, provided it was not subsequently transferred to a competent person.

Article 22

Action regarding annulment of a patent

(1) An action regarding the annulment of a patent may be brought at any time during the term of the patent, and must only be predicated on the reasons specified in Article 21.

(2) Any person may bring an action in court to annul a patent. In the case provided for by item (c) of Article 21, the action may only be brought by a person entitled to enter patents in the National Register of Patents as a patent owner, or jointly by persons entitled to enter a patent in the Register as joint owners in accordance with paragraph (2) of Article 11.

(3) action to annul a patent may be brought even where rights granted by the patent have been terminated, or where the patent has been refused.

(4) A decision regarding the annulment of the patent shall be communicated to the Agency by the interested parties and entered in the National Register of Patents. A communication regarding the annulment of the patent shall be published in the Gazette.

Article 23

Consequences of annulment

(1) Where a patent is declared annulled, the consequences of protection specified in Articles 15 to 19 shall be regarded as void from the date of grant of the patent.

(2) The retrospective effect of annulment of a patent shall not extend:

(a) to decisions relating to actions for the infringement of rights, which are recognized as final and coming into legal force before the decision to annul was taken;

(b) to contracts concluded before the decision to annul was taken, to the extent that they were implemented before this decision was taken. In the interests of fairness, compensation of sums paid under the contract may be demanded.

Article 24

Deprivation of patent owner's rights

(1) The Agency shall announce the withdrawal of the patent owner's rights with consequences *in futurum* where it has been established that the conditions specified in Articles 8 and 9 are no longer being satisfied. Where it has been established that these conditions were not being satisfied at a date earlier than the date of deprivation of rights, then the deprivation of rights may commence from this earlier date.

(2) The Agency shall announce the deprivation of a patent owner's rights where, within a time limit prescribed by the Agency, the patent owner:

(a) refuses to provide at the request of the State Commission information, documents or material of the protected variety necessary for its controlled testing;

(b) fails to propose another denomination for the variety, where the denomination of the variety no longer complies with the conditions of Article 36;

(c) fails to pay patent grant and maintenance-in-force fees;

(d) where the patent owner or his successor-in-title no longer satisfy the conditions specified in Articles 13 and 87.

(3) The deprivation of a patent owner's rights on the basis of non-payment of an annual fee or, where necessary, of an additional fee, shall be regarded as entering into force from the expiry date of the prescribed time limit for payment of this fee.

(4) The Agency shall publish a notice in the Gazette regarding the deprivation of a patent owner's rights.

Article 25

Surrender of a patent

(1) A patent owner shall be entitled to surrender a patent by written request to the Agency, on condition of payment of the prescribed fee.

(2) The surrender of a patent by one of the patent owners shall not terminate the validity of the patent, which shall remain in the ownership of the other patent owners.

(3) The surrender of a patent shall take effect only after its entry in the National Register of Patents. A record of this shall be published in the Gazette.

(4) The surrender of a patent shall be entered in the National Register of Patents only with the consent of a person enjoying a preferential right which has been entered in the Register.

(5) Where the patent is the subject of a license contract entered in the National Register of Patents, the surrender of the patent shall be entered in the Register only where the patent owner provides evidence of the fact that he informed the licensee of his intention to surrender the patent. In such a case, the licensee shall have a preferential right to obtain the patent in his name within three months of the patent owner notifying him in writing of his intention to surrender the patent.

(6) At the same time as submitting a written request to the Agency, the patent owner shall notify the breeder of his intention to surrender the patent. In such a case, the breeder shall have a preferential right to obtain the patent in his name within three months of the patent owner informing him in writing of his intention to surrender the patent.

Part 5

Patent application and patent as a subject of ownership

Article 26

Rights granted by a patent application after publication

(1) During the period from the date of publication until the date of grant of a patent, the patent application shall temporarily grant the applicant the

same rights as those granted to the patent owner in accordance with Article 15.

(2) Infringement by third parties of the rights specified in paragraph (1) shall oblige the guilty party to compensate damages in accordance with the law. Compensation for damage shall be discharged following the grant of the patent. The amount of compensation shall be prescribed by agreement between the parties. Where the parties are unable to reach agreement regarding the amount of compensation, it shall be fixed by a court.

(3) The consequences of a patent application, as specified in paragraph (1), shall be regarded as invalid and shall cease to exist where the patent application has been withdrawn or rejected.

Article 27

Transfer of rights

(1) The patent application and patent may be transferred to one or more successors-in-title.

(2) Transfer of a patent application or patent by means of assignment may only be effected to a successor-in-title which satisfies the conditions specified in Articles 13 and 87. Assignment shall be performed in writing and signed by the parties to the contract, with the exception of assignment on the basis of a court decision or any other final document of a legal procedure. Otherwise, it shall be considered invalid.

(3) Regarding cases referred to in Article 61, the transfer of rights shall not affect the rights of third parties which have been obtained before the date of transfer.

(4) The transfer of rights shall be regarded as coming into effect for the Agency and may be presented to third parties only after the provision of specified documentary evidence and following their entry into the National Register of Applications or the National Register of Patents.

Article 28

Proprietary rights

(1) A patent may be an independent subject of a mortgage or the subject of another proprietary right.

(2) The rights specified in paragraph (1) shall be entered into the National Register of Patents at the request of one of the parties, and corresponding information shall be published in the Gazette.

Article 29

License contracts

(1) The patent application and patent may be the subject of a license contract. The licenses may be exclusive or non-exclusive.

(2) The applicant or patent owner may claim rights granted by the patent application or patent to a license owner who has infringed one of the conditions or limitations stated in the license contract, in accordance with part (1).

Article 30

Joint ownership

In the case of joint ownership of a patent, the provisions of Articles 27 to 29 shall be applied *mutatis mutandis* in relation to the appropriate parts belonging to the joint owners, where such parts are defined by the contract.

Article 31

Compulsory licenses

(1) The court may grant compulsory, non-exclusive licenses for the use of the protected variety to one or more persons filing an application within three years after the grant of the patent, under the following conditions:

(a) authorization for such use shall be given where it is in the public interest;

(b) such use may be authorized only where prior to such use, the proposed user has attempted to obtain authorization from the patent owner on reasonable commercial terms and by acceptable means, although, regardless of his best efforts, he has not been successful within a reasonable period of time. Deviation from this provision is only permissible in situations of national emergency or other circumstances of extreme urgency or in cases of public, non-commercial use. In such instances, the patent owner shall be notified as soon as reasonably practicable;

(c) the scope and duration of such use shall be limited to the purposes for which it was authorized;

(d) such use shall be non-exclusive and non-assignable, except for transfer with the part of the enterprise or its intangible assets which enjoy such use;

(e) any such use shall be authorized predominantly to satisfy the requirements of the domestic market;

(f) authorization for such use shall be liable, subject to appropriate protection of the legitimate interests of the persons so authorized, to be terminated, if the circumstances which led to it cease to exist and it is evident that they will not recur. The courts shall have the authority to review the case, upon reasonable request, where these circumstances persist;

(g) the patent owner shall be paid adequate remuneration appropriate to each individual case, taking into account the economic value of the authorization;

(h) the validity of any decision relating to authorization of such use, and any decision relating to remuneration stipulated in relation to such use, may be subject to judicial review or other independent review by higher authorities;

(i) the provisions specified in items (b) and (e) shall not apply where such use is permitted to remedy a practice deemed after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration payable in such cases. The courts shall have the right to refuse termination of authorization where it is likely that the circumstances which led to such authorization may recur.

(2) A compulsory license shall only be granted to a person who is able to use the variety in accordance with the license, which shall confer on its owner the right to obtain source material of the variety from the patent owner.

(3) The compulsory license shall not prevent the patent owner using the protected variety or granting licenses for its use to others.

(4) A compulsory, non-exclusive license for the use of a protected variety may be granted, upon request, to the owner of the patent for a biotechnological invention on condition of payment of fair remuneration where:

(a) he unsuccessfully attempted to obtain a license contract from the plant variety patent owner;

(b) the invention is regarded as significant technological progress, with substantial economic significance in relation to the protected variety.

(5) Where the plant variety patent owner has been granted a compulsory, non-exclusive license for the use of the patented invention, a reciprocal, non-exclusive license for use of the variety may be granted, upon application, to the patent owner of the invention on reasonable terms.

(6) A compulsory license may be granted to the patent owner for an essentially derived variety, under the provisions of paragraph (1). The conditions for granting the compulsory license may include payment of fair remuneration to the owner of the initial variety patent.

(7) The decision of the court to grant or, under certain circumstances, to cancel the compulsory license shall be notified by the holder to the Agency, entered into the National Register of Patents and published in the Gazette.

(8) Where the holder of the compulsory license has failed to exploit the variety within one year following the date of the grant, the license may be cancelled by a court decision. The validity of the license shall likewise be terminated in the event where its holder fails to exploit the variety within two years following the date of the grant.

Chapter III PATENT APPLICATION

Part 1 Conditions of filing a patent application

Article 32 Filing of an application

The patent application shall be filed at the Agency by a competent person under Article 13 in person

or via a patent attorney in accordance with Article 87.

Article 33

Criteria which a patent application must satisfy

(1) The patent application must include:

(a) a statement regarding the grant of the patent;

(b) specification of the botanical taxon;

(c) information about the applicant (applicants);

(d) information about the breeder (breeders);

(e) a proposal for the denomination of the variety;

(f) a technical description of the variety (technical questionnaire);

(g) a declaration by which the applicant assumes responsibility for confirming that the variety for which protection is sought conforms with the provisions of Article 10;

(h) information relating to any other application filed for the variety, along with such applications.

(2) The following shall accompany the application:

(a) a document regarding payment of fees for the filing of the application;

(b) a document regarding priority, where necessary;

(c) a power of attorney, where the application is filed through a patent attorney;

(d) necessary documentary proof of acquisition of the right to the patent, where the applicant is not the breeder or is not the sole breeder;

(e) photographs or drawings, as necessary;

(f) results of testing of the variety, carried out by a competent body, as necessary;

(g) permission for introduction into the environment, granted by a competent national body in accordance with legislation in the field of biological security, where the variety is a genetically modified organism.

(3) A separate patent application shall be filed for each variety or each category of variety.

(4) The breeder shall be entitled to be specified in the application, patent, and in Agency publications concerning the application or patent. The breeder shall likewise be entitled to refuse attribution of his name in the patent and relevant Agency publications, for which purpose a request shall be filed in writing with the Agency.

(5) Other requirements which the application must satisfy shall be prescribed in regulations ratified by the Government (hereinafter referred to as "the *Regulations*").

Article 34

Language of prosecution

(1) A patent application shall be filed with the Agency in Moldovan.

(2) The filing of the application and accompanying documentation shall be permitted in another language with the exception of the items specified in (a) Article 33(1)((a)-(e).

(3) Where the application and accompanying documentation are filed in another language, for the purposes of examination the applicant shall be obliged to provide a translation into Moldovan within two months of filing the application. Otherwise, the application shall be declined.

Article 35

Filing date of the application

(1) The filing date of the patent application shall be deemed to be the date when the Agency was presented with an application containing, at the very least, the items specified in (a) Article 33(1)((a)-(g).

(2) Where the requirements specified in Article 33(1)(a)-(g) are not satisfied, the filing date of the application shall be deemed to be the date on which these conditions were satisfied.

(3) The parts of the application specified in item (h) of paragraph (1), and documents accompanying the application specified in paragraph (2) of Article 33,

with the exception of those specified in items (b) and (g), may be provided by the applicant within two months of the application filing date.

(4) Permission to introduce a genetically modified organism into the environment shall be provided simultaneously with the filing of the application or within two months of the date of completion of the substantive examination.

Article 36

Variety denominations

(1) The variety must be designated by a denomination which includes its generic designation and which enables it to be identified.

(2) Variety denominations:

(a) must be easily identifiable and reproducible by users and must not consist solely of figures, except where this conforms with the established practice for designating specific varieties;

(b) must not be misleading or confusing in relation to the characteristics, qualities or identity of the variety, or in relation to the identity of the breeder;

(c) must be different or may not be confused with the denomination of another variety of the same, or closely related, species, which has been entered in the Official Register of Varieties or marketed in any UPOV member State, except when this other variety no longer exists and its denomination did not acquire special significance;

(d) must be used even after the expiry of the term of the patent;

(e) must be different or may not be confused with other denominations used for the marketing of goods, or with denominations which may not be used by virtue of other normative acts.

(f) must not conflict with ethical standards and public order.

(3) Where the variety has already been entered in the Official Register of Plant Varieties and the material of the variety has been marketed in any

UPOV member State, the denomination of the variety in the patent application filed in the Republic of Moldova must be the same.

(4) Where, by virtue of a previously acquired right, a person obliged to use the variety denomination in accordance with paragraph (5) is prohibited from doing so, the Agency may require the applicant to provide another denomination for the variety.

(5) Any person who, on the territory of any UPOV member State, offers for sale or markets the material of a variety protected on the territory of said State, shall be obliged to use the denomination of that variety, even after the expiry of the term of the patent protecting that variety, except where the provisions of paragraph (4) apply.

(6) A variety denomination conforming with paragraphs (1) to (5) shall be entered in the National Register of Patents at the same time as the patent is granted, and shall be published in the Gazette.

(7) The conditions for conferral of the denomination to the variety shall be prescribed in the Regulations.

Part 2 Priority

Article 37 Right of priority

(1) The priority of the application shall be determined by its filing date. Where several applications have been filed on the same date, priority shall be established dependent upon the order in which they are received.

(2) Any person or his successor-in-title who has filed a plant variety patent application in accordance with the law in a UPOV member State or member of the World Trade Organization, shall enjoy for the purposes of filing the application for that same variety the right of priority for 12 months from the filing date of the preceding application; the filing day shall not be included in this period.

(3) The applicant shall enjoy the right of priority of the preceding application on condition that such application exists on the filing date.

(4) The right of priority shall be recognized in relation to any filing of an application valid as a correctly registered national application.

(5) The applicant shall be granted a two-year period following the expiry of the term of priority or, where the initial application was refused or withdrawn, an appropriate period after such refusal or withdrawal, in order to provide all documentation, information or materials requested for the purpose of carrying out an examination.

Article 38 Requesting priority

(1) An applicant who wishes to benefit from the priority of a previous application must file an application regarding the request of priority, a copy of the previous application, and, where necessary, a translation into Moldovan.

(2) Priority shall be requested at the same time as filing of a patent application or within two months of the date of filing of the application, and shall be confirmed by a priority document.

(3) The request for the right of priority shall be invalid where the applicant has failed to provide the Agency with copies of the previous applications, certified by a competent authority, within three months of the date of filing of the application.

(4) Where the previous application was not in Moldovan, the Agency shall be entitled to request a certified translation into Moldovan.

Article 39 Restoration of the right of priority

(1) Where an application in which the priority of a previous application is sought is filed after the expiry of the time limit specified in paragraph (2) of Article 37, but not later than two months after the expiry of said period, the Agency may re-establish the right of priority, if, at the same time as the filing of the patent application, the applicant filed a request confirming that under these circumstances appropriate measures had been taken, or that failure to comply with the time limit was unintentional.

(2) An application regarding the re-establishment of the right of priority shall be filed within two months of the expiry date of the priority period specified in paragraph (2) of Article 37, along with payment of the prescribed fee; failure to do so will result in the application being deemed not to have been filed.

(3) Where the Agency has not been provided with a copy of the previous application in the time limit specified in paragraph (3) of Article 38, the Agency may restore the right of priority if the following conditions are satisfied in aggregate:

(a) the applicant filed an appropriate request with the Agency before the expiry of the time limit prescribed in paragraph (3) of Article 38;

(b) the applicant provided the Agency with confirmation of the request filed with the Office which registered the previous application, proving that a copy of the previous application was requested in a period not exceeding 14 months from the filing date of said previous application;

(c) the Agency was provided with a certified copy of the previous application within one month of the date when the Office which registered the previous application granted the applicant with the relevant copy.

Article 40

Effect of the right of priority

(1) The effect of the right of priority shall be that where Articles 7 and 10 apply, the filing date of the previous application and the filing date of the patent application shall be one and the same.

(2) The filing of another patent application, publication of information on a variety or use of a new variety which was the subject of an initial application, in the period specified in paragraph (2) of Article 37, may not serve as a basis for refusing a subsequent application and the acquisition of rights by third parties.

(3) Failure to comply with the time limits stipulated in paragraphs (2) and (3) of Article 38, or to pay the priority claim fee shall cause the priority claim not to be recognized.

Chapter IV PROCEDURE FOR GRANTING A PATENT

Part 1

Examination conducted prior to the granting of a patent

Article 41

Examination of an application

(1) The Agency and the State Commission shall verify whether the patent application and variety which is the subject matter of the patent comply with the requirements stipulated by the Law. To this end, the Agency shall conduct an examination of form, a preliminary examination and a substantive examination of the patent application. The State Commission shall conduct a technical examination of the patent application.

(2) The Agency shall be entitled to request from the applicant what it deems to be necessary additional materials in relation to the identity of the applicant himself or of the breeder, a correctly registered national application, or to the fulfillment of conditions of patentability.

(3) The conditions for providing the additional materials specified in paragraph (2) shall be prescribed in the Regulations.

Article 42

Examination of form

(1) In conducting a formal examination, the Agency shall within two months verify the compliance of the patent application with the criteria for the award of a filing date under paragraph (1) of Article 35.

(2) Where the application complies with the criteria specified in (a)Article 33(1)((a)-(g), the Agency shall enter information relating to the application in the National Register of Applications.

(3) Where the application fails to comply with the criteria specified in (a)Article 33(1)((a)-(g), the Agency shall give the applicant the opportunity to correct any shortcomings within a time limit prescribed in a notification.

(4) If in the prescribed timeframe the applicant fails to provide the necessary information or to satisfy the conditions of (a) Article 33(1)(a)-(g), the application shall be deemed not to have been filed, and the applicant shall be accordingly notified of this.

Article 43

Preliminary examination

(1) In conducting a preliminary examination, within three months of the filing date of the patent application the Agency shall verify:

(a) the application's compliance with the conditions specified in Article 33, and, where necessary, Article 34;

(b) compliance of the contents of the application documentation with the conditions specified in the Regulations;

(c) compliance of the procedure for claiming right of priority with the provisions of Articles 37 and 38;

(d) fulfillment of the requirements of Article 87;

(e) payment within the prescribed time limit of the application filing fee.

(2) Where deficiencies are identified which may be obviated, the Agency shall notify the applicant, having granted him the opportunity to obviate them within a time limit specified in the notification. Where the specified time limit is not observed, or in the absence of a request to extend the time limit, the patent application shall be refused.

Article 44

Publication of the application

(1) Three months after the date of filing the patent application, the Agency shall publish information regarding said application in the Gazette. The information subject to publication shall be prescribed in the Regulations.

(2) At the same time as the publication of the application in the Gazette, the Agency shall publish the documents relating to the application in the form in which they were provided by the applicant.

(3) Patent applications which were withdrawn or refused prior to the completion of technical preparation for publication shall not be published.

Article 45

Substantive examination

(1) In conducting a substantive examination, within six months of the filing date of the patent application the Agency shall verify:

(a) compliance of the variety for which a patent has been applied for with the conditions specified in Article 10;

(b) compliance of the variety denomination with the conditions specified in Article 36.

(2) The Agency is entitled to request from the applicant any missing corroborative documents or clarifying materials which he must provide within a time limit specified in the Agency's notification. Where the time limit is not observed, or in the absence of a request to extend it, the patent application shall be refused.

(3) Where during the examination it is established that the variety denomination does not comply with the conditions of Article 36, the applicant shall be offered the opportunity to provide the Agency with a new variety denomination within a time limit specified in the notification. Where the time limit is not observed, or in the absence of a request to extend it, the patent application shall be refused.

(4) Where the patent application complies with the prescribed conditions, the Agency shall notify the applicant to this effect.

(5) Upon completion of the substantive examination, the Agency shall forward copies of the application documentation to the State Commission for the purpose of conducting a technical examination of the variety.

Article 46

Technical examination of a variety

(1) Where after conducting examinations under Articles 43 and 45, the Agency establishes that there are no obstacles to granting a patent, steps shall

be taken to conduct a technical examination in order to:

(a) determine whether the new candidate variety belongs to the botanical taxon applied for by the applicant and identified in the preliminary examination;

(b) establish whether the variety complies with the conditions of distinctness, uniformity and stability according to Articles 7, 8 and 9;

(c) establish whether a description of the new variety enables it to be distinguished from another commonly known variety.

(2) A technical examination of the variety shall be carried out by the State Commission and shall include the conduct of breeding tests:

(4) The State Commission shall establish a date and place for the seeds or propagating material required to conduct a technical examination to be provided free-of-charge, in appropriate samples and in necessary quantities. Failure to provide the necessary materials within the prescribed time limit shall result in the application being deemed to have been withdrawn.

(5) The State Commission may request all necessary information and documents from the applicant.

Article 47

Conducting a technical examination

(1) The State Commission shall conduct a technical examination of a variety in accordance with directions and within time limits prescribed by international standards.

(2) The applicant shall pay the prescribed fee for the technical examination to be conducted.

(3) Where testing of the variety has been carried out by a competent authority of a UPOV member State or by the applicant, the State Commission shall analyze its results in order to confirm or deny the suitability of the testing done.

(4) On the basis of the results of the technical examination, the State Commission shall compile a report on the technical examination and send it to the Agency.

Article 48

Technical examination report

(1) Where the State Commission deems the results of the technical examination to be insufficient to evaluate the variety, it shall send a report on the technical examination and a more precise official description of the variety to the Agency.

(2) Where in the course of conducting a technical examination it is established that the variety does not comply with the conditions in Articles 7, 8 and 9, the State Commission shall compile a report on the technical examination and send it to the Agency.

(3) The Agency shall notify the applicant of the results of the technical examination and invite him to provide feedback within the time limit specified in the notification.

(4) Where it is established that the report on the technical examination does not contain sufficient grounds to make a decision, the State Commission may, on its own initiative and following consultation with the applicant or upon reasonable request of the applicant, stipulate the conducting of an additional examination on condition of an additional payment. Any additional examination carried out prior to taking the final decision shall be deemed to be a constituent part of the examination carried out in accordance with Article 46(1).

(5) The results of the technical examination shall be for the exclusive use of the Agency and may only be used in future with its consent.

Article 49

Objections to a patent application

(1) Any person may file objections to a patent application in writing. Objections must be reasonable and relate exclusively to the failure to comply with Articles 6 to 10 and 36 and may be lodged:

(a) within three months of the publication date of the application where the proposed denomination does not comply with the provisions of Article 36;

(b) in the period between the publication of the application and before a decision is taken in the case of failure to comply with the conditions specified in Articles 6 to 10.

(2) The applicant shall be notified of objections and granted the opportunity to respond within two months. The objections and responses provided shall be taken into account by the Agency in taking the decisions specified in Article 50.

Article 50

Decisions of the Agency

(1) Within three months of the date of obtaining the report on the technical examination and the precise official description of a variety, where it has been established that the examination results are sufficient to take a decision on an application, and in the absence of any of the obstacles specified in Article 49 and paragraph (2) of this Article, the Agency shall take a decision regarding the grant of the patent.

(2) The Agency shall take a decision to reject an application:

(a) where the applicant has failed to eliminate deficiencies within the time limit specified in Articles 43 and 45;

(b) where the applicant has failed to satisfy the requirements specified in paragraph (1) of Article 46;

(c) where the applicant has failed to propose a variety denomination in accordance with Article 36;

(d) where on the basis of the technical examination report it has been concluded that the conditions of Articles 7, 8 and 9 have not been satisfied;

(e) at the request of a person whose right in the patent has been recognized by a court decision.

(3) The Agency shall notify the applicant of the decision taken.

Article 51

Basis of decisions

(1) The Agency's decisions must contain the grounds for taking said decisions.

(2) The Agency's decisions shall be based exclusively on grounds and items of evidence with which interested parties could familiarize themselves orally or in writing and on which they could state their point of view.

Article 52

Publication of a decision

(1) The Agency shall publish notification of its decision to grant a patent or refuse an application in the Gazette.

(2) At the same time as the publication of the notification of the decision to grant a patent, the Agency shall publish patent documents containing the official description of a variety and photographs, as necessary. Information for publication shall be determined by the Regulations.

Article 53

Withdrawal of a patent application

(1) An applicant shall be entitled to withdraw a patent application at any time prior to a decision being taken as to its validity.

(2) Where there is more than one applicant, a patent application may only be withdrawn with the consent of each of them.

(3) Where the applicant is not the breeder, he shall inform the breeder of his intention to withdraw the application at the same time as lodging a request to this effect in writing with the Agency. In this case, the breeder within two months of receiving such notification shall have a preferential right to apply for continuation of the application procedures as the applicant.

Part 2
Appeals procedure

Article 54
Conditions for filing an appeal

(1) Any decision taken by the Agency may be appealed at the Board of Appeals of the Agency.

(2) Any natural or legal person may lodge an appeal, while complying with the provisions of Article 87, against a decision affecting him directly, or against a decision affecting another person, but who has a direct relationship with him.

(3) A justified appeal shall be presented to the Agency in writing within two months of the day of the decision where the appeal is lodged by the applicant, or otherwise, within two months of the date of publication of the decision.

(4) The appeal shall only be deemed to have been lodged upon payment of the prescribed fee.

(5) An appeal lodged according to paragraph (1) has a suspending effect. The Agency, where it considers it necessary, may take the decision not to suspend an appealed decision.

Article 55
Examination of an appeal

(1) Where an appeal is permitted for examination, the Board of Appeals shall verify whether it is reasonable.

(2) In the course of examination of the appeal, which shall be conducted in accordance with the Regulations on the Board of Appeals of the Agency, the parties may lodge as necessary within the time limit prescribed by the Board of Appeals their feedback on the notifications addressed to them, or the communications received from other parties.

(3) The parties to the appeals procedure shall be entitled to make oral representations.

Article 56
Decision in relation to an appeal

(1) Following examination of an appeal, the Board of Appeals shall either pass final judgment on it, or transfer the matter to a competent sub-division of the Agency or to the State Commission in order to repeat the examination.

(2) Where the Board of Appeals transfers the matter to a competent sub-division of the Agency or to the State Commission, the grounds and directions contained in the Board of Appeals' decision shall be binding on said sub-division and the State Commission, provided that the facts of the matter are one and the same.

(3) The decision of the Board of Appeals shall be published in the Gazette within two months of it being taken.

Article 57
Means of appealing the
Board of Appeals' decisions

(1) Any decision taken by the Board of Appeals may be challenged in court under the provisions of the Code of Civil Procedure. The bringing of a suit shall not have a suspending effect.

(2) Grounds for bringing a legal action may be lack of competence, infringement of the fundamental requirements of the procedure, infringement of the provisions of this Law or the order of its application or abuse of authority.

(3) A Board of Appeals' decision, which in the procedure is not final with respect to one of the parties, may not be the subject of a legal action before the final decision is taken, except where such a decision does not provide for a legal action to be brought.

(4) The court is entitled to cancel or amend an appealed decision.

(5) A legal action may be brought in court within two months of the date of notification of interested parties of the Board of Appeals' decision.

(6) An action may be brought by any of the parties to proceedings which have been affected by the Board of Appeals' decision.

(7) The Agency shall be informed of a court's decision by an interested party. The Agency shall enter amendments arising from the court's final and legally enforceable judgment in the national registers, and shall publish said judgment in the Gazette within two months of the date of registration with the Agency.

Chapter V
PROCEDURE FOR GRANT AND
MAINTENANCE IN FORCE OF A PATENT

Article 58

Grant of a patent

(2) Where a decision to grant a patent has not been challenged, or the lodged appeals were rejected, the Agency shall grant a patent to the person entitled to said patent, provided that the prescribed fees have been paid, and shall publish information to that effect in the Gazette.

(3) The patent shall be granted by the Agency on the basis of the decision on the grant of the patent.

(4) The date of grant of the patent shall be the publication date of a notification of its grant in the Gazette. A list of information to be published shall be determined by the Agency. The date of grant of the patent shall be entered in the National Register of Patents.

(5) Where the prescribed fees for the grant of a patent have not been paid following publication of the notification of the grant of the patent under the conditions specified in the Regulations, the patent shall not be granted; a notification regarding the loss of the patent owner's rights shall be entered in the National Register of Patents and published in the Gazette.

Article 59

Maintenance in force of a patent

(2) In order to maintain a patent in force, it shall be necessary to pay annual fees in accordance with the provisions of Article 92.

(3) Annual fees shall be paid following publication of the notification regarding grant of a patent, and shall be deemed to have been paid when payment is effected within the time limit prescribed in the Regulations.

(4) Where the annual fee has not been paid within the prescribed time limit, it may be paid within six months of the expiry date of said time limit, subject to the payment of an additional fee.

Article 60

Patent granted to a non-competent person

(1) Where a patent is granted to a person who is not entitled to it, then the person who is so entitled may request the transfer of the patent to his name, without prejudicing other existing rights or actions according to the law.

(2) Where a person is only entitled to partial patent protection, he may request recognition as the joint owner of the patent in accordance with paragraph (1).

(3) The actions specified in paragraphs (1) and (2) may only be examined in court within five years of the publication date of the decision to grant the patent in the Gazette.

(4) Paragraph (3) shall not be applied where, on the date of the grant or grant of the patent, the patent owner was aware that he was not entitled to it, or was not the sole person so entitled.

(5) The lodging of a legal action shall be recorded in the National Register of Patents. A certified copy of the court judgment shall be provided to the Agency by the interested party. The final and legally enforceable court judgment shall be entered in the National Register of Patents and come into force for third parties as of the publication date in the Gazette.

Article 61

Implications of a change of patent owner

(1) Where there is a change of patent owner following a court judgment, a license agreement and any other rights shall be terminated by entering the authorized person in the National Register of Patents.

(2) Where, prior to bringing the action, the patent owner or license owner used the variety on the territory of the Republic of Moldova or undertook effective and substantive preparations for this purpose, they may continue such use, provided that an application for the grant of a non-exclusive license is submitted to the new patent owner, as entered in the National Register of Patents. The application must be submitted within the time limit stipulated in the Regulations. The license shall be granted for a defined period and under reasonable conditions.

(3) In the absence of agreement between the parties, the non-exclusive license specified in paragraph (2) may be granted by a court.

(4) The provisions of paragraph (2) shall not be applied where the patent owner or license owner acted in bad faith when they began to use the variety or prepared for such use.

Article 62

Change in variety denomination

(1) The denomination of the variety, conferred to it in accordance with Article 36, may be changed where the Agency establishes that such denomination fails to satisfy or no longer satisfies the requirements specified in the relevant Article, and where it has previously been possible to demonstrate the right of a third party, and the patent owner has agreed with the change, or where use of the variety denomination by the patent owner or by any other person is prohibited by a court decision.

(2) The Agency shall propose to the patent owner to provide an amended variety denomination in accordance with Article 36.

(3) The amended denomination proposed may become the subject of objections under Article 49.

Article 63

Technical inspection

(1) The patent owner shall be obliged to maintain the protected variety for the patent's entire term to such an extent as to retain all of its features as specified in the official description of the variety as at the date of the grant of the patent.

(2) The State Commission may carry out a technical inspection under Articles 46 and 47 in order to verify whether the protected variety is in continued existence as such, i.e. whether it retains all the features specified in the official description as at the date of the grant of the patent.

(3) The patent owner shall be obliged to provide the State Commission with all information necessary to verify the existence of the variety as such. He shall be obliged to provide variety material and to allow testing for the purpose of establishing whether essential measures have been taken to guarantee the existence of the variety as such.

Article 64

Technical inspection report

(1) Where the State Commission has established that the variety is no longer uniform or stable, it shall send the Agency a report with its conclusions.

(2) Where, upon conducting the technical inspection, it emerges that the variety fails to comply with the conditions of patentability specified in Part (1), the Agency shall notify the patent owner of the results of the inspection and give him the opportunity to provide feedback.

(3) Where the patent owner fails to provide feedback, the Agency shall announce his loss of rights as granted by the patent, in accordance with Article 24.

Chapter VI

INFORMING THE PUBLIC

Article 65

Informing the public

The Agency and State Commission shall, by virtue of their authority, inform the public of all decisions and notifications which stipulate a certain time limit or communication, which in turn are stipulated by other provisions of this Law, order of the Director General of the Agency, or order of the Chairman of the State Commission.

Article 66

Registers

(2) The Agency shall keep the National Register of Applications, including:

(a) patent applications, containing an indication of taxon, preliminary variety denomination, filing date, names and addresses of the applicants, breeders and patent attorney;

(b) all information relating to the completion of the procedure concerning patent applications, with reference to the information specified in item (a);

(c) proposals for the denomination of the variety;
(d) amendments affecting the applicant or the patent attorney.

(1) The Agency shall keep the National Registry of Patents, in which the following information shall be included after the decision regarding the grant of a patent is taken:

(a) the species and denomination of the variety;

(b) the official description of the variety, or an indication of a document at the Agency's disposal, which contains such a description;

(c) for varieties requiring certain components in order to obtain material for repeated use, an indication of such components;

(d) the names and addresses of the patent owner, breeder and patent attorney;

(e) the commencement date and expiry date of the period of validity of the patent;

(f) upon request, any contractual right to exclusive use or any right to compulsory use of the variety, including the name and address of the person enjoying the right of use;

(g) instructions for the identification of the variety as an initial variety, or a variety essentially inheriting the features of the initial variety, including the denomination of the varieties and the names of the parties involved.

(1) The Agency shall maintain the registers specified in paragraphs (1) and (2), in accordance with the provisions of the Law on Registers.

(2) The State Commission shall maintain the Register of Plant Varieties, which contains the following information about varieties permitted for breeding in the Republic of Moldova:

(a) registration number;

(b) variety denomination;

(c) breeder's name and address;

(d) holder's name and address;

(e) year of registration;

(f) some morphological and breeding characteristics of the variety.

Article 67

Public inspection

(1) The registers referred to in Article 66 shall be open for public inspection.

(2) Where there is legitimate interest and in accordance with the conditions specified in the provision, the following shall be open for public inspection:

(a) documents concerning the patent application;

(b) documents concerning the granted patent;

(c) cultivation tests conducted for the purposes of the technical examination of the variety;

(d) cultivation tests conducted for the purposes of the technical inspection of the maintenance of the variety.

(3) In the case of varieties whose material, consisting of specific components, must be used repeatedly in order to obtain the variety, upon the request of the applicant any information on the components, including their cultivation, shall be excluded from the number of materials subject to public inspection. After the decision regarding the patent application has been taken, such an application shall not be accepted.

(4) The Agency and State Commission shall not be entitled to transfer material provided or obtained within the framework of testing to third parties, except where the relevant person gives his consent.

(5) Upon request by an interested party, the Agency and the State Commission shall be entitled to grant excerpts from the register upon payment of the prescribed fee.

Article 68

Periodicals

(1) The Agency shall, on a monthly basis, grant the Gazette, containing:

(a) information entered in the National Register of Applications and the National Register of Patents, and likewise any other information whose publication is stipulated by this Law;

(b) notifications and information of a general nature, received from the Director General of the Agency, and also any other information affecting this Law and the application thereof.

(2) The State Commission shall periodically publish the Register of Plant Varieties, including varieties and hybrids allowed for breeding and marketing.

Article 69

Preventive marking

(1) The patent owner shall be entitled to mark the material of a variety or the harvested material of a variety with preventive marking indicating that the variety is patented.

(2) The absence of preventive marking shall not have legal consequences.

(3) A person who, directly or indirectly, falsely specifies that the material of a variety or the harvested material of a variety obtained or sold by him belongs to a variety patented by another person shall be answerable before the law.

(4) Where genetically modified plant varieties are marketed, the material of a variety shall be marked appropriately with an indication on the label and/or in accompanying documentation of the presence of genetically modified organisms.

Chapter VII ENSURING OBSERVANCE OF RIGHTS

Article 70

Actions for infringement of rights

(1) The undertaking of any act specified in Article 15 without the permission of the patent owner shall be deemed to be an infringement of rights arising from a patent application or a patent, as shall the following acts:

(a) incorrect use of the variety denomination or failure to indicate the denomination in contravention of the provision of Article 18(2);

(b) contrary to Article 19(3), use of the denomination of a protected variety or of a denomination so similar as to be easily confused with the denomination of a protected variety.

(2) A person who has committed the infringements specified in paragraph (1) shall be obliged to compensate for damages sustained by the patent owner. The amount of compensation may not be less than the benefit obtained by the infringer.

Article 71

Actions preceding the grant of a patent

The patent owner may apply for reasonable compensation from any person who in the period between the publication date of the patent application and the patent grant date committed an act which would have been prohibited had the patent been granted.

Article 72

Right to bring an action for infringement of rights

(1) An action for infringement of rights may be brought by a patent owner.

(2) A licensee may bring an action for infringement of rights, except where such an eventuality was deliberately excluded by way of agreement with the patent owner in the case of an exclusive license, or by a court in accordance with Article 31 or 61.

(3) Any licensee shall have the right to participate in infringement proceedings brought by the patent owner in a court in order to obtain compensation for damages sustained.

Article 73

Measures to secure evidence prior to the filing of an action for infringement of rights

(2) Any competent person who has provided sufficient evidence to confirm the infringement of his rights may request a court or other competent authority prior to the filing of an action against illegal acts to take temporary measures to secure relevant evidence provided that the confidentiality of the information is safeguarded. A court may pronounce judgment on the adoption of measures to secure evidence on condition that a deposit is lodged by the plaintiff or a guarantee of equivalent value is provided, necessary to compensate any damages caused to the defendant where no infringement is confirmed.

(3) In order to adopt measures to secure evidence, the court shall have the right to:

(a) request a detailed description of the variety or its materials, the rights to which are assumed to have been infringed, either with or without specimens;

(b) to seize the disputed products;

(c) to seize materials and equipment used in the production process and/or distribution of the disputed products, and also documents relating thereto.

(1) The procedure for applying measures to secure evidence shall be performed by a court or other competent authority in accordance with the Code of Civil Procedure. Measures to secure evidence shall be implemented with the assistance of a bailiff, accompanied where necessary by a representative of the Agency and a police officer.

Article 74

Securing evidence in urgent cases

(2) Measures to secure evidence may be prescribed without the knowledge of the defendant where a delay could cause irreparable harm to the patent

owner or where there is a risk of the evidence being destroyed. The affected parties shall be promptly informed of the court's decision.

(3) The decision regarding the securing of evidence may be appealed to the court.

Article 75

Invalidity of measures to secure evidence

(1) Measures to secure evidence shall be deemed worthless or invalid:

(a) where within 20 working days the plaintiff fails to bring an action on infringement of rights in court;

(b) as a result of any actions or inaction of the plaintiff which involved the causing of damage;

(c) upon the establishment of the absence of infringement or the risk of infringement of rights in a plant variety;

(d) in other cases specified by law, by court decision.

(2) Where damage is caused by measures to secure evidence recognized as worthless or invalid, the plaintiff shall pay the defendant appropriate compensation.

Article 76

Provision and securing of evidence in the context of an action for infringement of rights

(1) Where a party presents arguments as a basis for his claims, and also information that specific evidence is available to the opposing party, the court shall order that these documents are provided in sufficient and reasonable number provided that confidentiality of the information is ensured. In the case of an infringement of rights in a commercial field, the court may additionally order the parties to provide bank, financial or trade documentation.

(2) Where one of the parties to proceedings unreasonably refuses access to necessary information or in bad faith delays providing such information, thereby hindering settlement of the dispute, the court shall make a judgment on whether or not to take into consideration the statement of claim on the basis of information provided, including the appeals or claims of the party adversely affected

by the refusal to grant access to the information, on condition that the parties are granted the opportunity of a hearing as regards their claims or evidence.

Article 77
Right to information

(1) Where upon examination of the dispute it has been established that rights in a plant variety have been infringed, a court may request information regarding the provenance and distribution channels of materials infringing the right in the variety from the infringer or any other person:

(a) in whose possession counterfeit materials intended for sale were discovered;

(b) identified by the person mentioned in item (a) as a person involved in the production, reproduction or distribution of the variety materials.

(2) The information specified in paragraph (1) shall include where necessary:

(a) the names and addresses of the breeder, distributor, supplier and previous owners of the variety materials, and also of wholesalers and retailers;

(b) information on the amount produced, supplied, obtained or ordered, and also about the price of the relevant variety materials.

(3) The provisions of paragraphs (1) and (2) shall be applied without detriment to other legislative and regulatory norms, which:

(a) shall enable the patent owner to obtain more detailed information;

(b) shall govern use of information provided in accordance with this Article in civil or criminal cases;

(c) shall determine responsibility for abuse of the right to information;

(d) shall give the opportunity to refuse to provide information which might force the person identified in paragraph (1) to recognize his own participation or that of close relatives in the infringement of the patent;

(e) shall govern the safeguarding of confidentiality of information sources or the processing of personal data.

Article 78

Measures to secure an action for infringement of rights

(1) Having established actual or unavoidable infringement of a patent, a court may, upon the application of the right owner, take measures to secure an action on infringement of rights in relation to the infringer and/or intermediaries, such as:

(a) taking a decision on the temporary prohibition of any act which is an infringement of the patent owner's rights, or permitting the continuation of such acts on condition that a deposit is lodged which is sufficient to compensate the patent owner for damages sustained;

(b) the sequestration of materials suspected in the infringement of a patent in order to prevent their use in commercial trade;

(c) the sequestration of any of the infringer's property, including freezing of bank accounts, requiring bank, financial or commercial documentation to be provided, where the infringement has been committed in the commercial arena and there is a risk of failure to compensate for damages sustained.

(2) Measures for ensuring maintenance of rights may be prescribed without the defendant's knowledge, where any delay could cause irreparable harm to the patent owner, or where there is a risk that the evidence will be destroyed. The affected parties shall be promptly informed of the court's decision.

Article 79
Remedies

(1) Having established that an infringement of rights has taken place, a court may, upon application, order appropriate measures to be taken in relation to the products infringing a patent, and in appropriate cases in relation to materials and equipment which were used for creating and manufacturing such products.

In particular, such measures are:

- (a) temporary withdrawal from trade;
- (b) final and complete withdrawal from trade;
- (c) destruction.

(2) The measures specified in paragraph (1) shall be implemented at the expense of the defendant, except when there are important reasons preventing this.

(3) Upon examination of an application for remedies, a court shall be led by the principle of fairness, by proportionality of the seriousness of the infringement and prescribed means of protection, and shall also take into account the interests of third parties.

Article 80

Ensuring execution of a court judgment

Where a court passes judgment on the verification of a patent infringement, the court may, upon the patent owner's request, take measures to ensure the infringer fulfils the judgment, in accordance with which the latter shall be ordered to cease any actions infringing the rights of the patent owner. For this purpose, the court may oblige the infringer to lodge an appropriate deposit or provide a guarantee of equivalent value. The patent owner may also request the application of such measures to intermediaries whose services are used by third parties in infringing the patent.

Article 81

Alternative measures

The court may, upon the request of the infringer, prescribe financial compensation to the plaintiff instead of the measures specified in Articles 79 and 80, where the infringer acted unintentionally or carelessly, where adoption of such measures would cause him disproportionate detriment, and where financial compensation for the plaintiff is reasonable.

Article 82

Compensation for damage

(1) Upon the request of an aggrieved party, a person who deliberately infringed, or who had reasonable grounds to recognize the patent had been infringed,

shall compensate the patent owner for realistic damage caused by the infringement of his rights. In determining the amount of compensation:

(a) all existing circumstances must be taken into account, such as negative economic consequences, including profit foregone by the aggrieved party, income obtained illegally by the defendant, and also other aspects, such as moral damage sustained by the patent owner as a result of infringement of his rights;

(b) as an alternative, a single lump sum may be determined, calculated based upon, at the very least, regular payments or remuneration which would be due to the patent owner where the defendant has requested permission to use the relevant plant variety.

(3) Where the infringer has committed an infringement unwittingly or did not have reasonable grounds to be aware of said infringement, he shall be obliged to compensate the patent owner for profit foregone or damage caused, as prescribed in accordance with the law.

Article 83

Publication of court decisions

(1) In the context of actions for infringement of protected rights, at the request of the plaintiff and at the expense of the defendant, a competent legal authority may prescribe measures for the distribution of information relating to a court decision, including displaying it in public places, and also partial or full publication of the decision.

(2) The competent legal authority may prescribe additional publicity measures, including mass-market, appropriate to the specific circumstances.

Chapter VIII

GENERAL PROVISIONS

Article 84

Extension of time limits and reinstatement of a missed deadline

(1) Time limits concerning the application or patent prescribed by this Law or by the Regulations may be extended by submitting a request to the Agency prior to the expiry of the prescribed time limit. The

time limit shall be extended by no more than six months from the expiry date of the prescribed time limit.

(2) The request for an extension to a time limit shall be deemed to be submitted only upon payment of the relevant fee.

(3) An applicant who has breached a time limit prescribed in relation to any procedure under the Agency's auspices may request the reinstatement of the missed deadline within six months of the expiry date of the prescribed time limit. The missed procedure must be undertaken within this time limit. The request shall be deemed to be submitted only after the payment of the fee for the reinstatement of a missed deadline; otherwise, it shall be rejected.

(4) The provisions of this Article shall not be applicable to the time limits specified in paragraphs (1) and (3) of this Article, paragraph (3) of Article 12, paragraph (3) of Article 34, paragraph (3) of Article 35, in Articles 37 to 39, 49, paragraph (3) of Article 54, paragraph (3) of Article 59, and paragraph (2) of Article 85.

Article 85

Restoration of rights (*restitutio in integrum*)

(1) Where, despite taking all appropriate measures dictated by circumstances, the applicant or patent owner or any of the parties to a procedure under the Agency's auspices are not confined to any time limit, a direct consequence of which is the loss of the right or the opportunity to appeal, the rights of the relevant person or party, upon request, shall be restored.

(2) A request for the restoration of rights shall be submitted in writing within two months of the date of the elimination of the reason for failing to comply with the prescribed time limit, but no later than 12 months from the expiry date of the missed deadline. Where a request concerns the reinstatement of a patent due to non-payment of the annual maintenance-in-force fee, the 12-month period shall commence from the expiry of the time limit specified in Article 59(3).

(3) A request for restoration of rights must be justified and contain the facts and arguments on which it is based.

(4) A request for restoration of rights shall be deemed to be submitted upon payment of the prescribed fee for restoration of rights.

(5) The provisions of this Article shall not be applicable to the time limits specified in paragraph (2) of this Article, paragraph (3) of Article 12, paragraph (1) of Article 14, in Articles 37 to 39, 49 and paragraph (3) of Article 54.

Article 86

Right of subsequent use

Any person who, in the period between the loss of application or patent rights and the restoration of such rights, used in good faith or undertook effective and essential preparations to use a variety which is the subject of a published application or enjoys patent protection, may continue to use it free of charge within the framework or for the requirements of his business, without exceeding the existing scope of use.

Article 87

Representation

(1) Applying the provisions of Part (2), nobody shall be obliged to have a representative for the conduct of business with the Agency in procedures prescribed by this Law.

(2) Natural or legal persons who are not domiciled or do not have a place of business in the Republic of Moldova, or likewise an industrial or commercial enterprise operating in the Republic of Moldova, must be represented by a patent attorney in order to conduct business with the Agency, with the exception of the following activities:

- (a) filing of a patent application;
- (b) payment of fees;
- (c) filing of a previous application.

(1) Natural or legal persons who are domiciled or have a place of business in the Republic of Moldova, or an industrial or commercial enterprise operating in the Republic of Moldova, may be represented at the Agency by their own employees.

(2) Representation shall be conducted through a power of attorney provided to the Agency, under the conditions and within the time limits prescribed by the Regulations.

(3) Patent attorneys shall conduct their activities in accordance with regulations approved by the Government.

Article 88

Examination at the Agency's initiative

(1) Whilst carrying out procedures, the Agency may, on its own initiative, resort to studying facts to the extent that they are the subject of the examinations specified in Articles 45 and 46.

(2) The Agency shall not be obliged to take into account facts which have not been requested, or evidence which has not been provided within the prescribed time limit.

Article 89

Oral procedure

(1) An oral procedure shall be conducted at the Agency's initiative or upon the request of one of the parties to the procedure.

(2) Without affecting the provisions of paragraph (3), an oral procedure conducted at the Agency shall not be public.

(3) An oral procedure conducted at the Board of Appeals, and in particular publication of the decision, shall be public, with the exception of decisions whose publication might inflict serious and unjustified losses, especially on one of the parties to the procedure.

Article 90

Gathering evidence

(1) In carrying out any procedure under the auspices of the Agency, State Commission, or the courts, the following measures may be undertaken for the collection of evidence:

- (a) hearing of the parties;
- (b) request for information;

(c) provision of documents and other evidence;

(d) hearing of witnesses;

(e) examination;

(f) visiting the place of business;

(g) written declarations under oath.

(2) Where the Agency, State Commission or court considers it necessary that a party to the procedure, witness or specialist give an oral testimony:

(a) the person shall be invited to the appropriate authority;

(b) a request to obtain testimonies from the appropriate person shall be submitted to the court or other competent authority.

(3) A party to the procedure, witness or specialist who has been invited to the Agency, State Commission or court, may request approval to be heard by a competent authority. After receiving such a request, or where the person fails to appear, the Agency, State Commission or court may request before the competent authority to receive the testimony of said person.

(4) Where a party to the procedure, witness or specialist gives evidence to the Agency, State Commission or court, the relevant person may request before the competent authority to be heard under appropriate conditions.

Article 91

Suspension of procedure in court

(1) Where the matter in court concerns establishing which person has the right to obtain a patent, and where the decision depends upon an assessment of the patentability of the variety according to Article 6, then such a decision may only be taken after the Agency has taken a decision as to the patentability of the variety in accordance with the patent application.

(2) Where the matter in court concerns a patent that has already been granted, in relation to which a cancellation or loss of rights procedure has been

applied, the procedure may be suspended to the extent that the decision is dependent upon the validity of the patent.

Article 92

Fees

(1) In accordance with regulations ratified by the Government, the Agency shall levy fees for the performance of legal acts, and also annual fees for the maintenance in force of the patent during its term of validity.

(2) In the case of non-payment of fees prescribed for the performance of other acts only on the request of an interested party, the application shall not be deemed to be filed where the fee has not been paid within the time limit specified in the Agency's notification, by means of which the person was invited to pay the fee and was warned about the consequences of non-payment.

(3) Where certain information provided by the applicant may only be verified by means of carrying out a technical examination, the cost of which exceeds the prescribed payment, an additional charge shall be levied in respect of the technical examination.

(4) Fees shall be paid by the applicant, patent owner, and also by other interested natural or legal persons.

Article 93

Protection and testing of varieties abroad

(2) Natural and legal persons from the Republic of Moldova shall have the right to choose in which State to submit the initial filing of the patent application.

(3) The applicant shall be entitled to apply to other UPOV member States for the grant of a plant variety patent, without having to wait for the grant of the patent for said variety by an authority of the State in which the initial application was filed.

(4) The variety for which protection is sought in the Republic of Moldova may be tested in another State where a corresponding bilateral or international treaty has been concluded with that State.

(5) An applicant who has filed his first application in another State shall be required to provide information on the testing carried out in compliance with the requirements for variety protection in that State.

(6) The cost of protecting a variety abroad shall be borne by the applicant.

Article 94

Competencies in examination of disputes

(1) The Agency's Board of Appeals shall examine disputes concerning:

(a) grant of a patent or rejection of a patent application;

(b) recognition of right of priority;

(c) withdrawal of the patent application or refusal of the patent.

(2) The work of the Board of Appeals shall be governed by the Regulations on the work of the Agency's Board of Appeals, as ratified by the Government.

(3) The Cisinău Chamber of Appeals shall examine disputes:

(a) regarding the establishment of the breeder;

(b) concerning the establishment of the person entitled to obtain a patent;

(c) regarding the grant of a license for a patent application or patent;

(d) in relation to actions concerning the right of subsequent use;

(e) between an enterprise and an employee relating to actions affecting patent rights;

(f) relating to actions concerning the infringement of a patent application or a patent, and instructions on appropriate measures;

(g) regarding the cancellation of the patent;

(h) regarding the examination in a court of first instance of objections to decisions of the Board of Appeals.

Article 95

Use of varieties for production purposes

Plant varieties shall be used for production purposes only after said varieties are tested for agronomical value and entered in the Register of Plant Varieties. Varieties of genetically modified plants shall be used for production purposes only after obtaining approval for their introduction into the environment, granted where necessary by a national competent authority in compliance with biological safety legislation.

Article 96

National policy

Foreign natural and legal persons from UPOV member States shall enjoy rights granted by this Law on an equal footing with natural and legal persons from the Republic of Moldova. The provisions of this Law shall be applicable both in the case of bilateral agreements and on the basis of the principle of reciprocity.

Chapter IX

FINAL AND TRANSITIONAL PROVISIONS

Article 97

Entry into force

This Law shall enter into force three months from its publication date in the Official Monitor of the Republic of Moldova, with the exception of Articles 73, 74, 75 and 76, which shall come into effect at the same time as the entry into force of the corresponding changes entered in the Code of Civil Procedure.

From the date of entry into force of this Law, the Law on Protection of Plant Varieties No.915-XIII of July 11, 1996, as amended, shall be recognized as superseded.

It shall be established that:

(a) patent applications, the procedure for the examination of which shall not be complete until the date of entry into force of this Law, shall be examined in the order prescribed by this Law;

(b) patents for varieties of plants relating to botanical genera and species protected on the territory of the Republic of Moldova under the Law on Protection of Plant Varieties No.915-XIII of July 11, 1996, granted prior to the entry into force of this Law, shall be equivalent in legal terms to patents granted in accordance with this Law.

Article 98

Organization of enforcement

In the three-month period from the date of entry into force of this Law, the Government shall:

(a) present Parliament with proposals on bringing current legislation into line with this Law;

(b) bring its normative acts into line with this Law.

CHAIRMAN OF PARLIAMENT

Marian Lupu

Cisinău, February 29, 2008.
No.39-XVI.

NETHERLANDS

**ACT OF 19 FEBRUARY 2005, CONTAINING NEW REGULATIONS GOVERNING
THE APPROVAL OF VARIETIES OF PLANTS, THE MARKETING OF PROPAGATING
MATERIAL, AND THE GRANTING OF BREEDER'S RIGHTS
(SEEDS AND PLANTING MATERIALS ACT, 2005)***

Bulletin of Acts, Orders, and Decrees of the
Kingdom of the Netherlands

Year 2005

184

Act of 19 February 2005, containing new regulations governing the approval of varieties of plants, the marketing of propagating material, and the granting of breeder's rights (Seeds and Planting Materials Act [*Zaaizaad- en plantgoedwet*] 2005)

We Beatrix, by the Grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

To all who shall see or hear these presents, greeting!
Be it known:

Having regard to the necessity of imposing new regulations for the approval of varieties of plants, the marketing of propagating material, and the granting of breeder's rights; to the International Convention for the Protection of New Varieties of Plants, signed in Paris on 2 December 1961 (Treaty Series of the Kingdom of the Netherlands [*Tractatenblad*] 1962,117), as most recently amended by an instrument of 19 March 1991 (Treaty Series 1992, 52); and to the various European directives on the marketing of propagating material of various species of plants;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed, as We hereby approve and decree, the following:

CHAPTER 1. DEFINITION OF TERMS

Section 1

For the purposes of this Act and the provisions based upon it, the following terms shall be understood to have the meanings assigned to them below:

- a. Our Minister: Our Minister of Agriculture, Nature, and Food Quality
- b. the Board: the Plant Varieties Board [*Raad voor plantenrassen*] referred to in Section 2;
- c. variety: a group of plants within a single botanical taxon of the lowest known rank, which group – regardless of whether it complies fully with the provisions of the present Act regarding the granting of a breeder's right – can be
 - defined on the basis of the expression of the characteristics resulting from a certain genotype or a combination of genotypes;
 - distinguished from all other plant groups on the basis of the expression of at least one of the said characteristics; and
 - considered as a unit with regard to its suitability for being propagated unchanged;
- d. the Register of Varieties: the Netherlands Register of Varieties referred to in Section 25;
- e. stand: a clearly delimited and, as regards composition, sufficiently uniform population of trees;

* Translation provided by the Dutch Authorities. This Act replaces the Seeds and Planting Material Act. The Law entered into force on February 1, 2006.

- f. propagating material: plants and plant parts intended for the cultivation or propagation of plants or that are used for such purposes;
- g. marketing: commercial provision or stocking, displaying or offering for sale, selling, possessing with a view to sale, and also providing, supplying or transferring to a third party free of charge;
- h. maintainer: a person who ensures that an approved variety is maintained;
- i. supplier: any natural person or legal entity who/that – other than for use on his/its own holding – professionally propagates, produces, holds, processes, treats, imports, or markets propagating material;
- j. breeder: a person who has propagated a variety through his own work or has discovered or developed that variety, or that person's legal successor;
- k. Union: the International Union for the Protection of New Varieties of Plants formed by the states that are party to the International Convention for the Protection of New Varieties of Plants, signed in Paris on 2 December 1961 (Treaty Series 1962,117), as most recently amended by an instrument of 19 March 1991 (Treaty Series 1992, 52);
- l. Union State: a state that is a member of the Union;
- m. trade directive or regulation: a directive or regulation of the Council of the European Union, or of the European Parliament and the Council of the European Union jointly, that is wholly or partly based on Articles 37, 52, 95, 152, or 175 of the Treaty Establishing the European Community, that relates to the plants sector and that sets rules regarding economic activity in that sector, the interests of customers, the internal market, quality, production with a view to marketing and marketing of propagating material, the environment, public health, technical requirements, or the provision of information;
- n. delegated directive, delegated regulation, or delegated decision: a directive, regulation, or decision of the Commission of the European

Communities based on a trade directive or regulation.

CHAPTER 2. PLANT VARIETIES BOARD

Section 2

There shall be a Plant Varieties Board, whose duties shall be:

- a. to register varieties and stands in the Register of Varieties pursuant to Chapter 4 of the present Act;
- b. to approve varieties and stands pursuant to Chapter 5 of the present Act;
- c. to grant breeders' rights pursuant to Chapter 7 of the present Act;
- d. to draw up and announce national lists of approved varieties and stands pursuant to Section 26; and
- e. to approve plant groups and register them in the Register of Varieties pursuant to Section 85.

Section 3

1. The Board shall consist, including its President, of a minimum of seven and a maximum of eleven members, who shall be appointed and discharged by Our Minister. They shall be appointed on the basis of their expertise in the area of the duties with which the Board is charged. Persons who are subordinates of Our Minister shall not be appointed to the Board.
2. The Board may designate one or more Vice-Presidents from its midst.
3. A Secretary and one or more Assistant Secretaries, to be appointed by Our Minister, shall be attached to the Board.
4. In order to support it in its work, the Board shall have an office headed by the Secretary referred to in Subsection 3.
5. One or more departments may be appointed within the Board by means of a general administrative order [*algemene maatregel van bestuur*].

Section 4

1. The appointment of the President and other members shall be for a period of five years.
2. Upon resigning their position, the persons referred to in Subsection 1 shall immediately be eligible for reappointment. They may be reappointed no more than twice.
3. Our Minister may suspend or prematurely discharge the persons referred to in Subsection 1 because of their being unsuitable or incompetent for the position they hold or for other serious reasons regarding their person. The persons concerned may also be discharged at their own request.
4. Any of the persons concerned may be suspended or discharged due to serious reasons regarding his person within the meaning of Subsection 3:
 - a. if he is convicted of a criminal offence by means of a judicial decision that has become final and conclusive or has been sentenced to a term of imprisonment by means of such decision;
 - b. if, by means of a judicial decision that has become final and conclusive, he has been placed under legal guardianship, has been declared bankrupt or subject to a debt rescheduling arrangement for natural persons, has been granted a suspension of payments, or has been imprisoned for debt;
 - c. if by his action or omission he causes serious harm to the activities of the Board or to confidence in the Board; or
 - d. if he contravenes the confidentiality obligation within the meaning of Section 2:5 of the General Administrative Law Act [*Algemene wet bestuursrecht*] or acts contrary to Section 5 of this Act.
5. A person appointed to replace a member of the Board whose position has fallen vacant shall resign at the point when the person he has replaced would be required to resign.
6. Our Minister shall allocate remuneration to the members of the Board.

Netherlands

Section 5

1. The President of the Board, its other members, the Secretary, and the Assistant Secretaries shall not participate in the consideration of cases in which they are in any way personally involved.
2. The President and other members of the Board shall not hold any other additional positions if such is undesirable with a view to the proper fulfilment of their duties, the maintenance of their independence, or confidence in such independence.
3. The persons referred to in Subsection 2 shall inform Our Minister of their intention to accept an additional position.
4. Additional positions other than those arising from a Board member's position as such shall be published. Such publication shall be effectuated by a list of additional positions being submitted for perusal by the Board and by Our Minister.

Section 6

1. The costs for the Board shall be borne by the national budget.
2. Our Minister shall set fees for:
 - a. processing requests for registration and entry in the Register of Varieties;
 - b. processing applications for the approval of varieties and stands;
 - c. processing applications for a breeder's right;
 - d. carrying out the technical investigation that is necessary to assess applications within the meaning of (b) and (c) above;
 - e. the provision of copies and extracts from the Register of Varieties;
 - f. each year that a variety or stand is included in the Register of Varieties in connection with its approval or in connection with the granting of a breeder's right;
 - g. the provision of advice within the meaning of Section 58(4); and

The Seeds and Planting Material Act 2005

h. the processing of applications for approval of plant groups within the meaning of Section 85.

3. The fees referred to in Subsection 2:

a. shall be directly related to the activities referred to in (a) to (h) of Subsection 2 ;

b. shall not amount to more than is necessary to cover the costs incurred due to the various different activities; and

c. shall be set separately for each plant or for each category of plants to which the activities of the Board pertain.

4. Specific rules shall be set by ministerial regulation with respect to the imposition and collection of the said fees and to their periodical revision to take account of trends in wages and prices.

5. If payment is not effectuated within the period set by the Board, the Board shall be empowered to collect the amount owing, plus the statutory interest and the costs relating to collection, by means of a writ of execution. The writ of execution shall be served by means of a bailiff's notification at the expense of the party that owes the said amount in accordance with Section 45 ff. of Book 1 of the Dutch Code of Civil Procedure [*Wetboek van Burgerlijke Rechtsvordering*] and shall constitute entitlement to enforcement within the meaning of Section 430 of Book 2 of the said Code.

6. For a period of six weeks after the date of service, it shall be possible to lodge an objection to the writ of execution by issuing a writ of summons against the State. The lodging of such objection shall suspend enforcement of the writ of execution. A court of law may lift the suspension of enforcement at the request of the State.

7. The Board shall not process any documents or issue any copies or extracts from the Register of Varieties until the amount owing pursuant to the present section has been paid.

Section 7

1. The Board may examine witnesses and experts in connection with the approval of varieties and stands and the granting of a breeder's right.

2. Any person who is called by the Board as a witness shall be obliged to comply.

3. Sections 191 and 203(2) and (3) of the Code of Civil Procedure shall apply *mutatis mutandis* to witnesses.

4. The Board may order that witnesses who, though duly summoned, have failed to appear shall be brought before it by the public authorities.

5. Sections 197 to 199, 203, and 205 of the Code of Civil Procedure shall apply *mutatis mutandis* to the examination of witnesses.

6. Experts shall carry out their task impartially and make their reports to the best of their knowledge.

Section 8

1. The Board shall adopt administrative regulations specifying in any case:

a. the working methods of the Board and the division of duties between its members;

b. the summoning of applicants, persons making a request, and other interested parties, as well as witnesses and experts;

c. the monetary remuneration to be paid to witnesses and experts.

2. In the said administrative regulations, the Board may assign the authority to represent it, both at law and otherwise, to one or more of its members or to the Secretary. The Board may provide that such authority to represent it shall apply solely to certain specific matters.

3. In the administrative regulations referred to in Subsection 1, the Board may assign duties and powers to one or more of its members or to the Secretary.

4. The said administrative regulations shall require the approval of Our Minister. Our Minister may refuse such approval if he considers that there is a conflict with the law or on the grounds that he believes that the said regulations impede the proper fulfilment of the tasks of the Board.

Section 9

1. Before 1 July of each year, the Board shall draw up an annual report on its work and general policy, and specifically on the efficiency and effectiveness of its work and working methods during the previous calendar year.

2. The said annual report shall be submitted to Our Minister and to both houses of the States General and shall be made public.

Section 10

1. As regards the exercise of its tasks and powers, the Board shall ensure:

- a. timely preparation and implementation;
- b. the quality of the procedures adopted;
- c. the careful treatment of persons and institutions coming into contact with it;
- d. the careful treatment of any objections or complaints that it may receive.

2. The Board shall make provisions allowing persons and institutions coming into contact with it to make proposals for improvements in its working methods and procedures.

3. In the annual report referred to in Section 9, the Board shall report on what it has undertaken to implement Subsections 1 and 2.

Section 11

1. The Board shall provide Our Minister, on request, with the information required for him to perform his task. Our Minister may require that he be enabled to inspect business data and records insofar as such is necessary for him to perform his task.

2. In providing the information referred to in Subsection 1, the Board shall if necessary indicate which information is of a confidential nature. The confidentiality of the said information may arise from the nature of the information or from the fact that natural persons or legal entities provided that information to the relevant body on condition that it should be classed as confidential.

Section 12

1. Our Minister may adopt guidelines regarding the fulfilment of the Board's tasks.
2. The said guidelines shall be published in the Government Gazette [*Staatscourant*].

Section 13

1. Our Minister shall be empowered to nullify a decision adopted by the Board.
2. Such nullification shall be announced in the Government Gazette.

Section 14

1. Should Our Minister consider that the Board is seriously neglecting its task, he shall be empowered to take the necessary measures.
2. Except for urgent cases, the said measures shall not be taken until the Board has been given the opportunity to carry out its task properly within a period to be determined by Our Minister.
3. Our Minister shall immediately inform both houses of the States General of measures he has taken within the meaning of Subsection 1.

Section 15

Before 1 April of each year, the Board shall submit an annual draft budget for the following year to Our Minister.

Section 16

If significant differences arise or seem likely to arise in the course of the year between the actual and budgeted revenue and charges, or income and expenditure, the Board shall immediately inform Our Minister, stating the reasons for the said differences.

Section 17

Pursuant to the relevant civil service regulations, the Board shall ensure that the necessary technical and organisational facilities are in place to ensure the security of its data against loss or damage, and against unauthorised perusal, alteration, or disclosure.

Section 18

Within four years of this Act entering into force, and subsequently every four years, Our Minister shall provide both houses of the States General with a report regarding the efficiency and effectiveness of the manner in which the Board operates.

CHAPTER 3. TESTING INSTITUTIONS

Section 19

1. By means of a general administrative order, one or more legal entities under private law, with full statutory powers, shall be charged with the task of testing propagating material and issuing supporting documentation or distinguishing marks to implement the provisions of or pursuant to Chapter 6 of the present Act.

2. The testing referred to in Subsection 1 shall be intended to determine whether propagating material complies with the rules of or pursuant to Chapter 6 of the present Act, including by studying the propagating material or its origin by means of sampling and the performance of tests.

3. By means of a general administrative order within the meaning of Subsection 1, a testing institution appointed pursuant to that subsection may also be charged with the task of recognising or registering suppliers, as referred to in Section 42.

Section 20

1. A testing institution designated pursuant to Section 19 shall not operate in the pursuit of profit.

2. The said testing institution shall adopt regulations specifying the manner in which testing will be carried out and the manner in which it will issue supporting documentation and distinguishing marks. The said regulations shall require the approval of Our Minister. Our Minister may refuse such approval if he considers that there is a conflict with the law or on the grounds that he believes that the said regulations impede the proper fulfilment of the tasks of the testing institution.

Section 21

1. Insofar as the costs incurred by a testing institution relate to the statutory tasks within the meaning of Section 19, they shall be covered by the fees to be determined and charged by the testing institution for:

- a. granting consent within the meaning of Section 39(6);
- b. carrying out testing within the meaning of Section 40;
- c. issuing supporting documentation and distinguishing marks within the meaning of Section 41;
- d. processing applications for recognition or registration of suppliers within the meaning of Section 42, or processing applications for renewal or alteration of such recognition or registration;
- e. maintaining a recognition or registration within the meaning of (d); and
- f. the provision of information within the meaning of Section 64.

2. The fees referred to in Subsection 1 shall require the prior approval of Our Minister. Our Minister may refuse such approval if he considers that there is a conflict with the law or the public interest.

3. The fees referred to in Subsection 1:
- a. shall relate directly to the activities referred to in that subsection
 - b. shall not amount to more than is necessary to cover the costs incurred due to the various different activities; and
 - c. shall be set separately for each plant or for each category of plants to which the activities of the testing institution pertain.

4. Specific rules shall be set by ministerial regulation with respect to the imposition and collection of the said fees and to their periodical revision to take account of trends in wages and prices.

5. If payment is not effectuated within the period set by the testing institution, the testing institution shall be empowered to collect the amount owing, plus the statutory interest and the costs relating to collection, by means of a writ of execution. The writ of execution shall be served by means of a bailiff's notification at the expense of the party that owes the said amount in accordance with Section 45 ff. of Book 1 of the Code of Civil Procedure and shall constitute entitlement to enforcement within the meaning of Section 430 of Book 2 of the said Code.

6. For a period of six weeks after the date of service, it shall be possible to lodge an objection to the writ of execution by issuing a writ of summons against the legal entity to which the testing institution belongs. The lodging of such objection shall suspend enforcement of the writ of execution. The court may lift the suspension of enforcement at the request of the said legal entity.

7. The testing institution shall not carry out activities within the meaning of Subsection 1, or shall cease such activities, if the fee payable pursuant to this section is not paid.

Section 22

1. Amendments to the articles of a testing institution designated pursuant to Section 19 shall require the consent of Our Minister before taking effect. Our Minister shall ensure that the said articles are published in the Government Gazette.

2. The appointment and discharge of the President of a testing institution shall require the prior consent of Our Minister.

Section 23

The testing institution shall keep separate accounts in respect of the tasks assigned to it by or pursuant to the present Act and in respect of work arising directly from those tasks, and shall account separately for those tasks and that work in its annual accounts.

Section 24

Sections 9 to 14 and Sections 17 and 18 shall apply *mutatis mutandis*.

CHAPTER 4. THE REGISTER OF VARIETIES

Section 25

1. There shall be a Netherlands Register of Varieties for the registration of varieties and stands. The said register shall be public.

2. The following shall be registered in the Register of Varieties:

- a. varieties and stands that have been approved pursuant to Chapter 5 of the present Act;
- b. varieties for which a breeder's right has been granted pursuant to Chapter 7 of the present Act;
- c. plant groups within the meaning of Section 85.

3. Registration shall be effectuated by the Board recording the description characterising the variety adopted by the Board and, insofar as a variety is concerned, the denomination adopted by the Board.

4. The registered denomination shall be deemed to be the generic designation.

5. By or pursuant to a general administrative order, rules shall be laid down regarding the structure of the Register of Varieties and the information to be given when varieties, stands, and plant groups within

the meaning of Subsection 2 are registered. The information referred to in the first sentence of this Subsection shall in any case comprise:

- a. a record of the technical investigation carried out in order for a variety or stand to be approved or for a breeder's right to be granted, within the meaning of Section 35(1)(a, b, and c) or Section 49(7);
- b. where approved varieties are concerned: a record of the maintainer or maintainers;
- c. where stands are concerned: a record of the owner or manager and the growing location of the stand.

Section 26

1. In order to implement binding decisions of the Council of the European Union, of the European Parliament and the Council of the European Union jointly, or of the Commission of the European Communities, the Board shall draw up national lists of the varieties and stands of a plant that have been approved in the Netherlands, doing so on the basis of the information contained in the Register of Varieties.

2. The establishment of a national list within the meaning of Subsection 1 shall be announced in the Government Gazette.

Section 27

1. The denomination referred to in Section 25(3) shall be suitable to identify the variety to which it applies.

2. The denomination shall differ, specifically:

- a. if a variety is concerned for which a breeder's right has been granted: from any denomination used in any Union State to refer to an existing variety of the same or a related plant;
- b. where other varieties are concerned: from any denomination used in any Member State of the European Union, or in another state that is a party to the Agreement on the European Economic Area, to refer to an existing variety of the same or a related plant.

3. The denomination shall not be contrary to public order or be offensive.

4. The denomination shall be the same as that already registered for the variety in any Union State, or in any Member State or other state that is a party to the Agreement on the European Economic Area, provided that that denomination is suitable for use in the Netherlands.

5. No denomination shall be adopted that so closely resembles a trade name or trademark that using it might give rise to confusion regarding the nature or origin of goods.

6. More detailed rules regarding denominations shall be laid down by ministerial regulation in order to implement a binding decision of the Council of the European Union, of the European Parliament and the Council jointly, or of the Commission of the European Communities. In drawing up the rules referred to in the first sentence of this subsection, account shall also be taken of the recommendations adopted by the Council of the European Union regarding the nomenclature for varieties for which a breeder's right has been granted.

Section 28

1. Before adopting a denomination, the Board shall announce its intention to do so in the Government Gazette.

2. Within eight weeks after the announcement referred to in Subsection 1, an interested party may submit objections to the denomination pursuant to Section 27(5).

3. The Board shall not adopt a denomination before it has decided on the objections referred to in Subsection 2.

4. The Netherlands Industrial Property Office [*Bureau voor de Industriële Eigendom*] shall provide the Board, on request, with information regarding trademarks that are registered with it.

Section 29

1. When applying for the granting of a breeder's right or for the approval of a variety, the applicant shall also submit a proposal for the denomination of the variety.

2. The applicant may also restrict itself to proposing a provisional denomination. In that case, the applicant shall be obliged to submit a proposal for a definitive denomination at a time to be specified by the Board.

3. The proposal for the denomination shall be accompanied by a deed stating that if the proposed denomination is registered, the applicant relinquishes the rights that may accrue to him in any Union State or in any Member State of the European Union, or another state that is a party to the Agreement on the European Economic Area, in respect of the same or similar goods.

4. The Board shall adopt the proposed denomination, or the denomination within the meaning of Section 27(4), unless it considers that doing so would be contrary to the provisions of Section 27. In that event, the Board shall give the applicant the opportunity to propose a different denomination.

5. The Board shall provide the Netherlands Industrial Property Office and the Office of the Union, on request, with information regarding the denominations that are registered with it.

Section 30

1. If the use of a registered denomination for propagating material of the variety for which this has been registered is prohibited by a judicial decision on the grounds of a right accruing to another party in respect of that denomination, the Board, at the request of any of the parties concerned, shall delete the registered denomination and register a provisional denomination, doing so in consultation with the party that has an interest in the approval of a variety or with the holder of the breeder's right.

2. The Board shall adopt an amended denomination after giving the party that has an interest in the approval of a variety or the holder of the breeder's

right the opportunity to propose a different denomination within a set period of time, and shall then register the amended denomination. Section 28 shall apply *mutatis mutandis*.

3. Should it be established that a variety cannot be included under the registered denomination in a common list of varieties for the plant to which the variety belongs that has been adopted by the Commission of the European Communities, the Board, upon receiving a request to that effect from the holder of the breeder's right or from the party that requested that the variety be approved, shall delete a registered denomination and register a provisional denomination. Subsection 2 shall apply *mutatis mutandis*.

Section 31

1. The Board may establish and register a provisional description characterising the variety.

2. The Board may add to the description referred to in Subsection 1 and shall register such addition:

- a. at the request of the applicant;
- b. *ex officio*, if such is necessary in connection with the description of another variety, in which case the party that has an interest in the approval of a variety or the holder of the breeder's right shall be heard, or for other reasons, but then only in agreement with the persons referred to above.

Section 32

Subject to the provisions of Section 3:41 of the General Administrative Law Act, decisions of the Board pursuant to the present chapter shall be announced to the interested party referred to in Section 28, to the party that has an interest in the approval of a variety pursuant to Sections 30 and 31, and to the holder of the breeder's right referred to in Sections 30 and 31.

Section 33

The applications and requests referred to in this chapter and in Chapters 5 and 7, and the withdrawal or refusal of such applications and requests, shall

be recorded in the Register of Varieties, with an announcement being made in the Government Gazette.

Section 34

Registrations and entries within the meaning of the present chapter and Chapters 5 and 7 pursuant to decisions that are the subject of an appeal shall be effectuated as soon as a ruling has been given on any appeal or the period for lodging an appeal has expired without such appeal being lodged, or as soon as the appeal has been withdrawn by means of written notification to that effect submitted to the Board.

CHAPTER 5. APPROVAL OF VARIETIES AND STANDS

Section 35

1. Rules may be set by or pursuant to a general administrative order regarding the approval of varieties and stands; the said rules may differ from one plant to another. The said rules may in any case concern:

- a. the requirement that it be established, on the basis of a technical investigation, whether a variety is distinct, uniform, and stable;
- b. the requirement that it be established, on the basis of a technical investigation, whether a variety has sufficient cultivation and utility value;
- c. the requirement that it be established, on the basis of a technical investigation, whether a stand for silvicultural purposes complies with conditions to be set by or pursuant to the general administrative order referred to in the opening words of this section regarding the production of categories of propagating material as designated by the said order;
- d. the features covered by the technical investigation within the meaning of (a), (b), and (c) and the requirements for that investigation; and

e. further requirements for approval and the conditions under which, and cases in which, approval can be amended or withdrawn by the Board.

2. A variety shall be considered distinct if it can be clearly distinguished from any other variety whose existence is a matter of common knowledge at the point when the application is submitted. A variety shall be considered to be a matter of common knowledge if, at the point when application is made for approval of a variety that is to be assessed, it is included either in a common list of varieties adopted on the instructions of the Commission of the European Communities or has been approved, or is the subject of an application for approval, in a Member State of the European Union.

3. A variety shall be considered uniform if, disregarding the variation that may be expected from the particular features of its propagation, it is sufficiently uniform as regards its significant characteristics.

4. A variety shall be considered stable if its significant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each cycle.

5. A variety shall be deemed to have sufficient cultivation and utility value if, when compared to other varieties approved in the Netherlands, the sum total of its qualities, at least as regards production in a particular area, constitutes a clear improvement for either the propagation or the valorisation of the harvest or of the products derived from it. A lower level of certain characteristics may be compensated for by other favourable characteristics.

6. The technical investigation referred to in (a), (b), and (c) of Subsection 1 shall be carried out at the responsibility of the Board. By or pursuant to the order referred to in Subsection 1, rules may be set for cases in which the conditions under which the Board, for the purposes of the technical investigation of a variety, may make use of existing investigation reports regarding that variety or of the results of investigations carried out by the applicant itself and practical experience gained during cultivation.

Section 36

1. The Board shall decide, on application, regarding the approval of a variety or stand.
2. An application for approval of a variety shall comprise the following information:
 - a. a proposal for the denomination of the variety within the meaning of Section 29;
 - b. a description characterising the variety; and
 - c. a precise account of the characteristics by which the variety is distinguished from other varieties of the same plant.
3. If the Board so requires, a sufficient quantity of material of the variety to which the application relates shall be provided to the Board for the purposes of the technical investigation within the meaning of Section 35(1)(a and b), in accordance with requirements to be set by the Board.
4. The application for approval of a stand shall contain a record of the owner or manager of the stand, the location of the stand, and a description characterising the stand.

Section 37

1. An approved variety or stand shall be registered in the Register of Varieties, with a record being made, simultaneously with the registration of the variety or stand, of the approval and of the maintainer/maintainers or the owner or manager of the stand designated pursuant to Section 39(3).
2. The said approval shall be dated and shall take effect on the day immediately following that on which the registration and entry in the Register of Varieties within the meaning of Subsection 1 took place.
3. The Board shall ensure that an approved variety that is not clearly distinguishable from:
 - a. a variety previously approved in the Netherlands or another Member State; or
 - b. another variety that has been assessed in respect of its distinctiveness, uniformity, and stability according to rules agreeing with those

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set pursuant to Section 35 but without being a variety that is a matter of common knowledge within the meaning of Section 35(2), shall bear the denomination of the variety concerned.

4. Subsection 3 shall not apply if the denomination referred to in that subsection is misleading or may be confusing as regards the variety or if other facts prevent its use, or if a third-party right prevents the free use of that denomination for the variety concerned.

Section 38

1. The approval of a variety or stand shall lapse by operation of law if the fee referred to in Section 6(2)(f) remains unpaid six months after it became due. Such lapse of approval shall be recorded in the Register of Varieties.
2. If payment has not been effectuated within fourteen days after the date on which the approval lapsed, the party that is the maintainer of the variety according to the Register of Varieties, or the applicant for approval of a stand, shall receive a reminder of its obligation to pay from the Board by registered letter.

CHAPTER 6

MARKETING OF PROPAGATING MATERIAL

Section 39

1. Rules may be set by or pursuant to a general administrative order in respect of plants designated by such order regarding the marketing of propagating material of the varieties or stands that belong to those plants. Such rules may include, for example:
 - a. the condition that propagating material may only be marketed if it derives from a variety or a stand that has been approved and has been registered in the Register of Varieties or is included in a common list of varieties or stands adopted on the instructions of the Commission of the European Communities;
 - b. the condition that only certain categories of propagating material may be marketed;

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c. the condition that certain categories of propagating material may only be marketed by the holder of the breeder's right to the variety concerned or, if no breeder's right exists in respect of the variety, by the maintainers of the variety registered with the Board.

2. By or pursuant to the order referred to in Subsection 1, rules may also be set regarding:

a. supervision of the maintenance and marketing of propagating material of a variety that is no longer maintained;

b. marketing with a view to export beyond the territory of the European Union of propagating material of varieties and stands that do not comply with the conditions set out in Subsection 1(a).

3. The registration of maintainers within the meaning of Subsection 1(c) shall be carried out by the Board on the instructions of the testing institution. If this is necessary for reasons of propagation technology, the Board shall designate a single maintainer. The latter shall be obliged, on conditions set by the Board, to provide other parties that have requested it with material suitable for producing propagating material.

4. In respect of plants for the marketing of which rules have been drawn up by a binding decision of the Council of the European Union, of the European Parliament and the Council jointly, or of the Commission of the European Communities, that apply, pursuant to the Agreement on the European Economic Area, to the whole territory of the European Economic Area, Subsection 1(a) and Subsection 2(b) shall apply *mutatis mutandis* to the territory of the European Economic Area.

5. In deviation from the rules pursuant to Subsection 1, it shall be permissible to market small quantities of propagating material for scientific or breeding purposes.

6. In deviation from the rules pursuant to Subsection 1, a testing institution, on request, may grant consent either for the marketing of propagating material for a given period or for the marketing of quantities of propagating material suitable for research and testing purposes or for maintaining genetic diversity,

insofar as the propagating material concerned is of a variety or stand for which an application for approval has been submitted in at least one Member State of the European Union.

7. The conditions under which consent within the meaning of Subsection 6 may be granted and the quantities within the meaning of that subsection shall be set by ministerial regulation.

Section 40

1. Propagating material shall not be marketed if it has not been determined on the basis of testing that it complies with the rules regarding the quality of propagating material set by or pursuant to a general administrative order.

2. The rules referred to in Subsection 1 may relate to:

a. the trueness to type, health, viability, dimensions, and purity of the propagating material;

b. the sorting, classification, treatment, packaging, shipping, and designation or labelling of the propagating material insofar as these relate to the matters referred to in (a);

c. the technical organisation and administration of the enterprise and its technical operations; and

d. the manner of testing the propagating material.

Section 41

1. If rules have been set by or pursuant to a general administrative order within the meaning of Section 40 regarding the testing of propagating material, supporting documentation and distinguishing marks may be specified as being exclusively intended for attachment, by or on behalf of the authorised party, to the propagating material or its packaging, or for inclusion with the propagating material.

2. Rules may also be set by or pursuant to an order within the meaning of Section 40 regarding the issuing, preparation, having available, stocking, and using supporting documentation and distinguishing marks as well as printing plates, stamps, and other tools for creating or applying supporting documentation and distinguishing marks.

Section 42

1. Suppliers shall be prohibited from marketing propagating material of plants designated by Our Minister without the relevant recognition or registration by a testing institution.

2. Recognition or registration shall only be valid for a period set when it is effectuated for the specified activities in respect of propagating material of specified plants.

3. The testing institution may attach conditions or regulations to recognition or registration. Recognition or registration may be granted or be effectuated subject to restrictions.

4. Subsection 1 shall not apply to suppliers who only sell or supply to persons who do not concern themselves professionally with the production of plants or the marketing of propagating material.

Section 43

1. Recognition or registration within the meaning of Section 42 shall be granted or effectuated on request if the requirements set by or pursuant to a general administrative order have been met.

2. The requirements referred to in Subsection 1 may, for example, relate to:

- a. the technical organisation of the enterprise;
- b. the production process and storage;
- c. documentation regarding the production process, storage, and delivery; and
- d. arrangements regarding supervision of compliance with the provisions of or pursuant to the present Act.

Section 44

Rules shall be set by ministerial regulation regarding the submission of an application for recognition or registration, or for the renewal or alteration of such recognition or registration and regarding the manner of dealing with such. The following may, for example, be specified:

- a. the data and documents that must be submitted before an application can be dealt with;
- b. the period within which application can be made for an amendment to the recognition or registration after alteration of the information within the meaning of (a) above.

Section 45

Recognition or registration within the meaning of Section 42 may be suspended, withdrawn, or cancelled by the testing institution if:

- a. the activities for which the recognition was granted or registration was effectuated are no longer carried out; or
- b. the requirements within the meaning of Section 43 are no longer complied with, even though the holder of the recognition or registration has been given a reasonable period in which to make the necessary changes.

Section 46

1. Without prejudice to the right to use a trade name or a trademark, propagating material of a variety included in the Register of Varieties by or pursuant to the provisions of the present Act shall be marketed solely under the registered denomination.

2. If the denomination prescribed for a variety in a different country differs from that registered in the Netherlands, propagating material of that variety shall only be exported to that country under the denomination prescribed in that country.

3. In deviation from Subsection 1, propagating material of a registered variety shall be exported under a denomination that is usual in the country to which it is imported:

- a. to other Union States, insofar as a breeder's right has been granted for the variety concerned; or
- b. to states other than one of the Member States of the European Union or another state that is a party to the Agreement on the European Economic Area, insofar as no breeder's right has been granted for the variety concerned.

4. The registered denomination or a similar word shall not be used for other propagating material of the same or a related plant.

Section 47

1. The testing institution shall ensure that propagating material that fails to comply with the rules set out in the present chapter is withdrawn from the market. To that end, the testing institution shall oblige the offender, in writing, to withdraw the defective propagating material from the market within a period set by the testing institution, or to store or destroy it.

2. If an offender fails to take the measures referred to in Subsection 1 within the period referred to in that subsection, the testing institution shall be empowered to take any necessary measures itself at the expense of the offender.

3. The testing institution shall be empowered to collect the amount owed by the offender, plus the statutory interest and the costs relating to collection, by means of a writ of execution. The provisions of Section 21(5)(second sentence) and (6), shall apply *mutatis mutandis*.

Section 48

1. Our Minister may grant dispensation or exemption in respect of the provisions of or pursuant to the present chapter.

2. Such dispensation or exemption shall only be granted:

- a. in order to provide the market with sufficient propagating material of plants whose propagation is important; or
- b. to enable temporary experiments to be carried out.

3. Such dispensation or exemption may be subject to conditions.

CHAPTER 7. BREEDER'S RIGHT

Part 1

Entitlement to the granting of a breeder's right

Section 49

1. A breeder's right may be granted for varieties of all plants belonging to the plant kingdom insofar as the varieties concerned are new, distinguishable, uniform, and stable.

2. A variety shall be deemed to be new if, at the date of submission of the application for a breeder's right, no propagating material or harvested material of the variety has been sold or otherwise provided to others by or with the consent of the breeder, for purposes of exploitation of the variety for a period:

- a. in the Netherlands: no more than one year prior to the point referred to in the opening words;
- b. outside the Netherlands: either no more than four years or, in the case of trees or vines, no more than six years before the point referred to in the opening words.

3. For the application of Subsection 2, the fact that material of a variety has already been provided to other parties for testing shall not be relied upon against the breeder of that variety or his legal successors.

4. A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the submission of the application. A variety shall in any case be considered to be a matter of common knowledge if an application for the granting of a breeder's right or for the entering of that variety in an official register of varieties has been submitted, in any country, from the date of the application, provided that the application leads or has led to the granting of a breeder's right or to the registering of the said other variety in the said register of varieties.

5. A variety shall be deemed to be uniform if it complies with the provisions of Section 35(3).

6. A variety shall be deemed to be stable if it complies with the provisions of Section 35(4).

7. In order to determine whether a variety complies with the conditions set out in Subsections 4 to 6, a technical investigation shall be carried out at the responsibility of the Board. The features that the said investigation covers and the requirements with which it must comply shall be set by ministerial regulation. In the said ministerial regulation, rules may be set for the cases in which, and the conditions under which, the Board, for the purposes of the technical investigation of a variety, may make use of existing investigation reports regarding that variety or of the results of investigations carried out by the applicant itself and practical experience gained during cultivation.

Section 50

1. Entitlement to the granting of a breeder's right shall accrue solely to the breeder.

2. If the variety was bred, or discovered and developed, outside the Netherlands, either by a natural person who does not hold Dutch nationality or by a legal entity without a registered office in the Netherlands, there shall only be an equivalent entitlement to the granting of a breeder's right insofar as the Netherlands is obliged by an international agreement to grant a breeder's right.

3. If a variety has been bred, or discovered and developed, outside the Netherlands but the Netherlands is not subject to an obligation within the meaning of Subsection 2, a breeder's right may be granted for the variety if it is a variety for which a breeder's right may be granted both in the country where the variety was bred and in the Netherlands.

Section 51

1. If the breeder has bred a variety, or has discovered and developed it, in the context of an employment relationship or in the context of an agreement to provide services for another party otherwise than in return for wages and that employment relationship or agreement provides that the breeder perform breeding or development work in respect of the plant to which the variety belongs, the entitlement to the granting of a breeder's right

shall accrue, in deviation from Section 50, to the employer or the client or to the employer's or client's legal successor.

2. In a case within the meaning of Subsection 1, the breeder shall be entitled to reasonable remuneration unless such remuneration can already be deemed to be included in his wages or in the benefits he enjoys.

3. Any stipulation that provides for a departure from Subsection 2 shall be null and void.

Section 52

If two or more persons, otherwise than in the case referred to in Section 53, have collaborated in breeding or discovering and developing a new variety, they shall be jointly entitled to the granting of a breeder's right.

Section 53

If, pursuant to Section 52, two or more persons may be individually entitled to the granting of a breeder's right for the same new variety, the entitlement to the granting of the breeder's right shall accrue to the person who first submitted the relevant application.

Section 54

1. A breeder who has submitted an application for the granting of a breeder's right in another Union State in accordance with the provisions in force in that State, shall have a priority right in respect of the acquisition of a breeder's right in the Netherlands for the same variety if:

- a. within twelve months of the submission of the application in the Union State concerned, excluding the day on which the application was submitted, a provisional application is submitted in the Netherlands invoking, in writing, the said priority right;
- b. within three months of the submission of the provisional application, a copy of the documents submitted in the other Union State is presented, such copy being certified by the competent authority in the Union State concerned; and

c. within two years of the end of the period referred to in (a) above, a full application within the meaning of Section 55 is submitted.

2. The priority right shall mean that, in deviation to that extent from the provisions of Sections 49 to 53, events occurring in the period between the submission of the application in the other country and the submission of the provisional application shall not affect an application submitted in the Netherlands in accordance with Subsection 2(c); in particular, such events shall not affect the submission of an application by another party or the marketing of propagating material of the variety concerned.

Part 2
The granting of a breeder's right

Section 55

1. An application for the granting of a breeder's right shall be submitted to the Board.

2. The said application shall comprise the following information:

- a. a proposal for the denomination of the variety in accordance with the rules set out in Chapter 4;
- b. a description characterising the variety; and
- c. a precise account of the characteristics by which the variety can be distinguished from other varieties of the same plant.

3. If the Board so requires, a sufficient quantity of material of the variety to which the application relates shall be provided to the Board for the purposes of the technical investigation within the meaning of Section 49(7) in accordance with requirements to be set by the Board.

4. If an applicant is not resident or does not have a registered office within the territory of the European Union, he shall be obliged to elect domicile within the Netherlands at the address of a legal representative, with such election of domicile being deemed, for the application of this Act, to continue until the Board has been informed in writing of a change of domicile.

Section 56

1. The Board shall decide on an application for the granting of a breeder's right and shall adopt the description characterising the variety and denomination of the variety.

2. When the variety is registered in the Register of Varieties, a record shall simultaneously be made of the granting of the breeder's right.

3. The breeder's right shall be dated and shall take effect on the day immediately following that on which the registration and entry in the Register of Varieties within the meaning of Subsection 2 took place.

Part 3
Rights and obligations of the holder
of a breeder's right

Section 57

1. The holder of a breeder's right to a variety shall have the exclusive right to produce propagating material of that variety or to further propagate it, to treat it for the purposes of propagation, to market it, export it, import it, stock it for one of these purposes, or to cause these activities to be carried out by another party or parties.

2. Parties other than the holder of the breeder's right shall be prohibited from carrying out the activities referred to in Subsection 1. This prohibition shall not apply if consent has been given by or pursuant to the present Act or by the holder of the breeder's right.

3. The prohibition shall not apply to:

- a. activities engaged in for private purposes and not commercially;
- b. activities engaged in solely for the purpose of scientific research;
- c. activities engaged in in order to breed new varieties.

4. The exclusive right shall also apply to activities in respect of harvested material of the variety, including plants and parts of plants, that is acquired through the use of propagating material for which

no consent has been granted, unless the holder of the breeder's right has had reasonable opportunity to exercise his right in respect of the said propagating material.

5. The exclusive right shall also apply to activities in respect of products that have been directly produced using harvested material of the variety for which no consent has been granted, unless the holder of the breeder's right has had reasonable opportunity to exercise his right in respect of the said harvested material.

Section 58

1. The exclusive right within the meaning of Section 57(1) shall also apply to activities within the meaning of that subsection in respect of material of:

- a. varieties derived from the protected variety within the meaning of Section 57(1), unless the protected variety is itself derived from a different variety;
- b. varieties which are not clearly distinguishable, in accordance with Section 49(4), from the protected variety;
- c. varieties whose propagation requires the repeated use of the protected variety.

2. For the application of Subsection 1(a), a variety shall be deemed to be derived from another variety if the former variety:

- a. is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety;
- b. is clearly distinguishable, pursuant to Section 49(4), from the initial variety; and
- c. except for the differences which result from the act of derivation, conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

3. Subsection 1(a) shall not apply to varieties which were a matter of common knowledge at the point when the Act Implementing the 1991 UPOV

Convention [*Uitvoeringswet UPOV 1991*] came into force. Section 49(3) shall apply *mutatis mutandis*.

4. The Board may advise, on request, regarding whether a variety referred to in the request is derived from a variety for which the Board has granted a breeder's right.

5. The advice provided by the Board within the meaning of Subsection 4 shall state the grounds on which it is based.

Section 59

1. It may be provided by means of a general administrative order that the exclusive right within the meaning of Section 57(1) in respect of a variety belonging to plants designated in the said general administrative order shall not apply to a breeder's use for propagation purposes, on his own holding, of material of that variety or a variety within the meaning of Section 58(1)(a or b) that he has harvested.

2. The use of harvested material for propagation purposes on a breeder's own holding may be made subject to restrictions or conditions by or pursuant to the general administrative order referred to in Subsection 1, with such restrictions or conditions relating, *inter alia*, to the maximum quantity of harvested material that may be used for propagation purposes, the information and supporting documentation to be provided to the holder of the breeder's right by the breeder, and the payment to be made to the holder of the breeder's right.

Section 60

The exclusive right within the meaning of Section 57(1) shall not apply to activities involving material of the protected variety or a variety within the meaning of Section 58(1) that has been marketed by or with the consent of the holder of the breeder's right in the Netherlands or in one of the Member States of the European Union or in another state which is a party to the Agreement on the European Economic Area, or that has been derived from such material, with the exception of activities:

- a. that involve further propagation of the variety to which the material belongs;

- b. that involve export, other than for consumption purposes, of the material to a country where the plant to which the variety belongs is not subject to protection comparable to the protection that may be afforded pursuant to the provisions of the present Act.

Section 61

1. The holder of a breeder's right shall be obliged to grant such licences as are in the public interest.
2. The obligation within the meaning of Subsection 1 shall also mean that the holder of the breeder's right, in return for reasonable payment, shall provide the propagating material necessary for the exercise of the licence.
3. The holder of a breeder's right shall be obliged to grant a licence to a patent holder, in return for reasonable payment, if the patent holder is unable to exploit a patent for a biotechnological discovery without infringing the breeder's right predating the patent and the said biotechnological discovery constitutes important technical progress of significant economic significance in respect of the protected variety.
4. If the holder of a breeder's right has been granted a licence under Section 57(5) of the Dutch Patents Act 1995 [*Rijksoctrooiwet*] 1995, the holder of the breeder's right shall be obliged to grant a reciprocal licence to the patent holder, at the latter's request, for use of the protected variety.

Section 62

1. If the holder of the breeder's right fails to comply with his obligations within the meaning of Section 61, the Board shall issue the licence at the request of the interested party.
2. Before reaching a decision, the Board shall give the parties the opportunity to reach agreement within a period set by the Board.
3. In the event of a failure to reach agreement, the Board shall decide, having heard the parties. The Board's decision shall specify the following: the scope of the licence, the amount of the fee to be paid to the holder of the breeder's right, and the quantity of propagating material to be provided,

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together with the fee to be paid for that material. In giving its decision, the Board may impose a requirement on the party acquiring the licence that it furnish security within a stated period.

4. After the licence has been issued by the Board and, if such obligation has been imposed, the obligation to furnish security has been complied with, the licence shall be registered in the Register of Varieties. The licence shall not take effect until it has been registered, including as regards those who acquired rights to the breeder's right after the registration of the request within the meaning of Subsection 1.

Section 63

1. A licence shall authorise the licensee to engage in the activities specified therein that parties other than the holder of the breeder's right are not permitted to engage in pursuant to Section 57(1).
2. If no provisions are made to the contrary, a licence shall apply for the whole duration of the breeder's right and shall relate to all activities that are subject to the consent of the holder of the breeder's right pursuant to this Act.
3. A licence issued otherwise than pursuant to Sections 61 and 62 shall be registered in the Register of Varieties at the request of the licensee. It shall become valid vis-à-vis third parties after such registration.

Section 64

A testing institution designated pursuant to Section 19 and a supervisory body designated pursuant to Section 8 of the Agricultural Quality Act [*Landbouwkwaliteitswet*], insofar as that body is charged by or pursuant to that Act with the testing of propagating material, shall provide, at the request of the holder of a breeder's right that is valid in the Netherlands in respect of propagating material tested by the said testing institution or supervisory body, with a list of the persons or enterprises that have produced propagating material of the variety for which the breeder's right has been granted and, as far as possible, of the quantities they have produced.

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Part 4

The breeder's right as a component of property

Section 65

1. A breeder's right and an entitlement to the granting of a breeder's right, both as regards the entire right or a part of it, shall be assignable or otherwise transferable.
2. The transfer required to assign a breeder's right or the right arising from an application for the granting of a breeder's right shall be effectuated by means of a deed.
3. Any proviso regarding the assignment shall be specified in the said deed; should no proviso be made, the assignment shall be deemed to be unrestricted.
4. The transfer shall not take effect in respect of third parties until the deed has been registered in the Register of Varieties.
5. Either party shall be equally entitled to have the Board carry out such registration.

Section 66

1. If a breeder's right accrues to more than one person jointly, the relationship between them and vis-à-vis third parties shall be governed by what has been agreed between them; however, their relationship vis-à-vis third parties shall only be so governed insofar as such is shown by the Register of Varieties.
2. If there is no agreement, or if the agreement does not provide otherwise, each co-titleholder shall be entitled to exercise the breeder's right and to take action against any infringement of that right; however, a licence, or consent within the meaning of Section 57(2) and 60, shall only be granted by the co-titleholders with their joint approval.
3. Before disposing of his rights to a third party, each co-titleholder shall be obliged to offer them for sale at a reasonable price to his co-titleholders.

Section 67

1. Any pledge of a breeder's right shall be established by means of a deed and shall not take effect in respect of third parties until the said deed has been registered in the Register of Varieties.
2. The pledgee shall be obliged to elect domicile in The Hague, doing so by means of a signed declaration submitted to the Board. If the pledgee fails to elect domicile in that way, the registered office of the Board shall be deemed to be his elected domicile.
3. Stipulations in the deed establishing the pledge regarding licences to be issued after registration shall apply, including in respect of third parties, from the point when they are registered in the Register of Varieties. Stipulations within the meaning of the first sentence regarding fees for licences that had already been issued at the point of registration shall take effect in respect of the licensee after a bailiff's notification has been served on the latter.
4. Deeds showing that the pledge has ceased to exist or has ceased to have effect shall be entered registered in the Register of Varieties.

Section 68

1. Any attachment of a breeder's right shall be levied, and the report of attachment entered in the Register of Varieties, with the provisions of the Code of Civil Procedure regarding the attachment of immovable property under a writ of execution and pre-judgment attachment applying *mutatis mutandis*, on the understanding that the record of attachment shall specify the breeder's right rather than the location of the immovable property.
2. Any disposal, encumbering, administration order, or issuing of a licence effectuated after registration of the report of attachment shall not be relied upon against the party levying the attachment.
3. Licence fees not yet paid prior to the registration of the record of attachment shall also be included in any attachment levied on the breeder's right, after notice of the registered attachment has been served on the licensee. The said fees shall be paid to the civil-law notary [*notaris*] before whom the execution is effectuated if the licensee is explicitly informed of

this when service takes place and without prejudice to any third-party rights that the execution creditor is required to respect. The amounts paid to the civil-law notary shall be counted as part of the proceeds within the meaning of Section 69(2). Sections 475(c), 476, and 478 of the Code of Civil Procedure shall apply *mutatis mutandis*.

4. The registration of the report of attachment can be cancelled:

- a. pursuant to a written statement by the bailiff, submitted for registration, to the effect that the bailiff lifted the attachment at the behest of the party levying the attachment or that the attachment has lapsed;
- b. pursuant to a judicial judgment, submitted for registration, that orders the lifting of the attachment or brings about the lapse of the attachment.

5. Sections 504(a), 538 to 541, 726(2), and 727 of the Code of Civil Procedure shall apply *mutatis mutandis* in the event of a breeder's right being attached.

Section 69

1. The sale of a breeder's right by a pledgee or party levying an attachment in order to enforce a claim shall take place in public before a competent civil-law notary. Sections 508, 509, 513(1), 514(2) and (3), 515-519, and 521-529 of the Code of Civil Procedure shall apply *mutatis mutandis*, on the understanding that the provisions of those sections regarding mortgages and mortgagees shall apply to pledges on the breeder's right and pledgees.

2. Sections 551 to 552 of the Code of Civil Procedure shall apply *mutatis mutandis* to the division of the proceeds.

Part 5

Enforcement of the breeder's right

Section 70

1. The holder of a breeder's right may enforce that right against any person who engages in one of the activities within the meaning of Section 57 without being entitled to do so.

2. Compensation may only be claimed from a party that engages in such activities intentionally. An intentional act shall in any case be deemed to have taken place if the infringement was perpetrated after the party concerned was informed, by means of a bailiff's notification, of the fact that the activities concerned constitute an infringement of the breeder's right.

3. In place of compensation, it shall be possible to request that the defendant be ordered to surrender the profits enjoyed due to the infringement and to provide a documented account; should a court find, however, that the circumstances of the case do not justify such an order, it may order the defendant to pay damages.

4. The holder of a breeder's right may also bring an action for compensation or the surrender of profits on behalf of, or also on behalf of, licensees or pledgees, without prejudice to the entitlement of pledgees to intervene in an action brought by the holder of the breeder's right, whether or not on their behalf, in order to claim compensation directly for the damage they have sustained or to have it ordered that the defendant surrender a proportionate share of the profits to them. Licensees and pledgees shall only bring an independent action or effectuate service of a bailiff's notification within the meaning of Subsection 2 with a view to such if they have gained the consent of the holder of the breeder's right.

5. The holder of the breeder's right shall be entitled to request an order that the movable property that infringes his right be withdrawn from use, destroyed, or rendered unfit for use, and to demand that materials and tools that are primarily used to produce that property should be withdrawn from use. When the claim is assessed, the court shall consider the seriousness of the infringement and the measures requested, together with the interests of third parties.

6. At the request of the holder of the breeder's right, the court may order that the party that has infringed that right should inform the holder of the breeder's right, at the latter's request, of everything that it knows regarding the origin of the property used in perpetrating the infringement, together with all data relating to it .

Section 71

1. The holder of a breeder's right shall be entitled to claim reasonable payment from a party that engages in activities within the meaning of Section 57 in respect of a variety for which a breeder's right has been requested in the period between application being made for a breeder's right and the granting of such right.

2. Such payment shall only be due for activities engaged in from thirty days after the party concerned was notified, by means of a bailiff's notification, of the entitlement accruing to the holder of the breeder's right pursuant to the present section.

3. The said bailiff's notification shall be accompanied by a copy, certified as such by the Board, of the documentation submitted in respect of the application or excerpts from that documentation insofar as these relate solely to the features of the variety for which the application was submitted and to the account of the characteristics that distinguish that variety from other varieties. This shall not include specifying the actual breeding process for the variety or the genealogical components.

4. Section 1 shall not apply to activities carried out by a party entitled to do so pursuant to an agreement with the party entitled to the granting of a breeder's right in accordance with Sections 50 and 51.

Part 6.

The duration and claiming of the breeder's right

Section 72

The duration of the breeder's right shall be twenty-five (25) years from the date it is granted, with the exception of plants designated by Our Minister, for which the duration of the breeder's right shall be thirty (30) years.

Section 73

1. The holder of the breeder's right may relinquish it.

2. Such relinquishment may only be effectuated by means of a deed, which shall be recorded in the Register of Varieties.

3. Such registration shall not be effectuated if there are persons who, as evidenced by documents recorded in the said Register, have acquired rights or licences in respect of the breeder's right or who have instituted legal action in respect of the breeder's right, and if the said persons have not given their consent for relinquishment.

4. The breeder's right shall lapse at the point when the said deed is registered in the Register of Varieties.

Section 74

1. A breeder's right shall expire by operation of law if the fee referred to in Section 6(2)(f) remains unpaid six months after it became due. Such expiry shall be recorded in the Register of Varieties.

2. If payment has not been effectuated within fourteen days after the due date, the party that is the holder of the breeder's right according to the Register of Varieties shall receive a reminder from the Board, by registered letter, of its obligation to pay.

3. If payment has not been effectuated within one month of the due date, written notification to that effect shall be sent to all parties that, as evidenced by the documents recorded in the Register of Varieties, have acquired rights or licences in respect of the breeder's right or who have instituted legal action in respect of the breeder's right.

Section 75

1. A breeder's right shall be declared null and void by a court of law:

- a. if it becomes apparent that the variety was not a new one at the point when the breeder's right was granted;
- b. if it becomes apparent that the variety was not a distinct one within the meaning of Section 49(4) at the point when the breeder's right was granted;
- c. if – in the event that the breeder's right was granted primarily on the basis of information and documentation provided by the breeder – it

becomes apparent that the variety was not uniform or stable within the meaning of Section 49(5) and (6);

d. if the breeder's right was granted to a person not entitled to hold it in accordance with the provisions of or pursuant to the present Act, unless the breeder's right is transferred to the person who is in fact so entitled.

2. Action may be instituted to bring about nullification at any time by any interested party or by or on the instructions of Our Minister.

3. At the request of the claimant, the summons shall be recorded in the Register of Varieties.

4. Nullification of a breeder's right shall remove all further legal consequences from the breeder's right and the rights arising from it.

Section 76

1. A breeder's right may be claimed, either wholly or in part, if it has been granted to a party that had no entitlement or no exclusive entitlement to it pursuant to Sections 50, 51, or 52.

2. At the request of the claimant, the summons shall be recorded in the Register of Varieties.

3. The right to claim the breeder's right shall accrue to the party that, pursuant to the above-mentioned sections, is entitled or jointly entitled to the granting of the breeder's right.

4. The right to claim the breeder's right shall expire five years after the date of the breeder's right.

5. Licences acquired in good faith before the entry within the meaning of Section 77(1) was made shall remain valid vis-à-vis the new holder of the breeder's right, who shall acquire a right to the fee owing for the licences.

Section 77

1. An entry shall be made in the Register of Varieties of the upholding or dismissal of legal action to claim a breeder's right or to have it declared null and void.

2. The dismissal or upholding of such claim shall have retroactive effect back to the date of the entry in the Register of Varieties referred to in Subsection 1.

Part 7

Disputes in respect of breeder's rights

Section 78

1. The District Court in The Hague shall have exclusive jurisdiction in the first instance in respect of legal action to claim a breeder's right or to have it declared null and void within the meaning of Sections 75 and 76.

2. The District Court in The Hague and the preliminary relief judge of that court shall have exclusive jurisdiction in the first instance in respect of:

a. claims within the meaning of Sections 70 and 71;

b. claims instituted by a party other than the holder of a breeder's right for a ruling that certain activities do not infringe a breeder's right.

3. Judgments and injunctions rendered or issued by the said District Court shall be open to appeal at the Court of Appeal in The Hague.

Section 79

1. The expert members within the meaning of Sections 55(a)(2) and 70(2) of the Judiciary (Organisation) Act [*Wet op de rechterlijke organisatie*] shall be appointed by Royal Decree. They shall be appointed as members, or as deputy members, to the District Court in The Hague or as advisers, or deputy advisers, at the Court of Appeal in The Hague, depending on the particular case.

2. The members and deputy members, or the advisers and deputy advisers, shall be appointed for a period of five years. Upon resigning their position, they shall immediately be eligible for reappointment. They may be discharged, at their request, by Royal Decree.

3. The members and deputy members, or the advisers and deputy advisers, shall be granted discharge by Royal Decree with effect from the first day of the month following that in which they reach the age of seventy.

Section 80

Sections 46(c), 46(d), 46(f), 46(g)(1 and 2), 46(i), with the exception of (c) of the first paragraph), 46(j), 46(l)(1 and 3), 46(m), 46(o), and 46(p)(1 to 5) of the Judicial Officers (Legal Status) Act [*Wet rechtspositie rechterlijke ambtenaren*] shall apply *mutatis mutandis* in respect of the members and deputy members or the advisers and deputy advisers.

Section 81

Our Minister shall set rules regarding the allocation of an allowance to cover travel and accommodation costs and further reimbursement to the members and deputy members or the advisers and deputy advisers.

Section 82

Legal representatives of the holder of a breeder's right may address the court at the hearing of disputes within the meaning of Section 78, without prejudice to the responsibility of the local counsel [*procureur*].

Section 83

The court registrar shall send a copy of all judicial decisions in respect of a breeder's right to the Board within one month of such decision, this being at no charge.

CHAPTER 8. OTHER PROVISIONS

Section 84

Specific rules shall be set by or pursuant to a general administrative order in respect of:

a. applications and requests submitted to the Board pursuant to Chapters 4 to 7;

b. the point at which applications and requests submitted pursuant to Chapters 4 to 7 must have been submitted to the Board;

c. the hearing of interested parties by the Board.

Section 85

In order to implement decisions of the Council of the European Union, of the European Parliament and the Council of the European Union jointly, or of the Commission of the European Communities, rules shall be set by or pursuant to a general administrative order regarding the approval of plant groups that do not comply with the requirements of Section 35 and regarding the marketing of propagating material deriving from such plant groups.

Section 86

An interested party may lodge an appeal against a decision arrived at pursuant to the present Act with the Trade and Industry Appeals Tribunal [*College van Beroep voor het bedrijfsleven*].

Section 87

1. If matters regulated in this Act should require further regulation in the interests of proper implementation of the law, this may be done by means of a general administrative order.

2. Rules for implementing trade directives may be set by or pursuant to a general administrative order.

3. Rules may be set by or pursuant to a general administrative order to implement a binding agreement between the European Community and a third country or an international organisation that relates to a matter covered by a trade directive or regulation.

4. Rules may be set by ministerial regulation for the proper implementation of trade regulations.

5. Rules may be set by ministerial regulation for the implementation of delegated regulations and delegated orders.

6. The rules referred to in subsections 2 to 5 may:

- a. assign tasks and powers to Our Minister, to the Board, or to a testing institution designated pursuant to Section 19;
- b. designate provisions of a trade regulation that are to be subject to the supervision of officials or other persons appointed by Our Minister, or that Our Minister, the Board, or a testing institution designated pursuant to Section 19 may apply by taking relevant decisions.

Section 88

1. It may be determined by or pursuant to a general administrative order that co-operation be required of the management board of a product board or industry board within the meaning of Section 66 of the Industrial Organisation Act [*Wet op de bedrijfsorganisatie*].

2. If the co-operation to be provided by the management board of an industrial association involves setting rules or detailed rules by means of regulations, such regulations shall require the approval of Our Minister. Insofar as such is determined by or pursuant to a general administrative order, decisions taken pursuant to the said regulations shall require the approval of Our Minister.

Section 89

1. Officials appointed pursuant to an order issued by Our Minister and persons appointed pursuant to an order issued by Our Minister working at a testing institution designated pursuant to Section 19 shall be charged with supervising compliance with the provisions of or pursuant to this Act.

2. An order within the meaning of Subsection 1 shall be published in the Government Gazette.

CHAPTER 9. TRANSITIONAL PROVISIONS AND FINAL PROVISIONS

Section 90

1. Should the decision in any civil or criminal proceedings depend on determining the variety to which a group of plants should be assigned, the Board shall be heard in respect of the matter. The advice provided by the Board shall state the grounds on which it is based.

2. The Board shall give priority to dealing with cases within the meaning of Subsection 1 over all other cases.

Section 91

The Economic Offences Act [*Wet op de economische delicten*] shall be amended as follows:

- a. in (2°) of Section 1, the following shall be added within the alphabetical order: the Seeds and Planting Materials Act 2005, Sections 39, 40, 41, 42, 46, 48(3) 57 to 60, 85 and 87;
- b. (3°) of Section 1, the passage relating to Regulation (EC) No. 2100/94 of 27 July 1994 of the Council of the European Union on Community plant variety rights shall be deleted; it shall be inserted at (2°) of Section 1;
- c. in (3°) of Section 1, the passage relating to the Seeds and Planting Materials Act shall be deleted.

Section 92

The Judiciary (Organisation) Act shall be amended as follows:

A

After Section 55, a section shall be inserted reading:

Section 55(a)

1. The board of the District Court in The Hague shall form divisions, to be known as “breeder’s rights divisions” to consider and rule on matters within the meaning of Section 78(1) and (2) of the Seeds and

Planting Materials Act 2005. The board of the said District Court shall determine the membership of the said divisions.

2. A breeder's rights division shall consist of two judicial officers charged with delivering judgments and a person who is not a judicial officer as an expert member. The provisions of Sections 7(3), 12, and 13 shall apply *mutatis mutandis*.

B

In Section 70, "cases within the meaning of Section 60 of the Seeds and Planting Materials Act" shall be replaced by "cases within the meaning of Section 78(3) of the Seeds and Planting Materials Act 2005".

Section 93

Our Minister shall be empowered to apply administrative coercion to enforce the obligations imposed by or pursuant to the present Act.

Section 94

1. Varieties already entered in the Register of Varieties at the point when the present Act enters into force shall be reclassified by the Board in accordance with the rules set by or pursuant to Section 25.

2. The Board shall ensure that varieties that had been approved pursuant to Section 82 of the Seeds and Planting Materials Act on the day prior to the point referred to in Subsection 1 are registered in the Register of Varieties.

3. The Board shall ensure that the approval is registered in the Register of Varieties of varieties of agricultural or silvicultural plants that, on the day prior to the point referred to in Subsection 1, were included in the list of varieties of agricultural plants determined pursuant to Section 73 in conjunction with Sections 79 and 83(1) of the Seeds and Planting Materials Act or in the list of varieties of silvicultural plants determined pursuant to Section 73 in conjunction with Section 79 of the Seeds and Planting Materials Act.

4. Applications and requests that are pending before the Breeders' Rights Board [*Raad voor het Kwekersrecht*] at the point when the present Act

enters into force shall from that point become pending by operation of law before the Board in the state in which they are at that point, on the understanding that applications relating to a variety within the meaning of Section 18(1)(b) and (2) of the Seeds and Planting Materials Act shall be considered as an application for the approval of a variety in accordance with Chapter 5 of the present Act.

5. Applications for the designation of plant groups within the meaning of Section 82 of the Seeds and Planting Materials Act that are pending at the point when the present Act enters into force shall from that point become pending by operation of law before the Board and shall from that point on be considered as an application for the approval of a variety in accordance with Chapter 5 of the present Act.

6. Cases that are pending before the Appeals Department of the Breeders' Rights Board, within the meaning of Section 5(1)(d) of the Seeds and Planting Materials Act, at the point when the present Act enters into force shall from that point become pending by operation of law before the Board and shall from that point on be considered as an objection.

7. Cases that are pending before the Appeals Board [*Raad van Beroep*] or Appeals Commission on Testing Matters [*Commissie van Beroep inzake Keuringen*] of a testing institution within the meaning of Section 88(2°)(e or g) of the Seeds and Planting Materials Act at the point when the present Act enters into force shall from that point become pending by operation of law before the relevant testing institution designated pursuant to Section 19 of the present Act and shall from that point on be considered as an objection.

8. Requests that are pending before the Breeders' Rights Board to claim a breeder's right or to have it declared null and void within the meaning of Sections 54 and 55 of the Seeds and Planting Materials Act at the point when the present Act enters into force shall be considered and ruled on in accordance with the provisions of the Seeds and Planting Materials Act.

9. Cases pending pursuant to Sections 25(2), 60, and 69 of the Seeds and Planting Materials Act before the Court of Appeal in The Hague or the Supreme Court of the Netherlands [*Hoge Raad*] shall be considered and ruled on in accordance with the provisions of the Seeds and Planting Materials Act.

Section 95

The Seeds and Planting Materials Act is hereby repealed.

Section 96

1. This Act may be referred to as the “Seeds and Planting Materials Act”, with reference being made to the year of the Bulletin of Acts, Orders, and Decrees in which it is published.

2. This Act shall enter into force at a point to be determined by Royal Decree.

We hereby order and command that this Act be published in the Bulletin of Acts, Orders, and Decrees and that all ministries, authorities, boards, and civil servants to whom such applies shall take measures to implement it diligently.

Issued in The Hague on 19 February 2005

Beatrix

The Minister of Agriculture, Nature and Food Quality
C. P. Veerman

Published on 7 April 2005

The Minister of Justice

OMAN

**ROYAL DECREE 49/2009 PROMULGATING
THE LAW ON THE PROTECTION OF BREEDERS' RIGHTS
IN NEW VARIETIES OF PLANTS***

We, Qaboos bin Said, Sultan of Oman,

Issued on: 8 Ramadan 1430H

Sultan of Oman

29 August 2009

After perusal of the Basic Law of the State promulgated by Royal Decree 101/96;

The Royal Decree No. 92/2000 Promulgating the Law on the Protection of New Plant Varieties;

**CHAPTER I
DEFINITIONS**

The Royal Decree 37/2007 regarding accession of the Sultanate of Oman to some International Treaties related to the Protection of Intellectual Property Rights;

Article 1

In the application of this Law, the following terms and expressions shall have the meaning attached for each:

The Royal Decree 9/2008 defining functions of the Ministry of Agriculture and adopting its Administrative Structure;

(1) "breeder" means

The Royal Decree 67/2008 promulgating the Law on Industrial Property Rights

i- the person who bred, or discovered and developed, a variety, or

And according to the exigencies of public interest.

ii- the person who is the employer of the aforementioned person or who has commissioned the latter's work, or

We decree the following:

iii- the successor in title of the first or second aforementioned person, as the case may be;

Article I : Provisions of the attached Law on the Protection of the Breeders' Rights in New Varieties of Plants shall apply

(2) "breeder's right" means the right of the breeder provided for in this Law;

Article II : Referred Royal Decree 92/2000 shall be rendered null.

(3) "variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be

Article III : The Minister of Agriculture shall issue the bylaws and regulations necessary for the enforcement of the provisions of this Law. Pending the issuance of the bylaws and regulations, prevailing acts shall remain in force provided they do not contradict with the provisions of the Law.

- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,

Article IV : The Royal Decree shall be published in the Official Gazette and shall come into effect from the day following the date of its publication.

- distinguished from any other plant grouping by the expression of at least one of the said characteristics and

Qaboos bin Said

* Translation provided by the Office of the Union. The Law entered into force on August 29, 2009.

- considered as a unit with regard to its suitability for being propagated unchanged;

(4) "Minister": Minister of Agriculture;

(5) "Authority": The Ministry of Agriculture is designated as the "authority";

(6) "UPOV" means the International Union for the Protection of New Varieties of Plants founded by the International Convention for the Protection of New Varieties of Plants of 1961 and further mentioned in the Act of 1972, the Act of 1978 and in the 1991 Act;

(7) "member of UPOV" means a State party to the UPOV Convention of 1961/ Act of 1972 or the Act of 1978 or a Contracting Party to the 1991 Act.

CHAPTER II GENERAL OBLIGATIONS OF THE CONTRACTING PARTIES

Article 2 Purpose

(1) The purpose of this Law is to grant and protect breeders' rights.

(2) The authority is entrusted with the task of granting breeders' rights.

Article 3 Genera and Species to be Protected

This Law shall be applied to the plant genera and species designated by the Minister, and by the expiration of a period of 10 years from the date of coming into force of this Law at the latest, to all plant genera and species.

Article 4 National Treatment

(1) According to this Law, nationals of a member of UPOV as well as natural persons resident and legal entities having their registered offices within the territory of a member of UPOV shall, insofar as the grant and protection of breeders' rights are concerned, enjoy within the territory of the Sultanate

of Oman the same treatment as is accorded by this Law to the nationals of the Sultanate of Oman. The said nationals, natural persons or legal entities of a member of UPOV shall comply with the conditions and formalities imposed on the nationals of the Sultanate of Oman.

(2) Nationals of any State which, not being a member of UPOV, grants reciprocity of treatment to the nationals of the Sultanate of Oman, shall enjoy national treatment in the Sultanate of Oman.

CHAPTER III CONDITIONS FOR THE GRANT OF THE BREEDER'S RIGHT

Article 5 Conditions of Grant

(1) The breeder's right shall be granted where the variety is

new,
distinct,
uniform and
stable.

(2) The grant of the breeder's right shall not be subject to any further conditions, provided that the variety is designated by a denomination in accordance with the provisions of Article 20, that the applicant complies with the formalities provided for in this Law and that he pays the required fees.

Article 6 Novelty

(1) The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety

(a) in the territory of the Sultanate of Oman earlier than one year before the date of filing of the application and

(b) in a territory other than that of the Sultanate of Oman earlier than four years or, in the case of trees or of vines, earlier than six years before the said date.

(2) Where, according to Article 3, this Law applies to a plant genus or species to which it did not previously apply, varieties belonging to such plant genus or species shall be considered to satisfy the condition of novelty defined in paragraph (1) even where the sale or disposal to others described in that paragraph took place in the territory of the Sultanate of Oman within four years before the filing date or, in the case of trees or of vines, within six years before the said date.

(3) The provision under paragraph (2) of this Article, shall apply to applications for protection of the breeder's right filed within one year after the provisions of the Law apply to the genera or species concerned.

Article 7 Distinctness

The variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

Article 8 Uniformity

The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

Article 9 Stability

The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

CHAPTER IV APPLICATION FOR THE GRANT OF THE BREEDER'S RIGHT

Article 10 Filing of Applications

(1) The filing date of the application for a breeder's right shall be the date of receipt of the application duly filed as prescribed by the bylaws.

(2) The authority shall not refuse to grant a breeder's right or limit its duration on the ground that protection for the same variety has not been applied for, has been refused or has expired in any other State or intergovernmental organization.

Article 11 Right of Priority

(1) Any breeder who has duly filed an application for the protection of a variety in one of the members of UPOV (the "first application") shall, for the purpose of filing an application for the grant of a breeder's right for the same variety with the authority, enjoy a right of priority for a period of 12 months. This period shall be computed from the date of filing of the first application. The day of filing shall not be included in the latter period.

(2) In order to benefit from the right of priority, the breeder shall, in the application filed with the authority, claim the priority of the first application. The authority shall require the breeder to furnish, after a period of not less than three months from the filing date of the application, a copy of the documents which constitute the first application, certified to be a true copy by the member of UPOV in which that first application was filed, and samples or other evidence that the variety which is the subject matter of both applications is the same.

(3) The breeder shall be allowed a period of two years after the expiration of the period of priority or, where the first application is rejected or withdrawn, an appropriate time, after such rejection or withdrawal, in which to furnish, to the authority, any necessary information, document or material required for the purpose of the examination under Article 12 of this Law.

Article 12
Examination of the Application

Any decision to grant a breeder's right shall require an examination for compliance with the conditions under Articles 5 to 9 of this Law. In the course of the examination, the authority may grow the variety or carry out other necessary tests, cause the growing of the variety or the carrying out of other necessary tests, or take into account the results of growing tests or other trials which have already been carried out. For the purposes of examination, the authority may require the breeder to furnish all the necessary information, documents or material as specified in the bylaws.

Article 13
Provisional Protection

Provisional protection is provided to the breeder during the period between the publication of the application for the grant of a breeder's right and the grant of that right. Such measures shall have the effect that the holder of a breeder's right shall be entitled to at least equitable remuneration from any person who, during the said period, has carried out acts which, once the right is granted, require the breeder's authorization as provided in Article 14 of this Law.

CHAPTER V
THE RIGHTS OF THE BREEDER

Article 14
Scope of the Breeder's Right

(1)(a) Subject to Articles 15 and 16 of this Law, the following acts in respect of the propagating material of the protected variety shall require the authorization of the breeder:

- production or reproduction (multiplication),
- conditioning for the purpose of propagation,
- offering for sale,
- selling or other marketing,
- exporting,
- importing,
- stocking for any of the purposes mentioned above.

(b) The breeder may make his authorization subject to conditions and limitations.

(2) Subject to Articles 15 and 16 of this Law, the acts referred to in paragraph (1)(a) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

(3)(a) The provisions of paragraphs (1) and (2) shall also apply in relation to

"1" varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,

"2" varieties which are not clearly distinguishable in accordance with Article 7 from the protected variety and

"3" varieties whose production requires the repeated use of the protected variety.

(b) For the purposes of subparagraph (a)"1", a variety shall be deemed to be essentially derived from another variety ("the initial variety") when

"1" it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,

"2" it is clearly distinguishable from the initial variety and

"3" except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(c) Essentially derived varieties may be obtained by the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering or other means.

Article 15
Exceptions to the Breeder's Right

- (1) The breeder's right shall not extend to
- (a) acts done privately and for non-commercial purposes,
- (b) acts done for experimental purposes and
- (c) acts done for the purpose of breeding other varieties, and, except where the provisions of Article 14(3) of this Law apply, acts referred to in Article 14(1) and (2) of this Law in respect of such other varieties.
- (2) Small farmers shall not infringe the breeder's right, in relation to varieties included in a list of agricultural plants, if they use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14(3)(a) "1" or "2" of this Law, provided that this use is within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder.
- (3) The varieties of fruit trees, ornamentals, vegetables and forest plants are excluded from the exception under paragraph (2) of this Article.

Article 16
Exhaustion of the Breeder's Right

- (1) The breeder's right shall not extend to acts concerning any material of the protected variety, or of a variety covered by the provisions of Article 14(3) of this Law, which has been sold or otherwise marketed by the breeder or with his consent in the territory of the Sultanate of Oman, or any material derived from the said material, unless such acts
- (a) involve further propagation of the variety in question or
- (b) involve an export of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption purposes.

(2) For the purposes of paragraph (1), "material" means, in relation to a variety,

- (a) propagating material of any kind,
- (b) harvested material, including entire plants and parts of plants, and
- (c) any product made directly from the harvested material.

Article 17
Restrictions on the Exercise
of the Breeder's Right

- (1) Except where expressly provided in this Law, the free exercise of a breeder's right shall not be restricted in the territory of the Sultanate of Oman for reasons other than of public interest.
- (2) When any such restriction has the effect of the Minister granting a compulsory license whereby a third party is authorized to perform any act for which the breeder's authorization is required, the breeder shall receive equitable remuneration.

Article 18
Measures Regulating Commerce

The breeder's right is independent of any measure taken by any relevant authority within its competence to regulate in the Sultanate of Oman the production, certification and marketing of material of varieties or the importing or exporting of such material. In any case, such measures shall not affect the application of the provisions of this Law.

Article 19
Duration of the Breeder's Right

The breeder's right shall be granted for a fixed period of 20 years from the date of the grant of the breeder's right. For trees and vines, the said period shall be 25 years from the said date.

CHAPTER VI VARIETY DENOMINATION

Article 20 Variety Denomination

(1)(a) The variety shall be designated by a denomination which will be its generic designation.

(b) Subject to paragraph (4), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination of the variety, even after the expiration of the breeder's right.

(2) The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any member of UPOV, an existing variety of the same plant species or of a closely related species.

(3) The denomination of the variety shall be submitted by the breeder to the authority. If it is found that the denomination does not satisfy the requirements of paragraph (2), the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the authority at the same time as the breeder's right is granted.

(4) Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority shall require the breeder to submit another denomination for the variety.

(5) A variety must be submitted to all members of UPOV under the same denomination. The authority shall register the denomination so submitted, unless it considers the denomination unsuitable. In the latter case, it shall require the breeder to submit another denomination.

(6) The authority shall ensure that all the other members of UPOV are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any member of UPOV may address its observations, if any, on the registration of a denomination to the authority.

(7) Any person who, in the Sultanate of Oman, offers for sale or markets propagating material of a variety protected in it shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.

(8) When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

CHAPTER VII NULLITY, CANCELLATION AND TERMINATION OF THE BREEDER'S RIGHT

Article 21 Nullity of the Breeder's Right

The breeder's right shall be declared null and void when any of the following is established

(a) that the conditions laid down in Articles 6 or 7 of this Law were not complied with at the time of the grant of the breeder's right,

(b) that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 8 or 9 of this Law were not complied with at the time of the grant of the breeder's right,

(c) that the breeder's right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

Article 22

Cancellation of the Breeder's Right

(1) The breeder's right may be cancelled if it is established that the conditions laid down in Articles 8 or 9 of this Law are no longer fulfilled.

(2) The breeder's right may be cancelled if, after being requested to do so and within the prescribed period,

(a) the breeder does not provide the authority with the information, documents or material deemed necessary for verifying the maintenance of the variety,

(b) the breeder fails to pay such fees as may be payable to keep his right in force, or

(c) the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

Article 23

Termination of the Breeder's Right

(1) The breeder's right shall terminate when the term provided in Article 19 of this Law expires.

(2) The breeder's right shall terminate before the term expires when the breeder renounces it by written declaration addressed to the authority.

(3) Termination and assignment shall be recorded and published according to the conditions and procedures prescribed by the Bylaws.

CHAPTER VIII
FINAL PROVISIONS

Article 24

Bylaws

(1) The Minister of Agriculture shall make bylaws and issue decisions required for the implementation of the provisions of this Law, and, more particularly for the following:

(a) Procedural matters concerning applications for the grant of breeders' rights;

(b) Matters concerning variety denominations;

(c) Matters concerning examination of applications for the grant of breeders' rights;

(d) Publication requirements;

(e) Opposition procedures; and

(f) Fixing the fees to be paid for the filing of applications, breeders' certificates and the compulsory licenses in coordination with the Ministry of Finance.

(g) Data to be included in the registers concerning breeders' rights.

(2) Any interested person may file an appeal against decisions made in respect of that person, within 60 days from the date on which the said person is informed of the relevant decision, before a committee, the constitution and working methods of which shall be prescribed by the Bylaws. Decisions made by the committee shall become final only upon approval by the Minister.

Article 25

Enforcement of Breeders' Rights

(1) The competent court shall expedite the settlement of disputes relating to the application of the provisions of this law and its executive bylaws and decisions.

(2) The provisional, civil, customs and criminal measures provided in the Law of Industrial Property Rights issued by the Royal Decree 67/2008 shall apply in respect of the enforcement of plant breeders' rights provided in this Law.

Article 26

Supervision

Supervision over the implementation of this Law and the Bylaws according to this Law shall be performed by the authority designated by the Minister.

Article 27

Publication

Information concerning applications for and grants of breeders' rights, and proposed and approved denominations shall be regularly published, as prescribed by the Bylaws.

URUGUAY

EXECUTIVE

Law No. 18.467* of February 27, 2009

The Senate and the Chamber of Representatives of the Eastern Republic of Uruguay, having met at the General Assembly,
Decreed as follows:

Article 1 –Articles 14, 35, 37, 38, 40, 41, 44, 45, 48, 63, 65, 69, 72 and 75 of Law No. 16.811 of February 21, 1997 are hereby replaced to read as follows:

“Article 14 – The Institute shall have the following duties:

(A) To promote the development of seed activities at all stages.

(B) To monitor the production and marketing of seeds and at the same time to ensure compliance with the provisions laid down by this Law and the Regulations under it; to that end it shall be empowered to:

(1) sample, inspect, analyze and test seeds in the process of production, transportation, sale and offering or display for sale, in any place and at any time, in order to ascertain whether legal and regulatory provisions have been met;

(2) have access to places in which seeds are located or are in the process of being produced;

(3) effect the withdrawal from sale of any seed that does not meet the requirements of this Law; and,

(4) seek the assistance of the forces of law and order where necessary.

(C) To advise the Executive on matters of seed policy by issuing opinions prior and fundamental to the enactment of provisions related to seed activities.

(D) To keep the National Register of Cultivars and the General Register of the Seed Industry.

(E) To maintain the Register of Cultivar Ownership and grant the appropriate titles in accordance with national provisions and bilateral or multilateral international agreements.

(F) To effect the national and international certification of seeds, subject to observance of bilateral or multilateral international agreements.

(G) To maintain the country's official seed laboratory by carrying out analytical work and also issuing the corresponding certificates, subject to observance of bilateral or multilateral international agreements.

(H) To authorize and advise private seed testing laboratories in accordance with the applicable provisions.

(I) To process and implement arrangements for the import and export of seeds.

(J) To carry out, either by itself or through third parties, such investigations of technical character as it may consider necessary for the fulfillment of its duties and functions, and also such consultations or verifications as may have to be made with foreign organizations of the same kind.

(K) To enter into relations of mutual cooperation and agreements with public or private institutions, either national or foreign, and also with international or regional organizations.

(L) To promote the training and further training of officials concerned with the relevant sector, in coordination with national research and technical assistance bodies.

(LL) To set prices for:

· entries in the National Register of Cultivars, the General Register of the Seed Industry and the Register of Cultivar Ownership;

* Translation provided by the Office of the Union.

- annual fees for the maintenance of entries in the aforementioned registers;
- labels for the various categories of seeds;
- seed testing;
- applications and annual fees for authorization of seed testing laboratories, processing plants and other service providers associated with seeds;
- seed certification;
- applications for cultivar ownership titles and processing and grant thereof; and,
- any other service provided by the Institute in accordance with the rules governing matters within its jurisdiction; the prices set shall be in strict proportion to the cost of the services provided.

(M) To decide on and apply the appropriate sanctions for violations of the regulatory provisions established by this Law and the Regulations under it, and to set the amounts of the corresponding fines.

(N) To enforce the sanctions imposed by it, for the purposes of which the records of its final resolutions shall constitute the titles of enforcement; those rulings shall be considered final that are expressly or tacitly accepted by the recipient of the sanctions and also those that deny leave to appeal under Article 22 of this Law.

(O) To enter into agreements on payment for the sanctions imposed by it, where it sees fit.”

“Article 35 – The only batches of seed produced in the country that may be marketed are those that have been previously tested by authorized or official seed testing laboratories, whose test findings show that the seed meets prevailing quality standards.

The Executive shall, when regulating this provision, set the date of the entry into force thereof.”

“Article 37 – Where the test findings fall short of those prescribed by the regulations, the seed shall, in order to be offered for sale, be reclassified under the control of the National Seeds Institute with a view to the achievement of acceptable values.

Where reclassification is not appropriate, the National Seeds Institute may order its use as a consumer product or in industrial processes, or its destruction.”

“Article 38 – The seed institutions shall be responsible, when dealing with third parties and the National Seeds Institute, for the conformity of a seed to the quality standards laid down in this Law and the Regulations under it, and for the accuracy of the information given on the labels and packaging of the seed, when the said seed is sold and offered for sale by them, or when it is sold or offered for sale by third parties, and the liability of the said seed institutions shall be verified. In other cases, the trader selling the seed shall be liable.”

“Article 40 – Where the consumer has doubts concerning the genuineness, purity, germination or treatment specified on the labels of seeds that he or she has bought, he or she may seek official confirmation from the National Seeds Institute according to the procedure laid down in the relevant regulations.

Complaints concerning genuineness, purity, germination and processing shall be made during cultivation and up to the start of harvesting, as soon as the problem is discovered.

If it is found that the complaint is justified, the seller shall be obliged to repay the price of the seed and freight charges to the buyer, without prejudice to the sanctions provided for in this Law.

The buyer shall be obliged to return the seed that has not been sown, along with the corresponding packaging, any expenses associated with the return being payable by the seller.”

“Article 41 – It shall be prohibited to market any seed:

(1) in packaging that prevents the traceability process needed to guarantee the fulfillment of the provisions;

(2) together with information on the packaging or labels that is not expressly allowed by prevailing regulations;

(3) with a label or notice that in one way or another misleads as to the properties and condition of the seed or does not conform to prescribed standards; and,

(4) that does not conform to the requirements, tolerances and other specific conditions laid down to that end by the provisions of this Law.

The National Seeds Institute shall regulate the conditions in which seeds in any of the situations provided for in this Article are transported.”

“Article 44 – Cultivars entered in the Register referred to shall:

(1) possess a characterizing proper name that prevents them from being confused with another variety already registered or from misleading as to the properties of the seed;

(2) retain their original names, in the case of foreign cultivars;

(3) be distinguishable from other cultivars already registered;

(4) be sufficiently uniform in their characteristics as a whole, according to their reproductive or vegetative propagation system, and satisfy the conditions of stability that enable them to be identified;

(5) be the subject of national test data carried out in the form and under the conditions stipulated by the Executive;

(6) have a maintainer that is registered with the National Seeds Institute; and,

(7) be sponsored by agricultural engineers.

For the purposes of the national test data requirement, regulations issued by the National Seeds Institute shall specify the growing periods or cycles required according to the species concerned, and it may make exceptions for species in respect of which such testing is required.”

“Article 45 – The testing of cultivars for the purposes of acceptance in the National Register of Cultivars shall be the responsibility of the National Seeds Institute, which may conduct technical examinations either directly or through other public or private national institutions. The testing shall be essentially agronomic and have scientific backing that allows an assessment, at the experimental level, of how the cultivar behaves in the field.”

“Article 48 – The term of validity of entries in the National Register of Cultivars shall be determined by the Ministry of Livestock, Agriculture and Fisheries on a proposal by the National Seeds Institute, taking into consideration the particular characteristics of each species or groups of species.

“Article 63 – The activities described in Article 82(9) of this Law, and also the production for commercial purposes, processing, testing, storage, distribution, sale, import and export of seeds may only be carried out by those who have been entered in the General Register of the Seed Industry that is kept for such purposes by the National Seeds Institute.

Those registered under Decree Law No. 15.173 of August 13, 1981, and the Regulations under it, Decree 84/983 of March 16, 1983, and its amending Decrees 418/987 of August 12, 1987, and 519/991 of September 17, 1991, shall be considered entered in the Register created by this Article.”

“Article 65 – Nurseries, seed producers, seedsmen, seed laboratories and seed processors, importers and exporters shall conduct their activities under the technical supervision of a professional agricultural engineer, who shall be registered with the National Seeds Institute.”

“Article 69 – For a cultivar to qualify for protection, it shall meet all of the following requirements:

(A) It shall be new, in the sense that it shall not have been offered for sale or marketed with the consent of the breeder:

(1) within the Republic, for a period of more than one year immediately prior to the filing date of the application for protection; and,

(2) outside the Republic, for more than six years in the case of vines and trees, or more than four years in the case of all other plants.

(B) It shall be clearly distinguished from any cultivar, the existence of which is a matter of common knowledge on the filing date of the application for protection in terms of at least one morphological, physiological, cytological, chemical or other

important characteristic, shall fluctuate little, and be able to be described and recognized in precise terms.

(C) It shall be sufficiently uniform in its characteristics as a whole according to its system of reproductive or vegetative propagation.

(D) It shall remain stable in its essential characteristics, in the sense that, at the end of each cycle of propagation carried out in the manner specified by its breeder, it shall retain the characteristics by which the said breeder defined it.

(E) It shall have been given a denomination that is acceptable to the Registry in accordance with the provisions of the Regulations.”

“Article 72 – The cultivar that is the subject of the title of ownership may be used without the holder thereof being granted any right to compensation where:

(A) the product of cultivation is used or sold as a raw material or food;

(B) seed is set aside and sown for own use and not for commercial purposes. When it is a small farmer who sets aside and sows seeds for own use and not for commercial purposes, the present provision is public policy. The Executive, through the Ministry of Livestock, Agriculture and Fisheries, shall define the term ‘small farmer’; or,

(C) other breeders use it for experimental purposes or as a source of genetic material for the creation of new cultivars, provided that the protected cultivar is not used repeatedly and systematically for the commercial production of other cultivars.”

“Article 75 – The term of validity of the title of ownership shall run from the time of its provisional issue, and may not be less than 20 years or more than 25 years according to the species concerned and to the provisions of the Regulations.”

Article 2 – The following paragraph shall be added to Article 82 of Law No. 16.811, of February 21, 1997:

“18) ‘Maintainer’ means the natural person or legal entity responsible for the maintenance of a variety, which ensures that it conserves the characteristics of its variety throughout its life span and, in the case of hybrids, that the hybridization formula was followed.”

Article 3 – Articles 83, 85 and 86 of Law No. 16.811, of February 21, 1997, shall be replaced to read as follows:

“Article 83 – With respect to aspects not provided for in the foregoing definitions, the criteria laid down by the International Seed Testing Association or other bilateral or multilateral agreements to which the country is a party shall be observed.”

“Article 85 – The violations referred to in the foregoing Article shall be punished with the following, according to the seriousness of the violation and the background of the violator:

(A) Warning.

(B) Fine from 20 to 2,000 UR (readjustable units).

(C) Seizure of the merchandise or of the apparatus used to commit the violation.

(D) Destruction of the merchandise where appropriate.

(E) Suspension of the violator from the relevant register.

(F) Temporary or permanent disqualification.

(G) Partial or total, temporary or permanent closure of the premises of the company, whether owned by it or by third parties, and regardless of whether they are intended for storage, processing, marketing, laboratory testing or any other activity associated with seed production and trading.

Where appropriate, closure may affect only such premises as are used for a specific activity.

The sanctions provided for above may be applied in combination and adapted to the seriousness of the violation, the value of the merchandise and the background of the offender. The National Seeds Institute shall periodically publish, through the

relevant channel, details of the wages of offenders that have been sanctioned for committing violations categorized as 'serious' or 'very serious', and its sanction decisions shall be final. The publication shall list the name of the violator, the violation committed and the sanction administered.

"Article 86 – Agricultural engineers with technical responsibilities who violate the provisions laid down in this Law and the Regulations under it shall be liable to the following sanctions:

- (1) Warning.
- (2) The fines provided for in the foregoing Article.
- (3) Suspension of their status as seed experts for up to one year.

Sanctions shall be graduated and applied with due regard to the nature and seriousness of the violations, the degree of guilt and similar acts previously committed by the offender. The National Seeds Institute shall keep a register of violators and shall periodically publish, through the relevant channel, details of the wages of those with technical responsibilities that have been sanctioned for committing violations categorized as 'serious' or 'very serious', and its sanction decisions shall be final. The publication shall list the name of the technical violator, the violation committed and the sanction administered.

Companies shall be jointly liable for the financial sanctions imposed on their technical staff."

Meeting Room of the Chamber of Representatives,
Montevideo, February 17, 2009.

(signed)

NELSON RODRÍGUEZ SERVETTO
3rd Deputy Chairman

(signed)

MARTI DALGALARRONDO AÑÓN
Secretary

Presidency of the Eastern Republic of Uruguay

MINISTRY OF THE INTERIOR
MINISTRY OF EXTERNAL RELATIONS
MINISTRY OF ECONOMY AND FINANCE
MINISTRY OF NATIONAL DEFENSE
MINISTRY OF EDUCATION AND CULTURE
MINISTRY OF TRANSPORT AND PUBLIC WORKS
MINISTRY OF INDUSTRY, ENERGY AND MINING
MINISTRY OF LABOUR AND SOCIAL SECURITY
MINISTRY OF PUBLIC HEALTH
MINISTRY OF LIVESTOCK, AGRICULTURE AND FISHERIES
MINISTRY OF TOURISM AND SPORT
MINISTRY OF HOUSING, PLANNING AND THE ENVIRONMENT
MINISTRY OF SOCIAL DEVELOPMENT

Montevideo, February 27, 2009

Be it complied with, receipt acknowledged, informed, published and included in the National Registry of Laws and Decrees, the Law which amends various provisions of Law No. 16.811, of February 21, 1997, relating to the National Seeds Institute.

(signed)

Dr. TABARE VAZQUEZ
President of the Republic

CASE LAW

This section has been created to publish information on case law relevant to plant breeders' rights. The Office of the Union welcomes the submission of summaries of recent decisions and/or, if possible, a direct link to the full text of the decision. Please send your contribution to: upov.mail@upov.int.

Disclaimer: The views expressed in the summaries under this section and/or in the contents of Court decisions are not necessarily those of UPOV. They are provided for information purposes only.

EUROPEAN UNION - Lemon Symphony

Summary by Gert Würtenberger, Wuesthoff & Wuesthoff, Germany

Facts

The Plaintiff, being the owner of a Community plant variety right for the "Lemon Symphony" variety of the *Osteospermum ecklonis* species, accused the Defendant of infringing upon its rights in "Lemon Symphony" by distributing cap marguerite seedlings under the variety denomination "Sumost 01" (brand name "Summer daisy's Alexander"). In 2001 grant of Community plant variety protection for this variety was applied for under the denomination "SUMOST 01". At the time of the appeal decision, no final decision had been issued in relation to the application for plant variety protection. However, in 2003 the Bundessortenamt (the German authority for plant variety protection), that had been entrusted with the technical examination by the CPVO, reached in an interim report, that had been drawn up in consideration of material dealt with as being part of the Plaintiff's variety, the conclusion that "SUMOST 01" had not been sufficiently distinct from the "Lemon Symphony" variety in the 2003 examination period.

Both the Regional Court and the Higher Regional Court of Düsseldorf granted the action and confirmed that the "Sumost 01" "variety" infringes upon the rights in the "Lemon Symphony" variety. The Defendant filed an appeal on a point of law directed against the Higher Regional Court of Düsseldorf's decision with the Federal Supreme Court. On 14 September 2005, that is to say, after announcement of the appeal decision, the CPVO adapted the original variety description of the

Plaintiff's variety to reflect the result of the technical post-examination and a variety description based thereupon, a possibility which is provided for in Art. 87 para. 4 of the Regulation on Community Plant Variety Rights. The appeal filed thereagainst by the breeder of the "Sumost 01" variety was rejected by the Appeal Board of the CPVO. The action lodged with the Court of First Instance of the European Communities against the rejection has not been decided upon yet.

As "Sumost 01" was obviously identical with "Lemon Symphony", the breeder of the "Sumost 01" variety filed the request in 2004 that the protection granted to the "Lemon Symphony" variety be annulled on the ground that since 2001 it has not corresponded with the phenotype determined in the course of the register examination in 1997. The Office rejected such request. The appeal filed by the breeder of the "Sumost 01" variety was dismissed by the Board of Appeal of the CPVO; the action lodged with the Court of First Instance in that regard has not been decided yet either. In 2007 the breeder of the "Sumost 01" variety further requested that the Community plant variety right for the Plaintiff's variety be declared invalid. Equally, the rejection by the Office was appealed. However, the Board of Appeal also rejected the appeal raised thereagainst.

The Decision of the Higher Regional Court

The Higher Regional Court of Düsseldorf had given the following reasoning in its decision: It confirmed that the Regional Court correctly assumed that the scope of protection of a protected variety is determined by the combination of the expression of its characteristics as specified in the granting

decision. Further, in addition to identity, the scope of a protected variety encompasses a scope of tolerance which has to be expected with regard to the species at issue. For determination purposes, the Court of Appeal agreed that a comparison cultivation is often required as was performed by the expert appointed by the Higher Regional Court. The variety description of 16 October 1997 of “Lemon Symphony” which continued being valid at the time of the oral hearing, formed the starting point of the assessment based on the results of this cultivation. The new variety description dated 14 September 2005 was, however, not entirely of no relevance since the differences in both descriptions primarily arose from an amendment of the examination guidelines and the circumstance that, in the interim, additional varieties were available for comparison purposes. Based on the results of the taking of evidence, the Appeal Court – like the High Regional Court – was convinced that the Defendant’s variety underlying a 2003 to 2005 cultivation and the 2005 variety description of “Lemon Symphony” identically concur with the Plaintiff’s variety. Accordingly, the Court of Appeal confirmed the Higher Regional Court’s conclusion that the attacked plant material identically concurs in all characteristics of the protected variety based on the results of the comparison cultivation. Colour deviations in certain characteristics were regarded as so marginal that they could have been expected, thus, lying within the scope of tolerance of the Plaintiff’s variety. Also, the Court of Appeal was of the opinion that the differences in one of the quantitative characteristics were within the variations to be expected and did not allow to recognise a significant difference between the Plaintiff’s variety and the attacked plants.

The Decision of the Federal Supreme Court

The Federal Supreme Court confirmed that the scope of protection of the protected variety, does not only cover identical plants, but plants of the same species with deviating characteristics which, however, fall into the scope of tolerance of certain variations to be expected. The Federal Supreme Court emphasised this correct consideration which so far was not finally acknowledged in the case law of the German Federal Supreme Court (cf. BGHZ 166, 203, 209 et seq. – Melanie), but was concurrent with established case law of lower instance courts (cf. Higher Regional Court of Frankfurt, comm.

1982, 212, 213; Higher Regional Court of Düsseldorf InstGE 4, 127, 134 = GRUR-RR 2004, 281) and with the unanimous view held in German literature (cf. Wuesthoff/Leßmann/Würtenberger, Handbuch zum deutschen und europäischen Sortenschutzrecht, Weinheim, 1999, margin note 306: “Equivalence region of a plant variety right; individualised scope of protection”; Keukenschrijver, German Plant Variety Act, 2001, margin note 48 in relation to § 10; Jestaedt, GRUR 1982, 595, 598). Such is not only applicable to the national plant variety protection pursuant to § 10 German Plant Variety Act but also to the Community plant variety protection as per Art. 13 CPVR, from which the national law does not differ in that regard. Correctly, the Higher Regional Court relied on the fact that plant variety protection concerns living matter the concrete expression of which depends on various factors such as the cultivation of the mother plant, quality of the used cuttings, pruning date, utilisation of fungicides and insecticides, substratum, quantity of manuring and water, temperature and light exposure. This is justification for acknowledging a scope of tolerance in addition to identity. The Federal Supreme Court was convinced that this issue of interpretation was to be unambiguously answered as well with regard to the Community plant variety protection with the effect that no preliminary ruling by the Court of Justice of the European Communities need to be obtained (cf. ECJ 1982, 3415 = NJW 1983, 1257 – C.I.L.F.I.T.).

Since the Defendant had challenged the adaptation of the “Lemon Symphony” variety description as well as validity of the Plaintiff’s protective right, the Defendant requested in the proceedings on the appeal on a point of law that the same be suspended until the conclusion of these further pending proceedings and the rendering of final decisions on the validity of the Community plant variety “Lemon Symphony” and the adaptation of the Plaintiff’s variety. In this regard, the German Federal Supreme Court set forth that the infringement court is bound by the grant of protection of the Community plant variety right (Art. 105 CPVR; cf. Würtenberger/van der Kooij/Kiewiet/Ekqvad, European Community Plant Variety Protection, 2006, margin note 7.09). The Federal Supreme Court admitted that it may suspend the proceedings and await the conclusion of another legal dispute if its own decision completely or partially depends on the existence or non-existence of a legal position which is subject to

another pending legal dispute. Art. 106 para. 2 CPVR expressly provides therefor in case of pending proceedings with the objective of a declaration of nullity of the Plaintiff's variety pursuant to Art. 20 CPVR or the cancellation of the Community plant variety right protection pursuant to Art. 21 CPVR.

A suspension in consideration of the action lodged against the adaptation of the variety description was, in the opinion of the Federal Supreme Court, not required in this case since the decision on the present legal dispute did not depend thereon. The Appeal Court committed no legal error in finding that the adapted variety description may be drawn upon in order to assess the expression of the characteristics decisive according to the original variety description in light of the UPOV Directive TG/176/3, thus only "translating" the same in order to allow a comparison of the expressions of the attacked plant material as cultivated in 2003 and 2004 with the Plaintiff's variety and the plants of the Plaintiff's variety cultivated in the same years. The basic principle as alleged in the appeal of a point of law that in the infringement proceedings one was not allowed to deviate from the variety description in the granting decision, can neither be taken from case law nor literature, bearing in mind the relevance afforded to it; particularly, the sources cited in the appeal on a point of law (BGHZ 166, 203, 208 et seq. – Melanie; Keukenschrijver, in the place cited, margin note 46 ad § 10) do not support such principle. Neither was there a justification for it. The Federal Supreme Court admitted that, while the infringement court is bound by the granting decision, it was not hindered thereby to determine the content and scope of the plant variety right on its own authority, like in cases of any other intellectual property right. Rather, the infringement court is under the obligation to seek clarity how the expressions of the characteristics specified in the granting decision can be determined under the climatic and other conditions at the time of clarification of the matter with a certainty sufficient for the Judge's shaping of opinion. Nothing else has been done by the Appeal Court.

"Complexity of the protective right position" as worried about in the appeal on a point of law could not be used for arguing against this authority of the infringement court. The adaptation of the official variety description pursuant to Art. 87 para. 4 CPVR

did not re-define the variety's scope of protection. Rather, it was meant to provide for better comparability and, thus, had a clarifying function. Therefore, the infringement assessment was to be based on it "retrospectively" as well as on the techniques deemed necessary by the infringement court in order to see for itself the distinctness or non-distinctness of the attacked plant material from the protected variety.

Equally, the stay of the proceedings because of the nullity and cancellation proceedings initiated by the breeder of "Sumost 01" was rejected by the Court. It pointed out that the suspension of the infringement case is up to the Court's discretion in accordance with Art. 106 para. 2 CPVR as well as § 148 of the German Civil Procedure Act and, even if more generous standards need to be applied in proceedings on an appeal of a point of law or on the leave to appeal on a point of law (BGHZ 158, 372, 376 – Druckmaschinentemperierungssystem), is only necessary if it is established that there is at least some prospect of success in the request for declaration of nullity or cancellation.

The Supreme Court denied such circumstances to be given. Such was not true with regard to the request for declaration of cancellation of "Lemon Symphony". It is not set forth in the substantiation of the appeal on a point of law on what basis the action brought to the Court of First Instance has been substantiated and because of which circumstances it may be expected with some likelihood that the Court will rule that the uniformity and stability requirements as laid down in Art. 8 or Art. 9 CPVR are no longer satisfied by "Lemon Symphony". Such presentation cannot be compensated by the fact that the claims in that action which the breeder of the "Sumost 01" variety has been asserting, are briefly outlined in the official Gazette of the European Union.

The same was the case with regard to the request for declaration of nullity of the Community plant variety protection. For it to succeed, it was required that it was established that one of the nullity reasons as laid down in Art. 20 CPVR was given. However, no argument of the Appellant was set forth what circumstances are meant to render such a finding of facts likely. Neither with regard to the discussed treatment of the examination material with a growth regulator in 1997 nor as regards the examination

which, according to the Appeal Board's decision, is common practice based on cuttings which have been obtained from the plant material made available to the examining office was it set forth which concrete facts were meant to justify the conclusion that the characteristics to be taken from the variety description do not result from the genotype of the protected variety. Therefore, it may remain unsettled whether, due to the rejection of the appeal alone, the courts dealing with the infringement issue are bound by the rejection of the request for declaration of nullity as long as an action may be lodged against the decision of the Appeal Board within the two-month term pursuant to Art. 73 para. 5 CPVR, an action which, however, is not afforded a delaying effect as per European law-related provisions (Art. 242 EC).

NEWSLETTER

UPOV COUNCIL APPOINTS NEW VICE SECRETARY-GENERAL

On March 26, 2010, the Council of the International Union for the Protection of New Varieties of Plants (UPOV) appointed Mr. Peter John Button, a national of the United Kingdom of Great Britain and Northern Ireland, to the post of Vice Secretary-General.

Mr. Button will succeed Mr. Rolf Jördens, a national of Germany, who will vacate the position on December 1, 2010, after more than 10 years of service.

The Council took the decision by consensus after having sought the agreement of the Secretary-General, Mr. Francis Gurry, who is also Director General of the World Intellectual Property Organization (WIPO). Mr. Gurry complimented the spirit of cooperation among the 68 members of the Union in this process.

Mr. Button holds a Bachelor of Science, Honours degree in Biological Sciences from the University of Warwick. Mr. Button has a range of experience in matters concerning plant breeders' rights from senior positions in the private sector and with the Government of the United Kingdom. Since September 2000 he has been the Technical Director of UPOV.

UPOV OPEN DAY

UPOV's First-Ever Open Day was held at the **WIPO-UPOV** Headquarters, Place des Nations, on June 5, 2010. The general public was invited to:

"Come and see what UPOV does and discover more about plant varieties. The stand will have a competition to test your skills in identifying different apple, rose and wheat varieties. We will also provide you with information on the role of UPOV in providing and promoting an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society."

Exhibitors from Meilland International (Mr. Bruno Etavard), CIOPORA (Mrs. Dominique Thevenon) and Delley Seeds and Plants Ltd, Switzerland (Mr. Wilhelm Wicki), together with UPOV staff, animated the UPOV stand with information and competitions which ensured the success of the event.

Photos: http://www.upov.int/export/sites/upov/en/news/2010/upov_website_photos_winners.pdf

UPOV DISTANCE LEARNING

2010: Session II

Dates: November 8 to December (On-line registration from August 1 to September 30, 2010)

<http://www.upov.int/en/about/training.html>

MEMBERS OF THE UNION

<http://www.upov.int/export/sites/upov/en/about/members/pdf/pub423.pdf>

ADDRESSES OF PVP OFFICES

http://www.upov.int/en/about/members/pvp_offices.htm

INDEX OF LEGISLATION PUBLISHED IN PLANT VARIETY PROTECTION

<http://www.upov.int/en/publications/npvlaws/index.html>

CALENDAR OF EVENTS 2010/2011**DATES OF MEETINGS IN 2010 (Second semester)****JUNE**

Monday, 28	TWC Preparatory Workshop
Tuesday, 29 to Friday, July 2	Technical Working Party on Automation and Computer Programs

JULY

Sunday, 4	TWV Preparatory Workshop
Monday, 5 to Friday, 9	Technical Working Party for Vegetables

SEPTEMBER

Sunday, 19	TWO Preparatory Workshop
Monday, 20 to Friday, 24	Technical Working Party for Ornamental Plants and Forest Trees
Sunday, 26	TWF Preparatory Workshop
Monday, 27 to Friday, October 1	Technical Working Party for Fruit Crops

OCTOBER

Monday, 18 and Tuesday, 19	Administrative and Legal Committee
Wednesday, 20	Consultative Committee
Thursday, 21	Council
Friday, 22	Administrative and Legal Committee Advisory Group

PROPOSED DATES OF MEETINGS IN 2011

Council	April 8 (afternoon) (extraordinary session) October 20
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Consultative Committee	April 8 (morning) October 19
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Administrative and Legal Committee

	April 7 October 17 and 18 (Administrative and Legal Committee Advisory Group: October 21)
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Technical Committee	April 4 (afternoon) to 6 (Editorial Committee: January (date to be agreed), April 4 (morning and evening), April 5 (evening))
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