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PLANT VARIETY PROTECTION



Gazette and Newsletter
of the International Union
for the Protection of
New Varieties of Plants
(UPOV)

No. 91
June 2001

H. Hoffman delin

Musa Cliffortiana from: Carl von Linné, 1736, *Musa Cliffortiana*.

UPOV

A. van der Laan Sculp

The International Union for the Protection of New Varieties of Plants (UPOV) – an intergovernmental organization established by the International Convention for the Protection of New Varieties of Plants – is the international forum for States and Organizations interested in plant variety protection. Its main objective is to promote the protection of the interests of plants breeders – for their benefit and for the benefit of agriculture and thus also of the community at large – in accordance with uniform and clearly defined principles.

Plant Variety Protection is a UPOV publication that reports on national and international events in its field of competence and in related areas. It is published in English only – although some items are quadrilingual (English, French, German and Spanish) – at irregular intervals, usually at a rate of four issues per year. Requests for addition to the mailing list may be placed with:

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The picture on the front cover shows the species
Banana (*Musa paradisiaca* L.),
Linnaeus, C. 1736, *Musa Cliffortiana*. Drawn by Hoffman, engraved by A. van der Laan.
Courtesy of the Botanical Garden at Uppsala University

Excessively proud of having, together with D. Nietzel, brought a banana to flower
in George Clifford's garden at Hartekamp, Linnaeus hastily published
his "*Musa Cliffortiana*" from which this print is taken.

Linnaeus remarked:

"Musa (pisang) is among the sweetest of fruits ... good for children and women".
According to Linnaeus, *Musa* was most probably the forbidden fruit of Eden.

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GAZETTE**ACCESSION TO THE UPOV CONVENTION****ROMANIA**

On February 16, 2001, the Government of Romania 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.

The Convention entered into force for Romania one month after the deposit of its instrument of accession, i.e., on March 16, 2001.

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

ACCESSION TO THE 1991 ACT OF THE UPOV CONVENTION**FINLAND**

On June 20, 2001, the Government of the Finland deposited its instrument of accession to the 1991 Act of the International Convention for the Protection of New Varieties of Plants with the Secretary-General of UPOV.

The 1991 Act entered into force for Finland one month after the deposit of its instrument of accession, i.e., on July 20, 2001.

NEWSLETTER

INTELLECTUAL PROPERTY - AREAS OF INTEREST

WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources and Traditional Knowledge and Folklore Geneva, May 1 to 4, 2001

Introduction

The World Intellectual Property Organization (WIPO) General Assembly, at its Twenty-Sixth Session, held in Geneva from September 26 to October 3, 2000, established an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ("the Committee"). The Committee constitutes a forum in which discussions may proceed among member States on three primary themes. Namely intellectual property issues that arise in the context of (i) access to genetic resources and benefit-sharing, (ii) the protection of traditional knowledge, innovations and creativity, and (iii) the protection of expressions of folklore, including handicrafts.

The Committee held its first session from April 30 to May 3 2001, it was attended by 102 States members of WIPO and the Paris Union for the Protection of Industrial Property, 18 intergovernmental organizations and 15 non-governmental organizations. The future work program of the Committee will include, among others, the development of "guide contractual practices" on access to genetic resources and benefit-sharing, and the revision and development of criteria which would allow the effective integration of traditional knowledge documentation into searchable prior art. The second session of the Committee will take place in Geneva from 10 to 14 December 2001.

The UPOV Secretariat was represented in an observer capacity. During the general statements of the first session of the Committee, the Vice Secretary-General of UPOV made the following declaration.

Declaration of Rolf Jördens, Vice Secretary-General of UPOV

The International Union for the Protection of New Varieties of Plants (UPOV) is composed of 47 Contracting Parties from developed and developing countries. They are committed to the enhancement of plant breeding through an effective system of protection of new varieties of plants. An overall aim is the promotion of food security and agricultural development in a sustainable way.

A variety protectable under the UPOV system has to be novel and it has to be clearly distinguishable from any other variety - this may include landraces - whose existence is a matter of common knowledge.

The effect of a grant of protection in conformity with the UPOV Convention is that the authorization of the holder of the protection right is required before acts of exploitation can be effected with material of the variety. The grant of protection should not give to the holder or his licensee a positive right to exploit the variety; it is open to UPOV Contracting Parties to regulate the exploitation of varieties being part of a genetic resource falling within the provisions of Article 15 of the Convention on Biological Diversity where the prior informed consent of the person providing the resource has not

been obtained. Under certain conditions contracting parties may restrict the scope of protection in order to permit farmers the saving of seed for propagating purposes of the protected variety.

The incentive for development of new varieties is, in itself, an important driver for effective conservation of plant genetic resources. The genetic resources contained in protected varieties often represent the most valuable genetic resources since they are necessary for the production of high yielding, high quality crops with good pest, disease and drought resistance. A further important feature of the *sui generis* system developed by UPOV is the "breeder's exemption" which specifically allows the use of all protected varieties in further breeding work thereby increasing the range of genetic resources available in the development of new varieties.

At present there are some 50,000 varieties protected under the UPOV system. They form a broad basis for genetic variation and are freely accessible for further breeding.

UPOV offers its active cooperation in the work of this Committee and is willing to share the experience of almost 40 years of involvement in the field of plant genetic resources.

**International Undertaking on
Plant Genetic Resources for Food and Agriculture -
6th Extraordinary Session of the Commission
on Genetic Resources on Food and Agriculture
Rome, June 25 to 30, 2001**

The sixth extraordinary session of the Commission on Genetic Resources for Food and Agriculture (CGRFA-Ex6) was held at the headquarters of the United Nations Food and Agriculture Organization (FAO) in Rome from June 25 to 30, 2001. Approximately 263 participants from 93 countries, intergovernmental and non-governmental organizations attended the session, which was convened to conclude negotiations on the Revision of the International Undertaking on Plant Genetic Resources for Food and Agriculture (IU), the first comprehensive, international instrument on Plant Genetic Resources for Food and Agriculture (PGRFA).

While the Plenary continued negotiations on Articles 1 to 18, different groups were constituted to consider other issues: a Committee of the Whole for a first reading of outstanding institutional issues in Articles 19 to 32; four infor-

mal working groups (on the use of terms, the list of crops, resolutions and *ex situ* collections); and a "Friends of the Chair" working group, comprising Bureau members and Angola, Argentina, Brazil, India, Japan, the United States of America and the European Union to resolve some of the most contentious issues, in particular on Coverage of, Facilitated Access within, and Access and Benefit-sharing in, the Multilateral System.

Among non-resolved issues were the definitions of the use of terms, including "variety." In view of the weakness of the existing definition proposed during the 6th intersectional meeting, and the absence of consensus in the informal working group on "variety" definition, the Vice Secretary-General of UPOV sent a written contribution to His Excellency, Ambassador Fernando Gerbasi of Venezuela, President of the CGRFA. A copy of that letter was sent to Mrs Louise O. Fresco, Assistant Director General of the FAO, and to Dr. José Esquinas-Alcazar, Secretary of the CGRFA. A copy of this letter is reproduced below.

Sir,

I have the honor to refer to the 6th Extraordinary Session of the Commission of Genetic Resources for Food and Agriculture which is taking place in Rome.

The International Union for the Protection of New Varieties of Plants (UPOV) has seen the definition of "variety" which is under discussion at the present time and would like to make the following comment. This definition risks not being applicable in practice. I strongly recommend applying a definition which is as close as possible to that of the 1991 Act of the UPOV Convention which reads as follows:

"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

- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,

- distinguished from any other plant grouping by the expression of at least one of the said characteristics and

- considered as a unit with regard to its suitability for being propagated unchanged;

This definition goes beyond varieties that fulfil the conditions for protection in the UPOV Convention. It may, for instance, include traditional varieties or land races. It allows the identification of plant groupings as biological units for the practical purposes of the International Undertaking.

Furthermore, it allows for a mutual supportive application of the International Undertaking and the UPOV Convention in the interest of the conservation and sustainable use of plant genetic resources for food and agriculture.

Accept, Sir, the assurances of my highest consideration.

ITALIAN REPUBLIC

LEGISLATIVE DECREE NO. 455 OF NOVEMBER 3, 1998*

ADAPTATION TO THE PROVISIONS OF THE 1991 ACT
OF THE INTERNATIONAL CONVENTION FOR THE PROTECTION
OF NEW VARIETIES OF PLANTS

THE PRESIDENT OF THE REPUBLIC,

Having regard to Articles 76 and 87 of the Constitution;

Having regard to Article 3 of Law No. 110 of March 23, 1998, on the Ratification and implementation of the International Convention for the Protection of New Varieties of Plants, adopted in Paris on December 2, 1961, and revised in Geneva on November 10, 1972, October 23, 1978, and March 19, 1991; Having regard to Law No. 620 of October 14, 1985, on the Ratification and Implementation of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised in Geneva on November 10, 1972, signed in Geneva on October 23, 1978;

Having regard to Presidential Decree No. 391 of April 18, 1994; Having regard to the decision of the Council of Ministers adopted at its meeting on October 30, 1998;

On the proposal of the President of the Council of Ministers and the Minister for Industry, Commerce and Handicraft, in agreement with the Ministers of Agriculture, Foreign Affairs, Finance, the Treasury, the Budget and Economic Planning;

ISSUES the following Decree:

Article 1

Breeder's Rights

- (1) The rights in a new plant variety shall be granted by means of a patent issued in accordance with this Decree.
- (2) New plant varieties shall be governed by the provisions contained in Articles 2584 to 2591 of the Civil Code and in Royal Decree No. 1127 of June 29, 1939, and subsequent additions and amendments thereto, and also by the regulations approved by Royal Decree No. 244 of February 5, 1940, and subsequent additions and amendments thereto, provided that they do not conflict with the provisions of this Decree.

Article 2

Economic Rights and Moral Rights

- (1) The rights arising from the breeding of new plant varieties shall be transferable and inheritable, except for the right to recognition of authorship.

- (2) The right to recognition of authorship may be claimed after the death of the breeder by a person whom he has designated for that purpose. In the absence of any such designation, or following the death of the person designated, the said right may be claimed by the spouse and by descendants down to the second generation, in their absence or after their death by the parents and other direct descendants, and in their absence or after their death also by relations down to and including the fourth generation.

Article 3

Definitions

- (1) For the purposes of this Decree, "breeder" means:
 - (a) the person who has bred, discovered or developed a variety;
 - (b) the person who is the employer of the aforementioned person or who has commissioned his work;
 - (c) the successor in title to the persons mentioned in the above subparagraphs.
- (2) "Variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, regardless of whether the conditions for the grant of breeders' rights are fully met, may be:
 - (a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;
 - (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics, and
 - (c) considered a unit with regard to its suitability for being propagated unchanged.

Article 4

Conditions of Protection

- (1) The breeder's right shall be granted where the variety is:
 - (a) new;
 - (b) distinct;

* The Legislative Decree No. 455 was adopted on November 3, 1998.

Translation: by the Office of the Union in cooperation with the national authorities.

- (c) uniform and
- (d) stable.

Article 5

Novelty

(1) The variety shall be deemed to be new if, on the filing date of the application for breeders' rights, 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 the purpose of exploitation of the variety:

- (a) on Italian territory, earlier than one year before that date, and
- (b) on the territory of any other State in which the application has been filed, earlier than four years or, in the case of trees or vines, earlier than six years before the said date.

Article 6

Distinctness

(1) 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.

(2) In particular, another variety shall be deemed to be common knowledge if:

- (a) an application has been filed in any country for the grant of breeders' rights or for the entry of the said other variety in the official register of varieties, provided that the application leads to the grant of breeders' rights or to the entry of the said other variety in the official register;
- (b) it may be found in public collections;
- (c) it is described in publications.

Article 7

Uniformity

(1) The variety shall be deemed to be uniform if, subject to the variations that may be expected owing to the particular features of its sexual reproduction and vegetative propagation, it is sufficiently uniform in those of its characteristics that are relevant to its protection.

Article 8

Stability

(2) 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.

Article 9

Filing of the Application

(1) The breeder may choose the member State of the Union for the Protection of New Varieties of Plants (hereinafter referred to as UPOV) with whose authority he wishes to file his first application for the breeder's right.

Article 10

National Treatment

(1) The provisions of this Decree shall apply, subject to reciprocity, to natural persons or legal entities residing or having their registered offices within the territory of one of the member States of UPOV.

(2) Natural persons or legal entities not residing or having their registered offices within the territory of one of member States of UPOV shall be covered by the provisions of this Decree, subject to reciprocity, by virtue of bilateral agreements.

Article 11

Right of Priority

(1) The breeder of a new plant variety, or his successor in title, may claim a right of priority by virtue of a first application filed earlier in a member State of UPOV for the purpose of obtaining the breeder's right in that variety.

(2) Such a right of priority may be claimed only if the application for the breeder's right is filed and the priority claim made earlier than 12 months from the filing date of the first application.

(3) The breeder shall be allowed a period of two years after the expiry of the priority period within which to furnish any information, document or material required for the purposes of the examination provided for in Article 18.

(4) Events occurring within the period provided for in paragraph (2), such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejection of the subsequent application. Such events shall likewise not give rise to any third-party right.

Article 12

Provisional Protection

(1) During the period between publication of the application for the grant of the breeder's right and the grant of that right, the breeder shall be entitled to equitable remuneration from any person who, in the course of the said period, has engaged in acts which, once the rights have been granted, require the breeder's authorization.

Article 13

Content of the Breeder's Right

(1) The following acts in relation to reproductive or vegetative propagating material of the protected variety shall require authorization by the breeder:

- (a) production or reproduction;
- (b) processing for the purpose of propagation;
- (c) offering for sale, selling or any other form of marketing;
- (d) exporting or importing;
- (e) stocking for any of the above purposes.

(2) The breeder's authorization shall be required for any of the acts mentioned in paragraph (1) in relation to harvested material, including whole plants and parts of plants obtained through unauthorized use of propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material. Use shall be presumed unauthorized in the absence of proof to the contrary.

(3) The provisions of paragraphs (1) and (2) shall also apply to:

- (a) varieties that are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- (b) varieties that are not clearly distinguishable from the protected variety in accordance with Article 6;
- (c) varieties whose production requires repeated use of the protected variety.

(4) For the purposes of subparagraph 3(a), a variety shall be considered essentially derived from another variety ("the initial variety") when:

- (a) it is mainly derived from the initial variety, or from a variety that is itself mainly 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 from the initial variety and, except for differences that result from the derivation, it conforms to the initial variety in the expression of the essential characteristics resulting from the genotype or combination of genotypes of the initial variety.

(5) Essentially derived varieties may be obtained, for example, by selecting a natural or induced mutant or a somaclonal variant, by selecting a variant individual from plants of the initial variety, by back-crossing or by transformation with the aid of genetic engineering.

Article 14

Exceptions to the Breeder's Right

(1) The breeder's right shall not extend to acts done privately and for non-commercial purposes, acts done for experi-

mental purposes, acts done for the purpose of breeding other varieties and, except where the provisions of Article 13(3) apply, acts referred to in Article 13(1) and (2) in relation to such other varieties.

Article 15

Duration of the Breeder's Right

(1) The breeder's right granted under this Decree shall last for 20 years from the date of grant. For trees and vines the rights shall last for 30 years from the said date.

(2) Rights shall be effective as from the date on which the application, with supporting evidence attached, is made accessible to the public.

(3) In relation to persons to whom the application has been notified by the breeder together with supporting evidence, the rights shall be effective as from the date of notification.

Article 16

Exhaustion of the Breeder's Right

(1) The breeder's right shall not extend to acts in relation to material of the protected variety, or of a variety covered by Article 13(3), that has been sold or otherwise marketed by the breeder or with his consent on the national territory, or any material derived from the said material, unless such acts involve further propagation of the variety in question or involve the export of material of that variety, the breeder thereby consenting to the reproduction of the variety in a State that does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is destined for consumption.

(2) For the purposes of paragraph (1), "material" means, in relation to a variety:

- (a) propagating material of any kind;
- (b) harvested material, including whole plants and parts of plants;
- (c) any product made directly from harvested material.

Article 17

Variety Denomination

(1) The variety shall be designated by a denomination which shall be its generic designation.

(2) The denomination must enable the variety to be identified. It may not consist solely of figures, except where that is an established practice for designating such a variety. It must not be liable to mislead or to cause confusion as to the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from any other denomination that designates, in the territory of a UPOV mem-

ber State, an existing variety of the same plant species or of a closely related species, except where that other variety no longer exists or where its denomination has not acquired any particular significance.

(3) Prior rights of third parties shall not be affected.

(4) The denomination must be the same as that previously registered in one of the UPOV member States to designate the same variety.

(5) A denomination filed and conforming to the requirements of paragraphs (1), (2), (3) and (4) shall be registered.

(6) Once filed and registered, the denomination, together with any variations on it, shall be communicated to the competent authorities of the UPOV member States.

(7) The registered denomination must be used for the variety, even after the expiry of the breeder's right in the variety, provided that acquired rights do not prevent such use as provided in paragraph (3).

(8) It shall be permissible to associate a trademark, trade name or other similar designation with a registered variety denomination, provided that the denomination is always readily recognizable.

Article 18

Examination of the Application

(1) The examination of an application for the grant of the breeder's right in new plant varieties is intended to establish:

- (a) that the application and its attached documentation are in order as to form;
- (b) that denomination of the new plant variety conforms to the provisions of Article 17;
- (c) that the variety conforms to the provisions of Article 4; such conformity may be ascertained by growing the variety or carrying out other trials, or by taking into account the results of growing trials or other tests that have already been carried out.

Article 19

Nullity of the Breeder's Right

(1) The breeder's right shall be declared null and void if it is established:

- (a) that the conditions specified in Articles 5 and 6 were not fulfilled at the time of the grant of the breeder's right;
- (b) that, where breeders' rights have been granted essentially on the basis of information and documents supplied by the breeder, the conditions specified in Articles 7 and 8 were not fulfilled at the time of the grant of the breeder's right;

(c) that the breeders' rights have been granted to a person not entitled to them, unless, prior to the declaration of nullity, the rights have been transferred to a person who is so entitled.

(2) Breeders' rights may not be declared null and void on grounds other than those specified in paragraph (1).

Article 20

Lapse of the Breeder's Right

(1) The breeder's right shall lapse if it is established that the conditions set forth in Articles 7 and 8 are no longer fulfilled.

(2) The rights shall lapse if the breeder, having been called upon to do so by the competent authority:

- (a) fails to submit within 30 days the information, documents or material considered necessary for verifying the maintenance of the variety;
- (b) fails to pay such fees as may be payable to keep his rights in force;
- (c) fails, where the denomination of the variety is cancelled after the grant of rights, to propose another suitable denomination.

(3) In the cases provided for in subparagraphs 2(a) and (c), lapse shall be declared by the Italian Patent and Trademark Office (UIBM), on a proposal by the Ministry of Agriculture.

(4) Breeders' rights may not lapse for reasons other than those referred to in paragraphs (1) and (2).

Article 21

Compulsory Licensing

(1) Breeders' rights may be made the subject of non-exclusive compulsory licenses only in the public interest.

Article 22

Administrative Functions

(1) The administrative functions relating to the matters regulated by this Decree shall be exercised by the Italian Patent and Trademark Office of the Ministry of Industry, Commerce and Handicraft, which, for the purpose of the filing of applications, shall enlist the cooperation of Chambers of Commerce, Industry, Handicraft and Agriculture in accordance with Article 20 of Legislative Decree No. 112 of March 31, 1998.

(2) For the purposes of verifying compliance with the requirements specified in Article 18(1)(b) and (c), the Ministry of Agriculture shall issue a binding opinion in consultation with the Advisory Committee established under Article 18 of Presidential Decree No. 974 of August 12, 1975.

Article 23

Expropriation

(1) The expropriation provided for in Articles 60 *et seq.* of Royal Decree No. 1127 of June 29, 1939, shall take place, for new plant varieties, after the Ministry of Agriculture has been heard.

Article 24

Procedural Requirements

(1) A copy of the writ for any civil litigation and any appeal to the Committee referred to in Article 71 of Royal Decree No. 1127 of June 29, 1939, in relation to new plant varieties, shall be transmitted to the UIBM and to the Ministry of Agriculture by the person who brought the action.

(2) In the event of failure to furnish the said copy, the judicial authority and the aforementioned Committee may, at any stage in the proceedings, direct that it be furnished before ruling on the merits.

Article 25

Government License Fees

(1) The following amendments are made to Article 9, Title IV, of the Tariff mentioned in the table attached to Presidential Decree No. 641 of October 26, 1972, as most recently amended by the Ministry Finance Decree of December 28, 1995, published in Official Journal No. 303 of December 30, 1995.

- (a) In paragraph 1, the words “and for new plant varieties” and “Law No. 620 of October 14, 1985” are deleted;
- (b) In paragraph 2, the words “and special license concerning patents for new plant varieties” are deleted.

(2) The following Article 9*bis* is inserted after Article 9 of the table attached to the Ministerial Decree referred to in paragraph (1):

“Art. 9*bis*: (1) Patents for new plant varieties:

- (a) application fee, including fees for publication and provisional protection (prior to grant of patent): L. 350,000;
- (b) fees for maintaining the patent (year from the date of grant):

First	L. 150,000
Second	L. 200,000
Third	L. 250,000
Fourth	L. 300,000
Fifth	L. 350,000
Sixth	L. 400,000
Seventh	L. 450,000
Eighth	L. 500,000

Ninth	L. 550,000
Tenth	L. 600,000
Eleventh	L. 650,000
Twelfth	L. 700,000
Thirteenth	L. 750,000
Fourteenth	L. 800,000
Fifteenth	L. 850,000
Sixteenth	L. 900,000
Seventeenth	L. 950,000
Eighteenth	L. 1,000,000
Nineteenth	L. 1,050,000
Twentieth and thereafter	L. 1,100,000

(2) Fees for compulsory licenses for new plant variety patents:

(a) for the application: L. 800,000;

(b) for the grant: L. 2,700,000.

(3) Fees for copies of certificates relating to new plant variety patents:

(a) for each patent: L. 120,000;

(b) for a registered letter: L. 50,000.

(4) The application fee for a new plant variety, including the fees for publication and provisional protection, shall not be refundable.”

Article 26

Tariffs

(1) The advice and necessary technical controls provided for in Article 18 shall be subject to the payment of compensation according to the rates established by decree of the Ministry of Agriculture, in amounts commensurate with the actual cost of the service. The said compensation shall be paid into the State budget before being reallocated, by order of the Ministry of the Treasury, the Budget and Economic Planning, to the appropriate budget heading of the Ministry of Industry, Commerce and Handicraft.

Article 27

Financial Expenditure

(1) The expenditure arising from the application of Article 22 of this Decree, which is estimated at L. 50 million per annum as from 1999, shall be covered by using the greater income amounts generated by virtue of the provisions of Article 25.

(2) The Ministry of the Treasury, the Budget and Economic Planning is hereby authorized to introduce the necessary changes to the budget by ministerial decree.

Article 28

Scope of Application

(1) Without prejudice to the provisions of Article 24 of Presidential Decree No. 974 of August 12, 1975, the provisions of this Decree shall extend to all plant genera and species one year after its entry into force.

Article 29

Transitional Provisions

(1) Applications for breeders' rights filed prior to the date of the entry into force of this Decree shall be processed in accordance with the provisions thereof, provided that the earlier provisions shall determine whether the applications are in order as to form.

(2) The provisions of Article 13(3) and (4) shall govern applications filed after the date of the entry into force of this Decree.

Article 30

Extension of the Term of Rights Granted

(1) The provisions of Article 15 shall apply to new plant variety patents granted in accordance with Presidential Decree No. 974 of August 12, 1975, that have not expired or lapsed by the date of the entry into force of this Decree.

(2) Licensees and those who, on the date of the entry into force of this Decree, have made a serious and genuine commitment to the use of the new plant varieties covered by the breeder's right shall be entitled to obtain a compulsory license, free of charge and non-exclusive, for a longer period. This entitlement shall not be available to infringers of rights that have not yet lapsed.

Article 31

Register of Industrial Property Agents

(1) The provisions on the profession of certified on industrial property agent and on the compilation of a Register of such agents, as provided for in Decree No. 342 dated May 30, 1995, of the Ministry of Industry, Commerce and Handicraft, shall apply to this Decree.

Article 32

Entry into Force

(1) This Decree shall enter into force on the ninetieth day following the date of its publication in the Official Journal of the Italian Republic.

(2) During that period the Ministry of Industry, Commerce and Handicraft, together with the Ministry of Agriculture, shall adopt the implementing regulations.

(3) On the date of entry into force of the regulations referred to in paragraph (2), the following legislation shall cease to be valid:

(a) Presidential Decree No. 974 of August 12, 1975, as amended by Presidential Decree No. 338 of June 22, 1979, except Articles 14, 15, 16, 17, 18 and 19;

(b) Law No. 620 of October 14, 1985;

(c) Presidential Decree No. 391 of April 18, 1994.

This Decree, bearing the seal of the State, shall be entered in the Official Register of Legislative Enactments of the Republic of Italy. All persons concerned by it are required to comply and to ensure compliance with it.

Done at Rome on November 3, 1998.

(Signed)

SCALFARO

D'ALEMA (President of the Council of Ministers)

BERSANI (Minister of Industry, Commerce and Handicraft)

DE CASTRO (Minister of Agriculture)

DINI (Minister of Foreign Affairs)

VISCO (Minister of Finance)

CIAMPI (Minister of the Treasury, the Budget and Economic Policy).

ROMANIA

LAW ON THE PROTECTION OF THE NEW
PLANT VARIETIES*

CHAPTER I

GENERAL PROVISIONS

Article 1

Object of Protection

Breeders' rights in the new plant varieties of all genera and species of plants are protected and recognized in the territory of Romania, through the grant of a variety patent by the State Office for Inventions and Trademarks, on the conditions specified in this Law.

Article 2

Definitions

For the purposes of this Law:

a) *variety* means a plant grouping within a single botanical taxon of the lowest known rank, which grouping may 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 characteristics under para 1);
- 3) considered as a unit with respect to its suitability for propagation unchanged the hybrid with the parental forms is also considered to be a variety;

b) *protected variety* means cultivated variety for which a variety patent has been granted by the State Office for Inventions and Trademarks;

c) *propagating material* means seeds, whole plants or various parts of plants which are capable of reproducing the whole plants;

d) *breeder* means:

- 1) the person who has bred or discovered and developed a new variety;

2) the person who is the employer of the person referred to in para (1) or who has commissioned the work of creating or discovering new varieties in accordance with this Law or an agreement specifying that the breeders' rights belong to the former;

3) the *successor in title* of the person under paragraph (1) or (2), as the case may be;

e) *applicant* means the person who has filed an application for the grant of a variety patent with the State Office for Inventions and Trademarks;

f) *holder* means the person who holds a breeders' rights;

g) *Office* means the State Office for Inventions and Trademarks;

h) *growing tests* means trials conducted by growing to determine the distinctness, uniformity and stability of the new variety in comparison with a reference variety.

Article 3

National Treatment

Any foreign natural or legal person having his place of residence or registered office outside the territory of Romania shall also benefit from the provisions of this Law in terms of the international conventions on plant variety protection to which Romania is a party.

Article 4

Representation

Natural and legal persons applying for the protection of a new plant variety may be represented, in the proceedings before the Office concerning the protection of the new variety, by an authorized agent having his place of residence or registered office in Romania. Representation by an authorized agent is mandatory for foreigners.

* Law No. 255/1998 on the protection of new plant varieties was adopted on December 30, 1998.
Translation: by the national authorities.

CHAPTER II

PATENTABILITY OF NEW PLANT VARIETIES

Article 5

Conditions of Protection

The Office grants protection for a new plant variety and issues a variety patent if the variety is:

- a) new;
- b) distinct;
- c) uniform;
- d) stable; and
- e) designated by a denomination in conformity with the provisions of Article 15.

Article 6

Novelty

(1) The variety is new if, on the filing date of the application for the grant of protection, or on the priority date, propagating material or harvested material of the variety has not been sold or otherwise disposed of to the others either by or with the consent of the breeder, for the purpose of exploitation of the new variety

- (a) on the territory of Romania, earlier than one year before the filing date of the application for a variety patent;
- (b) on the territory of other States, earlier than six years before the filing of the application for a variety patent for fruit trees, vines and forest trees, and earlier than four years for another species.
- (2) Novelty shall likewise not be lost where the variety
 - (a) forms part of an agreement on the transfer of rights, and the commercial exploitation of the variety did not take place prior to the filing of the application;
 - (b) forms part of an agreement between the breeder and another person by virtue of which the breeder authorizes the multiplication of the propagating material under his control;
 - (c) forms part of an agreement between the breeder and a third party concerning the conduct of a study or of a field test or laboratory trials, or of small-scale processing trials for the evaluation of the variety;
 - (d) has been disposed of to others as propagating or harvested material of the variety used for the purposes specified in Article 27 para (1) and not used for subsequent propagation, those acts not being deemed commercial exploitation of the new variety within the meaning of Article 27 para (1);

- (e) has been disposed of as a result of the breeder having displayed the new variety at an officially recognized exhibition;
- (f) has been disposed of to an official body, for statutory purposes or under a contract, with a view to production, reproduction, multiplication, processing or storage, provided that the breeder retains the exclusive right of exploitation of the variety and no other previous disposal for commercial purposes has taken place; if the variety has been thus disposed of for the production of a hybrid which has been marketed, the provisions of paragraph (1) shall be applied;
- (g) has been disposed of by a company or firm to another company or firm to which it is subordinate, or which with it is wholly owned by a third such company or firm, provided that no other such disposal had taken place.

Article 7

Distinctness

(1) A variety is distinct if it is clearly distinguishable by the expression of one or more relevant characteristics that result from a particular genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge on the filing date of the application with the Office, or, where applicable, on the date of the priority claimed.

(2) The distinctness of a variety is defined by the morphological and physiological characteristics, provided that those characteristics are capable of precise recognition and description.

(3) Where a plant variety has been granted protection or has been the subject of a variety patent application for such protection or has been entered in the official register of plant varieties of any country, which application would result in the grant of the breeders' rights in that particular variety, the said variety shall be deemed a matter of common knowledge on the filing date of the variety patent application.

Article 8

Uniformity

A variety is uniform if, subject to the variation that might be expected of it, owing to the particular features of its propagation, it is sufficiently uniform in the expression of those characteristics that are included in the examination for distinctness, as well as any other characteristics used for variety description.

Article 9

Stability

The variety is stable, if the expression of the characteristics that are included in the examination for distinctness, and any other characteristics used for the variety description, remain

unchanged after repeated propagation, or in special cases, at the end of each propagation cycle.

CHAPTER III

RIGHT TO PROTECTION

Article 10

Right to a Variety Patent

- (1) The right to a variety patent shall belong to the breeder. Where that right has been assigned under Article 35, it shall belong to the person to whom it has been assigned.
- (2) If two or more breeders have bred or discovered and developed a new variety jointly, the right to protection shall belong to them jointly.
- (3) The right to the grant of a variety patent shall also belong jointly to the breeder and to any other person if the breeder and the other person have declared in writing that they agree to such joint entitlement.
- (4) A breeder, who created a new variety during an employment relationship is entitled, unless otherwise provided in his employment contract, to the breeders' rights and equitable remuneration.
- (5) When the amount of remuneration, is determined, account shall be taken of the economic value of the variety and also the income of the company attributable to its exploitation. The amount of the remuneration shall be established by contract concluded between the breeder or breeders and the company or, where the parties fail to agree, by a court of law.
- (6) Where a judgement has ruled that a person other than the one mentioned in the variety patent is entitled to the grant of protection, the Office shall issue the variety patent to the entitled person and publish the change in the Official Bulletin for Industrial Property.

CHAPTER IV

PROCEDURE FOR THE EXAMINATION OF APPLICATIONS FOR VARIETY PATENTS

Article 11

Filing of the Application

The application for the grant of a variety patent shall be filed with the Office by any natural or legal person entitled to such grant under Article 10, or by the authorized agent of such person as provided by Law.

Article 12

Content of the Application for a Variety Patent

- (1) The application for the grant of a variety patent shall contain:
 - (a) a request for the grant of a variety patent and the data identifying the applicant or applicants as the case may be;
 - (b) a provisional denomination of the variety;
 - (c) identification of the botanical taxon, with both its Latin and its common name;
 - (d) a technical questionnaire describing the new variety in a standardized form;
 - (e) a claim of priority deriving from an earlier application filed in another State, where applicable.
- (2) The application for the grant of a variety patent shall be accompanied by the following documents:
 - (a) proof of payment of the fee for the filing of the application;
 - (b) documents confirming the priority, if claimed;
 - (c) the power of attorney where the applicant is represented by an authorized agent;
 - (d) a statement by the applicant on his own responsibility, that the variety for which protection (is sought) has not been commercially exploited, as provided in Article 6;
 - (e) the names of the breeder or breeders and a declaration by the applicant according to which, to the best of his knowledge, no other persons have been involved in breeding, or discovery and development of the variety;
 - (f) the instrument of assignment of the right to the grant of a variety patent where the applicant is not the same person as the breeder;
 - (g) any other documents and material capable of providing information on the origin and testing of the new variety, or on any variety patent application filed in another country;
 - (h) the geographical origin of the variety.
- (3) The application shall relate to one variety only.
- (4) All documentation shall be submitted in Romanian.

Article 13

Official Filing Date of the Variety Patent Application

(1) The official filing date of the variety patent application shall be the date on which it is filed with the Office, provided that at least the requirements specified in Article 12(1)(a) to (d) have been met, and that the application filing fee has been paid.

(2) The official filing date may also be the filing date of the application under paragraph (1) above where, for valid reasons, foreign applicants, whether natural or legal persons, submitted documentation in a foreign language, provided that Romanian translation of the application is produced within three months of the date of receipt of the documentation.

Article 14

Right of Priority

(1) The filing of an application for a variety patent confers a right of priority, starting on the filing date, for any subsequent application for a variety that is not clearly distinguishable from it as provided in Article 7.

(2) Any person who has previously filed a first application in a State party to an international convention in the field of new plant variety protection to which Romania is party, shall enjoy a right of priority of 12 months from the filing date of the first application if, within that period, he applies to the Office for the grant of a patent for the same variety, provided that the first application was properly filed on the priority date claimed.

(3) In order to prove the claim of priority from another State, the applicant shall submit to the Office, within three months from the filing of the application, certified copies of the documents of the first application, as well as the propagating material or other evidence proving that the varieties referred to in both applications are identical.

(4) Priority claimed under paragraph (3), above shall be recognized in so far as the priority fee prescribed by law has been paid.

(5) Failure to observe the time limit provided for in paragraph (2) above or failure to pay the priority fee shall result in non-recognition of the priority claimed.

(6) Acts performed within the period provided for in paragraph (2), such as the filing of another application or publication or use of the variety to which the first application relates, do not constitute grounds for refusal of a subsequent application and do not give rise to any third party rights.

Article 15

Variety Denomination

(1) The variety shall be designated by a generic denomination to permit its identification.

(2) The denomination shall be specified in the granted variety patent and shall also be used after the expiry of its term of validity.

(3) The denomination shall differ from any denomination that designates another existing variety belonging to the same or a closely related species.

(4) The denomination shall not consist only of figures, except where this is an established practice for the designation of certain plant varieties.

(5) The denomination shall not mislead or cause confusion concerning the characteristics, value or identity of the variety or of the breeder.

(6) If applications for the grant of variety patent are filed in Romania and simultaneously in other countries, the variety shall be registered under the same denomination in all the countries in which applications are filed, unless the Office considers the denomination unsuitable.

(7) If, by virtue of a prior right, the denomination has already been used or may cause confusion with the use of the denomination of another variety, the Office shall request the applicant to submit another denomination for his variety.

(8) In order to establish a correct denomination, the applicant may ask the Office, against payment of the preliminary examination fee, to conduct a search concerning the variety denomination.

(9) Any person who sells or markets propagating material of a protected variety is obliged to use the denomination of that variety even after expiry of the term of protection.

(10) Where a protected variety is offered for sale or marketed, a trademark, or trade name, or any other similar indication may be affixed to it for identification of the plant variety on the market.

(11) The variety denomination shall be entered in the National Register of Protected Varieties at the same time as the variety patent is issued.

(12) Where at least one of the conditions specified for in paragraphs (1) to (9) is not fulfilled, the Office shall cancel the registered denomination.

Article 16

Examination of the Application as to Form

(1) Within two months from the filing date of an application for the protection of a new variety, the Office shall ascertain whether the documentation filed by the applicant satisfies the formal requirements for the application, set forth in Article 10 (1) to (4) and 12.

(2) If the application meets the requirements referred to in paragraph (1) above, the Office shall enter the application in the National Register of the Variety Patent Applications and notify the applicant accordingly.

(3) Applications for the protection of the new varieties filed with the Office shall be published, within three months from the date of filing, in the Official Bulletin of Industrial Property.

(4) Where the application for the grant of a variety patent does not meet one of the provisions of Article 10, and 12, the Office shall decide, within an examination board, to reject the application.

Article 17

Substantive Examination of the Application

(1) The Office shall within nine months carry out a substantive examination of the variety patent application with respect to its novelty and variety denomination as provided for in Article 6, 15 and 16.

(2) The Office shall notify the applicant or his successor in title of the result of the substantive examination of the application; where the result is negative, a period not exceeding three months shall be accorded for reply.

(3) The applicant may for legitimate reasons ask the Office for a two -month extension of the period for reply.

(4) If after the substantive examination, the Office decides, that the application meets the requirements laid down in Articles 6, 10, 12 and 16, the variety shall undergo a technical examination by a competent national authority to which the Office shall send the documentation within one month from the decision.

(5) Where the application has not met the requirements of Article 6, 10, 12 and 16 and the applicant neither responds to the notification within the prescribed period, nor applies for an extension, the Office shall reject the application.

Article 18

Technical Examination of the New Variety

(1) The variety shall undergo a technical examination in order:

- (a) to verify that the variety belongs to the botanical taxon stated;
- (b) to establish that the variety is distinct, uniform and stable within the meaning of Articles 7 to 9.
- (c) to establish the official description of the variety.

(2) The technical examination shall be performed by a competent national authority, if the applicant fails on filing the application with the Office, to submit the findings of growing tests carried out by another internationally recognized authority.

(3) Where growing tests for a new variety have not been performed by the national authority or by an internationally

recognized authority, the Office may take into account a technical report drawn up by another competent authority, and purchased with the applicant's consent, provided that the prescribed fee is paid.

(4) The competent national authority or company designated to perform the growing tests shall carry out the necessary tests to determine whether the provisions of Articles 7 to 9 have been satisfied. The applicant shall make samples of the propagating material available to the authority conducting the tests in the amount requested and shall notify the Office, the date of delivery.

(5) Within two years from the start of the growing tests, the national competent authority shall draw up, on the basis of the results obtained, a technical report comprising the test findings, and the morphological and physiological characteristics of the new variety as compared with the reference variety and the conclusions regarding the fulfillment of the requirements laid down in Articles 7 to 9.

(6) Where the growing tests have been conducted by a foreign competent authority or by the breeder, they may be subjected to an analysis by the national authority. The validity of the tests shall be confirmed by a notice sent to the Office, within six months from the receipt of the documentation. Refusal of the validity of the tests findings shall be pronounced by the national authority in writing with a statement of reason.

(7) The Office shall reject the application for a variety patent if the validity of the tests is disputed by the national authority.

(8) The decision of the Office may be challenged by the applicant before the Board of Appeal of the Office, within three months from the communication.

(9) The Board of Appeal may decide:

- (a) to accept the appeal and grant the variety patent;
- (b) to accept the appeal, return the application for further substantive examination and were applicable request repetition of the test;
- (c) to reject the applicant's appeal.

Article 19

Testing of the Variety

(1) For the testing of the new variety the national authority may conduct its own growing tests or accept the findings of the tests performed by the applicant.

(2) The growing tests shall be conducted according to the methodology approved by the Ministry of Agriculture and Food Industry and the Office on the basis of the international guidelines for the testing of the new plant varieties.

(3) After having received the documentation and conducted the examination as to form, the Office, together with the national authority, shall establish the site for the trials and the amount of material necessary for organizing them and notify

the applicant accordingly, inviting him to submit the propagating material requested. The Office and the national authority may request the applicant to submit all information, documents and materials necessary for the satisfactory conduct of the technical examination.

(4) If, within the period allowed, the information, documents or materials requested are not submitted, the variety patent, application shall be rejected.

(5) The applicant has the right to inspect the crop trials, during the testing of the new variety.

Article 20

Decisions of the Office

(1) The Office shall decide, on the basis of the technical report of the national authority or of an internationally recognized authority, whether the new variety meets the requirements laid down for in Articles 7 to 9 and 16 and shall grant the variety patent, or reject the application as appropriate.

(2) The decision to reject shall be taken by the Office only after the applicant has been notified of the grounds for rejection and allowed a period of at least three months within which to submit comments.

(3) Decisions to grant variety patents, each with the description of the variety attached, shall be published in the Official Bulletin of Industrial Property within three months from the decision.

(4) During the term of the variety patent the official description of the protected variety may be amended by the Office or the applicant, subject to mutual consultation, in response to developments in agrobiological knowledge and variety description methods without the scope of protection and the characteristics of the new variety being thereby affected. Amendments made to the official description shall be published in the Official Bulletin of Industrial Property.

(5) Decisions of the Office may be challenged by applicants' appeals on just grounds, the being lodged with the Board of Appeal of the Office in accordance with Article 38 (1).

Article 21

Provisional Protection

(1) During the period between the publication of the variety patent application under Article 16 (3) and the grant of the variety patent, the applicant shall provisionally enjoy all rights conferred on the patent holder, under Article 27.

(2) The infringement by third parties of rights provided for in paragraph (1) above shall make the infringers liable for damages under civil law, payment of the damages being enforceable once the rights have been granted.

(3) Any person who commits the acts provided for in Article 27 without the holder's authorization during the period of provisional protection shall be liable under Article 40 (1).

(4) When the variety patent application has been rejected, the applicant shall not enjoy the rights provided for in paragraph (1) above.

Article 22

Extension of the Time Limit

The time limit for the examination of the application for a variety patent, and for verifying the growing tests findings may be extended by one year on payment of the fees provided for in items 3 and 4 of the Appendix.

Article 23

Withdrawal of the Application

The application for a variety patent may be withdrawn, on a request submitted to the Office by the applicant, any time until the decision on the grant of the variety patent is taken.

Article 24

Revocation of the Decision to Grant the Variety Patent

(1) Within three months from publication any person may apply to the Office for revocation of the decision to grant a variety patent, where at least one of the conditions set forth in Articles 6 to 10 and 15 has not been met; the request shall be made in writing and substantiated.

(2) The request for revocation shall be examined by the Board of Appeal within three months from the filing thereof with the Office.

(3) The Board of Appeal may, if it sees fit, ask the national authority to repeat the growing tests on the variety or to use the services of an expert who shall take part in the reexamination of the new variety.

(4) The decision of the Board of Appeal shall be communicated to the parties within 15 days of being pronounced.

(5) The decision of the Board of Appeal may be appealed against as provided in Article 38.

(6) Final decisions shall be published in the Official Bulletin of Industrial Property within 30 days.

Article 25

Issue of the Variety Patent and Registration of the Variety Denomination

(1) The variety patent shall be issued by the Director General of the Office in pursuance of the decision to grant the variety patent.

(2) The variety patent and the variety denomination shall be entered in the National Register of Protected Varieties, which

is open to the public and may be consulted by third parties on payment of the inspection fee prescribed by the law.

(3) Where the application is filed by two or more applicants, the variety patent shall be issued to the first applicant mentioned in the application and the others shall be issued duplicates thereof.

(4) Where breeder, is not the holder of the patent, he shall be entitled to receive a duplicate of the granted variety patent on request.

CHAPTER V

PROTECTION OF THE VARIETY

Article 26

Duration of Variety Protection

(1) The term of protection of the variety shall be 25 years as from the date of grant of the variety patent.

(2) For species of fruit trees, vines and ornamental forest trees the term of the variety patent shall be 30 years as from the date of the grant of protection.

CHAPTER VI

RIGHTS OF THE HOLDER

Article 27

Exclusive Rights of the Holder

(1) The holder of rights shall enjoy the exclusive right of exploitation of the new variety and the right to prevent any person, without his authority, from performing the following acts in relation to the propagating material and harvested material of the protected variety:

- (a) production or reproduction;
- (b) processing for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other marketing;
- (e) importing;
- (f) exporting;
- (g) stocking for one of the purposes mentioned in subparagraphs (a) to (f).

(2) The provisions of paragraph (1) shall also apply to varieties:

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

- (b) that are not clearly distinguishable from the protected variety in the meaning of Article 7;

- (c) the production of which requires repeated use of the protected variety;

(3) For purpose of paragraph 2(a) a variety shall be deemed "essentially derived" from another variety when:

- (a) it is predominantly derived from the initial variety or from a variety that is itself predominantly derived from the initial variety;
- (b) it is distinguishable, in terms of Article 7, from the initial variety from which it is derived;
- (c) it conforms to the initial variety in the expression of the essential characteristics resulting from a genotype or combination of genotypes thereof, except for the differences resulting from the derivation.

Article 28

Exceptions to the Exclusive Rights of the Holder

(1) The rights conferred by a variety patent, under Article 27, shall not extend to:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes, including those done in the process of breeding other varieties from initial material.

(2) The persons who use the protected variety in the manner provided for in paragraph (1) are obliged to inform the holder accordingly.

Article 29

Exhaustion of the Holder's Rights

(1) The holder's rights shall not extend to acts in relation to any propagating or harvested material of the protected variety or of a variety covered by the provisions of Article 27(2) or to those in relation to parts of the plant of the protected variety or to any material derived from that variety that have been sold or marketed by the holder or with his consent, unless such acts involve:

- (a) propagation of the protected variety;
- (b) exporting the material of the protected variety to a third country that does not protect varieties of the genus or species to which the new variety belongs, except where the exported material is used for consumption.

CHAPTER VII

LAPSE OF THE VARIETY PATENT

Article 30

Invalidation of the Variety Patent

- (1) Any person having a legitimate interest may file a request for invalidation with the Office any time during the period of protection.
- (2) The Board of Appeal shall invalidate the variety when it is established:
 - a) that the variety was not new, in terms of Article 6 or distinct in terms of Article 7 on the filing date of application, or on the date of any priority claimed;
 - b) that, where the grant of the variety patent has been essentially based on trials carried out or on information and documents submitted by the applicant, the variety was not uniform in terms of Article 8 or stable in terms of Article 9 on the date of grant;
 - c) that the person who has been granted the variety patent is not entitled to it, except where the rights have been transferred to the entitled person.
- (3) Decisions shall be communicated to the parties within 15 days of pronouncement, and may be challenged under Article 38.
- (4) The decision to invalidate the variety patent shall be entered in the National Register of Protected Varieties and published in the Official Bulletin for Industrial Property.
- (5) The decision to invalidate the variety patent come into effect on the date on which the application was filed with the Office.

Article 31

Forfeiture of Rights

- (1) The Office shall declare the holder's rights forfeit where one of the following situations obtains:
 - a) the holder does not fulfil his obligation to maintain the protected variety, as provided in Article 33(1);
 - b) the holder does not act on a request for the Office or the national authority that he supply information or material for the purpose of verifying the protected variety during the term of the patent;
 - c) the holder does not, within the time allowed, propose a suitable denomination for the plant variety where the Office has asked for a change in the denomination because it no longer fulfils the conditions set forth in Article 15;

- d) the holder fails to pay the fees for keeping the variety patent in force;

(2) The Office shall not declare the holder's rights forfeit before having notified him of his failure to comply with one of the obligations under paragraph (1)(a) to (c). Forfeiture of rights shall be published in the Official Bulletin for Industrial Property and shall be effective as of the date of entry in the National Register of Protected Varieties.

(3) The holder may, within 6 months from the date of publication of the forfeiture request the Office to revalidate the variety patent on just grounds.

(4) The decision of the Board of Appeal on the request for revalidation of the patent shall be communicated to the parties within 15 days of its pronouncement and may be challenged under Article 38. Revalidation of the variety patent shall be published in the Official Bulletin of Industrial Property.

(5) Exploitation of the variety by the third parties during the period between the forfeiture of rights and the revalidation of the patent shall not constitute infringement of the rights provided for in Articles 25 and 27.

Article 32

Renunciation to the Variety Patent

- (1) The holder may renounce the variety patent at any time during the protection period on the basis of a written declaration submitted to the Office.
- (2) The holder is obliged to inform the breeder of his intention to renounce the variety patent. At the breeder's request the holder is obliged to transfer his rights in the patent to him before filing the written declaration of renunciation.
- (3) Renunciation shall be effective as of the date of its submission to the Office. Renunciation shall be recorded in the National Register of Protected Varieties and published in the Official Bulletin of Industrial Property.
- (4) Where the variety patent has been the subject of a licence contract, renunciation is possible only with the consent of the licensees.

CHAPTER VIII

EXPLOITATION OF THE PROTECTED VARIETY

Article 33

Maintenance of the Protected Variety

- (1) The holder is obliged to maintain the protected variety throughout the term of the variety patent so that the variety retains all the characteristics presented in the official description on the date of grant of the variety patent.

(2) In order to verify the distinctness, uniformity and stability of the protected variety, the national authority may ask the holder to supply seed, propagating material or documents, or any other information required for the purpose.

(3) The Office may, at any time, during the term of the variety patent, request the holder to provide information and documents attesting the existence of the variety and the maintenance of its characteristics.

(4) Where the holder does not comply with the request, the Office shall declare his rights under the variety patent forfeit in accordance with Article 31 (1)(a).

Article 34

Transfer of Variety Rights

(1) The right to apply for a variety patent, the rights in the variety patent, the rights deriving from the filing of the application for the variety patent with the Office, and the rights derived from the variety patent may be transferred to other natural or legal persons.

(2) The transfer of rights is performed by assignment, by an exclusive or non-exclusive licence contract or by legal or testamentary provision.

(3) The rights in a new variety shall likewise be transferred in the case prosecution of the holder in accordance with the Law.

(4) The transfer of rights shall not affect rights acquired by the third parties before the date of transfer.

(5) The assignment or the exclusive licence shall be entered in the National Register of Variety Patent Applications or the National Register of Protected Varieties, as the case may be, and shall become enforceable against third parties on the date of registration.

Article 35

Assignment Contract

The variety for which a patent application has been filed or for which a patent has been granted may be the subject matter of an assignment contract.

Article 36

Licence Contract

(1) A variety for which a patent has been granted may be the subject of a licence contract.

(2) Where an exclusive licence is granted, the licensee shall enjoy the exclusive right of exploitation of the new variety, within the limits specified in the licence contract.

(3) Whenever a non-exclusive licence is granted, the holder shall retain the right to grant licences to third parties. The licensee does not have the right to transfer the right of exploitation of the variety to third parties.

(4) The holder may publish his offer to grant the licence in the Official Bulletin of Industrial Property.

(5) The Office shall enter the exclusive licence contract in the National Register of Protected Varieties and publish it in the Official Bulletin of Industrial Property.

Other licence contracts may also be entered in the Register at the request of the interested party.

Article 37

Compulsory Licences

(1) The Office may grant a compulsory licence at the request of any interested party after the expiry of a period of five years from the date of grant of the variety patent when:

- a) the holder does not exploit the protected variety and cannot justify his inaction;
- b) the protected variety is a matter of public interest.

(2) A compulsory licence shall be non-exclusive and shall be granted on specific conditions regarding duration, the exploitation of the variety and the amount of compensation payable to the holder.

(3) The compulsory licence confers on the licensee the right to receive original propagating material from the holder.

(4) The grant of a compulsory licence does not prevent the patent holder from exploiting the variety or from granting licences to third parties.

(5) Compulsory licences shall be granted by the Office, acting through the Board of Appeal, and by the Ministry of Agriculture and Food Industry, acting through its representatives.

(6) Were it is ascertained that the licensee has failed to fulfil his obligation to exploit the variety in the manner specified, the compulsory licence may, at the holder's request, be revoked by the Office, acting through the Board referred to in paragraph (5).

(7) Decisions of the Board of Appeal concerning the grant or withdrawal of compulsory licences shall be communicated to the parties within 15 days from pronouncement, and shall be subject to the appeals provided for in Article 38.

(8) The Office shall register the compulsory licence in the National Register of Protected Varieties and publish it in the Official Bulletin for Industrial Property.

CHAPTER IX

PROTECTION OF RIGHTS IN NEW PLANT VARIETIES

Article 38

Appeals Against Decisions of the Office

(1) Decisions of the Office may be appealed against by interested parties before the Office within three months from communication.

(2) The appeal or the request for revocation or cancellation of the variety patent, as the case may be, shall be considered by the Board of Appeal within three months of being filed. The composition of the Board shall be different from the composition of the Examination Board, being composed of representatives of the Ministry of Agriculture and Food Industry and the Office.

(3) The finding of the Board of Appeal shall be communicated to the parties within 15 days of being pronounced, and may be challenged in the Court of Bucharest within 30 days of being communicated.

(4) The decision of the Court of Bucharest may be appealed before the Court of Appeal of Bucharest within 15 days of being communicated.

(5) The Office is obliged to submit to the Court, at its request, the necessary documents and information for judging the case referred to it.

Article 39

Competence of the Courts

Litigations seeking to deprive of his status the breeder, patent holder or holder of other rights derived from the variety patent, including economic rights under an assignment or licence contract, or litigation relating to failure to comply with provisions of Articles 33(1) and 34, shall be within the competence of the courts of law.

CHAPTER X

OFFENCES AND PENALTIES

Section 1

Article 40

Infringement and Disclosure

(1) Any of the acts mentioned in Article 27 and any of the acts mentioned below, performed without the variety patent holder's authorization shall be deemed infringement:

- a) using a denomination, other than the registered denomination of the new variety, for propagating material produced and sold;

- b) using the registered denomination of a new variety for propagating material produced and sold that does not belong to that variety;
- c) giving a denomination to propagating material produced and sold that is so close to the denomination of the protected variety, that it may cause confusion;
- d) selling propagating material with false indications that it belongs to a variety for which a variety patent has been granted, thereby misleading purchasers;
- e) falsehood in the registration of a variety in the National Register of Protected Varieties;
- f) drawing up false reports, and falsification of documentation required by this Law;
- g) submitting documents containing false information.

(2) The acts specified in paragraph 1 shall constitute an offense punishable with imprisonment for a term of three months to three years or with a fine of 3 million to 15 million lei, which amount shall be updated by Government decision according to the rate of inflation. The attempted act shall likewise be punished.

(3) Disclosure of data and information constituting a trade secret concerning a new variety for which a variety patent has been applied for or granted shall be punished under criminal law.

(4) Where any of the offences provided for in paragraphs (1) and (3) is committed by a public official in the course of his duties, it shall be punished with imprisonment for a term of six months to five years.

(5) Criminal proceedings shall be initiated on a complaint by the injured party.

(6) The holder is entitled to claim damages under the provisions of ordinary legislation for prejudice caused to him, and the infringing goods shall be seized under the provisions of criminal law.

Section 2

Article 41

Actions for Infringement

(1) A legal action for infringement may only be initiated by the holder after publication of the grant of the variety patent.

(2) Where a licence has been granted and were not otherwise provided in the contract, the licensee may not sue for infringement without the consent of the holder.

(3) The holder of an exclusive licence may initiate a legal action for infringement, if the variety patent holder has been informed of the alleged infringement and has not take any action within a time limit requested by the licensee.

(4) Where a legal action for infringement has been brought by the variety patent holder, any of the licencees may intervene to demand that the prejudice caused by the infringement be made good.

CHAPTER XI

PROVISIONAL MEASURES, EVIDENCE, FEES

Article 42

Provisional Measures, Evidence

- (1) The holder may request the court:
 - a) to order provisional measures where there is a risk of infringement of the rights deriving from the variety patent and where such infringement is liable to cause irreparable prejudice, and also where there is a risk of evidence being destroyed;
 - b) to order, immediately on application, measures to put an end to the infringement of rights committed by a third party in connection with the introduction into commercial channels of imported merchandise that would infringe those rights;
 - c) to order the seizure or destruction of propagating material referred to in Articles 40(1)(b) to (d).
- (2) The court shall order the infringer of the rights under the variety patent to inform the holder of the identity of third parties who have taken part in production and distribution of the propagating material specified to in Article 40 (1) (b) to (d).
- (3) The provisions of Articles 581 and 582 from the Code of Civil Procedure shall be applicable to the ordering of the measures referred to in paragraph (1).
- (4) When provisional measures are ordered, the court may oblige the plaintiff to provide security, in an amount that it shall specify.
- (5) The court may ask the plaintiff to supply any evidence available to prove that he is the holder of the rights infringed or the infringement of which is unavoidable.
- (6) Where the evidence supporting the claims of the plaintiff is in the defendant's possession, the court may order the defendant to produce the evidence, provided that confidentiality of information is guaranteed, as provided by law.
- (7) The court shall order the plaintiff to pay the defendant all damages arising from improper exercise of the procedural rights concerning the variety.

Article 43

Fees

- (1) The fees for the procedures provided for in this Law shall be paid into the bank account of the Office, in the amounts

and by the time limits specified in the Appendix which forms an integral part of this Law.

(2) Romanian applicants or holders, whether natural or legal persons, shall pay the fees in lei. Foreign natural and legal persons, who are applicants, or holders or to whom industrial property rights have been transferred, shall pay the fees in currency. Where there are two or more applicants or holders, the fees owed jointly, shall be paid in currency.

(3) Applicants for or holders of variety patents whose rights have not been transferred to them or who have transferred their rights as provided by law, before the time of payment, shall pay the fees specified in the Appendix, reduced by 50 per cent of each fee, if they are natural or legal persons or domestic research or education institutes.

(4) The reduction provided for in paragraph (3) shall be applicable to each procedure separately, on the date of payment, if the conditions specified in the said paragraph are satisfied and supporting documents are supplied.

(5) The fees for variety patent applications and variety patents payable for the procedure before the Office shall constitute income and shall be assigned to extra-budgetary items as provided by Law.

(6) From the fees paid to it, the Office shall pay the national or international technical authorities, as the case may be, the amounts due for the conduct of growing tests.

Article 44

Competence

- (1) Competence for the enforcement of this Law belong to the Office and the Ministry of Agriculture and Food Industry.
- (2) The Office, as a specialized body responsible to the Government and sole authority within the territory of Romania for the grant of industrial property protection, shall grant patents for the new varieties under this Law and in accordance with the international conventions to which Romania is a party, and shall have the following duties:
 - a) filing, publishing and examining applications for the grant of patents for the new varieties;
 - b) keeping the National Register of Variety Patent Applications and the National Register of Protected Varieties;
 - c) regularly issuing the Official Bulletin of Industrial Property, and specifically the section for variety patents, which contains information on variety patent applications, denominations of new varieties and proposals for denominations, and also new varieties for which variety patents have been granted;
 - d) ensuring the exchange of publications with similar foreign national administrations and specialized international organizations;
 - e) establishing, in consultation with the Ministry of Agriculture and Food Industry, the characteristics to be speci-

fied in the technical questionnaire, in accordance with international guidelines for the protection of the new varieties;

- f) certifying authorized agents for the procedures before the Office relating to the protection of the new varieties.
- (3) The Ministry of Agriculture and Food Industry, in exercising its prerogatives:
 - a) shall decide on the methodology for testing the new varieties from a technical point of view;
 - b) shall cooperate with the Office, with breeders' associations, with the association of variety patent holders, with the association of producers of seed and propagating material, with the George Ionescu Sisesti Academy of Agricultural and Horticultural Science, and with specialized research institutes and testing stations in order to establish the characteristics involved in the protection of the new varieties;
 - c) shall designate the representatives of the Ministry of Agriculture and Food Industry on the Board of Appeal.
- (4) The Office and the Ministry of Agriculture and Food Industry shall entertain relations with similar governmental organizations and international organizations specialized in the protection of new varieties of plants, of which Romania is a member.

Article 45

Protection of the New Varieties Abroad

Romanian natural and legal persons shall have the right to choose the State in which they file their first application for the grant of a variety patent or a similar title of protection.

CHAPTER XII

FINAL AND TRANSITIONAL PROVISIONS

Article 46

- (1) Applications for variety patents filed with the Office under Patent Law no. 64/1991 and Government Decision no. 152/1992 approving Regulations implementing the Patent Law no. 64/1991 for which no decision has been taken to grant or refuse grant shall be settled in accordance with the provisions of this Law.
- (2) This Law shall enter into force 90 days following the date of its publication in the Official Gazette of Romania.
- (3) Within 90 days following the publication of this Law in the Official Gazette of Romania, the Government shall, on a proposal by the Office, approve the Regulations implementing this Law.
- (4) On the entry into force of this Law, the provisions on the protection of plant varieties and hybrids laid down in Articles 7 it (3) and 11 of Patent Law no. 64/1991, the provisions on plant varieties and hybrids in Chapter III of Government Decision no. 152/1992 and any other contrary provisions shall be repealed.

ANNEX

APPENDIX

Crt. No.	Purpose	Time of payment	Amount in thousands of lei *)					Amount in \$				
1.	Filing fee	on filing application	140					20				
2.	Priority claim: a) on filing application	on date of filing application or within 3 months	350					50				
	b) within 3 months from filing application for variety patent	on date of claim	700					100				
3.	Examination fee for variety patent on plant grouping: for each year of examination											
	1	on date of examination request	910					130				
	2 and 3	on date of examination request	560					80				
	4	on date of examination request	350					50				
4.	Verification of the growing tests (on request)	at the time of requesting verification	1400					200				
5.	Preliminary examination of variety denomination	on date of request	350					50				
6.	Issue of variety patent	six months after publication date of decision to grant	700					100				
7.	Examination of appeal	at the time of lodging the appeal	350					50				
8.	Examination of request for revocation	on requesting revocation	1050					50				
9.	Examination of request for cancellation	on requesting cancellation	1050					50				
10.	Maintenance fee for variety patent - from year 1 to year 5	at the end of each year of protection	1 38	2 350	3 315	4 280	5 280	1 55	2 50	3 45	4 40	5 40
	- subsequent years, per year	at the end of each year of protection	77	700	630	560	560	110	100	90	80	80

Crt.	Purpose	Time of payment	Amount in thousands of lei *	Amount in \$
11.	Examination of application for revalidation of variety patent	on requesting revalidation	700	100
12.	Purchase of international technical report for a new variety	when State Office for Inventions and Trademarks requests the report.	2450	350
13.	Inspection of National Register of Protected Variety	on request	350	50
14.	Filing change in legal status of patent application or variety patent: a) assignment	on filing and requesting Registration thereof	140	20
	b) licensing	idem	350	50
	c) other change	idem	175	25
15.	Issue of duplicates, copies, certificates	on filing request with the Office for Inventions and Trademarks	70	10

Variety grouping:

1. Cereals and technical plants
2. Fodder plants
3. Fruit trees and shrubs, vines
4. Vegetables, flowers, ornamentals trees

*) Calculated at the official exchange rate of the National Bank of Romania on the date of payment.

ROMANIA

IMPLEMENTING REGULATIONS* OF THE LAW ON THE PROTECTION OF THE NEW PLANT VARIETIES NO. 255/1998

CHAPTER I

GENERAL PROVISIONS

Rule 1

Object of Protection

Breeders' rights on the new plant varieties, granted in the conditions of the Law, are recognized and protected in the territory of Romania, through the grant of a variety patent by the State Office for Inventions and Trademarks.

Rule 2

Definitions

For the purpose of the present regulations:

- a) *law* means the Law on the protection of the new plant varieties No. 255/1998, published in the Official Gazette of Romania no. 525 of December 31, 1998;
- b) *regulations* means the Implementing Regulations of the Law on the protection of the New Plant Varieties No. 255/1998;
- c) *O.S.I.M.* means the State Office for Inventions and Trademarks;
- d) *M.A.A.* means The Ministry of Agriculture and Food Industry;
- e) *competent national authority* means The State Institute for Testing and Registration of Varieties (I.S.T.I.S.) or an authority designated by M.A.A.;
- f) *National Register of Variety Patent Applications* means the register for entering the variety patent applications (RNCBS);
- g) *National Register of Variety Patents* means the register for entering the granted variety patents (RNBSP);
- h) *Official Bulletin of Industrial Property* - the section for varieties protected by variety patents (BOPI- SSPBS);

i) *authorized agent* means the natural or legal person having the place of residence or headquarter in Romania, certified by O.S.I.M. and empowered to represent the applicant or the holder in the proceedings before the O.S.I.M.;

j) *candidate variety* means the variety for which an application for a variety patent was filed with O.S.I.M.;

k) *protected variety* means the bred and cultivated variety for which O.S.I.M. granted a variety patent;

l) *initial variety* means the protected variety which may be the starting material for a new variety essentially derived;

m) *dependent variety* means the variety which, for the purpose of production, needs the repeated use of an initial protected variety, or which is essentially derived from a protected variety, provided that said variety is not in its turn essentially derived; the dependent variety may be the subject-matter of a variety patent independently from the protected initial variety, provided that it fulfils the distinctness, uniformity and stability conditions stipulated by the law;

n) *essentially derived variety* means the variety derived from another protected initial variety, provided that it is predominantly derived from the initial variety or from another variety which is predominantly derived from the initial variety and who keeps the expression of the essential characteristics resulting from a genotype of the initial variety or from a combination of genotypes; the essentially derived variety shall be clearly distinguishable from the initial protected variety by one or more characteristics which may be precisely described;

o) *genetically modified variety* means any variety obtained by genetic engineering;

p) *ornamental tree variety* means a variety of trees belonging to any horticultural or forest species on which breeding was developed;

q) *variety of commun knowledge* means a variety existing in a recognized reference collection, in a gene bank or in an official catalogue/ register and which may be reproduced and cultivated whenever necessary.

* The Implementing Regulations were approved on March 17, 2000, and published on March 30, 2000, in the Official Gazette of Romania.
Translation: by the national authorities.

Rule 3

Representation

- (1) The applicant or holder of a variety patent may be represented in the proceedings before the O.S.I.M. by an authorized agent having the place of residence or headquarter in Romania.
- (2) The applicant or holder of a variety patent who does not have the place of residence or headquarter in the territory of Romania has to be represented before O.S.I.M. by an authorized agent.
- (3) The designation of the authorized agent is made by a written communication submitted to O.S.I.M., named power of attorney, and which comprises the applicant's or holder's name and signature, as the case may be.
- (4) The power of attorney will refer to only one variety patent application or to a variety patent belonging to the mandant.
- (5) Any document requested through the authorized agent regarding the withdrawal of the variety patent application, the renunciation to the variety patent and any application relating to the transfer of rights in a variety, will be made by a special document mentioning expressly the withdrawal, renunciation or transfer.
- (6) When the applicant is represented by an authorized agent, this one may sign the variety patent application on the basis of the power of attorney given to him by the applicant. If, within 3 months from the filing date of the application the power of attorney is not submitted to O.S.I.M., the application will be rejected, in conformity with Art. 20 (2) of the Law.
- (7) The applicant or the holder may have only one authorized agent, or if the application or other document indicates more authorized agents, only the first written will be taken into consideration.

CHAPTER II

PATENTABILITY OF NEW PLANT VARIETIES

Rule 4

Conditions of Protection

O.S.I.M. grants a variety patent if the conditions provided for in Art. 5 of the Law, respectively novelty, distinctness, uniformity and stability, depending on the group of species, are fulfilled cumulatively, and if the variety has a correct denomination, according to Art. 15 of the Law.

Rule 5

Novelty

- (1) The variety shall not be lost the novelty within the meaning of Art.6 paragraph (2) of the Law, if it:

- a) forms part of an agreement whereby a person produces propagating material of said variety in the name of the breeder or of his successor in title, provided that the harvested propagating material returns to the breeder or to his successor in title and is not used for the propagation of another variety;
 - b) forms part of an agreement whereby a person conducts trials in the field or laboratory or cultivates the variety to a small-scale for its evaluation;
 - c) forms the object of an administrative commitment with regard to the biological security or the registration of the varieties in an official catalogue of varieties admitted for commerce;
 - d) involves the harvested material as a subproduct, a secondary product or a surplus resulting from the new variety or from the activities provided for in paragraphs (1) (a) to (c).
- (2) In implementing Art. 6 (2) of the Law, following acts do not destroy novelty:
 - a) the commercial exploitation of the variety by the breeder, on the territory of Romania, earlier than one year before filing the application for a variety patent with O.S.I.M.; the breeder may sell the propagating or harvested material in order to prospect the market, earlier than one year before filing the application for a variety patent with O.S.I.M.;
 - b) for the varieties created by foreign applicants, the exploitation or commercialisation of the variety in other countries, earlier than four years before filing the application for the variety patent with O.S.I.M.; for the species of trees or of vines the commercial exploitation is earlier than six years before the filing date of the application with O.S.I.M.

Rule 6

Distinctness

- (1) The distinctness is established, according to Art. 7 of the Law, in comparison with a reference variety and any other variety whose existence is a matter of common knowledge on the filing date of the application for the variety patent or on the date of the priority, if the candidate variety is clearly distinguishable by the expression of one or more relevant characteristics.
- (2) The morphological, physiological and/or biochemical characteristics taken into consideration when examining the variety for establishing the distinctness, are the characteristics considered relevant and independent from the environment and easy to be described.
- (3) Filing the application for protection or registration of a variety in a catalogue of varieties accepted for marketing makes the variety a matter of common knowledge, provided that the application leads to the grant and recognition of the breeders' rights and to the existence of the variety as living material.

(4) In order to establish that the existence of a variety is a matter of common knowledge in Romania, documents proving the exploitation of the variety may be presented, respectively the registration in an official catalogue of varieties or in a registered professional association, if included in a reference collection recognized internationally or in a member State of the International Union for the Protection of New Plant Varieties.

(5) As a rule, when establishing the distinctness of a variety, the characteristics regarding the agronomic value of the variety may also be taken into consideration; these are used only for the agricultural species and to the extent in which said characteristics are precise and not fluctuant due to the environment.

Rule 7

Uniformity

(1) The uniformity is determined by taking into consideration the group of species the variety belongs to and the expected interspecific variations produced during the sexually or vegetative propagation, if the variety remains uniform in the expression of the relevant characteristics used for establishing the distinctness and for the variety description.

(2) For the vegetatively propagated varieties or for the varieties obtained from self-pollinating species, the degree of uniformity is established depending on the species.

(3) For the varieties belonging to cross-pollinating species and which have a high degree of heterogeneity, the uniformity is measured in relation to the comparison varieties.

Rule 8

Stability

The stability of a candidate variety, within the meaning of Art. 9 of the Law, is determined after repeated propagation and in compliance with the specificity of each propagation cycle of the new variety, provided that the variety remains unchanged in the expression of the relevant characteristics for distinctness and for the variety description.

CHAPTER III

RIGHT TO PROTECTION

Rule 9

Right to a Variety Patent

(1) The person entitled to be granted the protection under Art. 10 (1) of the Law is the breeder, who bred, discovered and developed the new variety.

(2) Where the breeder has assigned his rights in the variety by an assignment contract, a licence or by any other way of

transfer these rights belong to his successor in title as provided for in Art. 35 of the Law. The transfers are published in BOPI.

(3) Where two or more breeders, bred or discovered the new variety jointly, the variety patent shall be granted to them jointly.

(4) Where two persons bred, discovered and developed the same variety independently, the person entitled to be granted the variety patent is the one who first filed the variety patent application.

(5) Where the applications for the same variety were filed with O.S.I.M. by two applicants on the same day, the protection shall be granted to both applicants and the variety shall be exploited jointly.

(6) The right to the variety patent shall belong to the breeder and to any other person jointly, if the two declare in writing that they agree to hold this right jointly.

(7) Where an interested person notifies to O.S.I.M. that the applicant is not the person entitled to be granted the protection for a new variety and that the ownership is appealed against, O.S.I.M. suspends the examination procedure until a final and irrevocable decision is communicated.

CHAPTER IV

PROCEDURE FOR THE EXAMINATION OF AN APPLICATION

Rule 10

Filing the Application for Variety Patent

(1) Any natural or legal person who wants to protect a new variety and who is entitled to the grant of a variety patent, may file the application with O.S.I.M., directly or through an authorized agent.

(2) The application for the variety patent may be filed:

- a) directly and with the confirmation of the receipt from the Receipt bureau of O.S.I.M.;
- b) by mail, registered and with confirmation of the receipt;
- c) by electronic means, the original being afterwards sent by mail.

(3) The Receipt bureau writes down on the application the year, month and day of receipt.

Rule 11

Content of the Application for Variety Patent

(1) The application for the variety patent is drawn up in two copies, on standardized printed forms, and relates to only one variety.

(2) The application for the grant of a variety patent shall contain;

- a) an express request for the grant of a variety patent;
- b) name and surname / denomination and address / registered office of the applicant(s);
- c) name and surname / denomination and address / registered office of the breeder, if the breeder is not the same as the applicant;
- d) when the applicant is a foreign natural or legal person, the name of the state the citizen of which he is or the name of the state where he has the place of residence or registered office;
- e) when represented by an authorized agent, the name and place of residence thereof;
- f) identification of the botanical taxon, with both the Latin and common name of the species the variety belongs;
- g) provisional denomination of the variety given by the breeder on a separate printed form;
- h) in case of claiming the priority of a first application filed in another state, a priority declaration proving the date of the first filing;
- i) a standardized description of the variety in compliance with the international guidelines on the description of protected varieties, with at least one colour reproduction annexed;
- j) geographical origin of the variety;
- k) the applicant's or his authorized agent's signature, as the case may be.

(3) The application for the variety patent shall be accompanied by the following documents:

- a) proof of payment of the filing fee;
- b) power of attorney for the representation of the applicant or holder, drawn up in Romanian or accompanied by the legalized translation in Romanian;
- c) a declaration from the applicant on his own responsibility that the variety has not been commercialised, as provided in Art. 6 (1) of the Law;
- d) name/denomination of the breeder and a declaration from the applicant, according to which, to the best of his knowledge, no other persons have been involved in breeding, discovery and development of the new variety;
- e) the assignment contract, where the applicant is different from the breeder;
- f) documents confirming the priority in another state.

(4) The variety patent application may be accompanied by any other documents providing information about a first application, filed in another country.

(5) All documentation shall be submitted in Romanian.

(6) Where the priority of a first application filed in another state is claimed, O.S.I.M. shall invite the applicant within 3 months to provide a Romanian translation of that application.

Rule 12

Official Filing Date of the Variety Patent Application

(1) The official filing date of a variety patent application shall be the date of filing with O.S.I.M. a variety patent application containing at least the elements provided for in Art. 12 (1) (a) to (d) of the Law, drawn up in Romanian and accompanied by the proof of payment of the filing fee, as provided for in Art. 12 (3) (a) from the law.

(2) The official filing date provided for in Art.13 paragraph (1) of the Law shall be the same with the date of filing for foreign applicants, whether natural or legal persons, provided that the application filed in a foreign language will be translated in Romania and submitted within 3 months from the filing date.

(3) Within two months of the date of receipt of the application, O.S.I.M. examines whether the conditions provided for in Art. 12 (1) (a) to (d) and (2) (a) of the Law are fulfilled. If the conditions are fulfilled, O.S.I.M. decides to give an official filing date, to enter the application date in RNCBS, to notify the applicant and publish the application identification data in the Official Industrial Property Bulletin - SSPBS.

(4) In case some elements of the application provided for in paragraph (3) are missing, O.S.I.M. notifies the applicant a time limit of 3 months to remediate.

(5) Where the applicant regulates the application within the time period provided for in paragraph (4), the official filing date shall be the date of receipt of the documentation by O.S.I.M.

(6) Failing the regulation of the application within the time limit, O.S.I.M. will consider that the application has not been filed and will return the documentation to the applicant, refunding the examination fees in case they have been paid.

Rule 13

Right of Priority

(1) The provisions of Art. 14 paragraph (1) and (2) of the Law are also applicable to the applications whose subject-matters are new plant varieties, if the legislation, according to which they have been filed, stipulates identical criteria for the grant of protection, respectively distinctness, uniformity and stability.

(2) Where a priority is claimed according to Art. 14 paragraph (2) of the Law, the applicant shall mention it expressly in the variety patent application filed with O.S.I.M. and shall submit documents for identifying the first filing of the application.

(3) In order to prove the priority from another state, the applicant shall submit to O.S.I.M., within three months from filing the variety patent application, a certified copy in Romanian language of the priority documents provided for in paragraph (2).

(4) If the applicant fails to observe the time limit provided for in paragraph (3), or fails to pay the priority fee, O.S.I.M. shall not recognise the claimed priority.

(5) The filing of other applications, within 12 months of the date of the first official filing, the publishing of the identification data of other applications, the use of the variety for which protection is applied, do not constitute grounds for rejection of a subsequent application within this time period, and do not give rise to any third party rights.

(6) The non-recognition of the priority for a new variety shall be considered as the first file application with O.S.I.M.

Rule 14

Variety Denomination

(1) The protected variety shall be designated by a generic denomination to permit its identification on the market. The denomination shall be specified in the granted variety patent.

(2) The denomination shall be proposed by the applicant and shall be transmitted to O.S.I.M. at the same time with the variety patent application, being filled in on separate printed form.

(3) As a rule, the variety denomination shall consist of a word or of combination of words with or without significance, which may be accompanied by letters or figures, so as to differ from any other denomination of another known protected variety or contained in a catalogue of protected varieties or in a trade catalogue and which belongs to a species, subspecies, variety, of plants closely related to the candidate of the botanical taxon with the lowest rank variety.

(4) The denomination of the new variety shall not consist only of figures, except where this is an established international practice for the designation of said species.

(5) During the term of protection of the variety patent it is forbidden on the territory of Romania to use the denomination of the protected variety to designate another related variety which could cause confusion concerning its distinct characteristics.

(6) The interdiction provided for in paragraph (5) shall also be maintained after the expiry of the term of protection of the variety patent, if the variety exploitation continues or if the denomination is under the incidence of Art. 7 of the Law.

(7) Any person who offers for sale, sells or markets propagating material of the protected variety is obliged to use the denomination of that variety. This provision also applies to varieties referred to in Art. 27(2) (b) of the Law.

(8) If applications for the grant of variety patent are filed in Romania and simultaneously in other countries, the variety shall be registered under the same denomination, unless:

- a) O.S.I.M. considers the denomination unsuitable for that variety;
- b) the denomination has already been used by third parties for the said variety or for another variety and this may cause confusion on the autochthonous market.

Under the conditions provided for in letter a) and b) O.S.I.M. shall request the applicant to propose another denomination for the candidate variety.

(9) The filing of the variety denomination shall be refused if it contains an element liable to cause a damage or to give rise to a risk of confusion with another trade name of other variety or of a trademark, or of another previously protected industrial or intellectual property right.

(10) Where O.S.I.M. considers that the provisions of Art. 15 from the Law are fulfilled, the denomination proposed by the applicant for the candidate variety is published in BOPI-SSPBS.

(11) Within three months from the publishing date, any interested person may draw up written objections concerning the denomination of the candidate variety.

(12) O.S.I.M. notifies the objections to the applicant inviting him to submit his observations within 30 days of receiving the notification.

(13) The applicant may transmit a new proposal for the variety denomination within a time limit given by O.S.I.M., provided for in paragraph (12).

(14) The new proposal for the variety denomination shall be examined and published in BOPI-SSPBS, if the conditions provided for in the Law are fulfilled.

(15) When the new denomination does not comply with the provisions of Art. 15 of the Law, O.S.I.M. shall notify the applicant and ask him to propose another denomination. If the applicant does not answer, the variety patent application shall be rejected.

(16) The final denomination shall be mentioned in the variety patent.

(17) O.S.I.M. cancels the denomination, where:

- a) it has been ascertained that the denomination does not meet at least one of the conditions under Art. 15 paragraph (1) to (9) of the Law;
- b) the applicant requests the cancellation, of the denomination proving a legitimate interest;

- c) there exists a final and irrevocable decision forbidding the use of the denomination for that variety.

(18) O.S.I.M. shall inform the applicant about the reasons of cancellation provided for in paragraph (17) (a) or (c) and shall request him to propose a new denomination for the variety, within 30 days of the date of receiving the notification.

(19) The proposed denomination shall undergo the examination and publication procedures.

(20) Before filing a variety patent application and in order to propose a correct denomination for the candidate variety, any interested person may request O.S.I.M. to perform a preliminary search, subject to payment of the fee provided for in the appendix to the Law.

Rule 15

Examination of the Application as to Form

(1) The examination of the variety patent is performed by O.S.I.M. that shall check whether the documentation filed by the applicant satisfies the provisions of Art.10 paragraph (1) to (4) and of Art. 12 of the Law.

(2) O.S.I.M. examines, according to the provisions of Art. 10 paragraph (1) to (4) of the Law, whether:

- a) the applicant is the breeder;
- b) the right to the grant of the variety patent belongs to more breeders;
- c) the right to the grant of the variety patent belongs to the breeder and to other person jointly, according to the written declaration signed by them;
- d) the breeder being an employee and creating the variety during his employment, the right to the patent belongs to the employer.

(3) O.S.I.M. examines, according to the provisions of Art. 12 of the Law, whether the variety patent application contains:

- a) the applicant's name/denomination and address/head-quarter;
- b) the proposal of denomination for the new variety;
- c) the botanical taxon/Latin name of the genus, family, species, subspecies to which the variety belongs, common and/or trade name;
- d) the geographic origin of the new variety;
- e) the presentation of the new variety in standardized form, according to the international norms for the description of a new variety belonging to a species; if this is not correct, the applicant is granted a two-month time limit to remedy it;

- f) the claimed priority of a first application for the candidate variety as well as the priority documents;

g) whether the variety patent application is accompanied by the proof of payment of the filing fee;

h) whether there exists a power of attorney signed by the applicant;

i) the applicant's declaration on his own responsibility, that he did not market the new variety, according to the provisions of Art. 6 of the Law;

j) the name and address of the applicant or applicants involved in breeding or discovering and developing the new variety;

k) the document of assignment of the right to the grant of the variety patent, if the case may be;

l) other documents and information concerning the origin and crop cultivating conditions for the candidate variety.

(4) Where it has been ascertained that the variety patent application fulfils the provisions of Art. 12 of the Law, the variety patent application shall be given an official filing date, it shall enter in the RNCBS and the applicant shall be notified.

(5) The filed applications are published in BOPI-SSPBS within 3 months of the official filing date.

(6) For each candidate variety the species, the variety denomination and the provisional denomination, the application filing date, the claimed priority, if the case may be, the applicant's name and address shall be published.

(7) Where the application is incomplete, incorrect or contains irregularities, O.S.I.M. notifies the deficiencies to the applicant and an extension of 30-days time limit shall be granted to remedy them.

(8) Failing the answer or request for extension of the time limit or failing the regulation of the description, O.S.I.M. rejects the variety patent application.

Rule 16

Substantive Examination of the Application

(1) The variety patent application which fulfils the conditions provided for in Art.16 paragraph (1) of the Law shall be examined as to the substance on the basis of the information provided by the applicant, in order to verify whether:

- a) the application refers to a variety within the meaning of Art. 2 letter a) of the Law;
- b) the variety belongs to the declared botanical taxon;
- c) the candidate variety is new according to the provisions of Art. 6 of the Law;

- d) the denomination, proposed by the applicant is correct and fulfils the provisions of Art. 15 of the Law.
- (2) O.S.I.M. shall not reject the variety patent application before notifying the applicant the reasons of rejection and allowing a maximum three-month time limit for correcting the deficiencies.
- (3) Upon express request by the applicant, O.S.I.M. may extend, by two months, the time limit provided for in paragraph (2), according to the provisions of Article 17(3) of the Law.
- (4) Where the application fulfils cumulatively the provisions of Articles 6, 10, 12 and 16 of the Law, O.S.I.M. shall decide the start of the technical examination and shall request the applicant to submit the propagating material necessary for conducting the growing tests.
- (5) Failing the answer within the time limit, O.S.I.M. shall reject the variety patent application.

Rule 17

Technical Examination of the New Variety

- (1) I.S.T.I.S. or the authority designated by M.A.A. shall perform an examination in accordance with Article 8 of the Law, in order:
 - a) to verify that the candidate variety belongs to the botanical taxon declared by the applicant and identified during the formal examination;
 - b) to establish that the variety is distinct, uniform and stable within the meaning of Art. 7 to 9 of the law;
 - c) to establish that the official description of the new variety is drawn up so as to permit the differentiation of that variety from the reference variety.
 - (2) When the applicant does not submit the findings of the tests for the new variety conducted by another internationally recognized competent authority, autochthonous growing tests for distinctness, uniformity and stability shall be developed:
 - a) by I.S.T.I.S. or another authority on behalf thereof, designated by M.A.A.;
 - b) by the applicant, upon request by I.S.T.I.S. or O.S.I.M. for the rare species for which there does not exist the reference collection.
 - (3) In order to perform the growing tests correctly, the applicant shall supply documents relative to cultivation of the candidate variety.
 - (4) Where I.S.T.I.S. or the authority designated by M.A.A. or an internationally recognized authority have not conducted tests, O.S.I.M. may decide to grant the protection based on the technical report drawn up by a competent authority, provided that the applicant agrees to buy this technical report and pays the fee prescribed in the annex to the Law.
 - (5) In order to conduct the growing tests, the applicant shall supply, free of charge, propagating material in the amount requested by the authority performing the tests and shall notify, in writing, the amount and the type of the transmitted propagating material as well as the date of delivery, both to the competent national authority and to O.S.I.M.
 - (6) By way of exception, the testing period may be extended by I.S.T.I.S. or upon request by the applicant, provided that the prescribed fee of the annex to the Law is paid.
 - (7) Where the protection is rejected and the decision is appealed against, the applicant may request the repetition of the trials, provided that the prescribed fee for verification of the growing tests of the annex to the Law is paid.
 - (8) Based on the trial findings I.S.T.I.S. shall draw up a technical report containing the morphological and physiological relevant characteristics which make the variety distinct, uniform and stable in comparison with any other variety belonging to the same taxon, whose existence is a matter of common knowledge.
 - (9) The technical report drawn up by an international authority or by the breeder may be subjected to an analysis by the competent national authority, with a view to validating or invalidating the same.
 - (10) Where O.S.I.M. states that the tests have been invalidated by the competent national authority, it notifies the results to the applicant and allows him a three-month time limit for reaction.
- Upon expiry of this time-limit, if the applicant fails to answer, O.S.I.M. rejects the variety patent application and publishes the decision of rejection in BOPI-SSPBS.
- (11) During the entire period of examination of the new variety, O.S.I.M. and the competent national authority shall inform each other about the examination procedure of the variety patent application.
 - (12) The decision to reject the variety patent application may be appealed against by the applicant before the O.S.I.M. Board of appeal, within three months from the communication.
- The appeal may be lodged in writing with a statement of reason and the prescribed fee provided for in the annex to the Law shall be paid.
- (13) The Board of Appeal may decide, as the case may be:
 - a) to accept the applicant's appeal and grant the patent for the candidate variety;
 - b) to accept the applicant's appeal and to return the variety patent application to the substantive examination board and, where applicable, request the repetition of the growing tests;
 - c) to reject the appeal and keep the decision of rejection of the application.

(14) The decisions taken by the Board of Appeal are registered in RNCBS and are published in BOPI-SSPBS.

Rule 18

Testing the New Variety

(1) The competent national authority, depending on the species to which the variety belongs, conducts and organizes its own trials and may consider and/or inspect the crops and trials conducted by the breeder and/or applicant and may estimate whether the variety fulfils the requirements of distinctness, uniformity and stability.

(2) The growing tests methodology for each species is established by M.A.A. together with O.S.I.M., according to the international guidelines and with the national norms regarding the examining the varieties registered in the official list of varieties and considering the specific pedoclimatic conditions of the country.

(3) Where the growing tests are conducted according to Art. 19 paragraph (3) of the Law, O.S.I.M. together with the competent national authority shall establish the amount of propagating material necessary for organizing the trials, the place and the address where the applicant shall submit the material.

(4) O.S.I.M. and/or I.S.T.I.S or the authority designated by M.A.A. may request the applicant to submit all information, materials and documents necessary for the conducting of the technical examination.

(5) Failing an answer to the request provided for in paragraph 4 and a request for postponing with a statement of reason, within the time limit, the variety patent application shall be rejected.

(6) The applicant at his request, has the right to inspect the crop trials performed for establishing the distinctness, uniformity and stability for his variety during the testing of the new variety.

Rule 19

O.S.I.M. Decisions

(1) O.S.I.M. shall take the decision to grant the variety patent and publish this decision in BOPI, when the conditions provided for in Art. 7 to 9 and 16 are fulfilled. Otherwise, the variety is deemed being unqualified for protection and the variety patent application shall be rejected.

(2) The decision to reject is taken by O.S.I.M. only after having notified the applicant in writing about the grounds for rejection of the variety patent application and after having allowed a 3-month time limit for reply. For justified grounds, the applicant may request the postponing with a view to preparing a pertinent answer.

(3) Any interested party may object in writing and on justified reasons to the grant of the variety patent application and may request the revocation provided that the prescribed revocation fee of the annex to the Law is paid.

(4) The official description of the protected variety may be amended by the holder or by O.S.I.M. during the validity period of the variety patent in response to development in agrobiological knowledge and variety description methods, without the scope of protection being thereby affected. Amendments are made by O.S.I.M. only with the holder's agreement after to mutual consultation. Amendments made to the official description shall be published in BOPI-SSPBS.

(5) The appeals shall be settled by the Board of Appeal of O.S.I.M., these being submitted and drawn up within 3 months from publishing the decision.

Rule 20

Provisional Protection

(1) The applicant may request that third parties should be prevented to commit the acts provided for in Art. 27 of the Law only after publishing the variety patent application, within the period provided for in Art. 16 paragraph (3) of the Law.

(2) When the variety patent application has been rejected, the applicant shall not enjoy the rights provided for in Art. 27 of the Law.

Rule 21

Extension of the Time Limit

(1) The applicant may request the extension of the time limit for the examination of the application up to one year.

(2) The extension of the time limit for the examination may be applied for in a written request with a statement of reason, which is submitted to O.S.I.M. and shall be subject to the payment of the fee, adequate to the procedure to which it refers, of the annex to the Law.

Rule 22

Withdrawal of Variety Patent Application

(1) The applicant may withdraw the variety patent application filed with O.S.I.M., any time until a decision on the grant of the variety patent is taken.

(2) Were the technical examination procedure of the variety has started, the examination fees shall not be refunded to the applicant.

(3) Withdrawal of the variety patent application by the applicant is performed by submitting a notification to O.S.I.M.

Rule 23

Revocation of the Decision to Grant a Variety Patent

(1) The decision to grant the variety patent is published in BOPI-SSPBS.

(2) Within 3 months from the date of publication any interested person may apply to O.S.I.M. for the revocation of the decision to grant a variety patent, only where the following conditions have not been met:

- a) the variety is not new;
- b) the variety is not distinct;
- c) the variety is not uniform;
- d) the variety is not stable;
- e) the applicant is not the person entitled to be granted protection;
- f) the variety denomination is not adequate or infringes previous rights.

The request for revocation shall be made in writing with statement of reason and shall be accompanied by the proof of payment of the examination fee prescribed in the Law, and by the documents supporting the revocation.

(3) Within maximum 3 months from the date of filing thereof, the Board of Appeal of O.S.I.M. shall examine the request for revocation and shall take a decision regarding the candidate variety.

(4) In order to take a decision, O.S.I.M. may ask the person who lodged the request for revocation to submit documents and additional concerning the variety.

(5) When the request for revocation is based on non-fulfilment of the requirements of distinctness, uniformity and/or stability, the Board of appeal may request the repetition of the trial by I.S.T.I.S. or by other authority designated by M.A.A.

(6) The Board of Appeal may request the examination of the candidate variety by crop experts.

(7) In such cases O.S.I.M. shall inform the applicant that a request for revocation was submitted and shall allow him a time limit for reply.

(8) In case of growing tests repetition, the applicant may inspect the crop in order to support his variety.

(9) Within 15 days from the pronouncement of the decision of the Board of Appeal shall be submitted both to the applicant and to the person who requested the revocation.

(10) The final and irrevocable decisions shall be published in BOPI-SSPBS within 30 days and may be challenged as provided for in Art. 38 of the Law.

Rule 24

Issue of the Variety Patent and Registration of the Variety Denomination

(1) When, after the variety examination, it has been established that the variety fulfils cumulatively the requirements

provided for in Art. 5 of the Law and that the applicant is the person entitled to the grant of the variety patent, the Examination Board of O.S.I.M. decides to grant the variety patent. Within 6 months from the publishing of the decision in BOPI-SSPBS, the director general of O.S.I.M. issues a variety patent to which the official description of the protected variety is attached.

(2) The protected variety is entered in RNBSP which is open to the public and may be consulted on payment of the inspection fee prescribed by the Law.

(3) Where the variety patent application is filed with O.S.I.M. by two or more applicants, the variety patent accompanied by the official description is granted to the first applicant mentioned in the application and the others shall be issued a duplicate thereof, on payment of the fee prescribed in the annex to the Law.

CHAPTER V

Rule 25

Duration of Variety Protection

(1) The term of protection of the variety shall be 25 years as from the date of grant of the variety patent.

(2) For the new varieties of fruit-trees, vines and ornamental trees, forest trees included, the duration of protection is of 30 years as from the date of the grant of the variety patent.

(3) During the whole variety protection period, the applicant shall pay the annual maintenance fees of the variety patent at the terms prescribed in the annex to the Law.

CHAPTER VI

RIGHT OF THE VARIETY HOLDER

Rule 26

Exclusive Right of the Variety Patent Holder

In implementing the provisions of Art. 27 of the Law, the variety patent holder shall enjoy the exclusive right of exploitation of the new variety and the right to prevent third party without his authorization from performing the following acts, in relation to the propagating material: production and reproduction of the biological material for the purpose of propagation, processing for the purpose of propagation, offering for sale or selling, exporting or importing and stocking for these purposes.

Rule 27

Exceptions to the Exclusive Right of the Variety Patent Holder

Any interested person may perform, without the holder's authorization, the following acts, according to the provisions of Art. 28 of the law:

- a) the use of the protected variety for personal and non-commercial purpose, for example by the farmer for his household necessities or by an amateur in his garden;
- b) the use of the protected variety for experimental purposes and in the process of breeding, which allows to carry on the use of the protected varieties and ensures the breeding of new varieties.

Rule 28

Exhaustion of the Variety Patent Holder's Rights

- (1) Within the meaning of Art. 29 of the Law, the acts relating to any material of the protected variety shall not be considered an infringement of the holder's rights to the protected variety or to a variety covered by the provisions of Art. 27 of the Law, if sold or marketed by the breeder or with his consent.
- (2) Within the meaning of paragraph (1), material is considered:
 - a) the propagating material of any kind;
 - b) entire plants or parts of plants; and
 - c) any product made directly from the harvested material.

CHAPTER VII

LAPSE OF THE VARIETY PATENT

Rule 29

Invalidation of the Variety Patent

- (1) Any interested person may file a request for invalidation of the variety patent with O.S.I.M. any time during the period of protection for any of the reasons provided for in Art. 30 paragraph (2) of the law.
- (2) The request for invalidation of the variety patent shall be submitted in writing with statement of reason to the Board of appeal of O.S.I.M, being accompanied by the documents sustaining the invalidation and by the proof of payment of the legal fee.
- (3) The Board of Appeal shall invalidate the variety patent when it has been established that:
 - a) the interested person proves that at the date of filing the variety patent application, the variety did not fulfil the novelty requirement condition in terms of Art. 6 of the Law;
 - b) the interested person proves that the variety was not distinct in terms of Art. 7 of the Law;
 - c) the variety was not uniform in terms of Art. 8 of the Law;
 - d) the variety was not stable in terms of Art. 9 of the Law on the date of granting the variety patent;

- e) finds out, based on the notification submitted by the interested person, that the applicant was not entitled to be granted protection.

(4) Where a transfer of rights on a new variety took place and the variety patent was granted without fulfilling the provisions of Article 10 paragraph (1) of the Law, O.S.I.M. invalidates the granted variety patent and grants another variety patent to the person to whom the right to the variety patent was transferred.

(5) The Board of Appeal of O.S.I.M. takes no decision before informing the applicant that a request of invalidation has been filed, giving him the opportunity to express his opinion in front of the Board.

(6) The decision of the Board of Appeal shall be submitted to the parties within 15 days from the pronouncement and it may be challenged under Art. 38 of the Law.

(7) The final and irrevocable decision of invalidating the variety patent shall be entered into RNBSP and published in BOPI-SSPBS.

(8) The variety patent is deemed being invalidated starting from the date when the variety patent application was filed with O.S.I.M.

Rule 30

Forfeiture of Rights

- (1) O.S.I.M. shall declare the holder's rights forfeit only after having notified the holder about the non-fulfilment of one of the conditions provided for in Art. 31 paragraph (1) of the Law and after a three-month period for reply has been granted.
- (2) Failing the answer from the applicant within the period allowed or failing the request of extension of the time period for correcting the deficiencies, O.S.I.M. declares the variety patent holder's rights forfeit and the forfeiture is entered into the RNBSP and published in BOPI-SSPBS, and it shall be effective as of the date of entering.
- (3) The holder shall enjoy a six-month time limit from the date of publication of forfeiture and may request the revalidation of the variety patent after having corrected the deficiencies and having paid the related annual fee.
- (4) The request of revocation of the variety patent shall be submitted to O.S.I.M. and shall be settled by the Board of Appeal depending on the reason for which the holder's rights have been declared forfeit.
- (5) The decisions of the Board of Appeal relating to the request of revalidation of the variety patent shall be communicated to the applicant within 15 days of being pronounced and may be challenged under Art. 38 from the Law.
- (6) The final and irrevocable decisions of revalidation shall be published in BOPI-SSPBS.

(7) Committing the acts provided for in Article 27 from the law, namely the commercial exploitation of the variety in the period between the forfeiture of rights and the revalidation of the variety patent, according to the provisions of Article 31(5) from the Law shall not constitute infringement of the holder's rights.

Rule 31

Renunciation to the Variety Patent

(1) Renunciation shall be made on the basis of a written declaration signed by the holder, submitted to O.S.I.M.

(2) The holder shall inform the breeder of his intention to renounce the variety patent prior to renunciation.

(3) The breeder has the right to request the holder to transfer his rights in the patent to him and the holder is obliged to transfer this right.

(4) Renunciation or the transfer of right in the protected patent, as the case may be, becomes effective on the date of entering into the RNBSP.

(2) Where the protected varieties are pendent of other protected varieties the transfer of rights must be total and with the first protected variety holder's consent.

(3) The request for transfer of rights will be sent to OSIM accompanied by the documents as the case may be:

- a) assignment contract
- b) licence contract
- c) act of legal or testamentary successions
- d) other documents for proving the new holder.

(4) The transfer of rights shall not affect the previous rights of third parties.

(5) The assignment or licence contract shall be registered in RNCBS or in RNBSP simultaneously with its publishing in BOPI-SSPBS and it shall take effects to third parties beginning with the date of registration.

(6) The registration according to paragraph (5) will be made on condition of payment of the fee provided for in the Annex to the Law.

CHAPTER VIII

EXPLOITATION OF THE PROTECTED VARIETY

Rule 32

Maintenance of the Protected Variety

(1) Upon request, the holder shall supply samples of the protected variety or, if required, components thereof to O.S.I.M., I.S.T.I.S or to the authority designated by M.A.A. in a preestablished period of time.

(2) O.S.I.M. may ask the holder to maintain and preserve samples of propagating material on behalf of O.S.I.M., I.S.T.I.S and of the authority designated by M.A.A.

(3) Upon request by O.S.I.M., the holder is obliged to supply propagating material in order to verify whether the variety was maintained adequately or whether the protected variety still satisfies the distinctness, uniformity or stability conditions.

(4) The holder is obliged to submit information and documents attesting the existence of the protected variety upon request by O.S.I.M.

(5) Where the holder does not comply with the requests by O.S.I.M. and/or I.S.T.I.S or by the authority designated by M.A.A., O.S.I.M. shall declare his rights under the variety patent forfeit, in accordance with Art. 31 (1) (a) from the Law.

Rule 33

Transfer of Variety Rights

(1) The transfer of rights on the variety is performed in accordance with Article 34 of the Law and can be total or in part.

Rule 34

Assignment Contract

(1) The assignment is made in writing by an assignment contract in which the identification data of the breeder and of the person to whom the assignment was made are mentioned, the object of assignment, also the data and the interested parties signatures in authentic form.

Rule 35

Licence Contract

(1) The licence can be exclusive when it is granted only to one person or non-exclusive when it is granted to more interested persons.

(2) In the case of an exclusive licence the holder gives to the licensee an exclusive right of exploitation of the protected variety.

(3) The exclusive licence is limited in time.

(4) The licence of a non-exclusive licence has no right to grant the rights of exploitation of the protected variety to third parties.

(5) The non-exclusive licence may be registered at request in RNBSP on condition of payment of the prescribed fee specified in the Annex of the Law.

(6) At the holder's request and on the condition of payment of the legal fee, OSIM publishes in BOPI the offer for granting the licences for a protected variety and the identification

data of the holder in order to be contacted by interested persons.

Rule 36

Compulsory Licence

(1) Any interested person may request to OSIM the granting of a compulsory licence in the conditions set up in Article 37 of the Law.

(2) The request for a compulsory licence must contain the applicant's identification data, the reason of requesting the grant of a compulsory licence for the protected variety, documents to proof his competence, finances and facilities to exploit in good conditions.

(3) The request must contain the proof of payment of the fee specified in the Annex of the Law.

(4) Compulsory licence confers to the licensee a non-exclusive right of exploitation of the protected variety.

(5) Compulsory licence being non-exclusive does not prevent the variety patent holder from exploiting and/or from granting licences to third parties.

(6) OSIM shall grant compulsory licences at the request of an interested person, only after substantiated analysis and if necessary asking the advice of professional organizations.

(7) The Board of Appeal shall establish the specific conditions for exploitation of the protected variety, the duration and the amount of compensation payable to the holder.

(8) Non-compliance of the licensee with the conditions of exploiting the variety may determine the withdrawal of the licence by OSIM.

(9) Compulsory licence may be withdrawn to the request of the holder on justified grounds.

(10) The withdrawal of a compulsory licence shall be made by the Board of Appeal of OSIM.

(11) OSIM may extend a compulsory licence if the matter of public interest is maintained and the conditions of granting are unchanged.

(12) Decisions of granting or withdrawal a compulsory licence shall be notified to the parties within 15 days from pronouncement and they are published in BOPI-SSPBS and may be appealed against according to Article 38 of the Law.

Rule 37

(1) All decisions made by OSIM may be appealed against before the Board of Appeal within three months from communication.

(2) Appeals or requests for revocation, cancellation or re-

validation of the variety patent shall be made in writing and accompanied by substantiating documents and the proof of payment of the fee.

(3) The Board of Appeal will be different from the examination committee and will consist of a president and 2 or 4 members, depending on the grounds of appeal, in its composition M.A.A. and OSIM experts being designated as the case may be; one of the members of the Board of Appeal will be a legal adviser of OSIM.

(4) the members of the Board of Appeal will be approved by the order of OSIM's Director General.

(5) The Board of Appeal shall analyse the requests within 3 months from the date of filing at OSIM.

(6) For justified cases, which require the repetition of the growing tests, the time limit for the examination can be extended.

CHAPTER IX

Rule 38

Competence

(1) For the implementing of Art.44 paragraph (2) of the Law, OSIM's competences are to:

- a) register the variety patent applications;
- b) publish in BOPI - SSPBS the variety patent applications having official filing date;
- c) examine the variety patent application as to form and substantive respectively to be in conformity with Rules 15 and 16;
- d) send the formally and substantively examined and admitted application to the national competent authority for validation when the applicant filed the findings after technical examination or for organising growing tests in order to establish distinctness, uniformity and stability of the candidate variety;
- e) grant and issue variety patents and establishes the final description based on findings sent by ISTIS or by the competent authority designated by M.A.A. in a standardized form;
- f) organize and keep RNCBS and RNBSP.

(2) OSIM periodically issues BOPI-SSPBS comprising all information regarding the variety patent applications and the granted variety patents.

(3) OSIM publishes in BOPI the information as follows:

- a) the variety patents applications;
- b) the denominations of the varieties;

- c) the registered denominations for the protected varieties;
- d) the withdrawn variety patents applications;
- e) the rejected applications;
- f) the variety patents granted;
- g) the changing of persons respectively applicants and holders;
- h) the changing of authorized agents;
- i) the invalidation of variety patents;
- j) the licences;
- k) all modifications and observations.

(4) All information mentioned shall be registered in an electronic form on CD in order to ensure the changing of information with offices and national administrations from other states and with organizations and international specialised bodies.

(5) OSIM establishes together with M. A. A. for every species the characteristics to be mentioned in the technical questionnaire and in the standardized description, these documents being part of the variety patent application filed with OSIM for examination and for granting the variety patent.

(6) For the representation of the applicants by an authorised agent in the procedure of examination, OSIM together with M.A.A. organise training courses and authorise them.

(7) M.A.A. for the implementation of Articles 18 and 19 of the Law has the competences to:

- a) establish the methodology of conducting the growing tests and organising the trials in the field and/or in greenhouses in conformity with the existing experience in the country and in accordance with international guidelines;
- b) establish the flow of technical examination of plant varieties;
- c) cooperate with OSIM, breeders' national association, variety patents, holders association, seed and plant, material multiplication producers associations and with other bodies specified in Article 44 paragraph (3) lit.b) of the Law;
- d) establish different criteria of evaluation of the new varieties of plants and of the changing of the methodology and appoints experts or researcher-breeders to produce the methodology of conducting the growing tests and identifying new varieties and species of plants;
- e) designate crop experts for the OSIM's Board of Appeal in cases of appeal in which technical examination of the candidate variety is involved.

Rule 39

Time Limits

(1) Time limits established on day basis comprise calendar days and do not include the first and the last day. Monthly time limits are considered to elapse in the day of the next month equivalent to the day on which the documents were sent.

(2) The time limit beginning with the day of 29, 30 or 31 of the month and ending in a month not having such a day shall be the first day of the next month.

(3) The time limit ending on a holiday will be extended to the end of the first working day.

(4) The time limits begin to run from the date of sending the procedural documents, namely the date on which the document issued by OSIM, was received by the applicant, holder or agent as the case may be.

This date shall be confirmed by the receiving post office stamp.

(5) Procedural documents sent to OSIM by mail shall be considered to observe the time limits, if they were mailed before the end of the time limit.

(6) Non-compliance with the time limits notified by OSIM for sending the procedural documents shall not result in sanctions provided for in the Law, if the applicant proves that he was prevented from doing that, by circumstances beyond his will and if he complies with the procedure, within two months.

Rule 40

Forms

(1) In the filing procedure before OSIM, standardized forms shall be used.

(2) OSIM shall furnish upon request the forms specified at paragraph (1).

Rule 41

National Register of Variety Patent Applications

In the National Register of Variety Patent Applications (RNCBS) the following indications are published:

- a) number of the application;
- b) species, botanical taxon and the denomination;
- c) official filing date;
- d) name and address of the applicant;
- e) name and address of the breeder;
- f) name and address of the agent;
- g) modifications in the legal status.

Rule 42

National Register of Protected Varieties

In the National Register of Protected Varieties several indications are registered:

- a) date and number of the application filed with OSIM;
- b) priority date;
- c) official filing date;
- d) name and the address of the applicant;
- e) State on which territory the applicant has the place of residence;
- f) name and address of the agent;
- g) name and address of the breeder;
- h) botanical taxon;
- i) final denomination of the variety;
- j) name/denomination and address/ holder's headquarter;
- k) changing of the address and of the holder's name;
- l) any modifications or transfer of rights;
- m) payment of issuing and maintenance of variety patent fees;
- n) variety patent holder;
- o) declaration of renunciation to the variety patent;
- p) decision of annulment or invalidation of the variety patent, as the case may be.

KINGDOM OF SPAIN

LAW 3/2000 GOVERNING THE PROTECTION OF PLANT VARIETIES*

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* The Law 3/2000 was adopted on January 7, 2000.

Translation by the Office of the Union in consultation with the national authorities.

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ANNEX 1

Law in respect of which an exception may be admitted to Article 14 of the Law

ANNEX 2

Classification of plant species for the purpose of determining the amount of the fees in Articles 54 and 56

JUAN CARLOS I King of Spain

To all those who may see and hear the following -
Let it be known that Parliament has adopted and I have duly ratified the following Law.

FOUNDATIONS

1

The existence of a legal system for the protection of the rights of breeders of plant varieties will have a positive impact on the national economy in general and on the agricultural sector in particular in that it will stimulate the investigation and the consequent increase in private resources devoted to this activity, which will in turn facilitate the access of farmers to new technologies, improve farming productivity and, in the final analysis, result in an increase in the competitiveness of our products and the profits realised by farmers.

To date, the system for the protection of plant breeders has been covered by the International Convention for the Protection of New Varieties of Plants of 2 December 1961, administered by the International Union for the Protection of New Varieties of Plants (UPOV), signed and ratified by the Kingdom of Spain, and embodied in Law 12/1975, of 12 March 1975, on the Protection of Plant Varieties based to a large extent on the said Convention.

2

There are two fundamental reasons that justify the adoption of new domestic legislation on the protection of plant breeders:

Firstly, it is necessary to adapt domestic legislation to a changing international legal environment. On one hand, the UPOV International Convention has been revised on various occasions; revisions introduced by the Conventions of 10 November 1972 and 23 October 1978 were incorporated into domestic legislation, yet the Convention of 19 March 1991 introduced novelties of which account must be taken in the law of the land.

Conversely, the European Union has adopted its own protection system with Council Regulations (CE) 2100/94 of 27 July 1994 governing Community protection of plant varieties. Nevertheless, Article 3 of these Regulations (CE) recognises the right of the States members of the European Union to “grant national property rights for plant varieties”, although it expressly prohibits the simultaneous application of domestic and Community Law. The Spanish State opts for the establishment of its own protection system, although harmonised with that of the Community; in this connection, account should be taken of the fact that Community Law defers to domestic Law on all matters that could arise in connection with legal action that may be taken in respect of breaches of such a right.

Secondly, recent advances in biotechnology and genetic engineering that have accelerated the process of obtaining plant varieties and the experience acquired over the past twenty years, make it necessary and, of course, advisable to amend current legislation to bring it into line with all industrialised countries, not only of the European Union but also of other continents.

The fundamental objectives of the present Law, apart from adapting to international norms, is to reinforce the protection of plant breeders and to improve the operation of the public administration in the exercise of the functions relative to the matter governed by this Law.

The rights of plant breeders will be strengthened by the more precise and technically more perfect regulation of the facilities conferred on them by the plant breeder's rights, as well as the extended duration of protection for all plant species which, in turn, will encourage research in this field. Concretely, the main innovations of this Law are the following:

Firstly, it more precisely defines the facilities of plant breeders with respect to the exploitation of their protected varieties, clearly defining the Laws of third parties relating to such varieties that require the authorization of the breeders and it reinforces the action that can be taken against those who disregard such facilities.

Secondly, it clearly defines the term “farmer's exception” that refers to those situations in which farmers may avail themselves of the plant material produced on their own property for their own use without needing to obtain the authorization of the plant breeder of the variety used or making a payment to that breeder.

Besides the farmer's exception, some exceptions to the plant breeder's rights are clarified that were previously not very well defined. Possibly the most important is that of the use of the protected varieties as material for the creation of new varieties, thereby avoiding any limitation on research in this field. The concept of the essentially derived variety without a doubt plays an important role with respect to the limitation of the rights of plant breeders and will solve situations that in the past posed problems concerning the attribution of ownership of varieties.

Thirdly, the duration of protection for all plant species is increased, thereby offering greater incentive for research into

the obtaining of new varieties and bringing these period into alignment with those applicable in other countries.

Fourthly, our legislation now offers the possibility of marketing plant varieties in Spain before requesting protection, so that the plant breeders may, before submitting to the protection system, determine, on the one hand, the practical results and productive value of a variety before incurring expenses that would not be covered in the case of varieties of mediocre results and, on the other, the reaction of farmers to the supply of new varieties.

An effort will be made to improve the operation of the organs involved in the exercise of these functions by more simply and precisely describing their functions and the procedures according to which they perform those functions. In general, the Law improves the operation of the various organs concerned by giving them a far more technical, legal and scientific content than they have had hitherto and by deeply involving representatives of economic agents.

From another point of view, this Law allows for greater international co-operation, not only with other States members of the European Union, but also with third countries, as the systems for establishing co-operation in this area become more flexible.

Furthermore, it should be pointed out that advantage is being taken of this Law to incorporate into domestic legislation Article 12 of Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions relating to the compulsory granting of cross-licences.

Finally, in the case of varieties that contain or consist of genetically modified organisms, Law 15/1994, of 3 June 1994 will be applied which determines the legal system governing the technical examination required for the confined use, voluntary release and commercialization of modified organisms in order to prevent risks to human health and the environment.

The present Law is issued pursuant to Article 149.1.9 of the Constitution that confers on the State exclusive jurisdiction to legislate on intellectual and industrial property and Article 149.1.1 that confers on the State the right to regulate the basic conditions guaranteeing the equality of all Spaniards in the exercise of their rights and the performance of their constitutional obligations.

PREAMBLE GENERAL PROVISIONS

Article 1

Object of the Law

1. The object of the present Law is to establish the legal regime governing the protection of plant varieties.
2. A plant variety right shall be granted for the recognition and protection of the entitlements of the breeder of a new plant variety.

Article 2

Definition of variety

1. For the purpose of this Law, 'variety' shall be taken to mean a group of plant within a single botanical taxon of the lowest known rank, which group, irrespective of whether the conditions for the grant of a plant variety right are fully met, can be:

- (a) Defined by the expression of the characteristics that result from a given genotype or combination of genotypes,
- (b) Distinguished from any other plant group by the expression of at least one of the said characteristics, and
- (c) Considered as a unit with regard to its suitability for being propagated unchanged.

2. For the purpose of this Law, a plant group shall consist of entire plants or parts of plants as far as such parts are capable of producing entire plants.

Article 3

Definition of plant breeder

1. For the purpose of the provisions of this Law, 'plant breeder' shall be understood as the person who created or discovered and developed a variety, or his successors.

2. 'Breeder's rights' shall be understood as all of the rights conferred the holder of a plant variety right under the terms of the present Law.

Article 4

Scope of application

The present Law shall apply to all plant genera and species including hybrids of genera or species.

PART I

SUBSTANTIVE LAW

CHAPTER I

REQUIREMENTS OF PLANT VARIETY

Article 5

Conditions of variety

1. Plant variety rights shall be granted for varieties that are:

- (1) New
- (2) Distinct
- (3) Uniform, and

(4) Stable

2. The granting of plant variety rights may not depend on any conditions additional to or different from those mentioned, provided that the variety be designated by a denomination according to articles 47, 48 and 49, that the plant breeder has complied with the formalities foreseen by this Law and any complementary provisions and that he has paid the appropriate fees.

Article 6

Novelty

1. The variety shall be deemed new if, on the date of filing of the variety right application, the reproductive or vegetative multiplication material or a 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 or, if this has been done, the following periods have not elapsed:

- (a) One year from the above-mentioned date, if the sale or disposal took place in Spain;
- (b) Four years from the above-mentioned date, if the sale or disposal took place outside Spain and did not concern trees or vines;
- (c) Six years from the above-mentioned date, if the sale or disposal took place outside Spain and concerned trees or vines.

2. The condition of novelty shall not be deemed forfeit for sale or disposal to others in the following cases:

- (a) If it results from an abuse committed to the prejudice of the breeder;
- (b) If it results from a transfer of rights to the variety;
- (c) If it results from material for the reproduction or multiplication of the variety being produced by a third party on behalf of the breeder, provided that such material comes under the control of the breeder.
- (d) If it results from its use by a third person to conduct field or laboratory trials including small-scale transformation tests for the purpose of evaluation.

3. Likewise, the condition of novelty shall not be forfeit by the mere fact of the variety having been entered in an Official Varieties Register admitted for marketing purposes or in compliance with other legal obligations relating to biosecurity.

4. When the production of a variety requires the repeated use of one or more other varieties, the sale or disposal to others of material for reproduction or multiplication or of the product of the harvest of the first-mentioned variety on the conditions set forth in sub-paragraph 1 above, the condition of novelty of the variety or varieties used in such production shall no longer obtain.

Article 7

Distinctness

1. A variety shall be deemed to be distinct if it is clearly distinguishable, by reference to the expression of the characteristics that result from a particular genotype or combination of genotypes, from any other variety whose existence is a matter of common knowledge on the date of application.

2. The existence of a variety shall in particular be deemed to be a matter of common knowledge from the date on which an application has been filed in any country for:

- (a) either a plant variety right, provided that this leads to obtaining the requested protection;
- (b) or entry of the variety in an official register, provided that it is finally registered.

3. Common knowledge of the existence of another variety may also be deduced from the exploitation of the variety having commenced, the presence of the variety in a reference collection or from any other means of proof.

Article 8

Uniformity

A variety shall be deemed uniform if, subject to the variation that may be expected from the particular features of its sexual propagation or vegetative multiplication, it is sufficiently uniform in the expression of those characteristics.

Article 9

Stability

A variety shall be deemed to be stable if the expression of its specific characteristics remains unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

CHAPTER II

REQUIREMENTS OF THE APPLICANT

Article 10

Entitled applicant

1. The person who bred a variety as defined in Article 3(1) above may apply for a plant variety right. Where the application is filed by an entitled assignee of the plant breeder that assignee shall provide due proof of his condition as assignee.

2. Save proof to the contrary, the applicant shall be considered the holder of the breeder's right.

3. If two or more persons bred or discovered and developed the variety jointly, entitlement shall be vested jointly in both or all of them.

4. This entitlement shall also apply to the breeder and any other person if the breeder and the other person have agreed to share such rights.

5. If the breeder is an employee working for another or a civil servant, the entitlement to a plant variety right shall be determined in accordance with the law applicable to the employment relationship in question and, where none such exist, in accordance with the regulations governing inventions by employees contained in Part IV of the Patent Law, being Law 11/1986 of 20 March 1986.

Article 11

Nationality of applicant

The following individuals or bodies corporate may apply for the plant variety rights governed by the present Law:

- (a) Those of Spanish nationality or that have their domicile or registered office in Spain.
- (b) National of a State member of the European Union or of the International Union for the Protection of New Varieties of Plants (UPOV) or of a State that is member of an intergovernmental organization that is member of the said Union or that have their domicile or registered office in one of those States.
- (c) Foreigners not included in the previous paragraphs, whenever, in the State of which they are nationals, Spanish individuals or bodies corporate are granted equivalent rights.

CHAPTER III

PLANT BREEDER RIGHTS

Article 12

Scope of plant breeder's rights

1. Protection of the variety confers the beneficiary or the beneficiaries of the plant variety rights the exclusive right to execute the several Laws described below on the variety in question.

2. Without prejudice to the provisions of Articles 14 and 15, the following Laws in respect of variety constituents shall require the authorization of the holder:

- (a) production or reproduction (multiplication);
- (b) conditioning for the purpose of propagation;
- (c) offering for sale;
- (d) selling or other form of marketing;
- (e) exporting;
- (f) importing, or
- (g) stocking for any of the purposes mentioned in (a) to (f).

3. The holder may make his authorization subject to conditions and limitations.

Article 13

Other cases that require the authorization of the holder

1. Notwithstanding the provisions of Articles 14 and 15, the authorization of the holder shall be required for the Laws mentioned in Article 12(2), conducted on the product of the harvest, including whole plants and plant parts, obtained by the unauthorized use of reproduction or multiplication material of the protected variety, unless the plant breeder has been reasonably able to exercise his right in respect of this reproduction or multiplication material.

2. Regulations may provided that, subject to the provisions of Articles 14 and 15, the authorization of the plant breeder shall be required for the Laws mentioned in Article 12(2)(a) to (g), when conducted on products manufactured directly from the yield of a crop of the protected variety covered by the provisions of clause 1 of the present article, by the unauthorized use of the said harvest yield, unless the plant breeder has been reasonably able to exercise his right in respect of this harvest yield.

3. The provisions of Articles 12 and 13(1) and (2) shall also apply to:

- (a) The varieties derived essentially from a protected variety when that is not in turn an essentially derived variety.
- (b) Varieties that are not clearly distinguished from the protected variety, pursuant to the provisions of Article 7.
- (c) Varieties whose production needs the repeated use of the protected variety.

4. For the purposes of paragraph 3(a), a variety shall be deemed to be essentially derived from another variety, referred to hereinafter as '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 at the same time conserving those expressions of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.
- (b) It is quite distinct from the initial variety; and
- (c) Except for the differences which result from the Law of derivation, it conforms essentially to the initial variety in the expression of the characteristics that result from the genotype or combination of genotypes of the initial variety.

Article 14

Exception for the benefit of the farmer

1. Farmers shall be authorized for the purpose of propagation on their own farms, to use the product of the harvest obtained from the sowing on such farms of material for the propagation of a protected variety that has been legally acquired and is neither hybrid nor synthetic.

- (a) For the purpose of this Law, the term "own farm" shall be understood to be any farm or part thereof that the farmer really uses to cultivate plants, whether he be the proprietor thereof or whether he administer it under his responsibility and for his own account, in particular in the case of leased land.
- (b) Similarly the term "farmer" shall be understood as referring to any individuals, bodies corporate, co-operatives, agricultural processing companies, mercantile companies or any other admitted in Law as owner of the farm for the purpose of administering it under their own responsibility and for their own account.

2. The exception to which this Article refers shall apply only to the plant species mentioned in Annex 1.

3. The exercise of the exception shall be subject to the following rules:

- (a) There shall be no quantitative restrictions on the farmer's exploitation when the operational needs of the farm require that no such restrictions apply.
- (b) The product of the harvest may be processed to provide seed stock to be sown by the farmer himself or by any services to which he may resort but the identity of the product to be processed and the product resulting from the process must be clearly identified at all times.
- (c) Smallholding farmers shall not be obliged to pay the right-holder a fee. For the purpose of this Law, smallholding farmers shall be considered those determined by regulation according to the peculiarities of the species they produce.
- (d) All other farmers shall be obliged to pay the holder a fee that shall be considerably less than the amount paid for production under licence of the propagation material of the same variety in the same area.
- (e) Verification of the observance of the provisions of this Article or of those adopted pursuant hereto shall be the exclusive responsibility of the holder of the plant varieties right.
- (f) Farmers and those providing processing services shall, on request, provide the holder of the plant varieties right with any information he may deem necessary.

4. Official bodies involved in verification may provide relevant information if they came by it in the ordinary performance of their duties and provided that this incurs no additional burden or cost. This provision shall be understood in accordance with domestic or Community provisions on personal data protection.

Article 15

Limitations on the plant breeder's rights

The plant breeder's rights shall not extend to:

- (a) Laws done privately and for non-commercial purposes;
- (b) Laws done for experimental purposes;
- (c) Laws done for the purpose of breeding other varieties as well as Laws referred to in Article 12(2) and Article 13(1) and (2), in respect of such other varieties, except where the other varieties are: varieties essentially derived from the protected variety or that they are not clearly distinguished from the protected variety or that they are varieties whose production needs the repeated use of the protected variety.

Article 16

Material of a variety

1. The plant breeder's rights shall not extend to Laws concerning any material of the protected variety, or of a variety covered by the provisions of Article 13(3), which has been disposed of or marketed to others by the holder or with his consent in Spain, or any material derived from the said material, unless such Laws:

- (a) Involve further reproduction or propagation of the variety in question; or
 - (b) Involve the export of variety constituents, from which it can be produced, to a third 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 the present Law, the word "material" used in relation to a variety shall be understood to mean:
- (a) The reproduction or vegetative multiplication material in any form.
 - (b) The product of the harvest, including whole plants and plant parts.
 - (c) All products directly made from the product of the harvest.

Article 17

Limitations in the public interest

- 1. The exercise of the plant breeder's rights may be limited only for reasons of public interest that shall be approved by Royal Decree adopted by the Council on a proposal from the Minister of Agriculture, Fisheries and Food.
- 2. Reasons of public interest shall be deemed to exist:
 - (a) When the initiation, increase in the generalization of exploitation of the protected variety, or the improvement of the conditions in which such exploitation is conducted be of crucial importance to public health or to national defence or the environment.
 - (b) When the lack of exploitation or the inadequate quality or quantity of exploitation incurs a serious threat to the economic or technological development of the country.
 - (c) When national supply requirements so demand.
- 3. When the limitations referred to in the previous paragraphs result in allowing a third party to do any of the Laws for which the authorization of the plant breeder is required, the Government shall adopt such measures as may be necessary to ensure that the plant breeders receive equitable economic compensation.
- 4. Likewise, exercise of the plant breeder's rights may, without the need to resort to the regime foreseen in paragraph 1 above, be limited when the varieties concerned by the rights contain genetically modified organisms by applying the provisions of Law 15/1994, of 3 June 1994, for which purpose the juridical regime shall be established for the confined use, voluntary liberation and commercialization of genetically modified organisms, in order to prevent risks to human or animal health and to the environment.

Article 18

Duration of protection

- 1. The term of the plant breeder's right shall run until the end of the 25th calendar year or, in the case of varieties of vine and tree species, until the end of the 30th calendar year, following the year of grant.
- 2. During the period ranging from the filing of the application to the granting of the plant breeder's right, the applicant for a plant varieties right shall be entitled to receive financial compensation from anyone who, during the said period, has done Laws which, after the granting of the right, would require authorization from the plant breeder, in accordance with the provisions of Articles 12 and 13.
- 3. To receive the financial compensation foreseen in the previous paragraph, the applicant shall inform the third party of the existence of the application.

4. Should the plant variety right not be granted, an applicant having received the financial compensation mentioned in this article shall reimburse that compensation with legal interest, unless otherwise expressly agreed between the parties.

CHAPTER IV

THE PLANT BREEDER'S RIGHT AS A PROPERTY RIGHT

Article 19

Independence of the plant breeder's right

The validity of the plant breeder's right shall not depend on any restrictions or limitations imposed on the production, monitoring and commercialization of the material of the varieties or the import and export of that material.

Article 20

Assignment of the right

1. Rights deriving from a duly filed application and the right of the plant breeder shall be assignable by any of the means admitted by Law, without prejudice to any limitation set by Law.

2. Laws whereby rights deriving from a duly filed application or from the plant breeder's rights are assigned or modified shall not affect rights acquired by third parties prior to the date of such Laws.

3. To be valid, all the Laws to which the previous paragraphs refer shall be set down in writing.

Article 21

Violation of the plant breeder's rights

The holder of a plant varieties right may take appropriate action of any class and nature before the courts of ordinary jurisdiction against anyone who violates those rights and may demand that the necessary measures be taken to safeguard those rights.

In particular the holder may demand:

- (a) An injunction for cessation of the Laws that violate the right.
- (b) Payment of damages.
- (c) The collection of all obtained vegetable material that is in the possession of any of the persons responsible for the violation and the destruction of such material, if indispensable.
- (d) The granting of ownership of the plant material referred to in the previous paragraph, in which case its value shall be set against the damages awarded. If the value of the

said products should exceed the damages granted, the holder of the right shall compensate the condemned party for the excess.

- (e) Publication of the sentence at the cost of the condemned party.
- (f) Adoption of measures necessary to avoid continuation of the violation of the rights.

Article 22

Damages

1. Anyone infringing the plant breeder's rights shall be liable for damages in respect of their having:

- (a) Conducted any of the operations cited in Article 12(2) of this Law without possessing the authorization of the holder of the plant variety rights.
- (b) Used, to the point of creating a risk of confusion, an identical or similar denomination to that of a protected variety, if that denomination is applied to another variety of the same or a botanically close species.
- (c) Omitted to use the denomination for a certain protected variety or changed the mentioned denomination.

2. Anyone violating the rights of the plant breeder in any other way different from those mentioned in paragraph 1, shall be liable for damages only when, in their performance they employed deceit or negligence, where deceit is deemed to obtain from the moment the offender has been warned by the holder of the plant variety right and summoned to cease violating the plant breeder's rights.

3. Damages in favour of the holder of the plant varieties rights shall include not only the value of the loss suffered and the earnings forfeited by the holder but also the prejudice that may be deemed to have been suffered from the discredit of the plant variety covered by the plant variety right caused by the offender through improper use thereof. In no case may the damages be less than the benefit derived by the person who committed the offence.

CHAPTER V

EXPLOITATION LICENSES

Article 23

Contractual licences

1. The holder of a plant varieties right may grant exploitation licences to the variety covered by the right provided that the conditions stipulated by that holder and on this matter in the present Law and its complementary provisions are met.

2. The licences may be exclusive or non-exclusive.

3. The licence contrLaws shall be set down in writing and shall not apply to third parties until duly entered in the Licence Register.

Article 24

Compulsory licences

1. The Council of Ministers may, by Royal Decree on the proposal of the Minister of Agriculture, Fisheries and Food, grant compulsory exploitation licences to varieties covered by plant varieties rights, pursuant to the terms of Article 17(2), if that be deemed necessary in order to safeguard the public interest.

2. A compulsory licence shall be granted only if the following requirements are met:

- (a) That the applicant be in a position, in particular technically and financially, to exploit the plant breeder's rights competently and professionally.
- (b) That the holder of the plant breeder's rights has refused to grant the applicant a licence or is not willing to grant it under reasonable conditions.
- (c) That more than three years have elapsed between the date of granting of the plant breeder's rights and the date of application for the granting of the compulsory licence.
- (d) That the person requesting the compulsory licence has paid the required fee for the granting thereof.

3. The mandatory licence confers on the holder thereof the non-exclusive right to do all or some of the Laws covered by Articles 12 and 13.

Article 25

Compulsory cross-licences

1. When a plant breeder cannot obtain or exploit a right to a plant variety without violating a prior patent, he may, by paying appropriate financial compensation to the owner of the patent, request a non-exclusive compulsory licence to the invention protected by the prior patent, to the extent that that licence is in fact necessary for the exploitation of the plant variety that is to be protected. This financial compensation shall be determined by evaluating the factors relevant for that purpose and especially the economic importance of the invention.

When a licence of this type is granted, the holder of the patent shall be entitled to a reciprocal licence on reasonable conditions to use the plant variety for which the plant variety right was granted.

2. When the holder of a patent for a biotechnological invention cannot exploit it without infringing a plant variety right he may request a non-exclusive mandatory licence to that plant

variety protected by the said plant variety right by paying appropriate financial compensation to the holder of the plant variety right. This financial compensation shall be determined by evaluating the factors relevant for that purpose and especially the economic importance of the plant variety.

When a licence of this type is granted, the holder of the plant variety right shall be entitled to a reciprocal licence on reasonable conditions to use the protected invention.

3. Applicants for the licences referred to in the previous paragraphs shall demonstrate:

- (a) That an approach had in vain be made to the holder of the patent or the plant varieties right to obtain a contractual licence, and
- (b) That the variety or invention constitutes a significant technical advance of considerable economic importance as compared to the invention claimed in the patent or to the protected plant variety.

4. The formalities and the handling of applications for compulsory cross-licences for the non-exclusive use of a patented invention, shall be governed in accordance with the provisions of Part IX, Chapter III of the Patent Law 11/1986, of 20 March 1986, and its supplementary regulations.

5. The formalities and the handling of applications for mandatory cross-licences for the non-exclusive use of a patented invention, shall be governed in accordance with the provisions of the present Law.

Article 26

Conditions of the compulsory licences

The Council of Ministers shall:

- (a) Set the equitable remuneration that the beneficiary of a compulsory licence shall pay the holder of the plant breeder's right, bearing in mind, *inter alia*, the economic importance of the variety.
- (b) Require, where necessary, that the holder of the plant breeder's right make available to the beneficiary of the compulsory licence the quantity of reproduction or multiplication material necessary for the reasonable use of this licence, subject to payment of appropriate remuneration.
- (c) Set the term of the compulsory licence which may not exceed four years and may be extended if deemed appropriate if the conditions for the granting of the said licence persist.
- (d) Withdraw the compulsory licence if the beneficiary infringes any of the conditions imposed when it was granted to him.

CHAPTER VI

NULLITY AND EXTINCTION
OF THE PLANT BREEDER'S RIGHT

Article 27

Nullity of right

The plant variety right shall be declare null and void in the cases foreseen in Article 62.1 of Law 30/1992 of 26 November 1992, being the Public Administrations and Civil Service Procedures Law, and, in particular, in the following circumstances:

- (a) When it is found that, at the time of the grant of the right, the protected variety did not comply with any of the conditions laid down in Articles 6 and 7 and, if the grant of the right was essentially based upon information and documents furnished by the applicant, that the protected variety did not comply with conditions laid down in Articles 8 and 9.
- (b) When the plant variety right was granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.

Article 28

Lapse of the right

1. The plant breeder's right shall lapse for the following reasons:

- (a) Because the period for which it was granted has expired.
- (b) Because the holder waives the right.
- (c) Because events occur which cause the loss of the essential properties of the plant variety as stated in Articles 8 and 9.
- (d) Because of failure to meet the obligations set forth in paragraph 2 below after having been summoned to do so by the Administration.

2. The plant variety holder shall meet the following obligations within the deadlines and in the manner established by regulation:

- (a) Submit to the competent authority the data, documents and material necessary for verifying the maintenance of the essential requirements of the protected variety.
- (b) Pay the due maintenance fee as referred to in Article 56.
- (c) Propose an appropriate denomination for the protected variety in the event of cancellation of that initially designated.

3. The lapse of the right shall incur the cancellation of the registration of the plant variety right in the Official Protected Varieties Register.

PART II

OFFENCES AND PENALTIES

Article 29

Administrative offences

1. Administrative offences shall be classified minor, serious and very serious.

2. The following shall be deemed very serious offences:

- (a) The transfer of plant material protected by a plant variety right that does not comply with the characteristics shown in its official description.
- (b) The non-fulfilment of the conditions stipulated in the exploitation licence of a protected variety which conditions affect the intrinsic qualities of the material or the circumstances that prompted the grant of the plant variety right.

(c) The provision of false data that could be relevant to obtaining the rights protected by the present Law.

3. The following shall be deemed serious offences:

(a) The concealment or the intent to conceal information relevant to obtaining the rights protected by the present Law.

(b) Laws whose purpose is to render more difficult verification of the Lawivities governed by this Law and observance of the rules laid down herein for their conduct and inspection.

(c) Refusal or resistance to providing data or information required by the appropriate body or its agents for the purpose of performing the functions of gathering information, conducting formalities, inspecting and executing matters referred to in the present Law.

(d) The concealment of information by the entities authorized to package seed stock, with respect to the provisions of Article 14.

(e) Failure to comply with the obligation to use the denomination designated to the variety as envisaged in Article 49(3).

4. Minor offences shall be any of the Laws described in paragraphs 2 and 3 above which do not involve deceit but mere negligence.

Article 30

Penalties

1. Offences described as very serious shall be penalized by a fine of between 700,001 and 1,500,000 pesetas.

2. Offences described as serious shall be penalized by a fine of between 300,001 and 700,000 pesetas.
3. Offences described as minor shall be penalized by a fine of between 100,000 and 300,000 pesetas.
4. In addition to the fines indicated in this article, the seizure of the plant material shall be ordered in the cases envisaged in Article 29(2)(a) and (b).

Article 31

Amount of the penalties

The amount of the fines shall in each case be determined by taking account of whether there was intent or repetition of the offence, the nature of the prejudice caused and whether this was a first or repeated offence.

PART III

ORGANIZATION

Article 32

Competent body

The Ministry of Agriculture, Fisheries and Food shall, directly or through a public body answerable thereto, be responsible for the formalities and handling of the grant procedures for plant varieties rights and shall exercise the right to impose penalties in relation thereto. Also, it shall conduct relationships in this matter, through the corresponding channels, with other States and international bodies.

Article 33

Official Protected Varieties Register

1. An Official Protected Plant Varieties Register shall be constituted and kept by the Ministry Agriculture, Fisheries and Food, wherein shall be registered applications for protection, decisions to grant plant variety rights and exploitation licences, as well as any other relevant circumstance determined by Law.
2. The Official Register shall be organized in books as required by Law.

Article 34

Plant Variety Protection Right Committee

1. A Plant Variety Protection Right Committee shall be created that shall be answerable to the Ministry of Agriculture, Fisheries and Food and which shall be given the following functions:
 - (a) To propose to the Minister of Agriculture, Fisheries and Food a resolution on the procedures for granting "Plant Variety Rights".

- (b) To officially propose to the Minister of Agriculture, Fisheries and Food the revision of Laws which are null and void or that annulable Laws related with the protection of plant varieties be declared prejudicial.
- (c) To propose to the Minister of Agriculture, Fisheries and Food that draft Royal Decrees on the granting of compulsory licences be submitted to the Council of Ministers pursuant to the terms of Article 25.
- (d) To propose to the appropriate body that measures be adopted and the relative norms be prepared for the protection of plant breeders' rights.
- (e) To investigate any matters relating to plant breeder's rights that are submitted to it.
- (f) Any other functions referred to it by Law or regulation.

2. The Committee shall comprise experts of recognized prestige in the spheres of botany, genetics, of seed stock and nursery plant production and jurists specialized in the system for protecting the plant breeder's rights. The Committee shall not represent the various sectors affected.

3. The nature, nomination, composition and operation of the Committee shall be determined by regulation.

PART IV

PROCEDURE

CHAPTER I

APPLICATION

Article 35

Application

1. Any person interested in the grant of a plant varieties right for a given variety shall submit an application to the Ministry of Agriculture, Fisheries and Food that shall, as minimum, include the following details:
 - (a) First names, last names and address of the applicant and, where applicable, of the applicant's representative.
 - (b) First names, last names and address of the plant breeder should this be different from the applicant.
 - (c) Genus and species to which the variety belongs.
 - (d) Denomination proposed for the variety or, if necessary, a provisional denomination.
 - (e) Nationality of the applicant and, where applicable, of the plant breeder.
 - (f) Technical description of the variety and of the procedure whereby the variety was obtained or discovered and developed and its genealogy.

(g) The date of any prior presentation in another country, the denomination under which the variety has been registered or, where there is none such, the provisional denomination and the country in which the plant breeder's right was requested, all of which will be required if a priority right is claimed for a previous application.

(h) Proof that the required fees have been paid.

2. The form and the detailed content of the application form, as well as the documents that must accompany it, will be specified by regulation.

3. Applications for the granting of a plant variety right may be filed with any of the offices and registries referred to in Article 38.4 of Law 30/1992, of 26 November 1992, being the Public Administrations and Civil Service Procedures Law.

Article 36

Priority application

The right of priority of an application shall be determined by the date of receipt of the application. Where applications have the same date of application, the priorities thereof shall be determined according to the order in which they were received, if this can be established. Otherwise they shall have the same priority.

Article 37

Publication of the applications

1. The Ministry of Agriculture, Fisheries and Food shall periodically publish an official gazette of protected varieties, of a merely informative character.

2. Data determined by regulation and in any case the following information shall be published in the gazette of protected varieties:

- (a) The applications for plant breeder's rights submitted and withdrawn.
- (b) The applications of denominations of varieties for which protection applications are being filed, a list of approved denominations, as well as of changes of denomination.
- (c) The plant variety rights granted and the applications refused.

Article 38

Priority Right

1. An applicant for a "Plant Variety Right" may benefit from the priority of an application to protect the same variety that was previously presented in:

- (a) Any State member of the European Union.

- (b) The 'Community Plant Varieties Office' of the European Union.

- (c) Any State member of the UPOV or of an intergovernmental organization affiliated thereto.

- (d) Any State which, without belonging to the UPOV, recognizes applications filed in Spain as having a priority right with equivalent effect.

2. Recognition of the priority of an application shall be requested within twelve months from its date of presentation and be duly accredited. Should several prior applications have been filed pursuant to paragraph 1 above, the priority shall refer to the oldest application.

3. Once a previous application has been recognized as having priority, the filing date of the application for the grant of the plant varieties right shall, for the purposes envisaged in Articles 6 and 7, be deemed to be the filing date of that application.

4. The Ministry of Agriculture, Fisheries and Food shall require that an applicant claiming priority provide a copy of the documents substantiating the first application, certified by the authority to which they were submitted, as well as any other proof that the variety referred to in the two applications are one and the same. The applicant shall have a minimum term of three months from the date on which the priority claim was filed to do this.

5. The plant breeder shall have two years from the expiry of the period for filing the priority claim, or from the time the first application was rejected or withdrawn in which to provide the Ministry of Agriculture, Fisheries and Food with any information, documentation or material demanded for conducting the examination foreseen in Article 40.

6. Events that occur within the term set in paragraph 2 above, such as the filing of another application, or the publication or use of the variety to which the first application applied shall not constitute grounds for rejecting the later application nor can these events create rights in favour of third parties.

CHAPTER II

APPLICATION PROCEDURE

Article 39

Examination of the application

1. The Ministry of Agriculture, Fisheries and Food shall ensure that the application filed meets the required conditions and, in particular, that:

- (a) It has been filed pursuant to the provisions of Article 10.
- (b) It meets the conditions set in Article 35(1).
- (c) It is accompanied by the documents determined by the relevant regulations pursuant to the provisions of Article 35(1).

(d) It complies with the provisions of Article 38 if priority is claimed for a prior application.

(e) Proof is provided that the relevant fees have been paid pursuant to the procedure set forth in Article 53.

2. The Ministry of Agriculture, Fisheries and Food will examine the documentation appended to the application to ensure that the variety be entitled to the plant breeder's right.

3. If, as a result of these verifications, certain lacunae are found, the applicant shall be granted ten days in which to make them good or to furnish the required documents for each case, and shall be informed that should he not comply, he shall be deemed to have withdrawn the application subject to a prior decision adopted to that effect by the appropriate body.

Article 40

Technical examination

1. Once the examinations referred to in the previous Article have been conducted with positive results, the variety will be subjected to a technical examination whose purpose shall be:

- (a) To ensure that the variety belongs to the described botanical taxon.
- (b) To determine that it is distinct, uniform and stable in accordance with the provisions of Articles 7, 8 and 9 respectively.
- (c) To establish an official description of the variety.

2. The Ministry of Agriculture, Fisheries and Food shall for each species or group of species, determine the precise norms for the conduct of the technical examination of which, at least the following shall be given in detail:

- (a) The plant material that the plant breeder is required to provide in order that the relevant observations may be made.
- (b) The characteristics as to the quality of the said material.
- (c) The dates and places where the said material should be deposited.
- (d) The duration of the examinations which shall last at least two years or seasons unless special circumstances indicate the contrary and any other details of the conduct thereof.

3. The technical examination shall be conducted under the responsibility of the Ministry of Agriculture, Fisheries and Food which may conduct it directly or in agreement with the Autonomous Communities or other Spanish or foreign institutions that perform similar tasks.

4. In such cases as may be determined, the results of technical examinations carried out in another country with which Spain has agreements on the protection of plant breeder's rights

may be used provided that the necessary technical guarantee can be provided.

5. In cases where the conduct of the technical examination involves difficulties, the Ministry of Agriculture, Fisheries and Food may agree that account be taken of the results of cultivation trials or other trials already conducted by the plant breeder.

6. In the case of a variety that contains, or constitutes a genetically modified organism, the specific regulations concerning the confined use, voluntary liberation and commercialization of genetically modified organisms shall apply in order to prevent any risk to human health and the environment.

Article 41

Opposition to the grant of a plant variety right

1. Anyone may oppose the granting of a plant varieties right by filing a written protest with the Ministry of Agriculture, Fisheries and Food.

2. Opposition may be raised only on one of the following grounds:

- (a) Failure to meet the conditions set in Articles 6 to 11 of the present Law. However, the opposition may not be based on matters of property and ownership which are matters for the ordinary courts.
- (b) Breach of the norms governing plant varieties denomination set forth in this Law or in its development regulations.

3. Anyone filing an opposition shall be deemed interested parties for the purposes of Law 30/1992, of 26 November 1992, being the Public Administrations and Civil Service Procedures Law.

Article 42

Opposition procedure

1. The applicant shall be informed of the oppositions and shall have three months to comment thereon and to state whether he has the intention of maintaining, modifying or withdrawing the application.

The answer given by the applicant will be communicated to the opponent that shall have one month in which to comment thereon one and to confirm or withdraw its opposition.

2. Oppositions presented shall be examined and resolved separately and independently from the procedure for the granting of the plant variety right.

3. The Ministry of Agriculture, Fisheries and Food may, for the purpose of settling oppositions raised, require those who raised the opposition to provide additional information and documentation as well as any necessary plant material for the purposes of technical examination.

Article 43

Access to the information

1. Parties involved in a procedure shall have access to the documents constituting the file at issue, including the results of the technical examination and the description of the variety, in all cases guaranteeing the secrecy of the plant variety.
2. For the purpose of ensuring the secrecy of the plant matter, only persons having a legitimate interest therein, for the purpose of consulting documents relative to the application and decision on the granting of a plant variety right shall have access to the files contained in the Official Register of Protected Plant Varieties and be entitled to visit the trials involved in the technical examination of the variety and the verification of its maintenance.
3. In the cases of varieties in which, to produce the material, the repeated use of material belonging to others is required, the applicant for the corresponding plant varieties right may, when presenting the application, request that the documents and trials relating thereto be treated in all due secrecy. In such cases, that part of the information or trials may be neither consulted nor visited, as appropriate.
4. The Ministry of Agriculture, Fisheries and Food shall be obliged to preserve the documentation contained in the files for five years from the expiry of the plant variety right or the withdrawal or refusal of the application for protection.

CHAPTER III

RESOLUTION OF THE PROCEDURE

Article 44

Resolution

1. The Ministry of Agriculture, Fisheries and Food, on the proposal of the of Protection of Plant Varieties Committee, shall grant a plant variety right to an applicant when, as a result of the technical examination of the variety, it is shown that that variety meets the conditions foreseen in Article 5 of the present Law and that it has fulfilled the other requirements foreseen therein.
2. The protection conferred by the plant variety right shall have retroactive effect from the moment of submission of the application.
3. The decision shall, however, not become effective until payment has been made of the fee provided for in Article 55.
4. The grant of the plant breeder's right to a plant variety shall be entered in the Register of Protected Plant Varieties.

Article 45

Duration of the procedure

1. If the maximum duration of the procedure expires without the Administration having handed down an express deci-

sion, the application for the plant variety right shall be deemed to have been rejected.

2. The maximum duration of the procedure shall be six months. The term shall be interrupted from the date of the communication to the applicant as envisaged in Article 42(4) of Law 30/1992, of 26 November 1992, being the Public Administrations and Civil Service Procedures Law. The interrupted term shall resume from the date on which the applicant is informed that the hearings procedure is open at which point the results of the trials referred to in Article 40 above will have been placed on the case file and the denomination been found suitable in accordance with the provisions Chapter IV below.

3. The duration of the said technical examination shall, where necessary, be set by regulation for individual species or groups of species.

Article 46

Expiry of the procedure

1. Should the procedure be paralyzed though some fault of the applicant, he shall be informed that, after three months, the procedure will expire. Once that period has elapsed without the requested party having performed the activities necessary for reviving the procedure, the procedure shall be declared lapsed and the filing of the documentation relating thereto shall be archived.
2. Notwithstanding the provisions of the previous paragraph, the procedure shall not be declared lapsed if the applicant properly justifies to the Ministry of Agriculture, Fisheries and Food that his failure to Law was the consequence of a fortuitous event or an Law of God or other exceptional circumstances.

CHAPTER IV

DENOMINATION OF THE VARIETY

Article 47

Denomination requirements

1. The variety shall be designated by a single denomination whereby it can be identified without risk of confusion with any other and which shall be its generic designation.
2. Without prejudice to the provisions of Article 48(3) below, no right relative to the designation registered as the denomination of the variety can hinder the free use of the denomination in connection with the variety, even after expiry of the plant breeder's right.
3. The denomination may not comprise only digits, mislead or lead to confusion concerning the characteristics, value or identity of the variety or the identity of the plant breeder.
4. A composition of letters and digits will be admitted as denomination of a variety only when it is to be used exclusively for the production of material for propagating other va-

rieties, that is to say an established practice for designating varieties.

5. The denomination must be different from all denominations designating an existing variety of the same plant species or of a closely related species in any State member of UPOV, or member of any of the intergovernmental organization members of UPOV.

Article 48

Registration of the denomination

1. The denomination of the variety shall be proposed by the applicant to the Ministry of Agriculture, Fisheries and Food.

2. It shall be registered at the same time as the plant breeder's right is granted. If it be found that the denomination does not comply with the requirements of Article 47(3), (4) and (5), the registration shall be refused and the plant breeder shall be required to propose another denomination within the deadlines set by the regulations. The rights previously acquired by third parties shall not be affected.

3. If, by virtue of a previous right, a person who is obliged to use the variety denomination is forbidden to do so, pursuant to the provisions of Article 49(3), the Ministry of Agriculture, Fisheries and Food will require that the plant breeder propose another denomination for the variety.

4. In particular, the applicant cannot deposit as denomination of a variety, a designation that already benefits from a mark right referring to identical or similar products, in Spain or in countries with which agreements have been concluded on the protection of plant varieties, or a denomination that can create confusion with such marks, unless the applicant undertakes to give up the rights to the marks as soon as plant varieties are granted in respect of the variety.

5. The applicant shall, together with the denomination, present a report issued by the Spanish Patent and Trademark Office indicating any possible points of identity and similarity with any marks already registered or pending registration that have been discovered, indicating the products in class 31 protected thereby according to the nomenclature established under the Nice Agreement of 15 June 1957.

The report request shall be filed with the Spanish Patent and Trademark Office, on payment of the corresponding fee and indicating the reason for the request.

Article 49

Use of the denomination

1. A variety may not be denominated in way differently from the way it was designated in the first country in which it was registered unless it can be proven to the Ministry of Agriculture, Fisheries and Food that that denomination is inadequate in Spain in which case, the plant breeder will be required to propose another denomination.

2. The Ministry of Agriculture, Fisheries and Food shall communicate information relative to the denominations of varieties, and specifically their proposal, approval, registration and cancellation, to the corresponding authorities of the other countries members of the UPOV, to those of States members of the intergovernmental organizations members of the UPOV, and to the appropriate institutions in those States.

3. Anyone who, in Spain, proceeds to sell or commercialize plant reproduction or multiplication material of a protected variety shall be obliged to use the denomination of that variety, even after the plant breeder's right to that variety expires, provided that, pursuant to Article 48(3), no prior rights are raised opposing that use.

4. When a variety is offered for sale or is marketed, a manufacturing or trade mark, a trade name or a similar indication may be associated with the denomination of the registered variety. If such an indication is thus associated, the denomination shall, nevertheless, be easily recognisable.

CHAPTER V

MAINTENANCE OF THE PLANT BREEDER'S RIGHT

Article 50

Maintenance of the variety

1. The holder of the relative plant variety right shall be responsible for maintaining that right or, when appropriate, its successive components for as long as the protection remains effective.

2. The Ministry of Agriculture, Fisheries and Food may require the holder of a plant variety right to present to it or to any other authority it may designate, and on the terms determined by regulation, any such information, documents or material that be considered necessary for monitoring the maintenance of the variety, as well as for the renovation of the official samples that comprise the reference collection.

Article 51

Verification of the variety

1. The Ministry of Agriculture, Fisheries and Food or, as necessary, the corresponding service of the Autonomous Communities, shall determine whether the varieties covered by a plant varieties right remain unalterable, by conducting the corresponding technical verifications.

2. When there are reasons to believe that the holder of the plant varieties right is not maintaining the variety appropriately, the Ministry of Agriculture, Fisheries and Food shall order that a check be conducted on the maintenance of the variety and shall determine the conditions attendant thereon by means of field trials or other trials in which the material submitted by the holder is to be compared with the description or the official sample of the variety.

When this check indicates that the holder has not maintained the conditions of the variety he shall be duly informed.

3. In cases in which it is proven that the variety is not homogeneous or stable, the Ministry of Agriculture, Fisheries and Food may decide to withdraw the right after hearing the interested party and, if appropriate, after receiving a report from the corresponding services of the Autonomous Communities which conducted the relevant checks.

PART V

FEES

Article 52

Passive subjects

1. The applicant for the plant variety right and any individuals or bodies corporate on whose behalf services are rendered on which fees may be levied shall be passively liable to the fees set in this Part of the present Law.

2. The fees set in this Part shall be governed by the present Law and by the other legal sources established with respect to the levying of fees in Article 9 of Law 8/1989, of 13 April 1989, being the Public Fees and Levies Law and especially with respect to subjects obliged to pay fees as parties liable for such levies.

Article 53

Fee due in respect of procedure and decision

1. The administrative procedure and handing down of a decision shall constitute the Laws in respect of which this fee shall be due.

2. This fee shall fall due at the moment of presentation of the application for the plant variety right.

3. The amount of the fee due in respect of procedure and decision on the application shall be 50,000 pesetas.

Article 54

Fee for conduct of the technical examination

1. The trials and any other activity included in the technical examination to which Article 40 of the present Law refers shall constitute the Laws in respect of which this fee shall be due.

For the purpose of this Article, the species or groups of species to which belong the plant varieties whose material is to be subjected to the technical test shall be classified in the groups listed in Annex 2.

2. This fee shall fall due at the moment the plant material to be subjected to the technical examination is delivered to the competent authority for its realization.

3. The fees for conducting the trials that constitute the technical examination for the purpose of granting the "plant variety right" shall be as follows:

For each year of examination:

First group:	125,000 pesetas
Second group:	90,000 pesetas
Third group:	75,000 pesetas
Fourth group:	60,000 pesetas.

In the case of a hybrid variety of any species whatsoever, and where it is necessary to conduct a study of the genealogical components, the fee shall be double the amount indicated for the corresponding species.

When the technical examination is carried out in a foreign body or institution on behalf of the Ministry of Agriculture, Fisheries and Food because it was so agreed, the fee shall be the amount in pesetas of the sum necessary to pay for the said service. In a case where results of a previously conducted technical examination of the variety are used by a foreign body or institution, the fee shall be the amount in pesetas of the sum necessary to pay for the said service.

Article 55

Maintenance fee

1. Any periodical work and verifications required to ensure that the conditions necessary for the variety to continue being protected shall constitute the Laws in respect of which this fee shall be due.

For the purpose of this Article, the species or groups of species to which belong the plant varieties whose conditions are to be confirmed are classified in groups as listed in Annex 2.

2. This fee shall fall due annually, on the same day of the same month as that on which the decision was taken to grant the plant variety right to the holder.

3. The amounts of the fees for the annual maintenance of the plant breeder's rights shall be as follows:

For the first year:

First group:	15,000 pesetas.
Second group:	10,000 pesetas.
Third group:	8,000 pesetas.
Fourth group:	6,000 pesetas.

For the second year:

First group:	20,000 pesetas.
Second group:	15,000 pesetas.
Third group:	12,000 pesetas.
Fourth group:	10,000 pesetas.

For the third year:

First group:	27,000 pesetas.
Second group:	22,000 pesetas.
Third group:	17,000 pesetas.
Fourth group:	15,000 pesetas.

For the fourth year:

First group:	30,000 pesetas.
Second group:	26,000 pesetas.
Third group:	20,000 pesetas.
Fourth group:	15,000 pesetas.

For the fifth and subsequent years (until protection lapses):

First group:	36,000 pesetas.
Second group:	30,000 pesetas.
Third group:	25,000 pesetas.
Fourth group:	20,000 pesetas.

Article 56

Fees for administrative services rendered

1. The performance of some of the administrative services deriving from the applications procedure as listed below constitute the Laws in respect of which this fee shall be due:

- (a) Claiming a priority right.
- (b) Changing denomination in a right granted or pending.
- (c) Issuing copies, certificates and duplicates of any document.
- (d) Granting a compulsory licence.
- (e) Entering exploitation licences in the Registration of Protected Plant Varieties, as well as amending entries already made.

2. This fee shall fall due at the moment the corresponding applications are presented to a Registry.

3. The fee per request that an application be given priority; application for a change of denomination in an already granted or pending right; issue of copies, certificates and duplicates of any document; grant of a compulsory licence; registration of exploitation licences and amendments to already implemented licences, shall be 5,000 pesetas.

Article 57

Administration and collection

1. The services and activities for which the fees envisaged in Articles 53 and 56 are due will not be rendered or performed until the payment of the amount due has been made by the applicant and has become effective.

2. The services and activities for which the fees envisaged in Articles 53 and 56 are due, even when rendered or performed, shall not become effective until such time as payment has been made in the amount demanded. Notwithstanding the above, payment of the said amounts shall be enforceable by legal constraint.

3. The ordinary administration and collection of these fees shall fall to the Ministry of Agriculture, Fisheries and Food.

First additional provision

Revision of the amount of the penalties

The Government shall be authorized to amend the amount of the penalties contained in the present Law in accordance with variations in the consumer price index.

Second additional provision

Interpretation criteria

This Law shall be interpreted in accordance with the international Treaties and Conventions on such matters applicable in Spain.

Third additional provision

Limitation of the plant breeder's right

No limit may be placed on the free exercise of a plant breeder's right except for that stipulated in Article 17(1) or by virtue of an express provision to that effect in the Treaties and Conventions mentioned in the previous provision.

Fourth additional provision

Respect for international Treaties and Conventions

The measures adopted by the State to regulate the production, control and commercialization of the material of the varieties, or of the import and export of that material, shall in no way hinder the application of the provisions of the Treaties and Conventions mentioned in the third additional provision.

Fifth additional provision

Community protection

Should Community protection be granted a plant variety to which a plant variety right was previously granted, the holder of such [previous] right may not invoke that plant variety right as long as the Community plant variety protection remains effective for that variety.

On termination of the validity of the Community protection, the holder of the [previous] plant variety right shall be entitled again to invoke the rights deriving therefrom, provided that the periods from the granting of that plant variety right as set in Article 18 have not lapsed.

During the time the Community plant variety protection lasts, the plant variety right holder shall be exonerated from the obligation to pay 70 percent of the initial and annual maintenance fees for the plant breeder's rights envisaged in Part V of this Law.

First transitory provision

Procedures initiated before the application of the present Law

Applications for plant variety rights filed prior to the entry into force of the present Law shall be processed and resolved according to the legal situation effective on the date of filing.

Second transitory provision

Regime applicable to rights granted prior to the adoption of this Law

1. The plant variety rights granted under the provisions of Law 12/1975, of 12 March 1975, on the Protection of Plant Varieties shall be governed by the provisions of that Law.
2. Notwithstanding the provisions of the previous paragraph, the following Articles of the present Law shall apply:
 - (a) Part I, Chapter III: Article 12; Article 13 except for paragraphs 2 and 3; Article 15; Article 16, and Article 17.
 - (b) Part I, Chapter IV, concerning the plant breeder's right as a property right.
 - (c) Part I, Chapter V, on exploitation licences.
 - (d) Part II, on administrative offences.
 - (e) Part IV, Chapter V, on maintenance of the plant breeder's right.

Third transitory provision

Current court actions

Court actions that had begun before the entry into force of the present Law shall continue under the same procedure as that under which they were filed.

Single derogatory provision

Repeals

1. All provisions contrary to the present Law shall be repealed and, in particular, Law 12/1975, of 12 March 1975, governing the Protection of Plant Varieties.
2. Until such time as the necessary regulations have been adopted for the implementation of this Law, the principles of Decree 1674/1977, of 10 June 1977 by which the General Rules and Regulations on the Protection of Plant Varieties were approved shall be maintained, provided they do not run counter to this Law.

First final provision

Amendment to Law 11/1986 of 20 March 1986 – the Patent Law

1. Article 5(1(b)) of Law 11/1986, of 20 March 1986, the Patent Law, shall be amended to read:

“(b) Plant varieties.”

2. Article 143(3) of Law 11/1986, of 20 March 1986, the Patent Law, shall be amended to read:

“3. Inventions of procedures and plant varieties cannot be protected as utility models.”

Second final provision

Additional application legislation

Where the present Law lacks a provision specifically applicable to plant breeder's rights, the Law governing the legal protection of inventions shall also apply.

Third final provision

Development of the Law

The Government shall be authorized to dictate such provisions for the application and development of the present Law may be necessary as well as to amend the annexes. Within a maximum of six months from the entry into effect of this Law, the Government shall approve the Rules and Regulations for its application.

Fourth final provision

Entry into force

The present Law shall come into effect three months after its publication in the Official State Gazette.

And so saying,

I require all Spaniards, individuals and authorities to observe this Law and ensure that it be observed.

Madrid, 7 January 2000.

JUAN CARLOS REX

Prime Minister

JOSÉ MARÍA AZNAR LÓPEZ

ANNEX 1

Plant species in respect of which an exception may be admitted to Article 14 of the Law

(a) Fodder species:

Cicer arietinum L. (partim)- chickpea.
Hedysarum coronarium L. – “zulla”.
Lathyrus sp. – pea.
Lupinus albus L. - white lupine.
Lupinus angustifolius L. - blue lupine.
Lupinus luteus L. - yellow lupine.
Medicago sativa L. – medic (clover)
Onobrychis sativa (L) Lamk. – sainfoin cock’s-head clover.
Pisum sativum L. (partim) - peas.
Trifolium alexandrinum L. – berseem / Egyptian clover.
Trifolium resupinatum L. - Persian clover.
Trigonella foenum-graecum L. - Fenugreek.
Vicia ssp. - Vetch, beans, tare and carob beans.

(b) Cereals:

Avena sativa - common oat.
Hordeum vulgare L. - common barley.
Oryza sativa L. - rice.
Phalaris canariensis L. - bird seed.
Secale cereale L. - rye.
X triticosecale Wittm. - wheat.
Triticum aestivum L. emend *frori et paol.* - soft wheat.
Triticum durum Desf. - hard wheat.
Triticum spelta L. – awned wheat.

(c) Potatoes:

Solanum tuberosum - potato.

(d) oleaginous and textile species:

Brassica napus L. (partim) - colza.
Brassica rapa L. (partim) – common turnip.
Linum usitatissimum - linseed, excluding textile linen.

(e) Horticultural species:

Lens culinaris L. - lentil.
Cicer arietinum L. (partim) - chickpea.
Phaseolus ssp. - beans.
Pisum sativum L. (partim)- peas.

ANNEX 2

Classification of plant species for the purpose of determining the amount of the fees in Articles 54 and 56

First Group: cotton, strawberry, bean, lettuce, melon, potato, cucumber, pepper, tomato, sugar beet, and fodder and prairie grasses not mentioned in another group.

Second group: garlic, artichoke, rice, oats, barley, rye, colza, asparagus, sunflower, pea, beans, maize, water-melon, sorghum, wheat, wheaten products, vetch and species of the genus tare not mentioned in another group.

Third group: egg-plant, marrow, safflower, onion, carnation (clove), fruit-bearing plants, leguminous for human consumption not mentioned in another group, rose, soy, tare and carrot, and other species for horticultural exploitation not mentioned in another group.

Fourth Group: vine and other species not included in the previous groups.

KINGDOM OF SWEDEN

ACT ON THE PROTECTION OF PLANT BREEDERS' RIGHTS*
(Swedish Statute Book 1997:306)

CHAPTER 1

ON THE ACQUISITION OF
PLANT BREEDERS' RIGHTS

Article 1

Anyone who has in Sweden produced a new plant variety, or his successor in title, may acquire an exclusive right to exploit the plant variety according to this Act (plant breeder's right).

Anyone who has outside this country produced a new plant variety, or his successor in title, may acquire a plant breeder's right in respect of the plant variety, where the producer is a Swedish national or has his domicile in Sweden.

A plant breeder's right may also be acquired by

1. anyone who has produced a plant variety in a foreign State party to the Convention of December 2, 1961, on the Protection of Plant Varieties, or in a State which is party to an intergovernmental organization which in its turn is party to this Convention, or the successor in title of such a person,
2. anyone who is a national of, or has his domicile in, such a State and who has, in cases other than those mentioned under 1, produced a new plant variety outside this country, or is the successor in title of such a person.

The provisions in the first to third paragraphs apply also to anyone who has discovered and further developed a new plant variety or his successor in title.

A plant breeder's right is acquired through registration of the plant variety.

Article 2

The Government may prescribe that a plant breeder's right may be acquired also in cases other than those provided for in Article 1, where this is of specific importance for the supply of the Swedish market or for Swedish plant breeding activities.

The Government may furthermore provide for the application of this Act in relation to other countries on condition of reciprocity or where this follows from such an agreement with a foreign State or intergovernmental organization which has been approved by the Parliament.

Article 3

A "plant variety" means for the purposes of this Act a plant grouping within one and the same botanical entity of the lowest known rank, where this grouping can

1. be defined by the expression of 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.

CHAPTER 2

ON THE SCOPE OF THE PLANT BREEDER'S RIGHT

Article 1

A plant breeder's right applies to

1. the plant variety which has been registered in accordance with the provisions of this Act,
2. groupings of plants which are not clearly distinguishable from the variety which has been registered,
3. plant varieties which are essentially derived from the registered variety, where the registered variety is not in itself an essentially derived variety, and
4. plant varieties whose production requires the repeated use of the protected variety.

A plant variety shall be deemed to be essentially derived where it

1. is predominantly derived from the initial variety, or from a variety that in itself is predominantly derived from the initial variety, while retaining the the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,
2. is clearly distinguishable from the initial variety, and
3. except for the differences which result from the act of derivation, conforms with the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

* The Act on the Protection of Plant Breeders' Rights was adopted on May 29, 1997, and entered into force on July 1, 1997.
 Translation: by the national authorities.

Article 2

With the exceptions provided for in Articles 3 and 4, the plant breeder's right includes that nobody may, without the authorization of the holder of the plant breeder's right, exploit a plant variety or another grouping of plants covered by the plant breeder's right through

1. producing or reproducing propagating material
2. conditioning propagating material for the purposes of propagation,
3. offering propagating material for sale,
4. selling or otherwise marketing propagating material,
5. exporting propagating material from Sweden,
6. importing propagating material to Sweden, or
7. stocking propagating material for any of the purposes indicated in items 1. to 6.

Where the holder of the plant breeder's right had no reasonable opportunity to exercise the right in relation to a certain propagating material, nobody may without his or her authorization exploit the plant variety through such acts as mentioned in the first paragraph, items 1. to 7. by using harvested material which has been produced by means of this propagating material.

Article 3

The plant breeder's right does not include

1. acts carried out privately and for non-commercial purposes,
2. acts carried out for experimental purposes, and
3. acts carried out for the purposes of breeding, of new plant varieties.

Article 4

The plant breeder's right does not include the exploitation of plant variety material which has been brought on the market within the European Economic Area by the holder of the plant breeder's right or with his consent.

The provisions of the first paragraph do not extend to the exportation of plant variety material which can be used for propagating purposes, where the exportation is directed towards a foreign country where the plant genus or species to which the variety belongs is not protected and the material exported is not intended for final consumption.

Article 5

The provisions on exceptions from the exclusive right in Article 14 of the Council Regulation (EC) No 2100/94 of July 27, 1994, on the Community Breeder's Right and the Implementing Regulations which have been issued on the basis of that Article shall apply also to plant varieties which have been registered according to this Act. The provisions in that Article and Regulation on the Community Plant Breeder's Right shall apply to plant breeder's rights under this Act.

CHAPTER 3

ON THE REQUIREMENTS FOR REGISTRATION

Article 1

A plant variety may be registered only if it is

1. new,
2. distinct,
3. uniform with respect to its essential characteristics, and
4. stable.

Article 2

A plant variety shall be considered as new where propagating material or harvesting material of the variety have not been sold or otherwise disposed of to others for the purpose of exploitation of the variety, by the breeder or his successor in title

1. in this country, earlier than one year before the date of the filing of the application for registration,
2. outside this country, earlier than six years before the filing of the application for registration, where this application concerns trees or vines, or
3. outside this country, earlier than four years before the date of the filing of the application for registration, where this application concerns plant varieties other than trees or vines.

Article 3

A plant variety shall be deemed to be distinct if it is clearly distinguishable from any other variety the existence of which is known at the time of the filing of the application.

A plant variety shall be deemed as known, where propagating material of it has been offered for sale, sold or otherwise disposed of to others. The plant variety shall also be deemed to be known where it has been registered for a plant breeder's right, has been entered into an official list of plant varieties, has been entered into a commonly available list of references, has been described in a commonly available publication or has in any other way come to the common knowledge of the public.

Also a plant variety which has not come to the common knowledge of the public shall be deemed to be known, where an application for an exclusive right or for the entering into an official list of plant varieties has been filed in any country and that application has later been approved.

Article 4

For the determination of whether a plant variety is uniform, variations which can be expected due to particular features of the propagation of the variety shall not be taken into account.

Article 5

A plant variety shall be deemed to be stable, where its relevant characteristics remain unchanged after repeated propagation or, where the plant variety has a particular cycle of propagation, at the end of each such a cycle.

Article 6

If the applicant or someone from whom the applicant has acquired his right has earlier applied for protection of the plant variety in a State which is party to the Convention of December 2, 1961, on the Protection of Plant Varieties and if registration is applied for in this country within twelve months from the date when the application was filed in the foreign State, the application shall, for the purposes of Articles 2 to 5, be deemed to have been filed at the same time as the application in the foreign State, if the applicant so requests.

Such priority may also be granted from an application for protection filed in another foreign State if a corresponding priority from a Swedish application for the protection of a plant variety would be admitted in that State and where the legislation in force there corresponds in its main features with the Convention. Where priority has been sought in several foreign States, the twelve month period is calculated from the date when the first application for protection was filed.

The Government or a Public Authority as decided by the Government may issue provisions on the way in which a claim for priority shall be made and which documents shall be filed in support of the claim. Where such provisions are not complied with, priority shall not be enjoyed.

Article 7

A plant variety may not be registered where it is already registered for a Community plant breeder's right under the Council Regulation (EC) No 2100/94 on the Community Plant Breeder's Right.

CHAPTER 4

ON PLANT VARIETY DENOMINATION

Article 1

Any registered plant variety shall have a plant variety denomination. This denomination shall be such as to enable the distinction of that plant variety from other varieties.

A plant variety shall not be accepted where it

1. consists solely of figures, except where this is an established practice for designation of varieties
2. is obviously likely to mislead the public,
3. is contrary to laws or other regulations or public order or is likely to cause offence,
4. is likely to be cause confusion with a variety denomination which has, for a variety of the same plant species or of a closely related species, been entered into, or has been proposed for entrance into, the Plant Variety Register, any corresponding foreign Register or any other official list of varieties, or which is used as propagating material of such a variety,
5. is likely to cause confusion with a trademark, a name, a firm or any other denomination for which any person other than the applicant enjoys protection and which would have constituted an obstacle against the registration of the variety denomination as a trademark for material of a plant variety or for goods of a similar kind,
6. is likely to cause confusion with such a trademark for material of a plant variety or for goods of a similar kind for which the applicant enjoys protection.

On condition of reciprocity the Government may prescribe that a variety denomination which has been registered, or for which an application for registration has been filed, in a foreign State may be registered in Sweden notwithstanding the provisions in the first and second paragraphs, where there are no particularly important reasons for not doing so.

Article 2

Anyone who offers for sale or otherwise disposes of propagating material of a registered plant variety shall use the registered variety denomination. This applies also where the term of protection has lapsed or the plant breeder's right has been terminated for other reasons.

A registered denomination for a variety or a denomination which is confusingly similar to that denomination must not be used for any other variety of the same plant species or for a plant species which is closely related thereto or for material of such a variety as long as the registration of the denomination is in force.

CHAPTER 5

ON THE APPLICATION PROCEDURE

Article 1

Registration in accordance with this Act is effected in the Plant Variety Register which is kept by the National Plant Variety Board.

In connection with the registration of a plant variety, also the denomination of the variety shall be recorded.

Article 2

An application for the registration of a plant variety shall be made in writing to the National Plant Variety Board.

The application shall contain

1. a clear description of the variety with a special indication of the characteristic feature or features which distinguishes or distinguish the variety from other varieties,
2. an indication of the origin of the variety,
3. a proposal for the denomination of the variety, and
4. an indication of the name of the plant breeder.

Where a person other than the plant breeder applies for registration, the applicant shall prove his right in the variety.

To the application shall be attached a declaration, signed by the applicant himself, on his faith and honour, that the variety, to the best knowledge of the applicant, has not, before the date on which the application was filed or, according to Chapter 3, Article 6, shall be deemed to have been filed, has been disposed of in such a way that it, according to Chapter 3, Article 2, shall not be deemed to be new.

The applicant shall, in connection with the application, make available plant material sufficient to allow testing of the variety.

The application shall pay the prescribed application fee.

Article 3

An application may concern only the registration of one plant variety.

Article 4

The National Plant Variety Board may request an applicant not having his domicile in Sweden to appoint a representative domiciled in the European Economic Area and to notify this fact to the Board. The representative shall be empowered to receive communications of any documents in the matter. Where the applicant does not comply with the request, the serving of communications may be carried out through the mailing of the document in question to the applicant under his last known address.

Article 5

Where the applicant has not met the requirements relating to the application or where there is any other obstacle for the approval of the application, the applicant shall be invited to

submit, within a determined period of time, either a statement or a correction.

Where the applicant does not, within the prescribed period of time, submit a statement or take measures to remedy the deficiency indicated, the application shall be removed from the files. An indication of this possibility shall be included in the invitation.

Article 6

Where there is an obstacle for the approval of the application also after the applicant has submitted a statement and the applicant has been given an opportunity to file a statement concerning the obstacle, the applicant shall be rejected unless there is a reason for issuing a new invitation to the applicant.

Article 7

If anyone claims, before the National Plant Variety Board, that he has a better title to the plant variety than the applicant and the matter is in doubt, the Board may invite him to bring an action in Court within a certain time, failing which his claim may be disregarded in the course of the continued examination of the application.

Where a dispute concerning a better title to the plant variety is under consideration by a Court, the application for registration may be declared suspended pending a final decision in the case.

Article 8

If anyone proves before the National Plant Variety Board that he has a better title to the plant variety than the applicant, the Board shall, upon request, transfer the application to him or her. The person to whom an application is thus transferred, shall pay a new application fee.

If a transfer is requested, the application may not be altered, removed from the files, rejected or approved until the claim has been finally considered.

Article 9

If the application documents are complete and there is no obstacle to the registration, the National Plant Variety Board shall publish a notice of the application in order to give the public an opportunity to file an opposition against the application.

Any opposition shall be filed in writing with the National Plant Variety Board within the period determined by the Board.

Article 10

The National Plant Variety Board shall arrange for a test to be made of the plant variety material, unless this is, for special reasons, considered unnecessary. The applicant shall pay prescribed fee for testing conducted.

Article 11

Where the period for submitting an opposition against the application has expired and the tests of material of the plant variety have been finalized, the examination of the application shall continue. As regards this examination, Articles 4 to 8 apply.

The applicant shall be given an opportunity to submit observations concerning oppositions filed and concerning tests carried out.

Article 12

Where an application for the registration of a plant variety has been approved and the decision has taken legal force, the variety shall be entered into the Plant Variety Register and a notice of the registration be published.

Where an application which has been published according to Article 9, has been removed from the files or rejected, the decision in this respect shall be published when it has taken legal force.

CHAPTER 6

THE TERM OF VALIDITY, ANNUAL FEES
AND SUBSEQUENT CONTROL

Article 1

The plant breeder's right subsists from the date when the application for registration was approved and may be maintained for 25 years counted from, and including, January 1 the year after the year when the decision about the registration obtained legal force. As regards potatoes, trees and vines, the plant breeder's right may, however, be maintained for a period of 30 years calculated from the same point in time.

Article 2

A prescribed annual fee shall be paid for each calendar year for the plant breeder's right. This fee shall be paid as from, and including, the year when the application for registration was approved.

The annual fee shall be payable on the first day of the calendar year to which it relates. The latest day for the payment of the annual fee for a year which has commenced before the plant variety was registered or within two months thereafter shall, however, be payable only two months after the date of the registration. The annual fee must not be paid before the registration has been effected or earlier than six months before the calendar year to which the fee relates.

The annual fee, with the prescribed increase, shall be paid within six months after the date when it is payable.

Article 3

In order to control whether a registered plant variety is stable, the National Plant Variety Board may request the holder of the plant variety right to make available to the Board reproduction material as well as necessary documents and information.

CHAPTER 7

LICENSES

Article 1

If the holder of a plant breeder's right has granted someone else a right to commercially exploit a registered plant variety (license) the licensee may transfer his right further only if there is an agreement to this effect.

Where the license forms part of a business activity, it may, however, be transferred together with the activity or part thereof, unless there is an agreement to the contrary. If the license has been transferred in this manner, the transferor remains liable for the fulfillment of the license agreement.

Article 2

Where a plant breeder's right has been transferred to another person, or a license has been granted or transferred, an entry of this fact shall, upon request and against the payment of the prescribed fee, be made in the Plant Variety Register where it is shown that a license which has been recorded in the Register has expired, the entry shall be removed.

The provisions of the first paragraph apply accordingly to compulsory licenses.

The holder of the plant breeder's right shall, for the purposes of lawsuits or other legal cases relating to the plant variety, be deemed the person who has last been recorded in the Register in this capacity.

Article 3

Where there is not a supply of reproduction material of a registered plant variety available on the market on reasonable terms and to the extent necessary for the national economy or otherwise from the point of view of the public interest and there is no acceptable reason for the lack of supply, a compulsory license may be granted to any person who wants to exploit the plant variety in this country. The compulsory license includes also a right to obtain reproduction material from the holder of the plant breeder's right to the extent reasonable.

Article 4

A compulsory license may not be granted to persons other than those who can be presumed to be able to exploit the plant variety in an acceptable manner and in conformity with the license.

A compulsory license does not prevent the holder of the plant breeder's right from exploiting the plant variety himself or from granting a license in this respect. A compulsory license may be transferred to someone else only together with the business activity in which it is exploited or was intended to be exploited.

Article 5

A compulsory license is granted by a Court which also determines the extent to which a plant variety may be exploited and decides the remunerations and other conditions for the license.

CHAPTER 8

ON THE TERMINATION OF THE PLANT BREEDER'S RIGHT, ETC.

Article 1

Where the annual fee according to Chapter 6, Article 2, is not paid, the plant breeder's right shall be void as from January 1 of the year for which the fee was not paid. The National Plant Variety Board shall also remove the plant variety from the Register.

Article 2

If the holder of the plant breeder's right, in writing to the National Plant Variety Board, renounces his plant breeder's right, the Board shall remove the plant variety from the Register.

If the plant breeder's right is sequestered for debt, seized for debt or for securing the payment of a debt, or if a dispute concerning the transfer of a registration is pending, the plant variety may not, at the request of the holder of the plant breeder's right, be removed from the Register as long as the sequestering or seizure or the keeping for the payment of a debt is still valid or the dispute has not been finally decided.

Article 3

A Court may, upon an action brought in this respect, invalidate the registration of a plant variety, where

1. the plant variety on the date of the filing of the application, or, if the holder of the plant breeder's right has enjoyed priority, on the date from which priority has been enjoyed, did not meet the requirement of novelty under Chapter 3, Article 2, or the requirement of distinctness in Chapter 3, Article 3,
2. the plant variety at the point in time mentioned under item 1. did not meet the requirement of uniformity under Chapter 3, Article 4, or the requirement of stability under Chapter 3, Article 5, if the variety was registered mainly on the basis of information provided by the applicant,

3. the plant variety has been registered contrary to the provisions of Chapter 3, Article 7, or
4. the plant variety has been registered for someone who was not entitled thereto and no action has been brought concerning the transfer of the registration.

A registration must not be invalidated only on the ground that the person who has obtained the registration is entitled only to a part of the plant breeder's right.

Article 4

Where a plant variety has been registered for a person other than the one entitled to it under Chapter 1, Article 1, the Court shall, following an action in this respect by the person entitled to it, transfer the registration to him or her. Any action in this respect shall be brought within the period of time prescribed in Article 5.

Article 5

Any action under Article 3, first paragraph, item 4, which is based on the fact that a plant variety has been registered for a person other than the one who is entitled thereto may be brought only by the person who claims to be entitled to the variety. Any action in this respect shall be brought within one year from the date when the plaintiff became aware of the registration and of the other circumstances on which the action is based. If the holder of the plant breeder's right was in good faith when the variety was registered or when the plant breeder's right was transferred to him, the action may not be brought later than three years from the registration.

In other cases an action may be brought by anyone who suffers a disadvantage from the registration and, where this is called for in the public interest, by a Public Authority as decided by the Government.

Article 6

The National Plant Variety Board shall remove a plant variety from the Register where

1. the variety no longer meets the requirements under Chapter 3 as regards uniformity and stability, or
2. the holder of the plant breeder's right has not complied with an invitation under Chapter 6, Article 3, and the non-compliance constitutes an obstacle for a reliable subsequent control.

Article 7

Where a plant variety denomination has been registered contrary to the provisions of this Act and the ground for non-registration remains, the National Plant Variety Board shall register a new denomination for the plant variety. The same applies where a registered variety denomination obviously has become likely to deceive the public or has become contrary to public order or likely to cause offence.

In cases referred to in the first paragraph the holder of the plant breeder's right shall be given the opportunity to propose a new denomination.

A registered denomination for a variety for which the term of protection has expired or the plant breeder's right has otherwise lapsed, may, at the request of the plant breeder's right or where there is otherwise a reason for it, following an examination of the case by the National Plant Variety Board, be removed from the Register if the denomination is no longer used.

Article 8

Article 92.2 of the Council Regulation (EC) No 2100/94 on the Community Plant Breeder's Right contains special provisions which apply when a plant variety has been registered for a Community plant breeder's right after the registration of the variety according to this Act.

CHAPTER 9

ON LIABILITY AND COMPENSATION FOR DAMAGES, ETC.

Article 1

Anyone who willfully or with gross negligence infringes a plant breeder's right shall be punishable by fines or imprisonment for not more than two years. A person who has violated a prohibition on penalty of a fine under Article 2 must not be adjudged to criminal liability for the infringement covered by the prohibition.

Attempts to commit an infringement under the first paragraph, as well as the preparation of such acts, shall be punishable according to the provisions of Chapter 23 of the Criminal Code.

A public prosecutor is entitled to bring an action for violations as mentioned in the first and the second paragraphs only upon complaint by the injured party and such an action is called for in the public interest.

Article 2

Upon a request filed by the holder of the plant breeder's right or by anyone who has, on the basis of a license, the right to exploit the plant variety, a Court may order a prohibition, upon penalty of a fine, for anyone who infringes the plant breeder's right to continue the infringing act.

Article 3

Where the plaintiff shows a probable case than an act constituting an infringement takes place and it can reasonably be assumed that the defendant, through the continuation of the act, diminishes the value of the exclusive right in the plant variety, the Court may issue an injunction, upon penalty of a fine, for the time until the case has been finally adjudicated or otherwise is decided. No injunction may be issued before the

defendant has been given an opportunity to respond, unless a delay would entail a risk for injury.

An injunction under the first paragraph may be issued only if the plaintiff deposits a security with the Court for the injury which may be caused to the defendant. If the plaintiff is not capable of depositing such a security, the Court may liberate him from making a deposit. As regards the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the Court unless the defendant has accepted it.

When the case is adjudicated, the Court shall decide whether a prohibition issued under the first paragraph shall continue to apply.

Article 4

As regards appeals against decisions under Article 3 and as regards the procedures in higher courts the provisions in Chapter 15 of the Code of Judicial Procedure on appeals against decisions apply.

Article 5

An action for the imposition of a fine may be filed by the person who has requested the injunction. In connection with such an imposition, an action may be brought for a new injunction to be issued under penalty of a fine.

Article 6

Anyone who willfully or with negligence commits an infringement of a plant breeder's right shall pay an equitable compensation for the use of the plant variety and compensation for the further damage caused by the infringement. In the determination of the amount of the compensation, also the right-owner's interest that an infringement is not committed and to circumstances of other than purely economic importance shall be taken into account.

Anyone who without intention or negligence commits an infringement of a plant breeder's right shall pay a compensation for the use of the variety, if and to the extent this is considered reasonable.

Any action for compensation may relate only to the last five years before the action was brought. If an action is not brought within the time mentioned, the right to compensation shall be lost.

Article 7

At the request of a person who has suffered injury from an infringement in a plant breeder's right, the Court may, to the extent considered reasonable in order to prevent the continuation of the infringement decide that such plant material which the infringement concerns shall, against compensation, be surrendered to the injured party, or be destroyed, and that objects the use of which would constitute an infringement shall be

altered in a specified manner or destroyed. What has been said now does not apply to persons who have in good faith acquired the material or a particular right therein and who have not themselves committed the infringement.

Article 8

Property referred to in Article 7 may be seized, where it can reasonably be assumed that a violation under Article 1 has been committed. As regards such seizure, the provisions on seizure in criminal cases shall apply.

Notwithstanding the provisions in the first paragraph, the Court may, upon a request to this effect, decide that the owner of material mentioned there be entitled to dispose of the material against a reasonable compensation and upon other reasonable conditions.

The provisions in Article 7 and in the first and second paragraphs apply also as regards attempts and preparatory acts according to Article 1, second paragraph.

Article 9

If anyone exploits a plant variety which is included in an application for registration, what is said about infringements of a plant breeder's right shall apply, where the application results in a registration. Criminal liability may, however, not be adjudicated for such exploitation. Compensation for damages based on an exploitation which took place before the publication according to the provisions of Chapter 5, Article 9, may, however, be determined only according to the provisions in Article 6, second paragraph.

Notwithstanding the provisions of Article 6, third paragraph, the right to compensation is not lost where an action in this respect is brought no later than one year from the registration of the plant breeder's right.

Article 10

Where the registration of a plant breeder's right has been invalidated through a judgement which has taken legal force, the Court may not adjudicate a sanction or decide on other measures under Articles 1 to 9.

Where an action is brought concerning infringement of a plant breeder's right and the defendant claims that the registration should be invalidated, the Court shall, at his request, order the proceedings to be suspended until the question of the invalidation of the registration has, been finally decided. Where an action in this respect has not been brought, the Court shall, in connection with the order for suspension, determine a certain period of time for the person against whom an action for infringement is brought to initiate an action for invalidation.

Article 11

Anyone who willfully or by negligence violates the provisions of Chapter 4, Article 2, shall be adjudicated to fines and shall

pay compensation for the injury caused. Where the negligence is of minor importance, criminal liability shall not be adjudicated. In such cases also the amount of the compensation may be adjudged.

CHAPTER 10

PROVISIONS ON JUDICIAL PROCEEDINGS

Article 1

The holder of a plant breeder's right or anyone who on the basis of a license has a right to exploit a plant variety, may bring an action aiming at determining whether the registration provides protection against another party. A prerequisite for this is that there is uncertainty in this respect and that this is to the disadvantage of the holder of the plant breeder's right or the licensee.

Anyone who carries out or intends to carry out a business activity may, under the same conditions, bring an action against the holder of a plant breeder's right to the effect that it shall be determined whether there is, due to the registration, an obstacle against the activity.

If it is claimed, in a case as referred to in the first paragraph, that the registration should be invalidated, the provisions of Chapter 9, Article 2, shall apply.

Article 2

Anyone who intends to bring an action for the invalidation of the registration of a plant variety, for the transfer of a registration or for the obtaining of a compulsory license shall notify the National Plant Variety Board about this fact and inform anyone who is recorded in the Plant Variety Register as a licensee having the right to exploit the plant variety. If a licensee intends to bring an action for the infringement of the plant breeder's right or for the determination of a matter as referred to in Article 1, first paragraph, the licensee shall notify the holder of the plant breeder's right about this fact.

The requirement for notification shall be considered as fulfilled when a notification has been sent, in registered mail, to the address which has been recorded in the Plant Variety Register.

Where it is not shown, when the action is brought, that a notification has been made or information has been sent, the plaintiff shall be given time to do so. If the plaintiff does not comply within the time period afforded, the action must not be taken up for consideration.

Article 3

Where there is not, under the Code of Judicial Procedure, any Court competent as regards an action relating to a better right in a plant variety, to an invalidation of the registration of a plant variety, to the transfer of such a registration, to the granting of a compulsory license or to the determination of a legal

situation according to Article 1, the action shall be brought at the Stockholm City Court.

Article 4

The Court shall transmit a copy of any judgement or final decision in cases under this Act to the National Plant Variety Board.

Article 5

A final decision by the National Plant Variety Board may be appealed against by the party which is concerned by the decision where it goes against him or her.

An appeal against a decision through which an application for registration has been approved may, however, be brought only by a person who has, in due course, filed an opposition against the application. Even if the opponent withdraws his appeal, the case may still be brought to a decision where special reasons for it exist.

Any decision through which an application for the transfer of a registration under Chapter 5, Article 8, has been approved may be appealed against by the applicant. Anyone who has brought an action for such a transfer may lodge an appeal against a decision through which the claim has been rejected.

Article 6

A decision by the National Plant Variety Board may be appealed against before the Court of Patent Appeals ("Patentbesvärssrätten") within two months from the date of the decision.

A final decision by the Court of Patent Appeals may be appealed against before the Supreme Administrative Court within two months from the date of the decision. As regards appeals before the Supreme Administrative Court, the provisions of Articles 35 to 37 of the Act on Administrative Proceedings (Act 1971:291) shall apply. The decision of the Court of Patent Appeals shall contain an indication of the fact that a special permission has to be obtained for the case to be brought to the Supreme Administrative Court and of the grounds on which such a permission may be granted.

CHAPTER 11

SPECIAL PROVISIONS

Article 1

Anyone who holds a plant breeder's right and who does not have domicile in Sweden shall have a representative having his or her residence here. The representative shall be authorized to receive writs, invitations and other documents in cases relating to the plant breeder's right with the exception of writs in cases relating to criminal liability and of invitations to par-

ties to personally appear before the Court. The representative shall be notified to the National Plant Variety Board and be recorded there.

If the holder of the plant breeder's right has not notified any representative under the first paragraph, any notices may instead be served through the transmission of the document, which is to be served to him or her, to the address recorded in the Plant Variety Register. Where a complete address is not recorded in the Register, the serving of the notice may be carried out through the holding available of the document at the National Plant Variety Board and the publishing of this fact and of the main contents of the document in a publication as decided by the Government. The serving of a notice shall be deemed to have occurred when what has been said now has taken place.

Article 2

The Government or a Public Authority as decided by the Government may issue provisions concerning the amount of fees under this Act.

Article 3

The Government may prescribe that plant varieties for which registration is being sought may be submitted to tests at a Public Authority in another State or at an international institution. Furthermore, the Government may prescribe that persons who apply for registration of a variety for which they have earlier applied for registration in another State shall be obliged to provide information about what the Public Authority in that State has stated to them as regards the examination of the conditions for registration.

CHAPTER 12

ON EUROPEAN COMMUNITY PLANT BREEDER'S RIGHTS

Article 1

Anyone who files an application for a European Plant Breeder's Right to the National Plant Variety Board for transmission according to Article 49 of the Council Regulation (EC) No 2100/94 of July 27, 1994, on the Community Plant Breeder's Right shall pay a fee, the amount of which is decided by the Government.

Article 2

The provisions of Chapter 9, Article 1, on liability for infringement of a plant breeder's right apply to infringement of a Community Plant Breeder's Right.

1. This Act enters into force on the date decided by the Government. Through this Act the Act on Plant Breeder's

Rights (No 1971:392) is abrogated. (Note: According to Regulation No 1997:392 the Act entered into force on July 1, 1997).

2. This Act applies also to plant varieties registered at the date of the entry into force which have been registered on the basis of applications filed before that date, where not otherwise follows from what is prescribed below.

3. An application for registration which has been published before the entry into force shall be processed and decided on according to the provisions previously in force.

4. The new provisions do not apply to measures taken or rights acquired before the entry into force.

5. The provisions of Chapter 2, Article 4, second paragraph, do not apply to plant variety material which has been brought into circulation according to Article 4, third paragraph, of the Act previously in force.

6. The question of invalidation of a registration of a plant variety which has been registered according to the provisions previously in force shall be determined according to the previous provisions.

7. Where someone before the entry into force has started the exploitation of plant variety material in a manner which did not require authorization by the holder of the plant breeder's right under the provisions previously in force but which requires such an authorization under this Act, he or she may, notwithstanding the new provisions, continue the planned activity to the extent necessary and customary, however not for more than five years from the entry into force. Such a right has also, under the same conditions, anyone who has taken significant measures to exploit the plant variety.

8. Where an application for registration concerns a plant variety on which the provisions previously in force were not applicable and the application is filed within one year from the entry into force of this Act, the time limit under Chapter 3, Article 2. item 1. shall be four years instead of one year.

9. As regards a decision by the National Plant Variety Board which has been taken before the entry into force, the provisions concerning appeals which were previously in force shall apply.

UNITED STATES OF AMERICA

PLANT PATENT AMENDMENTS ACT OF 1998*

Oct. 27, 1998
(H.R. 1197)

To amend title 35, United States Code, to protect patent owners against the unauthorized sale of plant parts taken from plants illegally reproduced, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Plant Patent Amendments Act of 1998
35 USC 1 note.

SECTION 1 SHORT TITLE

This Act may be cited as the “Plant Patent Amendments Act of 1998”.

35 USC 163 note

SECTION 2 FINDINGS AND PURPOSES

(a) FINDINGS – The Congress makes the following findings:

- (1) The protection provided by plant patents under title 35, United States Code, dating back to 1930, has historically benefited American agriculture and horticulture and the public by providing an incentive for breeders to develop new plant varieties.
- (2) Domestic and foreign agricultural trade is rapidly expanding and is very different from the trade of the past. An unforeseen ambiguity in the provisions of title 35, United States Code, is undermining the orderly collection of royalties due breeders holding United States plant patents.
- (3) Plant parts produced from plants protected by United States plant patents are being taken from illegally reproduced plants and trade in United States markets to the detriment of plant patent holders.
- (4) Resulting lost royalty income inhibits investment in domestic research and breeding activities associated with a wide variety of crops – an area where the United States has historically enjoyed a strong international position. Such research is the foundation of a strong horticultural industry.
- (5) Infringers producing such plant parts from unauthorized plants enjoy an unfair competitive advantage over producers who pay royalties on varieties protected by United

States plant patents.

(b) PURPOSES – The purposes of this Act are –

- (1) to clearly and explicitly provide that title 35, United States Code, protects the owner of a plant patent against the unauthorized sale of plant parts taken from plants illegally reproduced;
- (2) to make the protections provided under such title more consistent with those provided breeders of sexually reproduced plants under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), as amended by the Plant Variety Protection Act Amendments of 1994 (Public Law 103-349); and

SECTION 3 AMENDMENT TO TITLE 35, UNITED STATES CODE

(a) RIGHTS IN PLANT PATENTS – Section 163 of title 35, United States Code, is amended to read as follows:

“§163. Grant

“In the case of a plant patent, the grant shall include the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or from importing the plant so reproduced, or any parts thereof, into the United States.”

35 USC 163 note

(b) EFFECTIVE DATE – The amendment made by subsection (a) shall apply to any plant patent issued on or after the date of the enactment of this Act.

35 USC 41 note

SECTION 4 ACCESS TO ELECTRONIC PATENT INFORMATION

(a) IN GENERAL – The United States Patent and Trademark Office shall develop and implement statewide computer networks with remote library sites requesting rural States such that citizens in those States will have enhanced access to information in their State’s patent and trademark depository library.

(b) DEFINITION – In this section, the term “rural States” means the States that qualified on January 1, 1997, as rural States under section 1501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 379bb(b)).

* The Plant Patent Amendments Act was approved on October 27, 1998.