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# PLANT VARIETY PROTECTION



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

a. Semen maturum, b. in magnitudine aucta.

*CEREVS altissimus gracilior, fructu ex-  
tus luteo intus niveo, seminibus nigris ple-  
no Sloā. Cat. Jam. p. 197. Jinerar. T. II. p. 158. Raii Hist.  
T. III. dendrol. p. 22. Mill. Gard. dict.*

**UPOV**

**No. 92**  
**December 2001**



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.

#### UPOV Mission Statement

*To provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit of society.*

*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  
Queen of the night (*Selenicereus grandiflorus* L.) Britt. & Rose (*Cactus grandiflorus* L.)  
from Cuba which was introduced to Europe, and thrived  
well in Linnaeus' caldarium (hot house)

The outstanding German flower painter Georg Dionys Ehret (1708-1770)  
included a couple of drawings of this remarkable plant in his *Plantae selectae* (1750-73)

Linnaeus used the plates from this work as wallpaper in his summer house Hammarby,  
where it can still be admired today, though somewhat worn by time.

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# GAZETTE

## ACCESSION TO THE UPOV CONVENTION

### REPUBLIC OF KOREA BECOMES 50TH MEMBER OF UPOV

On December 7, 2001, the Government of the Republic of Korea 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 the Republic of Korea one month after the deposit of its instrument of accession, i.e., on January 7, 2002.

According to the notification deposited with the Secretary-General together with the instrument of accession, protection is available to the following genera and species as of July 1, 2001.

Latin	English	Français	Deutsch	Español
<i>Aerides japonicum</i> Lindemb. et Reichb.	Aerides japonicum	-	-	-
<i>Ageratum houstonianum</i> Mill	Ageratum, Flossflower	Ageratum	Leberbalsam	Agérato
<i>Ajuga multiflora</i> Bunge	Ajuga multiflora	-	-	-
<i>Allium cepa</i> L.	Onion	Oignon	Zwiebel	Cebolla
<i>Allium fistulosum</i> L.*	Welsh Onion	Ciboule	Winterzwiebel	Cebolleta
<i>Alstroemeria</i> spp.	Alstroemeria	Alströmère, Lis des Incas	Inkalilie	Alstroemeria
<i>Angelica dahurica</i> (Fischer) Bentham et Hooker	Angelica dahurica	-	-	-
<i>Angelica gigas</i> Nakai	Angelica gigas	-	-	-
<i>Antirrhinum majus</i> L.	Snapdragon	Muflier, Gueule de loup, Gueule de lion	Löwenmaul	Boca de dragón
<i>Arachis hypogaea</i> L.	Groundnut	Arachide	Erdnuß	Cacahuete, Maní
<i>Astragalus membranaceus</i> Bunge	Astragalus membran	-	-	-
<i>Avena sativa</i> L.	Oats	Avoine	Hafer	Avena
<i>Bellis perennis</i> L.	Daisy	Pâquerette	Gänseblümchen, Tausendschön	Vellorita
<i>Brassica campestris</i> L. SPP. <i>Pekinensis</i> (Lour.) Rupr.	Chinese Cabbage, Pakchoi	Chou de Chine	Chinakohl	Col de China
<i>Brassica napus</i> L.	Rape	Colza	Raps	Colza
<i>Brassica oleracea</i> L. cv. <i>acephala</i> (DC.) Alef. var. <i>gongylodes</i> L.	Kohlrabi	Chou-rave	Kohlrabi	Colirrábano
<i>Brassica oleracea</i> L. var. <i>botrytis</i> (L.) Alef. Var. <i>botrytis</i>	Cauliflower	Chou-fleur	Blumenkohl	Coliflor
<i>Brassica oleracea</i> L. var. <i>italica</i> Plen.	Broccoli	Brocoli (à jets)	Brokkoli, Spargelkohl, Sprossenbrokkoli	Brócoli
<i>Bupleurum falcafum</i> L.	Bupleurum falcatum	-	-	-

## REPUBLIC OF KOREA

Latin	English	Français	Deutsch	Español
<i>Calanthe discolor</i> Lindl.	Calanthe discolor	-	-	-
<i>Calendula officinalis</i> L.	Pot marigold	Souci des jardins	Gartenringelblume	Caléndula, Maravilla
<i>Capsicum annuum</i> L.	Sweet Pepper, Capsicum, Chili	Poivron, Piment	Paprika	Pimiento
<i>Cassia tora</i> L.	Cassia	-	-	-
<i>Celosia cristata</i> L.	Cockscomb	Crête de coq	Hahnenkamm	Cresta de gallo
<i>Citrullus vulgaris</i> Schrad.	Watermelon	Pastèque	Wassermelone	Sandía
<i>Citrus junos</i> Sieb ex Tanaka	Yuzu (Citrus)	Yuzu	Yuzu	Yuzu
<i>Cnidium officinale</i> Makino	Cnidium	-	-	-
<i>Cucumis melo</i> L. var. <i>makuwa</i> Makino	Oriental Melon	-	-	-
<i>Cucumis melo</i> L. var. <i>reticulatus</i> Naud	Melon	-	-	-
<i>Cucumis sativus</i> L.	Cucumber	Concombre	Gurke	Pepino, Cohombro
<i>Cucurbita</i> spp.	Pumpkin, Squash	Potiron, Giraumon	Riesenkürbis	Calabaza
<i>Cyclamen persicum</i> Mill.	Cyclamen, Ivy-leaved Cyclamen, Persian Cyclamen	Cyclamen de Perse	Alpenveilchen	Ciclamen
<i>Dactylis glomerata</i> L.	Orchardgrass	Dactyle	Knautgras	Dactilo
<i>Daucus carota</i> L.	Carrot	Carotte	Möhre, Karotte	Zanahoria
<i>Dendranthema</i> spp. <i>Chrysanthemum morifolium</i> Ramat.	Chrysanthemum	Chrysanthème	Chrysantheme	Crisantemo
<i>Dendrobium</i> Sw.	Dendrobium	-	-	-
<i>Dioscorea</i>	-	-	-	-
<i>Euphorbia pulcherrima</i> Willd. Ex Klot	Poinsettia	Poinsettia	Poinsettie, Weihnachtsstern	Flor de Pascua
<i>Eustoma grandiflorum</i> Shinn	Lisianthus	-	-	-
<i>Festuca elatior</i> var. <i>arundinacea</i> (Schreb.) Wimm.	Tall Fescue	Fétuque élevée	Rohrschwengel	Cañuela alta, Festuca alta
<i>Forsythia</i> spp.	Forsythia	Forsythia	Forsythie, Goldflieder, Goldglöckchen	Forsitia
<i>Gladiolus gandavensis</i> van Houtte	Gladiolus	Glaïeul	Gladiole	Gladiolo
<i>Glycine max</i> (L.) Merrill	Soya Bean, Soybean	Soja	Sojabohne	Soja
<i>Godetia grandiflora</i> Lindl.	Godetia	-	-	-
<i>Gymnocalycium Mihanovichii</i> Br. & R	Plain cactus	-	-	-
<i>Hemerocallis hybrida</i> Hort	Hemerocallis, Day-lily	Hémérocalle	Taglilie	Hemerocala
<i>Hibiscus</i> spp.	Hibiscus	Hibiscus	Eibisch	Hibisco
<i>Hordeum vulgare</i> L.	Barley	Orge	Gerste	Cebada
<i>Hyacinthus</i> spp.	Hyacinth	Jacinthe	Hyazinthe	Jacinto



Latin	English	Français	Deutsch	Español
<i>Impatiens</i> spp.	Impatiens	Balsamine, Impatiente	Springkraut, Balsamine	Balsamina
<i>Ipomoea batatas</i> (L.) Lam.	Sweet potato	Patate	Süßkartoffel, Batate	Batata, Patata dulce
<i>Iris</i> spp.	Iris	Iris	Iris, Schwertlilie	Lirio
<i>Lactuca sativa</i> L.	Lettuce	Laitue	Salat	Lechuga
<i>Lilium</i> spp.	Lily	Lis	Lilie	Lirio
<i>Liriope graminifolia</i> Baker	Liriope platyphylla	-	-	-
<i>Lobularia maritima</i> Desv.	Lobularia, Sweet Alyssum	Lobularia, Alysse maritime, Alysse odorante, Corbeille d'argent	Lobularia, Duftsteinrich	Alhelicillo, Lobularia
<i>Lolium</i> L.	Ryegrass	Ray-grass	Weidelgras	Ballico, Raygrás
<i>Lycium chinensis</i> Millor	Lycium	-	--	-
<i>Lycopersicon lycopersicum</i> (L.)	Tomato	Tomate	Tomate	Tomate
<i>Lycoris</i> spp.	Lycoris	-	-	-
<i>Malus domestica</i> Borkh.	Apple	Pommier	Apfel	Manzano
<i>Matthiola incana</i> R. Br.	Common Stock	Giroflée d'hiver	Levkoje	Alhelí
<i>Myosotis alpestris</i> F.W. Schmidt	Myosotis alpestris, Alpine Forget-me-not	Myosotis des Alpes	Alpenvergüß- meinnicht	-
<i>Neofinetia falcata</i> Hu.	Neofinetia falcata	-	-	-
<i>Oryza sativa</i> L.	Rice	Riz	Reis	Arroz
<i>Panax ginseng</i> C.A. Meyer	Ginseng	Ginseng	Ginseng	Ginseng
<i>Perilla frutescens</i> Brit. Var. <i>japonica</i> Hara	Perilla	Pérille	Perille	Perilla
<i>Petunia hybrida</i> Hort.	Petunia	Pétunia	Petunie	Petunia
<i>Platycodon grandiflorum</i> DC.	Platycodon grandiflorum	-	-	-
<i>Pleurotus</i> spp.	Mushroom	-	-	-
<i>Prunus persica</i> (L.) Batsch	Peach	Pêcher	Pfirsich	Durazno, Melocotonero
<i>Pyrus pyrifolia</i> (Durm. f.) Nakai	Chinese Pear, Japanese Pear, Sand Pear	Poirier japonais	Chinesische Birne, Sandbirne	Peral japonés
<i>Raphanus sativus</i> L.	Radish, Black Radish	Radis	Radieschen, Rettich	Rábano
<i>Rehmannia glutinosa</i>	Rehmannia glutinosa	-	-	-
<i>Rosa</i> spp.	Rose	Rosier	Rose	Rosal
<i>Saposhnikovia seseloides</i> (Hoffm.) Kitigawa	Saposhnikovia	-	-	-
<i>Senecio cruentus</i> DC.	Senecio cruentus, Florists' Cineraria	Cinéraire hybride	Kreuzkraut	-
<i>Sesamum indicum</i> (L.)	Sesame	Sésame	Sesam	Sésamo
<i>Solanum tuberosum</i> L.	Potato	Pomme de terre	Kartoffel	Papa, Patata
<i>Spinacia oleracea</i> L.	Spinach	Épinard	Spinat	Espinaca

<i>Latin</i>	English	Français	Deutsch	Español
<i>Trifolium pratense</i> L.	Red Clover	Trèfle violet	Rotklee	Trébol violeta
<i>Triticum aestivum</i> L.	Wheat, Soft wheat, Bread wheat	Blé tendre, Froment	Weichweizen	Trigo blando
<i>Tropaeolum majus</i> L.	Nasturtium	Capucine	Kapuzinerkresse	Capuchina, Carmelita
<i>Tulipa gesneriana</i> L.	Tulip	Tulipe	Tulpe	Tulipán
<i>Viola tricolor</i> L. var. <i>hortensis</i> DC.	Pansy, Heartsease, Wild Pansy	-	-	-
<i>Vitis</i> spp.	Grapevine			
<i>Zea mays</i> L.	Maize	Maïs	Mais	Maíz
<i>Zinnia elegans</i> Jacq.	Zinnia, Youth- and-old-age, Youth and age	Zinnia élégant	Zinnie	Zinnia, Rascamoño



## EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES

## AUSTRIA

By virtue of the Regulation of No. 315 of the Federal Minister for Agriculture, Forestry, Environment and Water Management, published in the Federal Law Gazette on August 31, 2001, the Republic of Austria extended protection to further genera and species with effect from September 1,

2001. The list of species and genera to which protection is extended is reproduced below (the Latin names and English common names appear in the Regulation, whereas the French, German and Spanish common names have been added, without guarantee of concordance, by the Office of the Union).

Latin	English	Français	Deutsch	Español
<i>Agrostis canina</i> L.	Velvet Bent	Agrostis des chiens	Hundsstraußgras	Agróstide canina, Agróstide de perro, Agróstide perruna
<i>Agrostis capillaris</i> L.	Brown Top	Agrostide commune	Rotes Straußgras	Agróstide común
<i>Agrostis gigantea</i> Roth	Red Top, Black Bent	Agrostide blanche, agrostide géante	Weißes Straußgras, Fioringras	Agróstide blanca, Pastoquilla
<i>Agrostis stolonifera</i> L.	Creeping Bent	Agrostide blanche, Agrostide stolonifère	Flechstraußgras	Agróstide estolonifera
<i>Allium cepa</i> L.	Onion	Oignon	Zwiebel	Cebolla
<i>Allium porrum</i> L.	Leek	Poireau	Porree	Puerro
<i>Alopecurus pratensis</i> L.	Meadow Foxtail	Vulpin des prés	Wiesenfuchsschwanz	Alopecuro, Cola de zorra, Vulpino
<i>Amaranthus</i> L.	Amaranth	Amarante	Amarant, Fuchsschwanz	Amaranto
<i>Anthriscus cerefolium</i> (L.) Hoffm.	Chervil	Cerfeuil	Kerbel	Perifollo
<i>Apium graveolens</i> L.	Celery	Céleri	Bleich-, Stielsellerie	Aprio
<i>Arachis hypogaea</i> L.	Groundnut, Peanut	Arachide	Erdnuß	Cacahuete, Mani
<i>Arrhenatherum elatius</i> (L.) P. Beauv. ex J. S. et K. B. Presl	Tall Oatgrass	Fromental, Avoine élevée	Glatthafer	Avena alta, Avena elevada, Fromental
<i>Asparagus officinalis</i> L.	Asparagus	Asperge	Spargel	Espárrago
<i>Avena sativa</i> L.	Oats	Avoine	Hafer	Avena
<i>Beta vulgaris</i> L. ssp. <i>vulgaris</i> var. <i>altissima</i> Doell	Sugar Beet	Betterave sucrière	Zuckerrübe	Remolacha azucarera
<i>Beta vulgaris</i> L. ssp. <i>vulgaris</i> var. <i>cicla</i> (L.) Alef.	Spinach Beet, Leaf Beet	Bette commune, Poirée	Mangold	Acelga
<i>Beta vulgaris</i> L. ssp. <i>vulgaris</i> var. <i>conditiva</i> Alef.	Garden Beet, Beetroot	Betterave rouge, Betterave potagère	Rote Bete, Rote Rübe	Remolacha roja, Remolacha de mesa
<i>Beta vulgaris</i> L. ssp. <i>vulgaris</i> var. <i>crassa</i> Mansf.	Fodder Beet	Betterave fourragère	Runkelrübe	Remolacha forrajera
<i>Brassica juncea</i> (L.) Czernj. et Coss.	Brown Mustard	Moutarde brune	Sareptasenf	Mostaza de Sarepta

Latin	English	Français	Deutsch	Español
<i>Brassica napus</i> L.	Rapeseed	Colza	Raps	Colza
<i>Brassica napus</i> L. var. <i>napobrassica</i> (L.) Rchb.	Swede	Chou-navet, Rutabaga	Kohlrübe	Colinabo
<i>Brassica nigra</i> (L.) Koch	Black Mustard	Moutarde noire		
<i>Brassica oleracea</i> L. cv. <i>acephala</i> (DC.) Alef. var. <i>gongylodes</i> L.	Kohlrabi	Chou-rave	Kohlrabi	Colirrábano
<i>Brassica oleracea</i> L. cv. <i>acephala</i> (DC.) Alef. var. <i>medullosa</i> Thell. und var. <i>viridis</i> L.	Fodder Kale	Chou fourrager	Futterkohl	Col forrajera
<i>Brassica oleracea</i> L. cv. <i>acephala</i> (DC.) Alef. var. <i>sabellica</i> L.	Curly Kale	Chou fris�	Gr�nkohl	Col rizada
<i>Brassica oleracea</i> L. cv. <i>botrytis</i> (L.) Alef. var. <i>botrytis</i> L.	Cauliflower	Chou-fleur	Blumenkohl	Coliflor
<i>Brassica oleracea</i> L. cv. <i>botrytis</i> (L.) Alef. var. <i>cymosa</i> Duch.	Sprouting Broccoli, Calabrese	Brocoli (� jets)	Brokkoli, Spargelkohl, Sprossenbrokkoli	Br�coli
<i>Brassica oleracea</i> L. cv. <i>capitata</i> (L.) Alef. var. <i>alba</i> DC.	White Cabbage	Chou cabus	We�bkohl, We�bkraut	Repollo blanco
<i>Brassica oleracea</i> L. cv. <i>capitata</i> (L.) Alef. var. <i>rubra</i> DC.	Red Cabbage	Chou rouge	Rotkohl, Rotkraut	Lombarda
<i>Brassica oleracea</i> L. cv. <i>capitata</i> (L.) Alef. var. <i>sabauda</i> L.	Savoy Cabbage	Chou de Milan	Wirsing	Col de Mil�n
<i>Brassica oleracea</i> L. cv. <i>oleracea</i> var. <i>gemmifera</i> DC.	Brussels Sprout	Chou de Bruxelles	Rosenkohl	Col de Bruselas
<i>Brassica pekinensis</i> (Lour.) Rupr.	Chinese Cabbage	Chou de Chine, P�tsai	Chinakohl	Col china, Repollo chino
<i>Brassica rapa</i> L. var. <i>rapa</i> (L.) Thell.	Turnip	Navet	Herbstr�be, Mair�be	Nabo
<i>Brassica rapa</i> L. var. <i>silvestris</i> (Lam.) Briggs	Turnip Rape	Navette	R�bsen	Nabina
<i>Bromus catharticus</i> Vahl	Rescue Grass	Brome de Schrader	Horntrespe	Cebadilla, Triguillo
<i>Bromus sitchensis</i>	Alaska Brome Grass			
<i>Cannabis sativa</i> L.	Hemp	Chanvre	Hanf	C�namo
<i>Capsicum annuum</i> L.	Sweet Pepper, Capsicum, Chili	Poivron, Piment	Paprika	Pimiento
<i>Carthamus tinctorius</i> L.	Dyer's Saffron, Safflower	Vcarthame, Safran b�tard	Saflor, F�rberdistel	Alazor, Azafr�n bastardo, Cartamo
<i>Carum carvi</i> L.	Caraway	Carvi, Cumin des pr�s	K�mmel	Alcaravera
<i>Chenopodium quinoa</i> Willd.	Quinoa			
<i>Choenomeles</i> Lindl.	Flowering Quince			
<i>Cichorium endivia</i> L.	Endive	Chicor�e fris�e, Scarole	Winterendivie	Escarola



Latin	English	Français	Deutsch	Español
<i>Cichorium intybus</i> L.	Chicory	Chicorée, Endive	Wurzelzichorie, Salatzichorie	Achicoria
<i>Citrullus lanatus</i> (Thunb.) Matsum. et Nakai	Watermelon	Pastèque	Wassermelone	Sandía
<i>Clematis</i> L.	Clematis	Clématite	Waldrebe	Clemátide
<i>Cornus mas</i> L.	Cornelian Cherry	Cornouiller mâle	Kornelkirsche	Cornejo, Cerezo silvestre, Sanguino
<i>Cucumis melo</i> L.	Melon	Melon	Melone	Melón
<i>Cucumis sativus</i> L.	Cucumber	Concombre	Gurke	Pepino, Cohombro
<i>Cucurbita maxima</i> Duch.	Pumpkin, Squash	Potiron, Giraumon	Riesenkürbis	Calabaza
<i>Cucurbita pepo</i> L.	Pumpkin, Courgette, Marrow	Courge, Courgette, Pâtisson, Citrouille	Gartenkürbis, Ölkürbis, Zucchini	Calabacín
<i>Cydonia</i> Mill.	Quince	Cognassier	Quitte	Membrillero
<i>Cynara cardunculus</i> L.	Cardoon, Prickly Artichoke	Cardon	Kardone, Gemüse- artischoke, Cardy	Cardo
<i>Cynodon dactylon</i> (L.) Pers.	Bermuda Grass	Chiendent	Bermudagrass	Grama de Bermuda
<i>Cynosurus cristatus</i> L.	Crested Dog's Tail	Crételle	Kammgras	Cola de perro
<i>Dactylis glomerata</i> L.	Cocksfoot, Orchard grass	Dactyle	Knäulgras	Dactilo
<i>Daucus carota</i> L.	Carrot	Carotte	Möhre, Karotte	Zanahoria
<i>Fagopyrum esculentum</i> Moench	Buckwheat	Sarrasin, Blé noir	Buchweizen	Alforfón
<i>Festuca arundinacea</i> Schreb.	Tall Fescue	Fétuque élevée	Rohrschwengel	Cañuela alta, Festuca alta
<i>Festuca ovina</i> L. <i>sensu lato</i>	Sheep's Fescue	Fétuque durette, Fétuque ovine	Schafschwengel	Cañuela de oveja, Cañuela ovina, Festuca ovina
<i>Festuca pratensis</i> Huds.	Meadow Fescue	Fétuque des prés	Wiesenschwin- gel	Cañuela común, Cañuela de los prados, Festuca de los prados
<i>Festuca rubra</i> L. <i>sensu lato</i>	Red Fescue	Fétuque rouge	Rotschwengel	Cañuela roja, Festuca roja
X <i>Festulolium braunii</i> (K. Richter) A. Camus	X <i>Festulolium braunii</i>			
<i>Foeniculum vulgare</i> Miller	Fennel	Fenouil	Fenchel	Hinojo
<i>Fragaria</i> L.	Strawberry	Fraisier	Erdbeere	Fresa

Latin	English	Français	Deutsch	Español
<i>Glycine max</i> (L.) Merrill	Soya Bean	Soja	Sojabohne	Soja
<i>Gossypium</i> ssp.	Cotton	Cotonnier	Baumwolle	Algodón
<i>Hedysarum coronarium</i> L.	Spanish Escarpet	Sainfoin à bouquets	Italienischer Hahnenkopf, Süßklee	Zulla
<i>Helianthus annuus</i> L.	Common Sunflower	Tournesol, Soleil	Sonnenblume	Girasol
<i>Hordeum vulgare</i> L. <i>sensu lato</i>	Barley	Orge	Gerste	Cebada
<i>Humulus lupulus</i> L.	Hop	Houblon	Hopfen	Lúpulo
<i>Lactuca sativa</i> L.	Lettuce	Laitue	Salat	Lechuga
<i>Linum usitatissimum</i> L.	Flax, Linseed	Lin	Lein	Lino
<i>Lolium multiflorum</i> Lam. ssp. <i>alternativum</i>	Westerwold Ryegrass	Ray-grass de Westerwold	Welsches Weidelgras	Ballico de Westerwold, Raygrás de Westerwold
<i>Lolium multiflorum</i> Lam. ssp. non <i>alternativum</i>	Italian Ryegrass	Ray-grass d'Italie	Welsches Weidelgras, Italienisches Raygras	Ballico italiano, Raygrás italiano
<i>Lolium perenne</i> L.	Perennial Ryegrass	Ray-grass anglais	Deutsches Weidelgras	Ballico perenne, Raygrás inglés
<i>Lolium x boucheanum</i> Kunth	Hybrid Ryegrass	Ray-grass hybride	Bastardweidel- gras, Oldenburgisches Weidelgras	Ballico híbrido, Raygrás híbrido
<i>Lotus corniculatus</i> L.	Bird's Foot Trefoil	Lotier corniculé	Hornschotenklee	Loto de los prados
<i>Lupinus albus</i> L.	White Lupin	Lupin blanc	Weißlupine	Altramuz blanco
<i>Lupinus angustifolius</i> L.	Blue Lupin	Lupin bleu	Blaue Lupine	Altramuz azul
<i>Lupinus luteus</i> L.	Yellow Lupin	Lupin jaune	Gelbe Lupine	Altramuz amarillo
<i>Lycopersicon lycopersicum</i> (L.) Karst. ex Farwell	Tomato	Tomate	Tomate	Tomate
<i>Malus</i> Mill.	Apple	Pommier	Apfel	Manzano
<i>Medicago lupulina</i> L.	Black Medick, Yellow Trefoil	Luzerne lupuline, Minette	Gelbklee (Hopfenklee)	Alfalfa lupinina, Lupinina
<i>Medicago sativa</i> L.	Lucerne, Alfalfa	Luzerne (cultivée)	Blaue Luzerne	Alfalfa, Mielga
<i>Medicago x varia</i> T. Martyn	(Hybrid) Lucerne	Luzerne hybride	Bastardluzerne	Alfalfa híbrida, Alfalfa de las arenas
<i>Onobrychis viciifolia</i> Scop.	Sainfoin	Sainfoin, Escarpette	Esparsette	Esparceta, Pipirigallo
<i>Oryza sativa</i> L.	Rice	Riz	Reis	Arroz
<i>Panicum miliaceum</i> L.	Common Millet	Millet commun, Panic millet, Panic faux millet	Rispenhirse	Mijo común



Latin	English	Français	Deutsch	Español
<i>Papaver somniferum</i> L.	Opium Poppy	Œillette, Pavot	Mohn	Adormidera, Amapola
<i>Petroselinum crispum</i> (Mill.) Nym. ex A. W. Hill	Parsley	Persil	Petersilie	Perejil
<i>Phacelia tanacetifolia</i> Benth.	Phacelia	Phacélie à feuilles de tanaïs	Phazelia	Phazelia
<i>Phalaris aquatica</i> L.	Harding's Grass	Herbe de Harding, Alpiste tubéreux	Knolliges Glanzgras	Raballo de cordero, Alpiste bulboso
<i>Phalaris arundinacea</i> L.	Reed Canary Grass	Alpiste roseau	Rohrglanzgras	Hierba cinta, Alpiste arundináceo
<i>Phalaris canariensis</i> L.	Canary Grass	Alpiste des Canaries, Phalaris	Kanariengras	Alpiste, Alpistera
<i>Phaseolus coccineus</i> L.	Runner Bean, Kidney Bean	Haricot d'Espagne	Prunkbohne, Feuerbohne	Judía de España, Judía escarlata
<i>Phaseolus vulgaris</i> L.	French Bean	Haricot	Gartenbohne	Judía común, Alubia, Poroto
<i>Phleum bertolonii</i> DC.	Small Timothy	Fléole diploïde, Petite fléole	Zwiebellieschgras	Fleo
<i>Phleum pratense</i> L.	Timothy	Fléole des prés	Wiesensieschgras, Timothe	Fleo de los prados
<i>Pisum sativum</i> L.	Pea	Pois	Erbse	Guisante, Arvejo
<i>Poa alpina</i> L.	Alpine Meadow-Grass	Pâturin alpin	Alpenrispengras	Poa alpina
<i>Poa annua</i> L.	Annual Meadow-Grass	Pâturin annuel	Einjähriges Rispengras	Poa anual
<i>Poa nemoralis</i> L.	Wood Meadow-Grass	Pâturin des bois	Hainrispengras	Poa de los bosques
<i>Poa palustris</i> L.	Swamp Meadow-Grass	Pâturin des marais	Sumpfrispengras	Poa de los pantanos
<i>Poa pratensis</i> L.	Kentucky Bluegrass, Smooth-Stalked Meadow-Grass	Pâturin des prés	Wiesenrispengras	Poa de los prados
<i>Poa trivialis</i> L.	Rough-Stalked Meadow-Grass	Pâturin commun	Gemeines Rispengras	Poa común
<i>Populus</i> L.	Poplar	Peuplier	Pappel	Álamo, Chopo
<i>Prunus armeniaca</i> L.	Apricot	Abricotier	Aprikose	Albaricoquero
<i>Prunus avium</i> L.	Sweet Cherry	Cerisier (cerises douces: guignes, bigarreaux)	Süßkirsche	Cerezo dulce
<i>Prunus cerasus</i> L.	Sour Cherry	Cerisier (cerises acides: griottes, amarellés)	Sauerkirsche	Cerezo ácido, Guindo
<i>Prunus domestica</i> L.	Plum	Prunier	Pflaume	Ciruelo, Cirolero

Latin	English	Français	Deutsch	Español
<i>Prunus insititia</i> L.	Plum (Mirabelle)	Prunier de Damas, -, Mirabelle	Haferpflaume, Mirabelle	Ciruelo de San Julián, Ciruelo mirabel
<i>Prunus persica</i> (L.) Batsch	Peach	Pêcher	Pfirsich	Durazno, Melocotonero
<i>Pyrus communis</i> L.	Pear	Poirier	Birne	Peral
<i>Raphanus sativus</i> L.	Radish, Black Radish	Radis	Radieschen, Rettich	Rábano
<i>Raphanus sativus</i> L. var. <i>oleiformis</i> Pers.	Fodder Radish	Radis oléifère, Radis chinois	Ölrettich	Rábano oleaginoso
<i>Ribes nigrum</i> L.	Black Currant	Cassis	Schwarze Johannisbeere	Casis, Grosellero negro
<i>Ribes niveum</i> Lindl.	White Currant	Groseillier blanc	Weißer Johannisbeere	Grosellero blanco
<i>Ribes sylvestre</i> (Lam.) Mert. et W. D. J. Koch	Red Currant	Groseillier rouge	Rote Johannisbeere	Grosellero rojo
<i>Ribes uva-crispa</i> L.	Gooseberry	Groseillier à maquereau	Stachelbeere	Grosellero silvestre, Agrazón, Uva crespá
<i>Rosa</i> L.	Rose	Rosier	Rose	Rosal
<i>Rubus idaeus</i> L. & hybrides	Raspberry	Framboisier	Himbeere	Frambueso, Sangüeso
<i>Rubus</i> L. subgenus <i>Eubatus</i> Sect. Moriferi & Ursini & hybrides	Blackberry	Ronce fruitière	Brombeere	Zarza
<i>Salix</i> L.	Willow	Saule	Weide	Sauce
<i>Sambucus nigra</i> L.	Common Elder			
<i>Scorzonera hispanica</i> L.	Black Salsify			
<i>Secale cereale</i> L.	Rye	Seigle	Roggen	Centeno
<i>Sinapis alba</i> L.	Yellow Mustard, White Mustard	Moutarde blanche	Weißer Senf, Gelbsenf	Mostaza blanca
<i>Solanum melongena</i> L.	Eggplant, Aubergine	Aubergine	Eierfrucht, Aubergine	Berenjena
<i>Solanum tuberosum</i> L.	Potato	Pomme de terre	Kartoffel	Papa, Patata
<i>Sorbus aucuparia</i> L.	Mountain Ash	Sorbier	Eberesche, Mehlbeere, Elsbeere	Mostajo, Mostellar, Serbal
<i>Sorghum bicolor</i> (L.) Moench	Sorghum	Sorgho	Mohrenhirse	Sorgo
<i>Sorghum bicolor</i> (L.) Moench x <i>Sorghum sudanense</i> (Piper) Stapf	Sorghum x Sudan Grass			
<i>Sorghum sudanense</i> (Piper) Stapf	Sudan Grass			
<i>Spinacia oleracea</i> L.	Spinach	Épinard	Spinat	Espinaca
<i>Trifolium alexandrinum</i> L.	Berseem Clover	Trèfle d'Alexandrie, Bersim	Alexandrin Klee	Trébol de Alejandria, Bersim
<i>Trifolium hybridum</i> L.	Alsike Clover	Trèfle hybride	Schwedenklee	Trébol híbrido
<i>Trifolium incarnatum</i> L.	Crimson Clover	Trèfle incarnat	Inkarnatklee	Trébol encarnado

Latin	English	Français	Deutsch	Español
<i>Trifolium pratense</i> L.	Red Clover	Trèfle violet	Rotklee	Trébol violeta
<i>Trifolium repens</i> L.	White Clover	Trèfle blanc	Weißklee	Trébol blanco
<i>Trifolium resupinatum</i> L.	Persian Clover	Trèfle de Perse	Persischer Klee	Trébol de Persia
<i>Trigonella foenum-graecum</i> L.	Fenugreek			
<i>Trisetum flavescens</i> (L.) P. Beauv.	Golden Oatgrass	Avoine jaunâtre	Goldhafer	Avena amarilla
<i>Triticum aestivum</i> L. emend. Fiori et Paol.	Wheat, Soft wheat, Bread wheat	Blé tendre, Froment	Weichweizen	Trigo blando
<i>Triticum durum</i> Desf.	Durum Wheat	Blé dur	Hartweizen	Trigo duro
<i>Triticum spelta</i> L.	Spelt	Épeautre	Spelz, Dinkel	Espelta
X <i>Triticosecale</i> Wittm.	Triticale			
<i>Valerianella locusta</i> L.	Cornsalad, Lamb's Lettuce	Mâche, Doucette	Feldsalat	Hierba de los canónigos, Lechuga de campo
<i>Vicia faba</i> L.	Field Bean, Tick Bean	Fève, Féverole	Ackerbohne, Dicke Bohne (Puffbohne)	Haba
<i>Vicia pannonica</i> Crantz	Hungarian Vetch	Vesce de Pannonie	Ungarische Wicke	Veza de Hungría
<i>Vicia sativa</i> L.	Common Vetch	Vesce commune	Saatwicke	Veza común
<i>Vicia villosa</i> Roth	Hairy Vetch	Vesce velue	Zottelwicke	Veza vellosa
<i>Vitis</i> L.	Grapevine	Vigne	Rebe	Vid
<i>Zea mays</i> L.	Maize	Mais	Mais	Maíz

### RUSSIAN FEDERATION

By virtue of an official communication from the State Commission of the Russian Federation for Variety Testing and Protection of May 15, 2001,

protection was extended to all plant genera and species as from April 23, 2001.



## NEWSLETTER

### UPOV MARKS 40<sup>TH</sup> ANNIVERSARY WITH MILESTONE 50<sup>TH</sup> ACCESSION

On December 13, 2001, the Office of the Union organized a Press Briefing in order to inform journalists covering news concerning international organizations based in Geneva about important events in the history of the International Union for the Protection of New Varieties of Plants (UPOV), in particular, the anniversary of the adoption and signature of the UPOV Convention on December 2, 1961, and the deposit, on De-

cember 7, 2001, of the instrument of accession to the UPOV Convention (1991 Act) by the Republic of Korea.

Mr. Rolf Jördens, Vice Secretary-General, presented these events and UPOV's role in today's context. An animated discussion resulted from the Press Briefing. On that occasion, Press Release No. 50, reproduced below, was distributed.

The International Union for the Protection of New Varieties of Plants (UPOV), an intergovernmental organization that promotes the development of new varieties of plants, marks its 40<sup>th</sup> anniversary this month with a growing number of States acceding to the UPOV Convention. The Republic of Korea will become the 50<sup>th</sup> Contracting Party to the UPOV Convention, which was adopted on December 2, 1961, after the deposit of its instrument of accession to the UPOV Convention (1991 Act), on December 7, 2001.

"The growing membership reflected in the milestone of 50 members testifies to the benefits of a plant variety protection system in line with the UPOV Convention," said Dr. Rolf Jördens, Vice Secretary-General of UPOV. He added, "the Convention provides breeders' rights in the interest of society as a whole."

The number of UPOV members has increased rapidly in recent years, growing from 20 at the end of 1992, to 50 today. A further increase in membership is expected in the near future, as 19 States or organizations have initiated with the Council of UPOV the procedure for becoming members of the Union. In addition, 39 States have been in contact with the Secretariat with a view to developing legislation in line with the UPOV Convention.

The mission of UPOV is to provide and promote an effective system of plant variety protection, with the aim of encouraging the development of new varieties of plants, for the benefit

of society. New varieties of plants are one of the most powerful tools to enhance food production in a sustainable way, to increase income in the agricultural sector and to contribute to overall development.

The need to provide an incentive for breeders in the same way as for inventors and authors led to the creation of this international treaty. Ten States participated in the Diplomatic Conference that led to the adoption of the UPOV Convention of 1961, in Paris, which entered into force on August 10, 1968. The latest revision of the Convention, the 1991 Act, was developed to respond to technological developments in plant breeding and also to build on the experience gained from the application of the Convention. The 1991 Act of the UPOV Convention entered into force on April 24, 1998; as of today, 19 States have acceded to or ratified the 1991 Act and several States and organizations have adopted legislation in line with the 1991 Act.

The founders of the UPOV Convention sought to strike a balance between the needs of breeders, farmers and other variety users in the interest of society as a whole. The Convention, as revised in 1991, provides a modern and effective response to new developments and maintains the balance between the exclusive right of the holder of the breeder's right and free access to plant genetic resources, in the form of protected varieties, for further breeding.

## NEWS FLASH

### UPOV-WIPO SYMPOSIUM THE INTERFACE BETWEEN PATENTS AND PLANT BREEDERS' RIGHTS: THE BIOTECHNOLOGY CHALLENGE Geneva, October 25, 2002

The International Union for the Protection of New Varieties of Plants (UPOV) and the World Intellectual Property Organization (WIPO) are hosting a Joint Symposium on *The Interface Between Patents and Plant Breeders' Rights: The Biotechnology Challenge*, on October 25, 2002, at the Headquarters of UPOV/WIPO, in Geneva.

The Symposium will cover recent legal and technological developments in plant breeding and plant

biotechnology and will be of particular interest to government and intergovernmental organizations' officials, representatives of companies active in biotechnology and plant breeding, academics and lawyers.

More information will appear shortly on the UPOV Web site ([www.upov.int](http://www.upov.int)) and in the next issue of Plant Variety Protection, the UPOV Gazette and Newsletter.

## BOOK REVIEW

### SORTENSCHUTZGESETZ: KOMMENTAR VON ALFRED KEUKENSCHRIJVER\*

Köln; Berlin; Bonn; München: Heymanns, 2001  
(Heymanns Taschenkommentare zum gewerblichen Rechtsschutz);  
452 pages, ISBN 3-452-24812-7

Plant variety protection is implemented under rapidly changing conditions. The 1991 Act of the UPOV Convention, which is the basis for the *Sortenschutzgesetz*, has proven to provide convincing answers to challenges caused by technological progress in plant breeding and political requirements. An important task of UPOV is to ensure a consistent and harmonized understanding and application of the Convention throughout the Union. Keukenschrijver's Commentary is most welcome as a contribution to this objective.

The structure of the publication corresponds to the usual approach of legal commentaries. A list of abbreviations is followed by an introduction to plant variety protection in Germany and in international law. It deals with history, aims and interface with other forms of intellectual property protection. The main chapters are preceded by inventories of relevant literature. Detailed commentaries on the individual articles of the *Sortenschutzgesetz* form the core of the book (310 pages). Each article and the related commentary constitute a separate chapter structured according to a common principle. As far as is relevant, attention is given to the European Community Law. The annexes, *inter alia*, make reference to foreign laws on plant variety protection, relevant foreign literature and reproduce the 1991 Act of the UPOV Convention.

Keukenschrijver's commentary is characterized by a high degree of care and completeness. The reader will find a thorough reflection on the legal basis, the practical implementation and the latest experience in the field of plant breeder's rights in Germany, as well as on the national and international context. Minor inexactitudes cannot diminish the value of the book: the "African Model Law", for instance, which is mentioned on page 47 as having reached a final form, is still a draft under discussion.

Those who, for professional reasons, are involved in plant variety protection will appreciate referring to Keukenschrijver's book in order to develop or to confirm their own knowledge of the legal background and practice.

\* Commentary by Alfred Keukenschrijver on the "Sortenschutzgesetz" (Plant Variety Protection Law) of December 11, 1985, as last amended on July 17, 1997.

**MEMBER STATES****MODIFICATION OF FEES****NETHERLANDS\***

As a result of the bilateral administrative agreements concerning the cooperation in examination of plant varieties between the Netherlands and other members of the Union, the Dutch Board for Plant Breeders' Rights (the Board for PBR) will carry out, at the request of the other party, the technical examination of varieties belonging to certain species. It has been agreed that the requesting authority shall pay to the Board for PBR an amount corresponding to the examination fee prescribed in the Netherlands.

Since the level of the amount to be paid to the Board for PBR in relation to the testing on behalf of the requesting authority, is linked directly to national examination fees in the Netherlands, please note that national examination fees have been increased from the first of November 2001. In effect with respect to requests for examination filed after October 31, 2001, the following amounts will be charged:

	Examination during:		
	The first year	The second year	Each following year
Agricultural crops	778.60 euro	778.69 euro	389.34 euro
Vegetable crops	1395.15 euro	1395.15 euro	1395.15 euro
Other crops, including ornamental crops	648.91 euro	648.91 euro (3)	648.91 euro (3)

1. In grass species the examination takes normally 3 years; in other agricultural species the examination takes normally 2 years.
2. In vegetables the examination takes normally 2 years.
3. In most ornamental species the examination takes normally 1 year; in some ornamental species the UPOV test guidelines require at least 2 years of examination.

The fee for taking over reports remains at 226,90 euro.

\* Information transmitted by virtue of an official letter from the Dutch Board on November 30, 2001.

**UPOV CALENDAR OF MEETINGS 2002**

April 15 (afternoon) to 17 (Geneva, Switzerland)	Technical Committee
April 15 (morning and evening) April 16 (evening) (Geneva, Switzerland)	Editorial Committee
April 18 (Geneva, Switzerland)	Administrative and Legal Committee
April 19 (Geneva, Switzerland)	Consultative Committee
April 19 (Geneva, Switzerland)	Extraordinary Session of the Council
June 17 to 20 (Texcoco, Mexico)	Technical Working Party on Automation and Computer Programs
September 9 to 13 (Tsukuba, Japan)	Technical Working Party for Vegetables
September 23 to 27 (Rio de Janeiro, Brazil)	Technical Working Party for Agricultural Crops
October 21 and 22 (Geneva, Switzerland)	Administrative and Legal Committee
October 23 (Geneva, Switzerland)	Consultative Committee
October 24 (Geneva, Switzerland)	Council
October 25 (Geneva, Switzerland)	Symposium
November 18 to 22 (Quito, Ecuador)	Technical Working Party for Ornamental Plants and Forest Trees
November 25 to 29 (San Carlos de Bariloche, Argentina)	Technical Working Party for Fruit Crops



**STATES PARTY TO THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF  
NEW VARIETIES OF PLANTS**

**International Convention for the Protection of New Varieties of Plants\***

UPOV Convention (1961), as revised at Geneva (1972, 1978 and 1991)

**Status on December 7, 2001**

State	Date on which State became member of UPOV	Number of contribution units	Latest Act <sup>1</sup> of the Convention to which State is party and date on which State became party to that Act
Argentina .....	December 25, 1994	0.5	1978 Act..... December 25, 1994
Australia.....	March 1, 1989	1.0	1991 Act..... January 20, 2000
Austria .....	July 14, 1994	1.5	1978 Act..... July 14, 1994
Belgium <sup>2</sup> .....	December 5, 1976	1.5	1961/1972 Act..... December 5, 1976
Bolivia .....	May 21, 1999	0.2	1978 Act..... May 21, 1999
Brazil .....	May 23, 1999	0.25	1978 Act..... May 23, 1999
Bulgaria .....	April 24, 1998	0.2	1991 Act..... April 24, 1998
Canada .....	March 4, 1991	1.0	1978 Act..... March 4, 1991
Chile .....	January 5, 1996	0.2	1978 Act..... January 5, 1996
China.....	April 23, 1999	0.5	1978 Act <sup>3</sup> ..... April 23, 1999
Colombia .....	September 13, 1996	0.2	1978 Act..... September 13, 1996
Croatia .....	September 1, 2001	0.2	1991 Act..... September 1, 2001
Czech Republic.....	January 1, 1993	0.5	1978 Act..... January 1, 1993
Denmark <sup>4</sup> .....	October 6, 1968	1.5	1991 Act..... April 24, 1998
Ecuador.....	August 8, 1997	0.2	1978 Act..... August 8, 1997
Estonia .....	September 24, 2000	0.2	1991 Act..... September 24, 2000
Finland.....	April 16, 1993	1.0	1991 Act..... July 20, 2001
France <sup>5</sup> .....	October 3, 1971	5.0	1978 Act..... March 17, 1983
Germany.....	August 10, 1968	5.0	1991 Act..... July 25, 1998
Hungary .....	April 16, 1983	0.5	1978 Act..... April 16, 1983
Ireland.....	November 8, 1981	1.0	1978 Act..... November 8, 1981
Israel .....	December 12, 1979	0.5	1991 Act..... April 24, 1998
Italy.....	July 1, 1977	2.0	1978 Act..... May 28, 1986
Japan .....	September 3, 1982	5.0	1991 Act..... December 24, 1998
Kenya.....	May 13, 1999	0.2	1978 Act..... May 13, 1999
Kyrgyzstan .....	June 26, 2000	0.2	1991 Act..... June 26, 2000
Mexico.....	August 9, 1997	0.75	1978 Act..... August 9, 1997
Netherlands.....	August 10, 1968	3.0	1991 Act <sup>6</sup> ..... April 24, 1998
New Zealand.....	November 8, 1981	1.0	1978 Act..... November 8, 1981
Nicaragua.....	September 6, 2001	0.2	1978 Act..... September 6, 2001
Norway .....	September 13, 1993	1.0	1978 Act..... September 13, 1993
Panama.....	May 23, 1999	0.2	1978 Act..... May 23, 1999
Paraguay .....	February 8, 1997	0.2	1978 Act..... February 8, 1997
Poland.....	November 11, 1989	0.5	1978 Act..... November 11, 1989
Portugal.....	October 14, 1995	0.5	1978 Act..... October 14, 1995
Republic of Korea.....	January 7, 2002	0.75	1991 Act..... January 7, 2002
Republic of Moldova.....	October 28, 1998	0.2	1991 Act..... October 28, 1998
Romania.....	March 16, 2001	0.2	1991 Act..... March 16, 2001
Russian Federation.....	April 24, 1998	0.5	1991 Act..... April 24, 1998
Slovakia .....	January 1, 1993	0.5	1978 Act..... January 1, 1993
Slovenia .....	July 29, 1999	0.2	1991 Act..... July 29, 1999
South Africa.....	November 6, 1977	1.0	1978 Act..... November 8, 1981
Spain <sup>7</sup> .....	May 18, 1980	1.5	1961/1972 Act..... May 18, 1980
Sweden.....	December 17, 1971	1.5	1991 Act..... April 24, 1998
Switzerland.....	July 10, 1977	1.5	1978 Act..... November 8, 1981
Trinidad and Tobago.....	January 30, 1998	0.2	1978 Act..... January 30, 1998
Ukraine .....	November 3, 1995	0.5	1978 Act..... November 3, 1995
United Kingdom.....	August 10, 1968	5.0	1991 Act..... January 3, 1999
United States of America.....	November 8, 1981	5.0	1991 Act <sup>8</sup> ..... February 22, 1999
Uruguay.....	November 13, 1994	0.2	1978 Act..... November 13, 1994

(Total: 50 States)

<sup>1</sup> "1961/1972 Act" means the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as amended by the Additional Act of November 10, 1972; "1978 Act" means the Act of October 23, 1978, of the Convention; "1991 Act" means the Act of March 19, 1991, of the Convention.

<sup>2</sup> With a notification under Article 34(2) of the 1978 Act.

<sup>3</sup> With a declaration that the 1978 Act is not applicable to the Hong Kong Special Administrative Region.

<sup>4</sup> With a declaration that the Convention of 1961, the Additional Act of 1972, the 1978 Act and the 1991 Act are not applicable to Greenland and the Faroe Islands.

<sup>5</sup> With a declaration that the 1978 Act applies to the territory of the French Republic, including the Overseas Departments and Territories.

<sup>6</sup> Ratification for the Kingdom in Europe.

<sup>7</sup> With a declaration that the Convention of 1961 and the Additional Act of 1972 apply to the entire territory of Spain.

<sup>8</sup> With a reservation pursuant to Article 35(2) of the 1991 Act.

## CASE LAW

**J.E.M. AG SUPPLY, INC. v. PIONEER HI-BRED INTERNATIONAL, INC.\***

The recent decision by the United States Supreme Court (the Court) in *J.E.M. AG Supply, Inc. v. Pioneer Hi-Bred International, Inc.*, 122 S. Ct. 593, LEXIS 10949 (2001), affirms the notion that United States utility patent protection is available for plant inventions. This decision is of great importance in the field of plant variety development and affirms the policy, instituted by the United States Patent and Trademark Office (USPTO) in the 1980's, of providing broad patent protection for plant inventions.

This paper reviews the Court's decision in light of the current intellectual property protection for these types of innovations available in the United States.

*Protections Available in the United States of America*

In order to comprehend the significance of this decision, a review of the various types of intellectual property protection available in the United States with respect to innovations in plants is warranted. Section 101 of title 35 of the United States Code (35 U.S.C. § 101) defines the general subject matter available for patents in the United States. These patents are referred to as "utility" patents and require findings of novelty, non-obviousness and utility, as well as significant description and other traditional requirements according to the U.S. patent laws. "Utility" patents grant the owner a right to exclude others from making, using, offering to sell, selling within the United States, or importing into the United States the patented invention as defined in the claims, *see 35 USC § 271(a)*.

While utility patents are available for inventions in all fields of endeavor, the Plant Patent Act (PPA) and Plant Variety Protection Act (PVPA) provide plant specific protection mechanisms. The PPA provides for the grant of a "plant patent" and is limited only to asexually reproduced plant varieties. The PVPA provides for the grant of a breeder certificate according to UPOV requirements of distinctness, uniformity, stability, novelty and a suitable variety denomination and is limited only to sexually reproduced plant varieties. These plant specific mechanisms do not have the same requirements of non-obviousness and utility as those for utility patents and have a much less substantive description requirement. However, protection is limited under these systems to excluding others from reproducing the plant variety or using, offering for sale or selling the plant variety, or any of its parts, throughout the United States, or for importing the plant variety or any parts thereof, into the United States, *see 35 USC § 163, 7 USC § 2483(a)*.

*The Court's Analysis – Plant Inventions May Be Protected by Utility Patents*

*J.E.M. AG Supply v. Pioneer Hi-Bred International, Inc.* clarifies that plant inventions may be protected both by "utility" patents, as well as the applicable plant patent or plant variety

protection available. In coming to this conclusion, the Court initially cites to the landmark decision of *Diamond v. Chakrabarty*, 447 U.S. 303 (1980) for the basic proposition that living things are eligible for patenting under 35 USC § 101. *J.E.M. AG Supply*, LEXIS 10949 at \*12. The majority decision thereby continues the broad reading of the United States patent statutes that, at least since the *Chakrabarty* decision, has driven the view of patent coverage as welcoming new fields of innovation and appears to reaffirm that this broad outlook will be maintained as to the indefinite future.

The Court then cites to the decision of the United States Patent and Trademark Office (USPTO) in *Ex Parte Hibberd*, 227 USPQ 443 (Bd. Pat. App. & Inter 1985), which built on the broad language of *Chakrabarty* in determining that plants are within the understood meaning of manufacture or composition of matter and are thereby specifically within the definition of 35 USC § 101, *J.E.M. AG Supply*, LEXIS 10949 at \*14. By stepping through this analysis, the Court recognizes and approves USPTO policy that has provided for the granting of utility patents for plant inventions since the *Hibberd* decision.

The petitioners in the case, *J.E.M. AG Supply*, had argued that the Plant Patent Act of 1930 (PPA) and the Plant Variety Protection Act of 1970 (PVPA) were intended by the U.S. Congress to provide the exclusive means of protecting new varieties of plants, and set forth a number of arguments in this regard. The Court systematically rejects these arguments as unpersuasive in a consecutive manner.

*Discussing the Plant Patent Act of 1930*

First, discussing the PPA, the Court begins with the observation that "chapter 15 (the current plant patent code chapter) nowhere states that plant patents are the exclusive means of granting intellectual property protection for plants," *Id.* at \*18. Petitioner initially argues that the creation of the PPA, in and of itself, indicated that 35 USC § 101 does not include plants as protectable subject matter. In response, the Court finds that while the United States Congress may have thought that plants were unpatentable at the time of the PPA, this was due to the fact that, at that time, plants were (1) thought to be products of nature and (2) not amenable to the written description requirement. However, the Court reasons that it would be inappropriate to deny patent protection under 101 "simply because such coverage was thought technologically infeasible in 1930" as this would be "inconsistent with the forward-looking perspective of the utility patent statute," *Id.* at \*18-19.

Petitioner also made arguments suggesting that the limitation to asexually reproduced plants of the PPA would imply that Congress did not believe that 35 USC § 101 was meant to cover sexually reproduced plants, *Id.* at \*22. The Court

\* This commentary has been provided by Mr. Robert L. Stoll, Administrator for External Affairs, Office of Legislative and International Affairs, United States Patent and Trademark Office.

rejected this argument on the basis of the historical context of plant breeding. The Petitioner also argues that the 1952 amendment of the Patent Act, which moved the PPA provisions into chapter 15 of the United States Code, separate from section 101, evidenced the exclusive nature of Plant Patent protection for plant varieties. The second argument was rejected on the basis that the 1952 amendment constituted nothing more than a “house-cleaning” amendment leaving substantive rights unaffected, *Id.* at \*25.

#### *Discussing the Plant Variety Protection Act*

Petitioner’s arguments made with respect to the PVPA are then considered in turn. The majority decision again begins by taking note that the PVPA never states that it is an exclusive means of protecting sexually reproduced plant varieties, *Id.* at \*29. The fact that the USPTO had already issued utility patents protecting hybrid plants as a result of product-by-process protection at the time the PVPA was enacted is also cited as evidence that the two forms of protection are not mutually exclusive, *Id.* at \*30.

The Court also rejects the notion that the passage of the PVPA altered the subject matter protection of 101 by implication. According to United States jurisprudence, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable, *see Morton v. Mancari*, 417 US 535, 550 (1974). The Court finds that the PVPA and 35 USC § 101 are not irreconcilable as the requirements for obtaining a utility patent are more stringent than those for obtaining a PVP certificate, and the protections afforded by a utility patent are greater than those afforded by a PVP certificate, *J.E.M. AG Supply*, LEXIS 10949 at \*31.

Therefore, overlapping protections are considered consistent with one another, and not exclusive. This is an important recognition, and the majority decision appropriately analogizes the situation to that of an invention entitled to both patent and

copyright protection. Different forms of protection may be necessary in order to cover different features or characteristics of an innovative product or process, and this is true of plant varieties as well.

The Court then looks to other objective evidence. It recognizes that the USPTO has assigned utility patents for plants for at least 16 years and there has been no indication from Congress that such coverage is inconsistent with the PVPA or PPA. In addition, a 1999 amendment to the patent statutes recognized that plants are patentable under 101, *Id.* at \*36. This 1999 amendment is cited as objective evidence that the Congress intended for both systems to coexist.

#### *Conclusion*

This case clearly holds that developed plant breeds fall within the terms of 35 USC § 101. This holding, although already implemented by USPTO patent examination policy for at least 16 years, should be of great comfort to innovative plant breeders world-wide. It reaffirms the forward-looking nature of the United States patent system, and underscores the broad view of patentability that fuels innovation in all fields of endeavor, including the field of plant breeding.

Innovators may obtain protection for plant varieties according to the more limited regimes of the PVPA and PPA, or, in the case of plants that meet the stringent descriptions requirements and tough substantive requirements of novelty, non-obviousness and utility, can obtain utility patent protections for their innovations. The available protections can be tailored to the nature of the invention and thereby provide for the comprehensive protection deserved by plant breeders and other interested parties around the world.

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## LEGISLATION

## AUSTRIA

**FEDERAL LAW ON THE PROTECTION OF PLANT VARIETIES  
(VARIETY PROTECTION ACT 2001)\***

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\* Entered into force on September 1, 2001. On the same date, the Plant Variety Protection Law BGBl No. 108/1993 became obsolete. Translation: by the national authorities.

## PART I

## GENERAL PROVISIONS

*Definitions*

## Section 1

For the purposes of this Federal Law

1. "species" shall mean plant species as well as their combinations and sub-divisions including such that are characterised by a particular propagation system or final use;
2. "variety" shall mean 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
  - 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 as a unit with regard to its suitability for being propagated unchanged;
3. "variety essentially derived from another variety" shall mean a variety which
  - (a) is predominantly bred from an initial variety, or from a variety that is itself predominantly derived from the initial variety, while maintaining the expression of the essential characteristics; and
  - (b) is clearly distinct from the initial variety; and
  - (c) except for the differences which result from the act of derivation, conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
4. "propagating material" shall mean seeds, plants and parts of plants meant for the production or, otherwise, the growing, of plants;
5. "breeder" shall mean any natural or legal person that bred, or discovered and developed, a variety and this person's successor in title;
6. "Member of the Union" shall mean a state which is a member of the International Union for the Protection of New Varieties of Plants ("UPOV");
7. "Member State" shall mean a Member State of the European Community (EC);
8. "EEA country" shall mean a state party to the Agreement on the European Economic Area (EEA).

*Scope of Applicability*

## Section 2

- (1) The Federal Minister for Agriculture, Forestry, Environment and Water Management shall by way of ordinance declare those species protectable under a plant variety right for which there is a possibility of conducting the required plant variety examinations and for whose varieties there is economic demand.
- (2) If the holder of a plant variety right was granted a plant variety right under this Federal Law prior to the grant of the Community variety right as laid down in Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, OJ No L 227 of 1 September 1994, p. 1 (hereinafter referred to as "Regulation (EC) No 2100/1994"), the rights under this Federal Law cannot be exercised for the term of the respective Community right in the variety.
- (3) Apart from protectable varieties, this Federal Law shall apply also to
  1. plant varieties essentially derived from another variety, except if the protected variety is itself a variety essentially derived from another variety;
  2. varieties not clearly distinguishable from the protected variety;
  3. varieties whose production requires the repeated use of the protected variety.

*Conditions of Protection*

## Section 3

- (1) The Variety Protection Office ("Sortenschutzamt") shall grant a plant variety right for varieties which are distinct, uniform, stable, and new.
- (2) A variety shall be deemed to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge on the date of application. The existence of another variety shall in particular be deemed to be a matter of common knowledge if, on the date of application,
  1. it was entered in an official register of plant varieties,
  2. an application for its entering in an official register of varieties was filed, provided the application has led to the entering in the meantime, or
  3. plants have been reproduced or plants, parts of plants or harvested material of the variety and products obtained directly therefrom have already been offered, disposed of to others, used, imported, or exported.
- (3) A variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.
- (4) A 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.

(5) A variety shall be deemed to be new if, at the date of filing of the application, propagating or harvested material of the variety has not, or only within the below-mentioned periods, been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety:

1. earlier than one year before that date in the Austrian federal territory;
2. earlier than four years in territories other than the Austrian federal territory, or, in the case of trees or vines, earlier than six years before the said date.

#### *Effects of Plant Variety Rights*

##### Section 4

(1) In respect of the propagating material of the protected variety the following acts shall require the authorisation of the holder of the plant variety right:

1. production or multiplication;
2. conditioning for the purpose of propagation;
3. offering for sale;
4. selling or other marketing;
5. exporting;
6. importing, and
7. stocking for the purposes mentioned in items 1 through 6.

The holder of the plant variety right may make his authorisation subject to conditions and limitations. This shall apply also to the transfer of plant variety rights by assignment.

(2) Notwithstanding the provisions of paragraphs (3) through (5), acts under paragraph (1) in respect of harvested material, including entire plants and parts of plants, obtained through the unauthorised use of propagating material of the protected variety, shall require the authorisation of the holder of the plant variety right, unless the holder of the plant variety right has had reasonable opportunity to exercise his right in relation to the said propagating material.

(3) Plant variety rights shall not extend to acts referred to in paragraph (1) where they are

1. done privately and for non-commercial purposes;
2. done for experimental purposes;
3. done for the purpose of developing new varieties; however, if this variety is regularly used to produce propagating material of another variety, the authorisation of the holder of the plant variety right shall be required.

(4) The protection of plant varieties shall not extend to farmers where they use, for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, of a protected variety.

Conditions of planting can be laid down in an agreement between the representatives of the holders of the plant variety right and the farmers; small farmers shall be exempted from such an agreement. If necessary to allow implementation of this agreement, the Federal Minister for Agriculture, Forestry, Environment and Water Management can by means of an ordinance issue rules regulating the transfer of the required information from suppliers of processing services, holders of plant variety rights and farmers.

(5) The plant variety right shall not extend to propagating material, harvested material including entire plants, parts of plants or products obtained directly therefrom, of a protected variety which was sold or marketed by, or with the consent of, the holder of the plant variety right, or to the propagating material derived therefrom, unless

1. it was used for further production of propagating material or
2. it was exported into a country which does not offer equal protection of the variety concerned and it was used for propagation, except where the variety concerned was intended for final consumption purposes.

#### *Duration and Termination of Plant Variety Rights*

##### Section 5

(1) The term of protection shall be 30 years for trees and vines as well as for hop and potatoes, for all other species 25 years from the date of grant of the plant variety right.

(2) Plant variety rights shall lapse

1. with effect from the day following the holder's declaration of surrendering of the plant variety right to the Variety Protection Office;
2. upon expiry of the term of protection;
3. upon the entry into force of the withdrawal;
4. upon the entry into force of the revocation, where there was no official transfer of title.

#### *Compulsory Licenses*

##### Section 6

(1) Provided that

1. this is necessary to ensure sufficient supply of the domestic plant production with suitable propagating material;
2. this can, from the financial point of view, be reasonably expected from the holder of the plant variety right; and
3. the license applicant can prove that he tried in vain to be granted a voluntary license under standard business conditions for an appropriate period;

the Revocation Division of the Patent Office shall, upon request, permit that propagating material of a protected variety be produced, marketed, or regularly used in the production of another variety also without the consent of the holder of the plant protection right. The permission shall be granted only where the applicant substantiates that the objectives of the compulsory license can be reached.

(2) The holder of the plant variety right may request the Revocation Division of the Patent Office that the compulsory license be restricted or withdrawn to the degree in which the conditions underlying its grant ceased to exist.

(3) The holder of the plant variety right shall be obliged to make available to the person enjoying the right under the compulsory license at least such quantity of propagating material as is necessary for maintenance breeding corresponding to the scope of the compulsory license.

(4) The holder of the plant variety shall be entitled to claim equitable remuneration from the person enjoying the right under the compulsory license. This remuneration, as well as any necessary security, shall be determined by the Revocation Division of the Patent Office upon request.

(5) The holder of the plant variety right shall be entitled to authorise other persons to use the protected variety.

## PART II

### GRANT OF PLANT VARIETY RIGHTS

#### *Application for Plant Variety Rights*

##### Section 7

(1) The breeder shall be entitled to file an application for a plant variety right in respect of a variety at the Variety Protection Office when

1. the breeder has a seat, or is domiciled, in an EEA country, a Member State, or a Member of the Union, or
2. in a state where the breeder has a seat, or is domiciled, Austrian nationals can obtain a plant variety right or an equal proprietary right for varieties of the same kind.

(2) Persons who are not domiciled, or do not have a seat, in an EEA country or in a Member State can, before the Variety Protection Office and with the Federal Minister for Agriculture, Forestry, Environment and Water Management, assert rights under this Federal Law only through an authorised representative who is domiciled, or has a seat in the federal territory and, before the Revocation Division of the Patent Office and the Supreme Patent and Trademark Chamber (Oberster Patent- und Markensenat), only through a lawyer or a patent attorney.

(3) Applications filed for the grant of a plant variety right shall contain at least:

1. name, nationality and address of the applicant and his representative;

2. the species as well as, where applicable,
  - (a) the type of use;
  - (b) the propagation system; and
  - (c) the information that the variety is, in every propagating cycle, produced using particular hereditary components;
3. the description of the characteristics essential for the distinctness of the variety;
4. the proposed denomination of the variety or the final variety denomination;
5. name and address of any other breeder;
6. information in respect of any earlier application for a plant variety right already filed for this variety in another EEA country, Member State, or Member of the Union, and which decision was made in such a case;
7. in the case of genetically modified plants all relevant data and documents concerning the existence of the genetically modified organism and the authorisation already granted under Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms (OJ No L 117, of 8 May 1990, p. 15) and, if this variety is intended for a novel food or for a novel food ingredient, on the authorisation already granted under Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients (OJ No L 43 of 14 February 1997, p. 1); and
8. a sufficient quantity of propagating material for the Variety Protection Office, which shall either be attached to the application or communicated to the Variety Protection Office upon request.

(4) To discoveries and breeds by employed persons, sections 6 through 19 of the 1970 Patent Act, Federal Law Gazette No 259 ("Patentgesetz"), shall apply *mutatis mutandis*.

#### *Rights of Priority*

##### Section 8

(1) If applications for a proprietary right in respect of a variety or a variety denomination are filed at the Variety Protection Office by several persons independently of each other, the earlier application shall have priority over the later one, the decisive factor being the date of receipt of the application by the Variety Protection Office. If several applications for the grant of a plant variety right are received by the Variety Protection Office on the same day, these applications shall have the same priority. Where notices of variety denominations for varieties of related species have the same priority and no agreement is reached, the Variety Protection Office shall decide by drawing lots for which applicant the variety denomination given notice of should be registered.



(2) In derogation thereof, the Variety Protection Office shall grant the applicant who already filed an application for a plant variety right in another EEA state, Member State or Member of the Union the priority corresponding to the date of this earlier application. The right of priority shall, however, be acquired only if

1. it is expressly claimed in the application to the Variety Protection Office;
2. at the time of claiming the right not more than one year has passed since the earlier application; and
3. at the latest three months following the claim the applicant furnishes proof of the earlier application by submission of copies of the application documents: the copies shall be certified true by the authority responsible for such applications in the respective foreign country.

#### *Publication of Applications*

##### Section 9

(1) The Variety Protection Office shall publish applications for variety rights which appear to be acceptable in the Variety and Seed Journal ("Sorten- und Saatgutblatt") on the basis of the information supplied by the applicant. The publication shall contain at least:

1. the species;
2. the proposed variety denomination or the registered variety denomination;
3. the date of application;
4. any priority rights claimed;
5. name, nationality and address of the applicant;
6. the reference number of the application.

(2) The Variety Protection Office shall permit everybody who so requests to inspect the documents relating to applications for grant of a plant variety right and the test results and shall allow the growing trials of varieties, conducted for purposes of examination, to be viewed. The following shall be withheld from inspection:

1. in the case of varieties the plants of which are produced by crossing of specific hereditary components the data of the hereditary components as well as
2. business and trade secrets.

#### *Objections to the Grant of a Plant Variety Right*

##### Section 10

(1) Any person may lodge with the Variety Protection Office a reasoned written objection to the grant of a plant variety right based on the contention that

1. the variety does not comply with the conditions of protection; or
  2. the variety denomination is not permissible; or
  3. the applicant is not entitled to file an application for the grant of a plant variety right.
- (2) Objections may be lodged until the following deadlines:
1. until the closure of proceedings, in the case of paragraph (1) item 1 hereof;
  2. within three months of the publication of the variety denomination in the Variety and Seed Journal, in the case of objections under paragraph (1) item 2 hereof; and
  3. within three months of the publication of the application in the Variety and Seed Journal, in the case of objections under paragraph (1) item 3 hereof.

(3) The objector shall, upon written request, be informed about the result of the examination by the Variety Protection Office. If an objection under paragraph (1) item 3 leads to the final and binding refusal or rejection or withdrawal of the application for grant of the plant variety right, the Variety Protection Office shall inform the objector thereof without delay. If the objector files an application for grant of a plant variety right in respect of the same variety within one month of service of the written notification, and if he proves that he is eligible to receive protection, he can request that the date of the earlier application be deemed the date of his application.

#### *Examination of Varieties*

##### Section 11

(1) The Variety Protection Office shall, based on its own growing trials or other appropriate investigations, verify that the variety complies with the conditions of protection (examination for registration). The examination shall be conducted for so long a period as is adequate to allow a reliable evaluation.

(2) The Variety Protection Office may, in the place of its own examinations, base its evaluation on the findings of other examination offices of EEA countries, Member States or Members of the Union, provided these examination offices can be considered qualified for an examination for registration with a view to their respective technical equipment, investigation methods and local conditions of cultivation, and that these findings are available to the Variety Protection Office.

(3) The applicant shall

1. in respect of the Variety Protection Office
  - (a) provide free of charge the propagating material of the variety and of hereditary components used in the production of the variety, required for the examination;

- (b) provide every information on the maintenance of the variety and permit the verification of such information;
  - (c) permit inspections of the enterprise;
2. permit the Variety Protection Office
- (a) to take the necessary amount of samples of the variety free of charge; and
  - (b) to inspect the records concerning the maintenance of the variety.

If, despite written request and granting of an appropriate extension period, the applicant does not fulfil these obligations, the application shall be refused in the form of an administrative ruling by the Variety Protection Office.

(4) If the applicant can invoke a right of priority, the Variety Protection Office shall, on his request, suspend the examination for a maximum of five years following application in another EEA country, Member State or Member of the Union. Withdrawal or rejection of an application shall have the consequence that, after an appropriate period of time, the Variety Protection Office shall immediately start the examination.

(5) After the grant of the plant variety right the Variety Protection Office shall examine if the continuing existence of the protected variety is ensured, if there are grounds for suspicion that the holder of the plant variety right does not take sufficient measures to ensure such continuing existence of the variety. For purposes of examination the Variety Protection Office shall be entitled in respect of the plant variety right

- 1. to inspect the enterprise;
  - 2. to take samples of the variety, free of charge, at the quantity required; and
  - 3. to inspect the records relating to the maintenance of the variety.
- (6) The Variety Protection Office shall be entitled to communicate the results of its own examinations as well as those of examinations carried out by the other domestic examination offices to examination offices of EEA countries, Member States or Members of the Union that are responsible for the grant of plant variety rights or equal proprietary rights.

#### *Grant of a Plant Variety Right*

##### Section 12

(1) The plant variety for which the application for the plant variety right was filed shall be entered into the Plant Variety Register when

- 1. all requirements for the grant of the plant variety right have been satisfied and
- 2. a permissible variety denomination has been submitted.

(2) The holder of the plant variety right shall receive a document evidencing the entry of the plant variety into the Plant Variety Register. If the plant variety will not be registered, the Variety Protection Office shall issue a negative ruling.

3) During the period between the publication of the application in the Variety and Seed Journal and the grant of the plant variety right the person who filed the application for the grant of a plant variety right shall be entitled to an appropriate remuneration from everyone who performs acts requiring the authorisation of the holder of the plant variety right pursuant to section 4. This claim can however be asserted only from the time when the plant variety right is granted and shall be subject to a limitation period of one year of the publication of the grant of the plant variety right.

#### *Transfer of a Plant Variety Right*

##### Section 13

(1) Transfer of a plant variety right by assignment shall take effect on the written application of one of the parties involved, from the time of its entry in the Plant Variety Register. The document on which the entry is to be based shall be attached to the application for entry.

(2) The ranking shall be determined by the order of the applications for entry received by the Variety Protection Office, provided that the application is registered. Applications received at the same time shall have equal rank.

#### *Cancellation of Plant Variety Rights*

##### Section 14

(1) The Variety Protection Office shall cancel the plant variety right if it is established that the variety is not, or no longer, uniform or stable.

(2) The Variety Protection Office shall cancel the plant variety right if the holder of the plant variety right, despite written request and granting of an appropriate extension period,

- 1. does not provide the Variety Protection Office with the necessary information or does not submit the documents or the propagating material required to verify the maintenance of the variety;
- 2. fails to pay the due annual fees; or,
- 3. in cases where the variety denomination is cancelled after the grant of the plant variety right, does not submit another suitable variety denomination.

#### *Revocation and Official Transfer of Plant Variety Rights*

##### Section 15

(1) A plant variety right shall, on application, be cancelled by the Revocation Division of the Patent Office if

- 1. it is established that the variety was not, or no longer, distinct or new, or

2. proof is furnished that the holder of the plant variety right was not eligible to receive protection.
- (2) The final and binding revocation shall take effect retrospectively from the date of the grant of the plant variety right.
- (3) Simultaneously with his application for revocation of the plant variety right pursuant to paragraph (1) item 2 the applicant can file an application with the Revocation Division of the Patent Office for the official transfer of the plant variety right to himself.
- (4) Revocation and official transfer of the plant variety right pursuant to paragraph (3) can be claimed only by persons who have a claim to the grant of the plant variety right and shall be subject to a limitation period of three years following the time of the entry of the plant variety right in the Plant Variety Register vis-à-vis the *bona fide* holder. The official transfer shall take effect from the time of its entry in the Plant Variety Register.
- (5) Mutual claims for compensation and return under revocation and official transfer shall be evaluated under civil law and enforced in civil action.

*Obligations of the Holder of the Plant Variety Right*

Section 16

- (1) The holder of the plant variety right shall be obliged to take sufficient measures to ensure the continuing existence of the variety.
- (2) The holder of the plant variety right shall be obliged, vis-à-vis the Variety Protection Office,
  1. to permit to verify that the continuing existence of the variety has been ensured;
  2. to make available free of charge the propagating material required for the examination of the protected variety as well as propagating material of hereditary components used in the production of the variety;
  3. to provide all the necessary information;
  4. to render all the necessary assistance free of charge;
  5. to submit all the necessary books of account and records and permit their inspection;
  6. to make known all the places and means of transportation serving the production or marketing of the protected variety and permit access to them.

PART III

VARIETY DENOMINATION

*Proposed and Final Variety Denominations*

Section 17

- (1) For the term of protection, and even after its expiration, propagating material of a protected variety may be marketed only under the variety denomination registered by the Variety Protection Office. In the procedure for grant of the plant variety right a proposed variety denomination may be used.
- (2) Proposed or final variety denominations shall be permissible where they comply with the provisions set out in Regulation (EC) No 2100/1994 and Commission Regulation (EC) No 930/2000 of 4 May 2000 establishing implementing rules as to the suitability of the denominations of varieties of agricultural plants and vegetable species (OJ No L 108 of 5 May 2000, p. 3) and there is no reason for exclusion.
- (3) Denominations shall be excluded from registration where they
  1. are similar to a denomination which, within the domestic territory, the territory of an EEA country, a Member State, or a Member of the Union, is, or was, used for a variety belonging to the same, or a related, species as the registered variety, unless the older variety is no longer protected or used and its denomination has acquired no special significance;
  2. are liable to give offence;
  3. are liable to mislead, in particular concerning the identity, the origin, the characteristics, or the value of the variety;
  4. consist exclusively of information about the nature of the variety or of plant designations;
  5. contain the terms "variety" or "hybrid".
- (4) When the examination of the variety has been completed the Variety Protection Office shall, in the case of a variety for which only a proposed name has been supplied, require the applicant to submit a final variety denomination within a specified period. If the applicant does not comply with this request, the application for the variety protection right shall be refused by decree.
- (5) If a proposed or final variety denomination is not permissible, the Variety Protection Office shall require the applicant to submit a permissible, proposed or final, denomination within an appropriate period. If the period expires without the applicant having complied with the request, the application for the variety protection right shall be refused by decree.

(6) If the variety has already been registered or protected in another EEA country, Member State or Member of the Union, only the variety denomination used there may be registered by the Variety Protection Office, provided it is not contrary to the provisions of paragraphs (2) and (3).

(7) Once the variety has been entered in the Plant Variety Register, the holder of the plant variety right may not assert, in respect of the variety concerned, any rights he may have in a mark that is similar to the variety denomination.

(8) The variety denomination shall be cancelled by the Variety Protection Office *ex officio* where

1. it is established that
  - (a) the variety denomination is not, or no longer, in accordance with paragraph (2);
  - (b) there is an impediment to the variety denomination pursuant to paragraph (3);
  - (c) the variety denomination is not, or no longer, in accordance with paragraph (6);
2. the holder of the plant variety right, providing sufficient proof of his legitimate interest, applies for the cancellation; or
3. an application for cancellation was approved in a final and binding way.

The Variety Protection Office shall in these cases request the holder of the plant variety right to submit a new variety denomination for registration; in such cases, paragraph (6) shall not apply.

(9) The Variety Protection Office shall inform the Patent Office in writing of the registered variety denomination and the species to which the protected variety belongs.

#### *Application for Cancellation of Variety Denominations*

##### Section 18

(1) An application for the cancellation of a variety denomination can be filed with the Revocation Division of the Patent Office

1. by the holder of an identical trademark for identical goods or services registered prior to the registration of the variety denomination and still rightfully existing;
2. by the holder of an identical or similar trademark for identical or similar goods or services registered prior to the registration of the variety denomination and still rightfully existing, provided this constitutes a risk that it might cause confusion with the public, which includes the risk that the variety denomination might be intellectually associated with the trademark;
3. by the holder of an identical or similar trademark for goods or services not similar registered prior to the reg-

istration of the variety denomination and still rightfully existing trademark which is known within the domestic territory, provided that the use of the variety denomination would unjustifiably and in an unfair way exploit or impair the distinctness or the reputation of the known trademark;

4. by the person furnishing proof that the non-registered mark held by him for the same, or for similar, goods or services was, among groups of market participants involved, considered a characteristic of the goods or services provided by his enterprise already at the time of the registration of the contested identical or similar variety denomination; or
5. by an entrepreneur if his name, his trade name, or the particular designation of his undertaking, or a designation similar to one of these designations, has been registered as a variety denomination, or as an element thereof, and if the use of the variety denomination would be liable to cause the risk of confusions with one of the above-mentioned names or designations of the applicant.

(2) Applications under paragraph (1) shall be rejected if the applicant was informed about the use of the registered variety name and tolerated it for a period of five successive years. This shall apply only where the holder of the plant variety right did not act in bad faith in the procedure for the entry of the variety denomination into the Plant Variety Register.

(3) After the expiry of the plant variety right the cancellation procedure shall be conducted by the Revocation Division of the Patent Office *ex parte*.

(4) The five-year-period referred to in paragraph (2) shall, with respect to the claims that are, at the time of the entry into force of this Federal Law, valid against the holder of a variety denomination registered at that time, begin to run as of the entry into force of this Federal Law. Applications for cancellation pursuant to paragraph (1) item 4 shall be rejected if, at the time of the entry into force of this Federal Law, the period provided for in section 16 paragraph (2) of the Variety Protection Act, Federal Law Gazette No 108/1993, has already expired.

#### PART IV

#### AUTHORITIES

#### *Jurisdiction and Rules of Procedure*

##### Section 19

(1) The Variety Protection Office shall be the Austrian Federal Office and Research Centre of Agriculture (Bundesamt und Forschungszentrum für Landwirtschaft).

(2) The Federal Minister for Agriculture, Forestry, Environment and Water Management shall decide about appeals from decisions of the Variety Protection Office.

(3) The Federal Minister for Agriculture, Forestry, Environment and Water Management shall, vis-à-vis the Variety

Protection Office, be the supreme authority having subject-matter jurisdiction for the purposes of the General Law on Administrative Procedures (AVG).

(4) Unless otherwise provided in this Federal Law, the authorities shall apply the AVG.

(5) Any other legislation referred to in this Federal Law shall apply as amended from time to time.

*Jurisdiction of the Patent Office*

Section 20

(1) The Revocation Division of the Patent Office shall decide in procedures concerning

1. the granting of compulsory licenses pursuant to section 6;
2. the revocation and official transfer of variety protection rights pursuant to section 15;
3. the cancellation of variety denominations pursuant to section 18.

(2) Appeals from decisions of the Revocation Division of the Patent Office shall be subject to the decision of the Supreme Patent and Trademark Chamber. Procedures before the Revocation Division of the Patent Office and the Supreme Patent and Trademark Chamber as well as matters concerning fees, shall be governed by the 1970 Patent Act.

(3) On the proposal of the Federal Minister for Agriculture, Forestry, Environment and Water Management, in agreement with the Federal Minister for Transport, Innovation and Technology, the President of the Federal Republic of Austria shall, in addition, appoint that number of non-permanent, technically qualified members of the Patent Office as well as that number of technically and legally qualified members of the Supreme Patent and Trademark Chamber which is necessary to attend to the tasks under the present Federal Law. Such appointments shall be made exclusively to persons having subject-matter competence in matters related to plant variety rights.

(4) The composition of the committees of the Revocation Division and the Supreme Patent and Trademark Chamber in procedures under paragraph (1) items 1 and 2 shall be governed by the 1970 Patent Act subject to the provision that each committee of the Revocation Division of the Patent Office has one technically qualified member and each committee of the Supreme Patent and Trademark Chamber has one legally and one technically qualified member who were appointed on the proposal of the Federal Minister for Agriculture, Forestry, Environment and Water Management in agreement with the Federal Minister for Transport, Innovation and Technology. The composition of committees in procedures under paragraph (1) item 3 shall be governed by the 1970 Trademark Act ("Markenschutzgesetz").

*Variety and Seed Journal ("Sorten- und Saatgutblatt")*

Section 21

(1) The Variety Protection Office shall issue a Variety and Seed Journal ("Sorten- und Saatgutblatt") to be published at least quarterly.

(2) The following shall be published in the Variety and Seed Journal:

1. the application for the grant of a plant variety right;
2. the withdrawal, rejection and refusal of any application that has been published;
3. the grant, termination, cancellation, and revocation of any plant variety right;
4. any change with respect to the applicant for, or holder of, the plant variety right;
5. the submission of a proposed or final variety denomination;
6. any changes in, or cancellations of, variety denominations;
7. the information under section 6 of the 1997 Seed Act ("Saatgutgesetz"), Federal Law Gazette I No 72; and;
8. information and documents relating to
  - (a) ordinances issued on the basis of this Federal Law;
  - (b) international developments within the framework of UPOV;
  - (c) relevant Community legislation;
  - (d) decisions of courts and administrative authorities;
  - (e) other matters of general interest concerning the protection of plant varieties and seeds.

*Plant Variety Register  
("Sortenschutzregister")*

Section 22

(1) The Variety Protection Office shall keep a public register of plant variety rights.

(2) The following data shall be entered in the Plant Variety Register stating the date of entry:

1. the registration number;
2. the date of application and, if applicable, the date establishing priority;
3. the species as well as, if applicable,

- (a) the type of use;
  - (b) the propagation system; and
  - (c) the reference that the variety is produced in every propagating cycle by using specific hereditary components;
  - (d) in the case of a genetically modified variety, the reference to the genetic modification;
4. the variety denomination;
  5. name and address of the holder of the plant variety right and his agent;
  6. the day when the plant variety right begins to run;
  7. the employer's exploitation right;
  8. the names and addresses of holders of voluntary licenses and compulsory licenses;
  9. the reference to proceedings pending before the Revocation Division of the Patent Office and before the Supreme Patent and Trademark Chamber;
  10. date and reason of the termination of the plant variety right;
  11. the revocation as well as
  12. the legal and official transfers.
- (3) During the hours of office the Plant Variety Register at the Variety Protection Office shall be open to public inspection and everybody may make copies on the spot or, subject to the available equipment, have extracts made at his cost. The following data shall be withheld from inspection:
1. in the case of varieties the plants of which are produced by the crossing of specific hereditary components, the data on the hereditary components as well as
  2. business and trade secrets.
- (4) Data processing as defined by the 2000 Data Protection Act ("Datenschutzgesetz") for purposes of the automatic keeping of the Plant Variety Register shall be permitted.

## PART V

## OTHER PROVISIONS

*Fees*

## Section 23

- (1) For the acts of the Variety Protection Office pursuant to this Federal Act, fees shall be charged.
- (2) The Federal Minister for Agriculture, Forestry, Environment and Water Management shall in agreement with the

Federal Minister for Finances, in accordance with the average costs accruing, determine the fees, their maturity and the way of their collection in a tariff.

*Civil Law Claims*

## Section 24

(1) Whosoever is infringed in a plant variety right due to him under this Federal Law or under Regulation (EC) No 2100/1994 shall be entitled to injunction, removal, publication of the judgement, reasonable compensation, damages, restitution of gains, and rendering of accounts. Also any person who has reason to suspect such infringement may take action for injunction. Sections 147 through 154 of the 1970 Patent Act shall apply *mutatis mutandis*.

(2) For legal actions and temporary injunctions under this Federal Law or under Regulation (EC) No 2100/1994, jurisdiction shall lie with the Handelsgericht Wien (Commercial Court of Vienna). Section 7 paragraph (2) first sentence (7a) and section 8 paragraph (2) Code of Jurisdiction, shall apply. This shall apply also to temporary injunctions.

*Penal Infringements of Plant Variety Rights*

## Section 25

(1) Whosoever performs acts under section 4 hereof or under Article 13 of Regulation (EC) No 2100/1994 without the consent of the holder of the plant variety right, and thus infringes a plant variety right, shall be fined by the court up to 360 daily rates.

(2) Infringements shall be sued only upon the request of the injured party.

(3) To the penal procedure, sections 148, 149 and 160 of the 1970 Patent Act shall apply *mutatis mutandis*.

(4) Jurisdiction in penal matters under this Federal Law or under Regulation (EC) No 2100/1994 shall lie with the Provincial Courts competent to hear penal matters.

*Fines*

## Section 26

(1) Where the act does not constitute a punishable act within the jurisdiction of the courts, or where severer penalties are provided for it under other provisions, any person who

1. markets propagating material of a variety without using the variety denomination provided for in section 17 paragraph (1) hereof or in Article 63 paragraph (1) of Regulation (EC) No 2100/1994;
2. uses a variety denomination entered in the Plant Variety Register, or a similar denomination, for a different variety of the same, or a related, species;



3. in marketing, makes a pretence of a non-existing plant protection right;

shall have committed an administrative offence and shall be fined up to € 7,270, in case of repetition of the offence up to € 36,440, by the district administrative authority.

#### *Transitional Provisions*

##### Section 27

(1) For those of the varieties which, pursuant to the Plant Breeding Act ("Pflanzenschutzgesetz"), Federal Law Gazette No. 34/1948, were entered in the breeding record for crops as specially selected plants, and which were taken over into the Plant Variety Register pursuant to section 36 of the Plant Variety Act, Federal Law Gazette No 108/1993, variety protection rights shall end on 1 March 2003, at the earliest. These varieties shall be transferred into the Plant Variety Register.

(2) Those of the varieties for which a plant protection right was granted in accordance with the provisions of the Plant Variety Act, Federal Law Gazette No 108/1993, shall be transferred into the Plant Variety Register.

(3) For those of the varieties which were transferred into the Plant Variety Register in accordance with paragraphs (1) and (2), the period for which a right of protection was granted shall be appropriated to the term of protection under section 5 and the assessment of the fees.

(4) In section 26, the amounts of € 7,270 and € 36,440 shall, until 31 December 2001, be replaced by the amounts of ATS 100,000, respectively ATS 500,000.

#### *Entry Into Force*

##### Section 28

(1) This Federal Law shall enter into force on 1 September 2001.

(2) Ordinances under this Federal Law may be issued already from the day following its promulgation. Such ordinances may take effect on 1 September 2001, at the earliest.

(3) Upon the entry into force of this Federal Law, the Federal Law on the Protection of Plant Varieties (Variety Protection Act), Federal Law Gazette No 108/1993, and Article 11 of the Euro Conversion Law Agriculture, Forestry, Environ-

ment and Water Management – EUG-LFUW<sup>2</sup>, Federal Law Gazette I No 108/2001, shall become invalid.

#### *Execution*

##### Section 29

The execution of this Federal Law shall lie

1. with respect to section 20 paragraph (1) items 1 and 2, with the Federal Minister for Transport, Innovation and Technology in agreement with the Federal Minister for Agriculture, Forestry, Environment and Water Management;
2. with respect to section 20 paragraph (1) item 3, with the Federal Minister for Transport, Innovation and Technology;
3. with respect to section 20 paragraphs (3) and (4), the Federal Minister for Agriculture, Forestry, Environment and Water Management in agreement with the Federal Minister for Transport, Innovation and Technology;
4. with respect to section 23, the Federal Minister for Agriculture, Forestry, Environment and Water Management in agreement with the Federal Minister for Finance Affairs;
5. with respect to sections 24 and 25, the Federal Minister of Justice; and
6. with respect to all other provisions, the Federal Minister for Agriculture, Forestry, Environment and Water Management.

Klestil

Schüssel

1 German title: Bundesgesetz über den Schutz von Pflanzensorten (Sortenschutzgesetz)

2 German title: Euro-Umstellungsgesetz Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft

## REPUBLIC OF KOREA

## SEED INDUSTRY LAW\*

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\* Consolidated Text of the Seed Industry Law of December 6, 1995, under Law No. 502. As to be enforced as of December 31, 1997, and part of which is to be enforced as of March 1, 1998  
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**PART I**  
**PURPOSE AND DEFINITIONS OF THE LAW**

Article 1

*Purpose of the Law*

The purpose of the Law is to develop seed industry and to contribute to stability of agriculture, forestry, and fishery by enacting provisions on protection of the breeder's right, management of variety performance of major crops, seed production, certification, marketing, etc.

Article 2

*Definitions*

For the purposes of this Law:

- (i) "Seed industry" means doing business in connection with breeding, propagation, production, processing, assignment, leasing, export, import, or display of the seeds;
- (ii) "crops" means all plants which are raised for the production of farm products, forest products, or marine products;
- (iii) "seed" means a seed, a mushroom spawn, or vegetative material used for the propagation or cultivation of plants;
- (iv) "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 distinguished from any other plant grouping by the expression of at least one of the characteristics, and considered as a unit with regard to its suitability for being propagated unchanged;
- (v) "breeder" means the person who has bred, or developed from discovery, a variety;
- (vi) "variety protection right" means the right granted to a person who is entitled to have variety protection pursuant to this Law;
- (vii) "variety protection right holder" means the holder of a variety protection right;
- (viii) "protected variety" means the variety which is the subject matter of a variety protection right meeting the requirements for variety protection defined by this Law;
- (ix) "exploiting" means an act of propagating, producing, processing, assigning, leasing, exporting, importing, or offering for sale (including displaying for assignment or lease) of the seeds to be protected;
- (x) "variety performance" means ability for a variety to produce its value in cultivation and usage of more than the level defined by this Law;
- (xi) "certified seed" means the seed at each production stage of which identity, genetic purity, and quality are certified by this Law;

(xii) "seed quality manager" means the person who is entitled by this Law to certify the seeds produced by seed traders for their marketing, export, or import;

(xiii) "seed business" means doing business in the production and marketing of the seeds;

(xiv) "seed merchant" means the person who practices seed business pursuant to this Law;

(xv) (Deleted) (xvi) (Deleted);

(xv) "Agricultural germplasm" means useful materials for agriculture such as seed, pollen, cell line and microorganism.

**PART II**

**PROTECTION OF THE RIGHTS OF THE BREEDER**

CHAPTER I  
SUBSTANTIVE LAW

Article 3

*Variety Protection Agent for Non-Residents*

(1) A person who has neither a domicile nor a place of business in the Republic of Korea (hereinafter referred to as a "non-resident") may not, except for the cases that an application for registration under Paragraph (3) has been made, or a Presidential Decree otherwise prescribes, initiate any procedure relating to variety protection defined by the Ministry of Agriculture and Forestry or the Variety Protection Examination Committee (hereinafter referred to as "Examination Committee") under Paragraph (1) of Article 91 (hereinafter referred to as a "procedure for variety protection"), nor appeal against any decision taken by an administrative agency in accordance with this Law or any decree thereunder, unless he is represented by an agent with respect to his variety protection who has an address or place of business in the Republic of Korea (hereinafter referred to as a "variety protection agent").

(2) The variety protection agent shall, in addition to the powers specially conferred on him, represent the principal in all procedures relating to variety protection and in any appeal against a decision taken by an administrative agency in accordance with this Law or any decree thereunder.

(3) If a non-resident is the holder of a variety protection right or has a registered right in variety protection, the appointment or change of his variety protection agent, or the grant of a power of attorney or the revocation thereof, shall not be effective against any third party unless it is registered.

(4) When a non-resident intends to register the establishment of a variety protection right, he shall appoint and register a variety protection agent, for the duration of the variety protection right.

## Article 4

*Scope of Power of Attorney*

An agent of a person who is domiciled or has his place of business in the Republic of Korea, and who is instructed to initiate a procedure relating to variety protection shall not, unless expressly so empowered, do any one of the actions of:

- (i) amendment, abandonment or withdrawal of an application for variety protection;
- (ii) request for an application or withdrawal of such application;
- (iii) request for priority claim under Paragraph (1) of Article 27 or withdrawal of such claim;
- (iv) demand for a trial under Article 92 or 93; and
- (v) appointment of a sub-representative.

## Article 5

*Representatives of Plural Parties*

(1) Where two or more persons jointly initiate a procedure relating to variety protection, each of them shall represent the joint initiators except for actions falling under Items (i) through (iv) of Article 4; however, this provision shall not apply where those persons have appointed a common representative and notified the appointment of the representative to the Minister of the Ministry of Agriculture and Forestry (in case of Item (iv), to the Committee Chairman of the Variety Protection Examination Committee under Paragraph (2) of Article 91 (hereinafter referred to as "Examination Committee Chairman")).

(2) Where the common representative has been appointed and notified as referred to in proviso of Paragraph (1), written proof of the fact that the representative has been appointed shall be presented.

## Article 6

*Extensions of Time, Etc.*

(1) The Minister of the Ministry of Agriculture and Forestry or the Examination Committee Chairman may, for the benefit of the persons residing in a place that is remote or difficult to access, extend upon request or *ex officio*, the period for presenting amendments to the grounds for opposition against variety protection under Article 42, or the period for demanding a trial under Article 92 or 93.

(2) The Minister of the Ministry of Agriculture and Forestry, the presiding examiner under Paragraph (3) of Article 97 (hereinafter referred to as "presiding examiner"), or the examiner under Article 33 (hereinafter referred to as "examiner") may, where a time limit for a procedure relating to variety protection to be initiated under the Law has been designated, extend the time, upon request or *ex officio*.

(3) The presiding examiner or examiner may, when a date for a procedure relating to variety protection to be initiated has been designated under this Law, change the date, upon request or *ex officio*.

## Article 7

*Amendment of Procedure*

The Minister of the Ministry of Agriculture and Forestry or the presiding examiner may order correction of a procedure relating to variety protection, designating a time limit if such procedure falls under any of the following items:

- (i) where the procedure has not complied with the provisions of Article 4 of this Law or Paragraph (1) of Article 3 of the Patent Act applied under Article 10 of this Law;
- (ii) where the procedure has not complied with the formalities specified in this Law or an order under this Law; and
- (iii) where fees required in accordance with Article 160 have not been paid.

## Article 8

*Invalidation of Procedure*

(1) The Minister of the Ministry of Agriculture and Forestry may invalidate a procedure relating to variety protection when a person who has been advised to make an amendment in accordance with Article 7 fails to do so within the time limit designated.

(2) If the procedure relating to variety protection is invalidated in accordance with Paragraph (1), but the expiry of the time limit is deemed to be due to a natural disaster or unavoidable circumstances, the Minister of the Ministry of Agriculture and Forestry may withdraw the invalidation upon a request made within fourteen (14) days from the day on which the reasons for the delay ceased to exist or within one (1) year following the expiry of the time limit.

## Article 9

*Effective Date of Submitted Documents*

(1) Application, demands or other documents (including articles, the same applying hereinafter) submitted to the Minister of the Ministry of Agriculture and Forestry or the Examination Committee Chairman under the provisions of this Law, or any decree thereunder, shall have effect as of the date on which they are delivered to the Minister of the Ministry of Agriculture and Forestry or the Examination Committee Chairman.

(2) Where applications, demands or other documents are submitted by mail to the Minister of the Ministry of Agriculture and Forestry or the Examination Committee Chairman, they are deemed to be delivered to the Minister of the Ministry of Agriculture and Forestry or the Examination Committee

Chairman on the date indicated on the date stamp by the mail service, if the date stamped is clear; however, if such date stamp is unclear, they are deemed to be delivered on the date when the mail was submitted to a post office (as shown by a receipt thereof).

(3) Details concerning the submission of documents with regard to the delay of mail, loss of mail, or interruption of mail service, other than the provisions of Paragraphs (1) and (2), shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

#### Article 10

##### *Mutatis Mutandis Application of Patent Law and Others*

To the procedure relating to variety protection, the provisions of Articles 3, 4, 7, 8, and 9, Paragraphs (1), (2), and (4) of Article 10, Articles 13, 14, and 17 through 24 of the Patent Act as well as Paragraph (2) of Article 54, Articles 55, 59, 80, 83, 85, and 87 of the Code of Civil Procedure shall apply. In this case, "the location of the Korean Industry Property Office" in Article 13 of the Patent Act shall be regarded as "the location of the Ministry of Agriculture and Forestry," and "(3) of Article 132 and (4) of Article 132" in Article 17 of the Patent Act shall be regarded as "Articles 92 and 93."

### CHAPTER II CONDITIONS OF VARIETY PROTECTION AND VARIETY PROTECTION APPLICATIONS

#### Article 11

##### *Plants Entitled to Variety Protection*

Species or genus of the plants entitled to variety protection under this Law shall be determined in accordance with an Ordinance of the Ministry of Agriculture and Forestry.

#### Article 12

##### *Conditions of Variety Protection*

Protection shall be granted for a variety, provided such variety is:

- (i) new,
- (ii) distinct,
- (iii) uniform,
- (iv) stable, and
- (v) the subject of a denomination established pursuant to the provisions of Paragraph (1) of Article 108.

#### Article 13

##### *Novelty*

(1) The variety is new under Paragraph (1) of Article 12 of this Law if, at the date of filing of the application pursuant to

Paragraph (2) of Article 28 (or, where relevant, at the priority date pursuant to Paragraph (1) of Article 27), propagating material or harvested material of the variety has not been assigned, by or with the consent of the breeder, for purposes of exploitation of the variety:

- (i) in the territory of the Republic of Korea for longer than one (1) year, and
- (ii) in a territory other than that of the Republic of Korea for longer than four (4) years (or, in case of trees and fruit trees, for longer than six (6) years).

(2) Notwithstanding the provisions in Paragraph (1), novelty under Item (i) of Article 12 shall not be lost through an assignment to others:

- (i) which is the result of an abuse to the detriment of the breeder of the propagating or harvested materials;
- (ii) which forms part of an agreement for the transfer of the right in the variety;
- (iii) which forms part of an agreement under which a third party increases the supplies of propagating material of the variety concerned on behalf of the breeder, provided that the multiplied supply comes again under the control of the breeder;
- (iv) which forms part of an agreement under which a third party undertakes field tests or laboratory trials, or small-scale processing trials, with a view to evaluating the variety;
- (v) which forms part of the fulfillment of a statutory or administrative obligation, in particular concerning biological conservation or the entry of varieties in an official catalogue of varieties admitted to trade (hereinafter referred to as a "catalogue of varieties") in accordance with Article 114; or
- (vi) which involves harvested material being a by-product or a surplus product of the creation of the variety or of the activities referred to in items (iii) to (v) of this Article, provided that said material is assigned without variety identification.

#### Article 13-2

##### *Variety Protection for Known Varieties*

(1) Among the varieties which have been known at the time of prescribing species or genus of the plants to be entitled to variety protection under an Ordinance of the Ministry of Agriculture and Forestry under Article 11, notwithstanding Paragraph (1) of Article 13, a variety falling under any of the following items shall be entitled to variety protection under this Law, where an application for variety protection thereof is filed within one (1) year from the enforcement date of this Law:

- (i) a variety of a superior seed specified under Article 2 of the previous Main Crops Seed Law;



- (ii) a variety which has been registered under Paragraph (2) of Article 45 of the Forestry Law;
- (iii) a variety of which establishment of the variety protection right has been registered in a foreign country; and
- (iv) a variety for which identification of the breeder and initial circulation date can be verified.

(2) The duration of the variety protection right for a protected variety under Paragraph (1) shall be calculated from the date falling under any of the following items; however, where the variety falls under two (2) or more items, the earliest date shall be used:

- (i) the date of being rendered a ruling of the Variety Committee under the previous Main Crops Seed Law, if the variety falls under Item (i) of Paragraph (1);
- (ii) the date of the registration of the variety, if the variety falls under Item (ii) of Paragraph (1);
- (iii) the date of the registration of establishment of the variety protection right of the variety, if the variety falls under Item (iii) of Paragraph (1); and
- (iv) the date of initial circulation of the variety, if the variety falls under Item (iv) of Paragraph (1).

(3) Among the varieties falling under any of the Items in Paragraph (1), the effect of the variety protection right of which establishment has been registered under Paragraph (1) of Article 55 shall not be extended to any exploitation that has been initiated before the filing of an application for variety protection of the variety.

(4) Where variety protection has been granted under Paragraph (1), a person, who has been exploiting the protected variety or has been making preparation thereof, in the Republic of Korea, prior to the filing date of an application for variety protection, shall have a non-exclusive license on that variety protection right, but such non-exclusive license shall be limited to the purpose of commercial and industrial exploitation of the protected variety, which is being made or for which preparations have been made. In this case, the non-exclusive licensee shall pay an adequate remuneration as consideration to the variety protection right holder.

(5) Paragraph (2) of Article 75 shall apply *mutatis mutandis* to matters concerning the non-exclusive license under Paragraph (4).

#### Article 14

##### *Distinctness*

(1) The variety is distinct in accordance with Item (ii) of Article 12, 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 pursuant to Paragraph (2) of Article 28 (or, where relevant, at the priority date pursuant to Paragraph (1) of Article 27).

(2) Common knowledge in the above item may be established by reference to various factors such as any of the following items; however, common knowledge established against intent of the entitled breed is excluded:

- (i) circulation of the variety already in progress,
- (ii) grant of a breeder's right in the variety,
- (iii) entry of the variety in a catalogue of varieties admitted to trade, and
- (iv) entry in the register of varieties kept by a professional association recognized by the Ministry of Agriculture and Forestry.

(3) In case of Items (ii) or (iii) of the above Paragraph (2), the filing, in any country, of an application for a breeder's right or for entry in a catalogue of varieties admitted to trade shall be deemed to render the variety being the subject of the application a matter of common knowledge from the date of the application, provided that the application leads to the granting of the breeder's right or the entry in the catalogue, as the case may be. However, a variety that is not entitled to protection or not entered in a catalogue of varieties under this Law is excluded.

#### Article 15

##### *Uniformity*

The variety is uniform under Item (iii) of Article 12 if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its basic characteristics. (revised on 7/1, 2001)

#### Article 16

##### *Stability*

The variety is stable under Item (iv) of Article 12 if its basic characteristics remain unchanged after repeated propagation (or, in case of a particular cycle of propagation such as F1 hybrid, at the end of each such cycle).

#### Article 17

##### *Persons Entitled to Variety Protection*

(1) The entitlement to the breeder's right shall be vested in the breeder or his successor in accordance with this Law.

(2) Where two or more persons have bred, or discovered and developed, a variety jointly, the entitlement to protection shall be vested in them jointly.

#### Article 18

##### *Capacity of Foreigners to Enjoy Rights*

Foreigners who have neither a domicile nor a place of business in the Republic of Korea shall not enjoy variety protection rights or other rights relating to a variety, except as provided for in any one of the following items:

- (i) where their country allows nationals of the Republic of Korea to enjoy variety protection rights or other rights relating to a variety under the same conditions as its own nationals;
- (ii) where their country allows nationals of the Republic of Korea to enjoy variety protection rights or other rights relating to a variety under the same conditions as its own nationals in the case that the Republic of Korea allows their country's nationals to enjoy variety protection rights or other rights relating to a variety; or
- (iii) where they may enjoy variety protection rights or other rights relating to a variety according to a treaty or equivalents of a treaty (hereinafter referred to as a "treaty").

#### Article 19

##### *Application filed by an Unentitled Person: Protection of Entitled Person*

If a variety protection can not be granted because of an application having been filed by a person who did not have the right as a successor in title or who has misappropriated such right (hereinafter referred to as an "unentitled person"), a subsequent application filed by the lawful holder of the right shall be deemed to have been filed on the date of filing of the first application filed by the unentitled person. This provision shall not apply, however, if the subsequent application is filed by the lawful holder of the right more than thirty (30) days after the first application by the un-entitled person was not accepted under Item (ii) of Article 38, or more than sixty (60) days after its date of publication.

#### Article 20

##### *Variety Protection of Unentitled Person: Protection of Entitled Person*

If a variety protection is invalidated under the provisions of Item (ii) of Paragraph (1) of Article 94, a subsequent application filed by the lawful holder of the right shall be deemed to have been filed on the date of filing of the application which led to the grant of the variety protection that was invalidated; however, this provision shall not apply if the subsequent application is filed more than two (2) years after the date of publication of the first application or more than thirty (30) days after the decision to invalidate it became final.

#### Article 21

##### *First-to-File Rule*

- (1) Where two or more applications relating to the same variety are filed on different dates, only the applicant filing the application having the earlier filing date may obtain a variety protection for the variety.
- (2) Where two or more applications relating to the same variety are filed on the same date, only the person agreed upon by all applicants (hereinafter referred to as a "variety protection applicant") after consultation may obtain a variety protection for the variety and, if no agreement is reached or no

consultation is possible, none of the applicants shall obtain a variety protection for the variety.

(3) Where a variety protection application is invalidated or withdrawn, such application shall, for the purposes of Paragraph (1) or (2), be deemed never to have been filed.

(4) A variety protection application filed by a person who is not the breeder, the creator, nor the successor in title to the right to obtain a variety protection shall, for the purposes of Paragraph (1) or (2), be deemed never to have been filed.

(5) The Minister of the Ministry of Agriculture and Forestry shall, in the case provided for in Paragraph (2), order the applicants to notify him of any agreement they have concluded, and to report to him the terms thereof. If such a report is not submitted within the period designated, the applicants shall be deemed not to have concluded an agreement within the meaning of Paragraph (2).

#### Article 22

##### *Transfer of the Right to Obtain Variety Protection*

- (1) The right to obtain a variety protection may be transferred.
- (2) The right to obtain a variety protection shall not be the subject of a pledge.
- (3) In case of joint ownership of the right to obtain a variety protection, a joint owner shall not assign his share without the consent of all other joint owners.

#### Article 23

##### *Succession to the Right to Obtain Variety Protection*

- (1) The succession to the right to obtain a variety protection before the filing of the variety protection application shall not be effective against third persons unless the successor in title files the variety protection application.
- (2) Where two or more applications for a variety are filed on the same date on the basis of a right to obtain a variety protection for the same variety derived by succession from the same person, the succession to that right to obtain the variety protection by the person agreed upon by all variety protection applicants shall be effective.
- (3) The succession to the right to obtain a variety protection after the filing of the variety protection application shall not be effective unless the applicant files a notice of change of applicant, except for the case of inheritance or other general succession.
- (4) Upon inheritance or other general succession with respect to the right to obtain a variety protection, the successor in title shall notify the Minister of the Ministry of Agriculture and Forestry accordingly without delay.
- (5) Where two or more notifications are made on the same date, on the basis of a right to obtain a variety protection for the same variety that has been derived by succession from the

same person, a notification made by the person agreed upon after consultations among all persons who made notifications shall be effective.

(6) Paragraph (5) of Article 21 shall apply *mutatis mutandis* to the cases under Paragraphs (2) and (5).

#### Article 24

##### *Breeding or Others as Part of Duties of a Public Official*

(1) A variety protection right entitled to a public official shall pass to the Government or a District Self-Ruling Entity, where a variety which has been bred, or discovered and developed by a public official, by reason of its nature, falls within the scope of the Government or the District Self-Ruling Entity, and an act or acts of breeding, discovery, or development of the variety were part of the present or past duties of the public official.

(2) The disposal and management of the variety protection right which has passed to the Government in accordance with Paragraph (1) shall be governed by the Minister of the Ministry of Agriculture and Forestry, notwithstanding Article 6 of the National Property Law.

(3) The disposal and management of the variety protection right under Paragraph (2) which has passed to the Government shall be prescribed by a Presidential Decree.

#### Article 25

##### *Remuneration for Breeding or Others as Part of Duties of a Public Official*

(1) If the Government or a District Self-Ruling Entity succeeds to the variety which has been bred, or discovered and developed by a public official in accordance with Paragraph (1) of Article 24, the Government or the District Self-Ruling Entity shall provide reasonable remuneration to the public official for it.

(2) The standards for remuneration, payment method thereof, and other matters relating to the remuneration under the above Paragraph (1) shall be prescribed by a Presidential Decree.

#### Article 26

##### *Application for Variety Protection*

(1) A variety protection applicant shall file, in the prescribed manner, an application with the Minister of the Ministry of Agriculture and Forestry. The application shall comprise the following elements:

- (i) the name and address of the applicant (in case of a legal entity, the title, place of business and the name of its representative);
- (ii) the name and address, or place of business, of the agent, if any;

(iii) the name and address of the person who bred, or discovered and developed, the variety (if that person is not the applicant);

(iv) the identification of the botanical taxon (Latin and common name);

(v) the denomination proposed for the variety, or a provisional designation;

(vi) the filing date;

(vii) matters prescribed in Paragraph (3) of Article 27 (where the priority of an earlier application is claimed);

(viii) a technical description of the variety and a procedural description of the variety breeding;

(ix) photographs and samples of a variety; and

(x) the proof of payment of the application fee.

(2) Where the entitlement to a variety protection is vested in the joint breeders in accordance with Paragraph (2) of Article 17, all joint breeders shall file an application jointly.

(3) Matters relating to the technical description of the variety and a procedural description of the breeding shall be prescribed by a Presidential Decree.

#### Article 27

##### *Priority Claiming*

(1) If a national of one of the countries which recognizes a right of priority for a variety protection application filed by a national of the Republic of Korea, claims the right of priority for a variety protection application in the Republic of Korea on the basis of the first application for the same variety in his country or in one of said countries, the filing date of the first application in the foreign country shall be deemed to be the filing date in the Republic of Korea for the purpose of Article 21. Where a national of the Republic of Korea has filed a variety protection application in a country which recognizes the right of priority for variety protection applications filed by nationals of the Republic of Korea, and claims the right of priority for a variety protection application in the Republic of Korea on the basis of the first application for the same variety in said country, this provision shall also apply.

(2) A person intending to claim the right of priority in accordance with Paragraph (1) shall file the variety protection application claiming the right of priority within one (1) year from the filing date of the first application.

(3) A person intending to claim the right of priority in accordance with Paragraph (1) shall specify such claim, the name of the country in which the first application was filed and the filing date of such application in the variety protection application which he files in the Republic of Korea.

(4) A person who has claimed the right of priority in accordance with Paragraph (3) shall submit, within ninety (90) days from the filing date referred to in Paragraph (2) of Article 28, a copy of the documents which constitute the first application, certified to be a true copy by the authority with which that application was filed.

(5) A person who has claimed the right of priority in accordance with Paragraph (3) shall be entitled to request the Minister of the Ministry of Agriculture and Forestry that the examination of the variety be deferred by up to three (3) years from the date of filing of the first application. Upon receiving such request, the Minister of the Ministry of Agriculture and Forestry shall accept the request unless there are legitimate reasons for not accepting the request. However, where the first application is rejected or withdrawn, the applicant may request to initiate the examination of the variety before the date specified by the applicant.

(6) In case of proviso of Paragraph (5), the Minister of the Ministry of Agriculture and Forestry shall give the applicant an appropriate period of time to furnish the information, documents or material required for the purpose of the examination of the variety of which application is filed in accordance with Paragraph (1) of Article 26 (hereinafter referred to as "applied variety").

#### Article 28

##### *Processing of the Application*

(1) The documents constituting the application shall be received by the Minister of the Ministry of Agriculture and Forestry, where the applied variety belong to the species or genus of the plants entitled to variety protection under Article 11 of this Law. Any application that is complete and correct under Paragraph (1) of Article 26, or any application that is amended under Item (ii) of Article 7, shall be given a filing date and shall be recorded in the Register of Applications.

(2) The filing date shall be taken to be the day on which the documents constituting the application has been received in accordance with the above Paragraph (1).

#### Article 29

##### *Amendment before the Decision of Publication*

(1) An applicant may amend the application before the transmittal of a certified copy of the decision of publication under Paragraph (2) of Article 38, if the amendment does not change the gist of the original application.

(2) The amendment in accordance with the above Paragraph 1 shall not be made after the transmittal of a certified copy of the decision of rejection. However, where a demand for a trial against a decision of rejection under Article 93 is filed, an applicant may amend the application within ninety (90) days from the filing date of the demand.

#### Article 30

##### *Amendment after the Decision of Publication*

(1) An applicant may, after the transmittal of a certified copy of the decision of publication under Paragraph (2) of Article 38, amend the application under any of the following items, provided that such amendment does not change the gist of the original application:

- (i) where an amendment is made, when a demand for a trial against a rejection under Article 93 is filed, after receipt of a rejection notice under Paragraph (1) of Article 37, within thirty (30) days from the date of filing a demand for an appellate trial against the reasons for rejection:
- (ii) where an amendment is made when an opposition is filed under Paragraph (1) of Article 41, within the time limit designated for submission of a written answer against the grounds for opposition under Paragraph (1) of Article 43; and
- (iii) where an amendment is made within the time limit designated for submission of the written opinion against the reasons for rejection after receipt of the notice of reasons for rejection under Paragraph (4) of Article 44.

(2) Where an amendment of the application, made after the transmittal of a certified copy of the decision of publication, is found not to have complied with the provisions of Paragraph (1) after registration of the establishment of the variety protection right, the variety protection shall be deemed to have been granted on the application without such amendment.

#### Article 31

##### *Change of Gist of the Application*

Where an amendment made in accordance with Articles 29 and 30 falls under any of the following items, the amendment shall be deemed not to change the gist of the application:

- (i) where errors are corrected;
- (ii) where unclear description is clarified; and
- (iii) the cases prescribed by a Presidential Decree.

#### Article 32

##### *Quash of Amendment*

(1) Where an amendment of the application made before the transmittal of a certified copy of the decision of publication changes the gist of the application, the examiner shall quash the amendment by a decision and notify the applicant of such decision without delay.

(2) Where a decision to quash an amendment under Paragraph (1) has been made, before the expiration of thirty (30)

days from the transmittal of a certified copy of that decision, the examiner shall neither make a decision with respect to an application nor make a decision of publication.

(3) Where an applicant has demanded a trial under Article 92 against a decision to quash an amendment under Paragraph (1), the examiner shall suspend the examination of the application until the trial decision has become final and conclusive.

(4) Where, before the examiner's decision has been made under Article 46, an amendment to the application made after the transmittal of a certified copy of the decision of publication is found not to comply with Paragraph (1) of Article 30, the examiner shall quash the amendment by a decision and notify the applicant of such decision without delay.

(5) The decision to quash an amendment under Paragraph (1) or (4) shall be in writing and shall state the reasons therefor.

(6) No appeal shall be made against a decision to quash an amendment under Paragraph (1) or (4). However, this provision shall not apply in case of the demand for a trial under Article 92.

### CHAPTER III EXAMINATION

#### Article 33

##### *Examination by Examiner*

(1) The Minister of the Ministry of Agriculture and Forestry shall have applications for variety protection under Article 26, oppositions to the grant of variety protection under Article 41, and applications for the registration of variety denomination under Article 111, examined by an examiner.

(2) Matters relating to the qualifications for examiners in accordance with the provisions of Paragraph (1) shall be prescribed by a Presidential Decree.

#### Article 34

##### *Publication of the Application*

(1) The Minister of the Ministry of Agriculture and Forestry shall publish the variety protection application, which has been registered in the register of variety protection applications in accordance with the provisions of Paragraph (1) of Article 28, by publishing the application in the Variety Protection Gazette (hereinafter referred to as an "Official Gazette") under Article 54 without delay.

(2) Any person may, when the application is published under Paragraph (1), furnish the Minister of the Ministry of Agriculture and Forestry with information, together with evidence, that the variety concerned is unprotectable under Article 12, 17, or 18.

(3) Matters which shall be published in the Official Gazette on the publication of the application under Paragraph (1) shall

be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

#### Article 35

##### *Examination of Applied Variety*

(1) An examiner shall examine whether an applied variety meets the requirements prescribed in Articles 13 through 16.

(2) The Minister of the Ministry of Agriculture and Forestry may entrust a research institute, university, or any appropriate person with investigation or testing to perform the examination under Paragraph (1).

(3) Matters relating to the method, standard, and procedures of the examination under Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

#### Article 36

##### *Submission of Materials*

(1) The Minister of the Ministry of Agriculture and Forestry may order the applicant to furnish all materials, if necessary, for the purposes of the examination under Paragraph (1) of Article 35.

(2) The applicant who has been ordered to furnish the materials under Paragraph (1) shall comply with the order, unless the applicant has a legitimate reason for his failure.

#### Article 37

##### *Rejection Ruling and Notification of Reasons Therefor*

(1) The examiner shall render a ruling to reject a variety protection application where it falls under any of the following items (hereinafter referred to as "reason for rejection"):

- (i) it is not protectable under Article 3, 11, 12, 17, or 18, Paragraphs (1) and (2) of Article 21, Paragraphs (2) and (5) of Article 23, Paragraph (1) of Article 24, or Paragraph (2) of Article 26;
- (ii) it is filed by a person who is not entitled to obtain a variety protection right; and
- (iii) it is in violation of a treaty.

(2) An examiner shall, when he intends to render a ruling on rejection under Paragraph (1), notify the applicant of the reasons and give him an opportunity to submit a written opinion designating a time limit for such submission.

(3) Where a ruling of rejection under Paragraph (1) is rendered, a certified copy of the ruling shall be transmitted to the applicant and the ruling shall be published in the Official Gazette.

(4) Matters which shall be published in the Official Gazette on the ruling of rejection under Paragraph (3) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

## Article 38

*Publication of the Application for Public Inspection*

- (1) Where an examiner finds no reason for rejecting a variety protection application, he shall render a decision that the application is to be published.
- (2) Where a decision to publish the application is made under Paragraph (1), the Minister of the Ministry of Agriculture and Forestry shall transmit a certified copy of the decision of publication of the application to the applicant and publish the application in the Official Gazette.
- (3) The Minister of the Ministry of Agriculture and Forestry shall make the application files and their attachments available for public inspection for sixty (60) days following the date of publication of the application.
- (4) Matters which shall be published in the Official Gazette on the publication of the application under Paragraph (2) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

## Article 39

## Right to Provisional Protection

- (1) After publication of his application, the applicant for variety protection shall have an exclusive right to commercially and industrially exploit the variety claimed in the variety protection application.
- (2) After the publication of the application, where the application falls under any of the following items, the right under Paragraph (1) shall be deemed never to have arisen:
  - (i) where an application has been abandoned, invalidated or withdrawn; and
  - (ii) where the examiner's decision that the application is to be rejected has become final and conclusive.
- (3) Where a person having the right under Paragraph (1) has exercised the right and the application falls under either of the items in Paragraph (2), such person shall be liable to indemnify any damage caused to another party by exercising that right.
- (4) Articles 84 through 90 shall apply *mutatis mutandis* to the right under Paragraph (1).

## Article 40

*Exercise of the Right of Provisional Protection and Suspension of Litigation Proceedings*

- (1) Where a suit or an application for provisional attachment or provisional disposal has been filed with respect to the infringement of the right under Paragraph (1) of Article 68, the court may, if necessary, suspend the litigation proceedings by a ruling upon request, or *ex officio*, until the examiner's decision or the trial decision has become final and conclusive.

- (2) No appeal shall lie from a ruling with respect to a request under Paragraph (1).

- (3) When the reason for the suspension is no longer applicable, the court may revoke the ruling of suspension under Paragraph (1).

## Article 41

## Opposition to Grant of Variety Protection

- (1) Within sixty (60) days from the date of publication of an application, any person can file an opposition to the grant of variety protection with the Minister of the Ministry of Agriculture and Forestry, if an application falls under either of the following items:
  - (i) where the variety in the variety protection application does not comply with the requirements of Articles 13 through 16; and
  - (ii) where the variety protection application is filed by a person other than the one entitled to variety protection under Article 17.
- (2) When filing an opposition pursuant to Paragraph (1), the opponent shall submit the written opposition documents containing the reasons therefor, together with necessary evidence, to the Minister of the Ministry of Agriculture and Forestry.

## Article 42

*Amendments to Grounds for Opposition, Etc.*

An opponent who has filed an opposition to the grant of variety protection under Paragraph (1) of Article 41 (hereinafter referred to as a "variety protection opponent") may amend the grounds and evidence set forth in the written opposition within thirty (30) days for the expiration of the time limit for opposition.

## Article 43

*Ruling on Opposition*

- (1) When an opposition to the grant of variety protection is filed under Paragraph (1) of Article 41, the examiner shall transmit a copy of the notice of opposition to the applicant and give him an opportunity to submit a written answer, designating a time limit for submitting such answer.
- (2) After the expiry of the time limits provided for under Article 42 and under Paragraph (1), the examiner shall render a ruling on the opposition.
- (3) The ruling on an opposition to the grant of variety protection shall be in writing and shall state the reasons therefor.
- (4) When a ruling under Paragraph (2) has been rendered, the Minister of the Ministry of Agriculture and Forestry shall transmit a certified copy of the ruling to the applicant as well as to the opponent.

## Article 44

*Decision of Rejection taken Ex Officio after Publication*

(1) Where the examiner finds reasons for rejection after the publication of the application, he can make a decision of rejection *ex officio*.

(2) When the examiner makes a decision to reject an application under Paragraph (1), he shall not render a ruling on a variety protection opposition even if the opposition is filed in accordance with Paragraph (1) of Article 41.

(3) Where a decision of rejection is rendered under Paragraph (1) and an opposition to the grant of variety protection is filed in accordance with Paragraph (1) of Article 41, the Minister of the Ministry of Agriculture and Forestry shall transmit the certified copy of the decision of rejection to the opponent.

(4) Where a decision of rejection is rendered under Paragraph (1), the provisions of Paragraphs (2) and (3) of Article 37 shall apply *mutatis mutandis*.

## Article 45

*Conflict in Applications for Variety Protection Opposition*

(1) In case there are two or more applications for variety protection oppositions, the examiner may combine or separate their examination or ruling.

(2) In case there are two or more applications for variety protection opposition, if one of the applications is deemed to be justifiable upon its examination, the examiner may not render a decision on other applications.

(3) If an application for variety protection opposition is deemed to be justifiable and a decision to reject the application is made under Paragraph (2), the Minister of the Ministry of Agriculture and Forestry shall transmit a copy of the decision to other applicants for variety protection opposition, for whom the decisions are not made.

## Article 46

*Decision on Grant of Variety Protection*

(1) Where no grounds for rejecting a variety protection application are established, the examiner shall render a decision that variety protection is to be granted for the application.

(2) The decision on grant of variety protection shall be in writing and shall state the reasons therefore.

(3) When the decision on grant of variety protection has been rendered under Paragraph (1), the Minister of the Ministry of Agriculture and Forestry shall transmit a certified copy of the decision to the applicant, and publish the decision in the Official Gazette.

(4) Matters which shall be published in the Official Gazette on the decision on grant of variety protection under Paragraph (3) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

## Article 47

*Suspension of Examination or Litigation Proceedings*

(1) The examination procedure of a variety protection application may, if necessary to the examination, be suspended until a trial decision becomes final or litigation proceedings are concluded.

(2) The court may, if necessary to the litigation, suspend proceedings until the examiner's decision becomes final and conclusive.

## Article 48

*Mutatis Mutandis Application of Patent Law*

(1) To the examination relating to variety protection applications, the provisions of Items (i) through (v), and (vii) of Paragraph (1) of Article 148 of the Patent Act shall apply.

(2) To the examination relating to an opposition to the grant of variety protection, the provisions of Articles 133, 271, and 339 of the Code of Civil Procedure as well as Article 157, Paragraphs (3) through (6) of Article 165, Article 166 of the Patent Act shall apply.

## CHAPTER IV

VARIETY PROTECTION FEES  
AND VARIETY PROTECTION REGISTRATION, ETC.

## Article 49

*Variety Protection Fees*

(1) A person desiring to register the establishment of a variety protection right under Paragraph (1) of Article 55 shall pay the variety protection fees.

(2) A variety protection right holder shall pay an annual variety protection fee to the Minister of the Ministry of Agriculture and Forestry for the entire duration of the protection right.

(3) Regardless of the will of a person liable to pay the variety protection fees under the terms of Paragraph (1) or (2), any interested person in the variety protection right may pay the variety protection fees.

(4) Any interested person in the variety protection right who has paid the variety protection fees in accordance with Paragraph (3) may demand reimbursement of his expenses to the extent that the person liable to pay is actually making a profit.



(5) Matters relating to the variety protection fees, its payment method, its payment due date, etc. under Paragraph (1) or (2) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

#### Article 50

##### *Payments of Variety Protection Fees after Expiration of the Payment Period*

(1) Any person wishing to register the establishment of a variety protection right or a variety protection right holder may pay the variety protection fees during the 6-month grace period following the expiration of the payment period prescribed by Paragraph (5) of Article 49.

(2) Where the variety protection fees are paid during the grace period prescribed in Paragraph (1), an amount equivalent to twice of the variety protection fees under Paragraph (5) of Article 49 shall be paid.

(3) If the person wishing to register the establishment of a variety protection right does not pay the variety protection fees during the grace period provided for under Paragraph (1), the variety protection application shall be deemed to have been abandoned and the variety protection right concerned shall be deemed to have been extinguished retroactively to the time when the period for payment of the variety protection fees expired.

#### Article 51

##### *Exemption of Variety Protection Fees*

Notwithstanding Article 49, the payment of the variety protection fees shall be exempted, if the situation falls under any of the following items:

(i) where the variety protection fees are to be paid by the Government or a District Self-Ruling Entity in order to register the establishment of a variety protection right;

(ii) where the variety protection fees are to be paid by the Government or a District Self-Ruling Entity for the entire duration of the protection right; and

(iii) where the variety protection fees are to be paid by a life protectee prescribed by Article 3 of the Life Protection Act in order to register the establishment of a variety protection right.

#### Article 52

##### *Refund of Variety Protection Fees*

Variety protection fees which have been paid shall not be refunded unless they have been paid by mistake.

#### Article 53

##### *Variety Protection Register*

(1) The Minister of the Ministry of Agriculture and Forestry shall keep a variety protection register and shall register the following items:

- (i) the establishment, transfer, extinguishment, or restriction on disposal, of a variety protection right;
  - (ii) the establishment, transfer, modification, extinguishment, or restriction on disposal, of an exclusive or non-exclusive license; and
  - (iii) the establishment, transfer, modification, extinguishment, or restriction on disposal, of a pledge on a variety protection right or on an exclusive or non-exclusive license.
- (2) Besides the matters prescribed in Paragraph (1), registration requirements, registration procedure, and other matters relating to the registration shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

#### Article 54

##### *Variety Protection Gazette*

The Minister of the Ministry of Agriculture and Forestry shall publish the Official Gazette periodically.

### CHAPTER V THE VARIETY PROTECTION RIGHT

#### Article 55

##### *Registration of Establishment of the Variety Protection Right*

(1) A variety protection right shall come into force upon registration of its establishment in accordance with Item (i) of Paragraph (1) of Article 53.

(2) Where the variety protection fees have been paid in accordance with Paragraph (1) of Article 49 or Paragraph (1) of Article 50, or where an exemption from payment of fees has been granted under Article 51, the Minister of the Ministry of Agriculture and Forestry shall register the establishment of the variety protection right.

(3) Where a registration has been made under Paragraph (2), the Minister of the Ministry of Agriculture and Forestry shall publish the following items in the Official Gazette:

- (i) the name and address of the variety protection right holder (in case of a legal entity, the title, place of business and the name of its representative);
- (ii) the registration number of the variety protection;
- (iii) the date of registration of establishment; and
- (iv) the duration of the variety protection right.

(4) When the establishment of a variety protection right has been registered, the Minister of the Ministry of Agriculture and Forestry shall issue a certificate of registration of a variety protection right to the variety protection right holder.

## Article 56

*Duration of the Variety Protection Right*

The variety protection right shall expire at the end of the twentieth (20th) calendar year following the registration of its establishment; for trees and fruit trees, it shall expire at the end of the twenty-fifth (25th) year.

## Article 57

*Effects of the Variety Protection Right*

(1) A variety protection right holder shall have an exclusive right to exploit the protected variety commercially and industrially. However, where the variety protection right is subject to an exclusive license, this provision shall not apply to the extent that the exclusive licensee has the exclusive right to exploit the protected variety under Paragraph (2) of Article 62.

(2) Besides the right prescribed in Paragraph (1), a variety protection right holder shall also have an exclusive right to exploit harvested material and the product which has been made directly from harvested material of the seed of the protected variety commercially and industrially. However, where the product is made directly by a person who has no knowledge of the right when producing the product, this provision shall not apply.

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

- (i) varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety,
- (ii) varieties which are not clearly distinguishable in accordance with Article 14 from the protected variety, and
- (iii) varieties whose production requires the repeated use of the protected variety.

(4) A variety shall be deemed to be an essentially derived variety when it is derived from the initial variety or from a variety that is itself derived from the initial variety, and retains the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety, and essential characteristics of the corresponding variety are the same as those of the initial variety except for differences in the particular characteristics which result from the particular breeding method although the corresponding variety is clearly distinguishable from the initial variety.

## Article 58

*Scope of No Effect of the Variety Protection Right*

(1) The effects of the variety protection right under Article 57 shall not extend to any of the following items:

- (i) exploitation of the protected variety for self-consumption and for non-commercial purposes;

- (ii) exploitation of the protected variety for experimental and research purposes; and

- (iii) exploitation of the protected variety for the purpose of breeding other varieties.

(2) The Minister of the Ministry of Agriculture and Forestry may restrict a variety protection right for a variety, if a farmer collects the seeds of the variety for himself for the purpose of self-production.

(3) Matters relating to the scope of restriction, procedures, method, etc. under Paragraph (2) shall be prescribed by a Presidential Decree.

## Article 59

*Exhaustion of the Variety Protection Right*

The variety protection right under Article 57 shall not extend to acts concerning any material of the protected variety which has been sold or otherwise marketed in the Republic of Korea by the holder of the variety protection right, or an exclusive or non-exclusive license, or its harvested material, or any material directly made from said material, unless such act falls under either of the following items:

- (i) an act of propagating the seed of the protected variety by using the seeds of the protected variety which has been sold or otherwise marketed, its harvested material, or any material directly made from said material; and
- (ii) an act of exporting the seeds of the protected variety, its harvested material, or any material directly made from said material for the purpose of propagation.

## Article 60

*Measures Restricting the Variety Protection Right*

Other than the measures prescribed by this Law, the Government shall not impose any restriction on the exploitation of the variety protection right.

## Article 61

*Transfer of the Variety Protection Right*

- (1) A variety protection right may be transferred.
- (2) A joint owner of a variety protection right may not do either of the following acts without the consent of all other joint owners:
  - (i) an act of assigning his share or establishing a pledge upon his share; and
  - (ii) an act of establishing an exclusive license, or granting a non-exclusive license, for the variety protection right.
- (3) Each of the joint owners may, except as otherwise agreed by a contract among all joint owners, exploit the protected variety by himself without the consent of other joint owners.

## Article 62

*Exclusive License*

- (1) A variety protection right holder may establish for another person an exclusive license on the variety protection right.
- (2) An exclusive licensee, who has an exclusive license established under Paragraph (1), shall have an exclusive right to exploit the protected variety commercially and industrially to the extent provided for in the license contract.
- (3) An exclusive licensee may not transfer the license without the consent of the variety protection right holder, except where it is transferred together with the business of the licensee or in case of inheritance or other general succession.
- (4) An exclusive licensee may not establish a pledge or grant a non-exclusive license on the exclusive license without the consent of the variety protection right holder.
- (5) Paragraph (2) of Article 61 shall apply *mutatis mutandis* to an exclusive license.

## Article 63

*Effects of Registration of the Variety Protection Right and Exclusive License*

- (1) The matter falling under any of the following items shall be of no effect, unless it is registered in the variety protection register under Article 53:
  - (i) the transfer (excluding the case of inheritance or other general succession) or extinguishment by abandonment of a variety protection right, or restriction on the disposal thereof;
  - (ii) the establishment, transfer (excluding the case of inheritance or other general succession), modification, or extinguishment of an exclusive license, or restriction on the disposal thereof; and
  - (iii) the establishment, transfer (excluding the case of inheritance or other general succession), modification, or extinguishment of a pledge, or restriction on the disposal thereof for the purpose of the exploitation of the variety protection right or exclusive license.
- (2) A person who has inherited, or succeeded generally to, a variety protection right, exclusive license, or pledge shall notify the Minister of the Ministry of Agriculture and Forestry of its purport within thirty (30) days from the effect.

## Article 64

*Non-Exclusive License*

- (1) A variety protection right holder may grant to another person a non-exclusive license on his variety protection right.
- (2) A non-exclusive licensee who has been granted a non-exclusive license under Paragraph (1) shall have a right to ex-

exploit the protected variety commercially and industrially to the extent prescribed in this Law or provided for by the license contract.

- (3) A non-exclusive license granted under Article 68 may be transferred only with the business in which it is exploited.
- (4) A non-exclusive license, other than the one referred to in Paragraph (3), may not be transferred without the consent of the variety protection right holder (or the variety protection right holder and the exclusive licensee in case of a non-exclusive license on an exclusive license), except for the case of transferring it with the business in which it is exploited.
- (5) A pledge, other than the one referred to in Paragraph (3), may not be established on a non-exclusive license, without the consent of the variety protection right holder (or the variety protection right holder and the exclusive licensee in case of a non-exclusive license on an exclusive license).
- (6) Paragraph (2) of Article 61 shall apply *mutatis mutandis* to the non-exclusive license.

## Article 65

*Non-Exclusive License by virtue of Prior Use*

Where, at the time of filing a variety protection application, a person who has bred a protected variety without having knowledge of the contents of the protected variety described in a variety protection application, or has learned how to exploit the protected variety from such person and has been exploiting the protected variety commercially and industrially, in good faith, in the Republic of Korea, or has been making preparations therefor, shall have a non-exclusive license on that variety protection right for which the variety protection application has been filed. Such license shall be limited to the purpose of commercial and industrial exploitation of the protected variety, which is being exploited or for which preparations have been made.

## Article 66

*Non-Exclusive License due to Exploitation prior to Registration of Demand for Invalidation Trial*

- (1) When a person falling under any of the following items has been exploiting commercially and industrially the protected variety, or has been making preparations therefor, in good faith, in the Republic of Korea, prior to the registration of a demand for an invalidation trial of the variety protection right concerned, without knowing that the variety protection right falls under the grounds of invalidation, such person shall have a non-exclusive license on that variety protection right or on the exclusive license existing at the time that the variety protection right was invalidated, but such non-exclusive license shall be limited to the purpose of commercial and industrial working of the protected variety, which is being made or for which preparations have been made:
  - (i) the original variety protection right holder, where one of more than two variety protections granted to the same variety has been invalidated;

- (ii) the original variety protection right holder, where his protected variety has been invalidated and a protected variety for the same variety has been granted to the entitled person; and
  - (iii) in the case referred to in Item (i) or (ii), a person, who, at the time of registration of the demand for an invalidation trial of the invalidated variety protection right, has been granted an exclusive or non-exclusive license, or a non-exclusive license on the exclusive license, and such license has been registered. However, a person falling under Paragraph (2) of Article 75 is not required to register the license.
- (2) A person who has been granted a non-exclusive license in accordance with Paragraph (1) shall pay an adequate remuneration as consideration to the variety protection right holder or exclusive licensee.

#### Article 67

##### *Non-Exclusive License subject to Transfer of the Variety Protection Right due to Exercise of Pledge*

If a variety protection right holder exploits the protected variety prior to the establishment of a pledge on the variety protection right, even if the variety protection right is subsequently transferred by an act such as an auction, the variety protection right holder shall have a non-exclusive license on the variety protection right. However, in this case, he shall pay an adequate remuneration to a person to whom the variety protection right is transferred through an act such as an auction.

#### Article 68

##### *Arbitration Decision on Grant of Non-Exclusive License*

(1) Where a protected variety falls under any of the following items, a person who intends to exploit the protected variety may request for an arbitration decision on the grant of a non-exclusive license (hereinafter referred to as "arbitration decision") to the Minister of the Ministry of Agriculture, Forestry, and Fishery. However, request for an arbitration decision under the following Item (i) or (ii) can only be made if no consultation on the grant of a non-exclusive license is possible, or no agreement is reached, with the variety protection right holder or exclusive licensee of the protected variety:

- (i) where the protected variety has not been continuously exploited for three (3) or more years in the Republic of Korea without any natural or territorial disaster, other *force majeure*, or any justifiable reason prescribed by a Presidential Decree;
- (ii) where the protected variety has not been commercially and industrially worked continuously in the Republic of Korea, without any justifiable reason, on a considerable commercial scale for three (3) or more years, or where the domestic demand for the protected variety has not been satisfied to a proper extent and under reasonable conditions;

(iii) where there is a significant necessity for the non-commercial exploitation of the protected variety for the benefit of the public; and

(iv) where it is necessary to exploit the protected variety in order to correct business practice which has been deemed to be unfair through judicial or administrative procedures.

(2) Paragraph (1) shall not apply before the expiration of three (3) years from the date of registration of the establishment of a variety protection right of the protected variety.

(3) In making an arbitration decision, the Minister of the Ministry of Agriculture, Forestry, and Fishery shall review if it is necessary to grant a non-exclusive license for each request.

(4) In making an arbitration decision, the Minister of the Ministry of Agriculture and Forestry shall require that the non-exclusive license be exploited for the main purpose of supplying the domestic demand. However, this shall not apply to an arbitration decision requested in accordance with Item (iv) of Paragraph (1).

(5) In making an arbitration decision under Item (iv) of Paragraph (1), the Minister of the Ministry of Agriculture and Forestry may take into consideration that the purport of the arbitration decision is for correcting unfair business practice when deciding its remuneration.

(6) Before making an arbitration decision, the Minister of the Ministry of Agriculture and Forestry shall hear the view of the Variety Committee established under Article 158.

#### Article 69

##### *Transmittal of Written Request for Arbitration*

Where a request has been made for an arbitration decision under Paragraph (1) of Article 68, the Minister of the Ministry of Agriculture and Forestry shall transmit a copy of the written request to the variety protection right holder and exclusive licensee related to the request, and to any other persons having a registered right to the protected variety, and shall give them an opportunity to submit a written reply within the time limit.

#### Article 70

##### *Manner of Arbitration*

(1) An arbitration decision shall be in writing and shall state the reasons therefor.

(2) The following items shall be indicated in the arbitration decision of Paragraph (1):

- (i) the scope and duration of the non-exclusive license, and
- (ii) the remuneration for the license, and the method and time of its payment.

(3) Where an extension of the duration of a non-exclusive license is requested under Item (i) of Paragraph (2), the Minister of the Ministry of Agriculture and Forestry may not reject such request as long as previous reasons for the extension remain to be valid.

#### Article 71

##### *Transmittal of Certified Copies of the Arbitration Decision*

(1) Where an arbitration decision is made, the Minister of the Ministry of Agriculture and Forestry shall transmit certified copies of the decision to the parties and any other person having a registered right to the variety protection right.

(2) When an arbitration decision has been transmitted to the parties under Paragraph (1), an agreement to the terms of the arbitration decision shall be deemed to have been reached by the parties.

#### Article 72

##### *Deposit of Remuneration*

A person who is to pay remuneration under Item (ii) of Paragraph (2) of Article 70 shall make a deposit thereof under any of the following circumstances:

- (i) where the person to receive the remuneration refuses or is unable to receive it;
- (ii) where a lawsuit prescribed in Paragraph (1) of Article 106 is filed against the remuneration; and
- (iii) where the variety protection right or exclusive license is the subject of a pledge, except for the case that the pledgee gave his consent.

#### Article 73

##### *Lapse and Cancellation of Arbitration Decision*

(1) When a person who is subject to a ruling under Paragraph (1) of Article 70 fails to pay or deposit the remuneration (if the remuneration is paid at a fixed period or in installments, the first portion of such payment) by the payment due date prescribed in Item (ii) of Article 70, the ruling shall lose its effect.

(2) The Minister of the Ministry of Agriculture and Forestry may cancel the ruling under Paragraph (1) of Article 70 upon the request of an interested party or *ex officio* under any of the following circumstances:

- (i) where a person who is subject to a ruling under Paragraph (1) of Article 70 fails to exercise his non-exclusive license;
- (ii) where the reasons for requesting an arbitration decision on a non-exclusive license have become invalid and there is no basis for their recurrence; and
- (iii) when a person who is subject to a ruling under Paragraph (1) of Article 70 fails to pay or deposit the subse-

quent portions of the remuneration following the first portion if the remuneration is paid at a fixed period or in installments.

(3) Paragraph (6) of Article 68, Article 69, Paragraph (1) of Article 70, and Article 71 shall apply *mutatis mutandis* to the cases described in Paragraph (2).

(4) The non-exclusive license shall be extinguished from the time a ruling on an arbitration decision has been cancelled under Paragraph (2).

#### Article 74

##### *Restriction on Objection to Arbitration Decision*

Where a demand for an administrative trial is filed against the arbitration decision under Paragraph (1) of Article 3 of the Administrative Trial Law, the remuneration determined in an arbitration decision may not be a ground for objection.

#### Article 75

##### *Effects of Registration of Non-Exclusive License*

(1) When a non-exclusive license is registered, it shall be also effective against any person who subsequently acquires the variety protection right or an exclusive license after the registration.

(2) A non-exclusive license granted under Articles 64 through 68, and 104 shall have the same effect as prescribed under Paragraph (1) even when it is not registered.

(3) The transfer, modification, extinguishment, or restriction on disposal of a non-exclusive license, or the establishment, transfer, modification, extinguishment, or restriction on disposal of a pledge relating to a non-exclusive license shall not be effective against a third party unless it is registered.

#### Article 76

##### *Restriction on Abandonment of the Variety Protection Right and Others*

(1) A variety protection right holder shall not abandon his variety protection right without the consent of the exclusive licensee, or pledgee, or non-exclusive licensee under Paragraph (4) of Article 62 or Paragraph (1) of Article 64.

(2) An exclusive licensee shall not abandon his exclusive license without the consent of a pledgee or non-exclusive licensee under Paragraph (4) of Article 62.

(3) A non-exclusive licensee shall not abandon his non-exclusive license without the consent of a pledgee.

#### Article 77

##### *Effects of Abandonment*

The variety protection right, exclusive license, or non-exclusive license shall be extinguished from the time of abandonment of the variety protection right, exclusive license, or non-exclusive license.

## Article 78

*Pledge*

Where a variety protection right, exclusive license, or non-exclusive license is the subject of a pledge, the pledgee may not exploit the protected variety except as otherwise provided by the contract.

## Article 79

*Subrogation of the Pledge Right*

A pledge may be exercised against the remuneration or goods to be received for the exploitation of the protected variety; however, it shall be seized before payment or delivery thereof.

## Article 80

*Cancellation of the Variety Protection Right*

(1) The Minister of the Ministry of Agriculture and Forestry may cancel the variety protection right under any of the following circumstances; however, in case of Item (iii), the variety protection right shall be cancelled:

- (i) where requirements prescribed in Article 15 or 16 have not been met;
- (ii) (deleted);
- (iii) where an act of maintaining the protected variety under Article 83 has not been performed; and
- (iv) where the registration of a variety denomination has been cancelled under Paragraph (1) of Article 113.

(2) The variety protection right shall be extinguished from the time of cancellation of the variety protection right under Paragraph (1).

(3) Paragraphs (2) and (3) of Article 37 shall apply *mutatis mutandis* to the cancellation prescribed in Paragraph (1).

## Article 81

*Extinguishment of the Variety Protection Right in absence of Successor*

A variety protection right shall be extinguished in the event that there is no successor thereto when the succession is commenced.

## Article 82

*Report on Exploitation of the Variety Protection Right*

The Minister of the Ministry of Agriculture and Forestry may require a variety protection right holder, exclusive licensee or non-exclusive licensee to report whether the protected variety has been exploited, and the scale, etc. thereof.

## Article 83

*Maintenance Obligation of the Protected Variety*

(1) The variety protection right holder shall have the obligation to maintain the basic characteristics of the protected variety at the time of the registration of establishment of the variety protection right for the entire duration of the right.

(2) The Minister of the Ministry of Agriculture and Forestry may require the variety protection right holder to furnish materials deemed necessary for verifying the maintenance of the basic characteristics of the protected variety under Paragraph (1), or may undertake the examination of varieties for the purposes of verification.

## CHAPTER VI

PROTECTION OF THE VARIETY  
PROTECTION RIGHT HOLDER

## Article 84

*Injunction and Prevention against Infringement*

(1) A variety protection right holder or exclusive licensee may request a person who is infringing or is likely to infringe his right to discontinue or refrain from such infringement.

(2) A variety protection right holder or exclusive licensee who is acting under Paragraph (1) may demand the destruction of the articles by which the act of infringement was committed, the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

## Article 85

*Acts deemed to be Infringement*

Any act falling under either of the following items shall be deemed to be infringing a variety protection right or an exclusive license:

- (i) an act of exploiting a protected variety of another person commercially and industrially without permission of the variety protection right holder or exclusive licensee; and
- (ii) an act of commercially using a variety denomination, which is identical with or similar to the variety denomination of the protected variety of another person, for a variety of the species or genus of the plant to which the protected variety belongs.

## Article 86

*Right to Claim Compensation for Damage*

(1) A variety protection right holder or exclusive licensee may claim a compensation for damage from a person who has intentionally or negligently infringed the variety protection right or exclusive license.

(2) Articles 128 and 132 of the Patent Act shall apply *mutatis mutandis* to claiming a compensation for damage under Paragraph (1).

#### Article 87

##### *Presumption of Negligence*

A person who has infringed a variety right or exclusive license of another person shall be presumed to have been negligent in the infringement.

#### Article 88

##### *Recovery of Reputation of Variety Protection Right Holder or Exclusive Licensee*

At the request of a variety protection right holder or exclusive licensee, the court may, in lieu of damages or in addition thereto, order the person who has injured the business reputation of the variety protection right holder or exclusive licensee by intentionally or by negligently infringing the variety protection right or exclusive license to take measures necessary for recovering the business reputation of said variety protection right holder or exclusive licensee.

#### Article 89

##### *Marking of Variety Protection*

A variety protection right holder, exclusive licensee, or non-exclusive licensee may indicate that the variety is a protected variety.

#### Article 90

##### *Prohibition of False Marking*

No person shall be allowed to perform either of the following acts:

- (i) an act of making a mark, on a container or package of the seeds for which variety protection has not been granted or a variety protection application is not pending, that the variety has been granted or a variety protection application has been filed, or of indicating any sign which is likely to cause confusion therewith on the container or package; and
- (ii) an act of indicating the variety, for which variety protection has not been granted or a variety protection application has not been filed, in commercial advertisements, signboards or labels, trading documents, etc. that variety protection has been granted or a variety protection application has been filed.

## CHAPTER VII TRIAL

### Article 91

#### *Variety Protection Trial Committee*

(1) The Variety Protection Trial Committee shall be established in the Ministry of Agriculture and Forestry in order to conduct trial and retrial proceedings on variety protection.

(2) In the Trial Committee, there shall be the Chairman of the Variety Protection Trial Committee and Variety Protection Trial Committee Members (hereinafter referred to as "trial members"), of which one member is a standing member.

(3) Matters relating to the composition and operation of the Trial Committee shall be prescribed by a Presidential Decree.

### Article 92

#### *Trial against Quash of Amendment*

If a person, who has been notified of a decision to quash the amendment under Paragraph (1) or (4) of Article 32, has an objection to the decision, he may demand a trial within thirty (30) days from the date of receipt of a certified copy of the decision.

### Article 93

#### *Trial against Rejection Ruling*

If a person, who has been rendered a ruling on rejection under Paragraph (1) of Article 37, has an objection to the ruling, he may demand a trial within thirty (30) days from the date of receipt of a certified copy of the ruling.

### Article 94

#### *Invalidation Trial of Variety Protection*

(1) An interested person or examiner in variety protection may demand an invalidation trial, if variety protection falls under any of the following items:

- (i) where variety protection has been granted contrary to Article 12, 17, or 18, Paragraph (1) or (2) of Article 21, Paragraph (1) of Article 24, or Paragraph (2) of Article 26; that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 15 or 16 were not complied with at the time of the grant of the breeder's right, or that, where the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder, the conditions laid down in Articles 8 or 9 were not complied with at the time of the grant of the breeder's right, or (revised on 7/1, 2001)

(ii) where variety protection has been granted to a person who is not entitled to obtain the right;

Article 96

(iii) where variety protection has been granted in violation of a treaty; and

*Trial Committee Member*

(iv) where, after the grant of variety protection, the variety protection right holder is no longer capable of enjoying the variety protection right under Article 18, or variety protection no longer complies with a treaty.

(1) When a trial is demanded under Paragraph (1) of Article 95, the Chairman of the Trial Committee shall have trial members adjudge the demand.

(2) The trial members shall conduct their official duties in an independent manner.

(2) A trial under Paragraph (1) may be demanded at any time as long as there is a benefit in demanding.

(3) The qualifications of the trial members shall be prescribed by a Presidential Decree.

(3) Where a trial decision invalidating the variety protection right has become final and conclusive, the variety protection right shall be deemed to have never existed; however, where a trial decision invalidating variety protection under Item (iv) of Paragraph (1) has become final and conclusive, the variety protection right shall be deemed to have not existed from the time that variety protection fell under said item.

Article 97

*Designation of Trial Members*

(4) Where a trial under Paragraph (1) has been demanded, the Chairman of the Trial Committee shall notify the purport of the demand to the variety protection right holder and exclusive licensee of the variety protection right as well as to other persons who have any registered right relating to variety protection.

(1) For each trial, the Chairman of the Trial Committee shall designate the trial members constituting a collegial body under Article 98.

(2) When any trial member designated under Paragraph (1) is unable to participate in the trial, the Chairman of the Trial Committee may have another trial member act for the former.

(3) The Chairman of the Trial Committee shall designate one of the trial members designated under Paragraph (1) as the presiding trial member.

Article 95

*Manner of Demanding a Trial*

(1) Any person desiring to demand a trial shall submit a written trial demand stating the following items to the Chairman of the Trial Committee:

(4) The presiding trial member shall preside in all matters relating to the trial.

Article 98

*Collegial System in Trial*

(i) the name and address of the demandant and his agent (in case of a legal entity, the title, place of business and the name of its representative);

(1) A trial shall be conducted by a collegial body composed of three trial members.

(ii) the variety denomination;

(2) The collegial body referred to in Paragraph (1) shall make its decisions by a majority vote.

(iii) the filing date of a variety protection application and application number of variety protection;

(3) The collegial decision of a trial shall not be disclosed.

(iv) the ruling date or decision date by an examiner; and

Article 99

*Mutatis Mutandis Application of Provisions on Examination to Trial*

(v) the purport of the demand and the reasons therefor.

(2) An amendment of the written trial demand submitted under Paragraph (1) may not change the gist thereof; however, this provision shall not apply to the reasons for the demand under Item (v) of Paragraph (1).

(1) Paragraph (1) of Article 29, Articles 30 and 32, Paragraph (2) of Article 37, Articles 38 through 43, Paragraphs (2) through (4) of Article 44, and Articles 45 and 46 shall apply *mutatis mutandis* to the trial against rejection ruling under Article 93; however, Article 38 shall not apply where the variety protection application has been already published.

(3) When a trial is demanded against the rejection ruling under Article 93, if the rejection ruling has been rendered based on an opposition to the grant of variety protection, the Chairman of the Trial Committee shall notify the purport of the demand to the variety protection opponent.

(2) In case of Paragraph (3) of Article 32 being applied in the first portion of Paragraph (1), "Where an applicant has demanded a trial under Article 92" shall read "Where an appeal to the Patent Court has been demanded under Paragraph (1) of Article 105" which means "until the trial decision has become final and conclusive."



## Article 100

*Mutatis Mutandis Application of Patent Law*

(1) Articles 139, 141, and 142, Articles 147 through Paragraphs (1) and (3) of Article 160, Articles 162 through 166, Paragraph (2) of Article 171, Articles 172 and 176 of the Patent Act shall apply *mutatis mutandis* to the trial under Articles 92 through 94.

(2) In case of Paragraph (1), "an invalidation trial under Paragraph (1) of Article 133, Paragraph (1) of Article 134, and Paragraph (1) of Article 137 or a confirmation trial of the scope of a right under Paragraph (1) of Article 135" in Paragraph (1) of Article 139 of the Patent Act shall be deemed to be "an invalidation trial under Paragraph (1) of Article 94."

(3) In case of Paragraph (1), "Paragraphs (1) and (3) through (5) of Article 140 or Paragraph (1) of Article 140-2" in the former portion of Paragraph (1) of Article 141 shall be deemed to be "Paragraph (1) of Article 95," and "Article 82" of the latter portion of the same paragraph shall be deemed to be "Article 160."

(4) In case of Paragraph (1), "Paragraph (1) of Article 133, Paragraph (1) of Article 134, and Paragraph (1) of Article 137" in Paragraph (1) of Article 154 of the Patent Act shall be deemed to be "Paragraph (1) of Article 94."

(5) In case of Paragraph (1), "Paragraph (1) of Article 133, Paragraph (1) of Article 134, Article 135, and Paragraph (1) of Article 137" in Paragraph (1) of Article 165 of the Patent Act shall be deemed to be "Paragraph (1) of Article 94," "Article 132-3, 132-4, 136, or 138" in Paragraph (3) of the same article shall be deemed to be "Article 92 or 93," and "a patent attorney" in Paragraph (7) of the same article shall be deemed to be "a person."

(6) In case of Paragraph (1), "a trial against rejection ruling under Article 132-3 and a decision to quash an amendment under Article 132-4" in Paragraph (2) of Article 171 of the Patent Act shall be deemed to be "a trial against rejection ruling under Article 93 and a decision to quash an amendment under Article 92."

(7) In case of Paragraph (1), "Article 132-3 or 132-4" in Paragraph (1) of Article 176 of the Patent Act shall be deemed to be "Article 92 or 93."

CHAPTER VIII  
RETRIAL AND LITIGATION

## Article 101

*Demand for Retrial*

(1) The party concerned may demand a retrial against a trial decision which has become final and conclusive.

(2) Article 422 and Paragraph (1) of Article 424 of the Code of Civil Procedure shall apply *mutatis mutandis* to the demand for a retrial against Paragraph (1).

## Article 102

*Demand for Retrial against Fraudulent Trial Decision*

(1) Where the parties in a trial acted in collusion to cause a trial decision to be rendered with the purpose of injuring the rights or interests of a third person, such third person may demand a retrial against the trial decision which has become final and conclusive.

(2) In case of the demand for retrial under Paragraph (1), the parties in the trial shall be made joint defendants.

## Article 103

*Restriction on Effects of Variety Protection Right Restored by Retrial*

The effects of variety protection right shall not extend to any act falling under either of the following items, performed in good faith, after the trial decision has become final and conclusive but before the demand for a trial has been registered:

(i) where the variety protection right which was invalidated has been restored by a retrial; and

(ii) where the establishment of the variety protection right with respect to a variety application previously rejected by a trial decision has been registered through a retrial.

## Article 104

*Non-Exclusive License for Prior User of Variety Protection Right Restored by Retrial*

Where, in the case referred to in any of the items of Article 103, any person, who has, in good faith, commercially and industrially exploited the protected variety in the Republic of Korea, or been making preparations therefor, after the trial decision has become final and conclusive but before the registration of the demand for a retrial, shall have a non-exclusive license on the variety protection right, said license being limited to the scope of the purpose of such exploitation or preparation.

## Article 105

*Appeal to Patent Court*

(1) The person, objecting to a trial decision or a decision to quash an amendment of a variety protection application, written trial demand, or written retrial demand, may appeal to the Patent Court.

(2) An appeal under Paragraph (1) may be filed only by an appellant, a participating party, or a person who has applied participation in the trial or retrial but has been rejected.

(3) An appeal under Paragraph (1) shall be submitted within thirty (30) days from the date of receipt of a certified copy of the trial decision or ruling.

- (4) The time limit prescribed in Paragraph (3) is invariable.
- (5) An appeal against matters to be demanded in the trial shall not be filed unless the appeal is against a trial decision.
- (6) An appeal against the trial decision or ruling on trial expenses under Article 165 of the Patent Act, which is applied *mutatis mutandis* by Article 100, shall not be filed independently from Paragraph (1).
- (7) Any person objecting to a judgment of the Patent Court may appeal to the Supreme Court.

## Article 106

*Action against Decision on Amount of Remuneration*

- (1) A person, who is dissatisfied with a decision on the amount of remuneration under Item (ii) of Paragraph (2) of Article 70, may bring an action before the court.
- (2) An action under Paragraph (1) shall be filed within thirty (30) days from the date of receipt of a certified copy of the arbitration decision.
- (3) In an appeal under Paragraph (1), the variety protection right holder, exclusive licensee, or non-exclusive licensee shall be the defendant.

## Article 107

*Mutatis Mutandis Application of Patent Law and Others*

- (1) Article 180 and 184 of the Patent Act and Paragraph (1) of Article 429 of the Code of Civil Procedure shall apply *mutatis mutandis* to the procedure and demand of a retrial with respect to variety protection.
- (2) Articles 187, 188, and 189 shall apply *mutatis mutandis* to the litigation with respect to variety protection.
- (3) In case of Paragraph (2), “the Commissioner of the Korean Industrial Property Office” in the main portion of Article 187 of the Patent Act shall be deemed to be “the Minister of the Ministry of Agriculture and Forestry,” “Paragraph (1) of Article 133, Paragraph (1) of Article 134, Paragraph (1) of Article 135, Paragraph (1) of Article 137, and Paragraphs (1) and (3) of Article 138” of the proviso of the same article shall be deemed to be “Paragraph (1) of Article 94,” and “Paragraph (1) of Article 186” in Paragraph (1) of Article 189 of the Patent Act shall be deemed to be “Paragraph (1) of Article 105.”

PART III  
VARIETY DENOMINATION

## Article 108

*Variety Denomination*

- (1) A variety falling under any of the following items shall have its unique variety denomination:

- (i) a variety for which an application for variety protection is to be filed under Paragraph (1) of Article 26;
- (ii) a variety for which an application for the entry in a catalogue of varieties is to be filed under Paragraph (1) of Article 155; and
- (iii) a variety for which a declaration to produce and sell its seed is to be submitted under Paragraph (3) of Article 138.

- (2) Where a denomination has already been registered, or its registration has been applied, in the Republic of Korea or in another country, that denomination alone shall be used; however, a denomination which is contrary to *ordre public* or morality shall not be used.

## Article 109

*Requirements for Variety Denomination Registration*

A variety denomination falling under any of the following items may not be registered under Paragraph (8) of Article 111:

- (i) the variety denomination which is indicated solely in terms of a number or sign;
- (ii) the variety denomination which is indicated solely in terms of the origin, quality, yield, price, use, or production time of the variety or harvested material of the variety; (revised on 7/1, 2001);
- (iii) the variety denomination which is identical with or similar to the variety denomination of another variety of the species or genus of the plant to which the variety belongs, and therefore, it is likely to cause mistake or confusion;
- (iv) the variety denomination for which variety is derived from another variety contrary to the fact, or which is likely to cause mistake or confusion as to be related to another variety;
- (v) the variety denomination using the denomination of the common name, species or genus of the plant, or which is likely to cause mistake or confusion as to be the denomination of the species or genus of the plant;
- (vi) the variety denomination which is liable to disturb public order or good public morals;
- (vii) the variety denomination including the name or title, or their short names, of a renowned person; however, in case of obtaining approval of that person, this provision shall not apply;
- (viii) the variety denomination which is likely to cause mistake or confusion as to its origin; and
- (ix) the variety denomination for which application for registration has been filed under the Trademark Law prior to the filing date of the variety denomination application, or which is identical with or similar to a registered trademark, and therefore, it is likely to cause mistake or confusion.

## Article 110

*First-to-File Rule*

- (1) Where two (2) or more applications for the registration of a variety denomination relating to an identical variety denomination have been filed, only the applicant having the earlier filing date may obtain a variety denomination registration for the variety denomination.
- (2) Paragraphs (2) and (5) of Article 21 shall apply *mutatis mutandis* to Paragraph (1).

## Article 111

*Registration Procedure of Variety Denomination*

- (1) Any person wishing to obtain a variety denomination registration (hereinafter referred to as an "applicant for variety denomination registration") shall file an application for the registration of a variety denomination with the Minister of the Ministry of Agriculture and Forestry.
- (2) An application for the registration of a variety denomination shall be deemed to have been filed if its application for variety protection in case of Item (i) of Paragraph (1) of Article 108, its application for entry in a catalogue of varieties in case of Item (ii) of the same paragraph, or a declaration on the production and sale of the variety in case of Item (iii), is filed with the Minister of the Ministry of Agriculture and Forestry.
- (3) An examiner shall examine whether requirements for the variety denomination under Article 109 have been met for variety denominations which have been filed in accordance with Paragraph (1).
- (4) An examiner shall render a rejection ruling against an application for the registration of a variety denomination, if the variety denomination filed falls under any of the following items (hereinafter referred to as "reasons for rejection"):
- (i) where an application for variety protection has been rejected by a ruling under Paragraph (1) of Article 37;
  - (ii) where the variety denomination is in violation of Paragraph (1) of Article 108;
  - (iii) where the variety denomination falls under any of the items in Article 109;
  - (iv) where registration of the variety denomination can not be obtained under Article 110; and
  - (v) where an application for the entry in a catalogue of varieties has been rejected under Paragraph (2) of Article 116.

(5) Where an application for the registration of a variety denomination is to be rejected in accordance with Items (ii) through (iv) of Paragraph (4), the examiner shall notify the applicant for variety denomination registration of the reasons for rejection, and request him to submit a new variety denomination within thirty (30) days from the date of receipt of the notification.

(6) Where the examiner finds no reason for rejecting an application for the registration of a variety denomination under Paragraph (1), he shall publish the application in the Official Gazette.

(7) Where an application for the registration of the variety denomination is published under Paragraph (6), any person can file an opposition to the grant of variety protection with the Minister of the Ministry of Agriculture and Forestry within thirty (30) days from the date of publication of an application. (revised on 7/1, 2001).

(8) Where no reasons for rejecting a variety protection applications are found after completion of the procedures of publishing an application for the registration of a variety denomination under Paragraph (6) and of filing an opposition against the registration of a variety denomination under Paragraph (7), the Minister of the Ministry of Agriculture and Forestry shall register the variety denomination in a variety denomination register without delay and notify the applicant of the registration.

(9) Paragraph (2) of Article 41, Articles 42 through 45 shall apply *mutatis mutandis* to a rejection ruling under Paragraph (4) and an opposition filing under Paragraph (7).

## Article 112

*Use of the Variety Denomination*

- (1) No person shall sell, distribute, import, or export the seeds by falsely using a variety denomination of a variety of another person other than the protected variety of which establishment has been registered under Paragraph (8) of Article 111 (excluding a variety denomination which has been registered in a variety denomination register under Paragraph (2) of Article 55). (revised on 7/1, 2001).
- (2) No person shall sell, distribute the seeds by falsely using a variety denomination of a variety which has been registered in a variety denomination register under Paragraph (8) of Article 111. (established on 7/1, 2001).
- (3) In using a registered variety denomination under Paragraph (8) of Article 111, an applicant for the registration of a variety denomination or a successor of the variety may indicate a trademark name, etc. along with the variety denomination. In this case, the variety denomination shall be readily distinguishable.

## Article 113

*Cancellation of a Denomination*

(1) The Minister of the Ministry of Agriculture and Forestry shall cancel a variety denomination registered under Paragraph (8) of Article 111, if the variety denomination falls under any of the following items:

- (i) when a reason for rejecting the variety denomination under Items (2) through (4) of Paragraph (4) of Article 111 has been found;

- (ii) when a judicial decision prohibiting the use of the variety denomination has been produced; and
- (iii) any other cases prescribed by a Presidential Decree.

(2) When a variety denomination is to be cancelled under Paragraph (1), the Minister of the Ministry of Agriculture and Forestry shall notify the applicant of the registered variety denomination of the reasons for cancellation and request him to submit a new variety denomination within thirty (30) days from the date of the notification.

(3) Paragraphs (3) through (9) of Article 111 shall apply *mutatis mutandis* to a new variety denomination which has been submitted under Paragraph (2).

#### PART IV MANAGEMENT OF VARIETY PERFORMANCE

##### Article 114

###### *Plants to be Entered in an Official Catalogue of Varieties*

Objects of the entry in an official catalogue of varieties to manage the variety performance of the seeds of the plants, which are important for the sake of stability in agricultural, forestry, and fishery production, shall include rice plants, barley, beans, corn, potatoes, and any other plants prescribed by a Presidential Decree. However, corn, which is imported for forage, shall not be included.

##### Article 115

###### *Application for Entry in a Catalogue of Varieties*

(1) Any person desiring to enter a variety of a plant under Article 114 (hereinafter referred to as an “applicant for the entry in a catalogue of varieties”) shall file an application for the entry in a catalogue of varieties with the Minister of the Ministry of Agriculture and Forestry along with seed samples of the variety attached thereto.

(2) Matters relating to the description in an application for the entry in a catalogue of varieties under Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

##### Article 116

###### *Examination of the Variety for which Entry in a Catalogue of Varieties is Applied*

(1) The Minister of the Ministry of Agriculture and Forestry shall examine a variety, for which an application for the entry in a catalogue of varieties has been filed under Paragraph (1) of Article 115, according to the standards for examination of variety performance prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

(2) In the case that a variety, for which an application for the entry in a catalogue of varieties has been filed, fails to meet the requirements for examination standards of variety performance under Paragraph (1), the Minister of the Minis-

try of Agriculture and Forestry shall reject the application for the entry of the variety.

(3) Where an application for the entry in a catalogue of varieties is to be rejected in accordance with Paragraph (2), the Minister of the Ministry of Agriculture and Forestry shall notify the applicant for the entry in a catalogue of varieties of the reasons for rejection, and give him an opportunity to submit a written opinion within a time limit designated.

(4) Where no reasons for rejecting an application for the entry in a catalogue of varieties are found after completion of an examination under Paragraph (1), the Minister of the Ministry of Agriculture and Forestry shall enter the variety in a catalogue of varieties without delay and notify the applicant of the entry.

##### Article 117

###### *Publication of the Variety Entered in a Catalogue of Varieties*

Where a variety is entered in a catalogue of varieties under Paragraph (4) of Article 116, the Minister of the Ministry of Agriculture and Forestry shall publish the type of a plant to which the variety belongs, variety denomination, duration of the entry in accordance with Article 118, etc. Where duration of the entry is extended under Paragraph (2) of Article 118, the above provision shall also apply.

##### Article 118

###### *Duration of the Entry in a Catalogue of Varieties*

(1) The entry of a variety in a catalogue of varieties under Paragraph (4) of Article 116 shall expire at the end of the tenth (10th) calendar year following the date of its entry of the next year.

(2) The duration of the entry in a catalogue of varieties under Paragraph (1) may be extended by requesting for an extension of time.

(3) An extension of time of the entry in a catalogue of varieties under Paragraph (2) shall be requested within one (1) year of the expiration date of the duration of the entry in a catalogue of varieties.

(4) Where an extension of time of the entry is requested under Paragraph (2), the Minister of the Ministry of Agriculture and Forestry may not reject such request as long as the variety retains variety performance which is the same as that at the time of its entry in a catalogue of varieties.

##### Article 119

###### *Cancellation of the Entry in a Catalogue of Varieties*

(1) The Minister of the Ministry of Agriculture and Forestry may cancel the entry of a variety in a catalogue of varieties, if the variety falls under any of the following items; however, the entry of the variety in Items (iv) and (v) shall be cancelled:

- (i) when the variety fails to meet the requirements for examination standards of variety performance prescribed in Paragraph (1) of Article 116;
  - (ii) when the cultivation of the variety caused damage to environment or is likely to cause such damage;
  - (iii) when the variety denomination falls under any of the items in Paragraph (1) of Article 113 and the registered variety denomination is cancelled;
  - (iv) when the entry of the variety in a catalogue of varieties is obtained through a fraudulent act or any unlawful method; and
  - (v) when one variety is entered under two (2) or more variety denominations in duplicate (excluding the variety which has been entered first among all).
- (2) Paragraphs (2) and (3) of Article 37 shall apply *mutatis mutandis* to cancellation of the variety entry in a catalogue of varieties under Paragraph (1).

## Article 120

*Maintenance of a Catalogue of Varieties*

The Minister of the Ministry of Agriculture and Forestry shall maintain a portion of a catalogue of varieties related to the variety for the entire duration of the entry of the variety prescribed in Article 118.

## Article 121

*Production of the Seed of a Variety Entered in a Catalogue of Varieties*

The Minister of the Ministry of Agriculture and Forestry desiring to produce the seed of a variety which is entered in a catalogue of varieties under paragraph (4) of Article 116 may have a person falling under any of the following items produce the seed:

- (i) Minister of the Ministry of Ocean Industry, Administrator of the Rural Development Administration, or Administrator of the Forestry Administration;
- (ii) Mayor of Seoul, Mayors of Metropolitan Cities, or Provincial Governors (hereinafter referred to as "Mayors or Provincial Governors");
- (iii) The mayor of city, the magistrate of county or head of district office in self ruling district (hereinafter referred to as "The mayor and the magistrate") (established on 7/1, 2001);
- (iv) Any agricultural, forestry, and fishery organization prescribed by a Presidential Decree (hereinafter referred to as an "agricultural organization"); and
- (v) any seed merchant, farmer, or fisherman prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

Article 122 *Management of Maintenance of the Variety Entered in a Catalogue of Varieties* (Deleted)

Article 123 *Order to Prohibit Cultivation* (Deleted)

**PART V  
CERTIFICATION OF THE SEED**

## Article 124

*Classification of Seed Certification*

The certification of the seeds is classified into certification by the Minister of the Ministry of Agriculture and Forestry (hereinafter referred to as "national certification") and certification by a seed quality manager (hereinafter referred to as "internal certification").

## Article 125

*Objects of National Certification*

(1) A case falling under either of the following items shall be subject to national certification:

- (i) where the seed of a crop to be entered in a catalogue of varieties under Article 114 is produced by the Minister of the Ministry of Agriculture and Forestry, Mayor of metropolitan city, Provincial Governor, the mayor of city, the magistrate of county or agricultural organization established under the presidential decree of National Agricultural Cooperative Federation; and (established on 7/1, 2001);
- (ii) where a seed merchant wishes to obtain national certification in order to produce and export the seed of a variety of a crop prescribed by the Minister of the Ministry of Agriculture and Forestry.

(2) The Minister of the Ministry of Agriculture and Forestry may recognize the seed, which has been certified by an international seed testing organization prescribed by a Presidential Decree, to have obtained national certification.

## Article 126

*Objects of Internal Certification*

A case falling under either of the following items shall be subject to internal certification:

- (i) where the seed of a crop to be entered in a catalogue of varieties under Article 114 is produced by a seed merchant; and
- (ii) where a seed merchant wishes to obtain internal certification in order to produce and sell seeds of a crop excluding those to be entered in a catalogue of varieties under Article 114.

## Article 127

*Qualifications of Seed Quality Managers*

- (1) Matters relating to the qualifications for seed quality managers shall be prescribed by a Presidential Decree.
- (2) Where a seed quality manager has neglected his duties prescribed in this Law or committed a serious fault, the Minister of the Ministry of Agriculture and Forestry may cancel his qualification or suspend his qualification for a period of less than one (1) year.
- (3) The detailed standards for administrative measures under Paragraph (2) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry taking into consideration of the type of violated act, degree of violation, etc.
- (4) A seed quality manager shall be registered to the Minister of the Ministry of Agriculture and Forestry as prescribed by the Ordinance of the Ministry of Agriculture and Forestry, and shall be served a certificate of registration at his/her request.

## Article 128

*Field Inspections*

- (1) A person desiring to produce seeds having national or internal certification shall have the seeds be subject to field inspection given by the Minister of the Ministry of Agriculture and Forestry or a seed quality manager more than once.
- (2) Matters relating to the standards, method, procedure, etc. of the field inspection for each seed production step prescribed in Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

## Article 129

*Field Conditions for Seed Production*

A person desiring to produce seeds having national or internal certification shall maintain some distance from or install isolation facilities at a cultivation area of a variety or crop that might contaminate in order to prevent the variety from being cross-pollinated with other varieties or crops of the same or related species.

## Article 130

*Seed Examination and Re-Examination*

- (1) A person desiring to produce seeds having national or internal certification shall have the seeds, which have been produced from a field having passed field inspection given by the Minister of the Ministry of Agriculture and Forestry or a seed quality manager under Paragraph (2) of Article 128, be subject to a seed examination.
- (2) Any person who has an objection to the results of the seed examination under Paragraph (1) may request a re-examination to the Minister of the Ministry of Agriculture and

Forestry or seed quality manager who has undertaken the examination.

- (3) Matters relating to the standards, method, procedure, etc. of a seed examination for each seed production step or re-examination under Paragraph (1) or (2) shall be prescribed by the Ministry of Agriculture and Forestry.

## Article 131

*Indication of Certification*

- (1) A person desiring to sell or distribute a certified seed which has passed field inspection under Article 128 and has been subject to a seed examination under Article 130 shall indicate the certification thereof.
- (2) Matters relating to the certification indication or duration of the certification under Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

## Article 132

*Submissions of Materials (Deleted)*

## Article 133

*Issuance of a Certificate*

At the request of a person who has had a certified seed having certification indication under Paragraph (1) of Article 133 be subject to an examination, the Minister of the Ministry of Agriculture and Forestry or seed quality manager shall issue a certificate.

## Article 134

*Control Examination*

- (1) The Minister of the Ministry of Agriculture and Forestry shall give a control examination for a certified seed of a plant prescribed by the Minister of the Ministry of Agriculture and Forestry.
- (2) Matters relating to the control examination under Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

## Article 135

*Effects of the Certification*

Effects of the certification shall be deemed to have been lost, if a certified seed falls under any of the following items:

- (i) where the certification under Paragraph (1) of Article 131 has not been indicated;
- (ii) where the duration of the certification under Paragraph (2) of Article 131 has been expired; and
- (iii) where the certified seed packed has been unpacked or repacked; however, repacking into smaller packages un-

der the authority of a certifying agency or seed quality manager who has certified the seed shall not be deemed to be the loss of the effects of the certification.

#### Article 136

##### *Certification Indication of Unpacked Seeds*

Certification indication of the unpacked seeds under the proviso of Paragraph (3) of Article 135 shall have an identical certification indication with that of the variety which has been indicated prior to unpacking.

### PART VI CIRCULATION OF THE SEEDS

#### Article 137

##### *Registration of Seed Business*

(1) A person desiring to practice seed business shall be equipped with facilities prescribed by a Presidential Decree and register his business with the Mayor or Provincial Governor.

(2) Any person desiring to practice seed business in accordance with Paragraph (1) shall have one (1) or more seed managers; however, a person desiring to produce and sell the crop seeds prescribed by a Presidential Decree may not have a seed manager.

(3) (Deleted)

(4) Paragraphs (1) and (2) shall not apply to the case of the propagation, production, sales, distribution, export, or import by any of Minister of the Ministry of Agriculture and Forestry, Minister of the Ministry of Ocean Industry, Administrator of the Rural Development Administration, Administrator of the Forestry Administration, Mayors or Provincial Governors, Mayor of city, Magistrate of county or agricultural organization .(revised on 7/1, 2001)

#### Article 138

##### *Selling and Distribution of the Seeds*

(1) A person desiring to sell or distribute the seeds to be entered in a catalogue of varieties under Article 114 shall enter the seeds in a catalogue of varieties under Paragraph (4) of Article 116 and obtain the certification of the seed under Article 124, except for the case falling under any of the following items:

- (i) where the seed is used as the parents of the first generation hybrid or of the synthetic variety;
- (ii) where the seller buys the entire seeds again which have been sold and produced for the purpose of propagation;
- (iii) where the seed is used for the purpose of undertaking the test or research;
- (iv) where the entire seeds produced are exported; and

(v) where the seed is used for the purpose of other than seedling.

(2) Where it is deemed to be necessary for the circulation in spite of the provisions in Paragraph (1), the Minister of the Ministry of Agriculture and Forestry shall publish the period of selling or distribution of the seeds of a cancelled variety, which have been produced prior to the date of cancellation or which are being produced, to be until the next calendar year from the date of cancellation, even though the entry of the variety in a catalogue of varieties has been cancelled in accordance with Paragraph (1) of Article 119.

(3) Any person desiring to sell, by producing or importing, the seeds of a variety other than the seeds of a variety falling under any of the following items shall report to the Minister of the Ministry of Agriculture and Forestry with seed samples of the variety attached:

- (i) the seed of a variety for which establishment of the variety protection right has been registered under Paragraph (2) of Article 55; and
- (ii) the seed of a variety which has been entered in a catalogue of varieties under Paragraph (4) of Article 116.

#### Article 139

##### *Cancellation of the Registration of Seed Business*

(1) Mayors or Provincial Governors may cancel the registration of seed business, or order suspension of the business for less than six(6) months, in the case that a seed merchant falls under any of the following items:

- (i) when the seed merchant has not initiated his business within one (1) year from the date of registration of his business, or has closed his business for more than one (1) year continuously without any justifiable reason;
- (ii) when the facilities of the seed business have not satisfied the requirements prescribed in Paragraph (1) of Article 137 after the seed merchant registered his seed business;
- (iii) when the seed merchant has not hired a seed manager in violation of the main provision of Paragraph (2) of Article 137;
- (iv) when the business has been registered through a fraudulent act or illegal method; and
- (v) when the seed merchant or seed trader has committed a violation of the provisions or order of this Law.

(2) In the case that a seed merchant continuously runs his business during the time of a suspension in violation of a suspension order under Paragraph (1), the Mayor or Provincial Governor may cancel the registration of his business.

(3) A person who has been disposed of the provisions of Paragraph (1) shall not apply for the re-registration of his seed business unless two (2) years have passed from the date of disposal.

(4) The detailed standards for administrative measures under Paragraph (2) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry taking into consideration of the type of violated act, degree of violation, etc.

#### Article 140

##### *Import and Export of the Seeds*

(1) A person desiring to import or export crop seeds to be entered in a catalogue of varieties in accordance with Article 114 shall report to the Minister of the Ministry of Agriculture and Forestry; however, in the case that a person prescribed by the Ordinance of the Ministry of Agriculture and Forestry imports or exports the seeds in an amount of less than the amount prescribed by the Ordinance of the Ministry of Agriculture and Forestry for the purpose of undertaking the test or research, this provision shall not apply.

(2) Imported seeds which fail to meet the requirements for examination of variety performance under Paragraph (1) of Article 116 shall not be subject to import report under the main provision of Paragraph (1).

(3) The Minister of the Ministry of Agriculture and Forestry may restrict export or import of the seeds or domestic circulation of the imported seeds as prescribed by the Ordinance of the Ministry of Agriculture and Forestry, in the case that it is deemed to incur serious problems in the protection of national ecological system and preservation of natural resources.

(4) (Deleted)

#### Article 141

##### *Adaptability Test of Imported Seeds*

(1) A person desiring to import crop seeds, which are prescribed by the Minister of the Ministry of Agriculture and Forestry, for the first time in the Republic of Korea for the purpose of selling shall have the seeds be subject to an adaptability test of imported seeds given by the Minister of the Ministry of Agriculture and Forestry.

(2) In the case that the result of an import adaptability test given in accordance with Paragraph (1) fails to meet the requirements for examination standards prescribed by the Ordinance of the Ministry of Agriculture and Forestry, the Minister of the Ministry of Agriculture and Forestry may restrict domestic circulation of the seeds of the variety.

#### Article 142

##### *Recommendation of Import of the Variety*

(1) A person desiring to import the seeds at a tax rate of raising permission applicable to the market approach quantity of the Korean raising permission symbols in accordance with the Marrakesh Agreement establishing the WTO shall obtain recommendation from the Minister of the Ministry of Agriculture and Forestry.

(2) The Minister of the Ministry of Agriculture and Forestry may have a related agency or organization designated by the Minister of the Ministry of Agriculture and Forestry undertake the task of recommending import of the seeds under Paragraph (1). In this case, the recommended quantity for each product, recommendation standards, and other matters relating to the recommendation shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

#### Article 143

##### *Indication of Quality of the Circulated Seeds*

A person desiring to sell or distribute the seed which is not subject to national or internal circulation shall indicate the year of the production of the seed or year of packing and other matters prescribed by the Ordinance of the Ministry of Agriculture and Forestry on a container or package of the seed. (revised on 7/1, 2001)

#### Article 144

##### *Prohibition of False Indication, Etc. (Deleted)*

#### Article 145

##### *Circulation Inspection, Etc. of the Seeds*

(1) Where it is deemed to be necessary for the production of quality seeds and smooth circulation thereof, the Minister of the Ministry of Agriculture and Forestry may have a seed merchant or seed trade have a related public official enter a place of business, business office, etc. and inspect facilities at the time, related documents or files, seeds, etc. or collect the seeds in the minimum amount necessary for the inspection.

(2) The Minister of the Ministry of Agriculture and Forestry may have a related public official stop the production or selling of, or seize, the seeds which have been produced or sold in violation of this Law. For the seized seeds, their list shall be made, and they shall be distributed to a person who has owned or possessed the seeds.

(3) The Minister of the Ministry of Agriculture and Forestry shall have a related public official take custody of the seeds which have been seized in accordance with Paragraph (2) for one (1) calendar year. Where, the seeds which are difficult to store, in accordance with ordinance of Minister of Ministry of Agriculture and Forestry shall be returned or destroyed under the application of paragraph of 4. (established on 7/1, 2001)

(4) The Minister of the Ministry of Agriculture and Forestry shall have a related public official prohibit the use of the seeds of which preservation durations under Paragraph (3) have been expired, and return such seeds to a person who has owned or possessed the seeds at the time of seizure thereof; however, where return thereof is not possible because the address of a person who has owned or possessed the seeds at the time of seizure thereof is uncertain or the person rejects receipt of the seeds, such seeds may be destroyed.



(5) When a related public official assumes his duties in accordance with Paragraph (1) or (2), he shall have an identification card showing his authority and present this card to a person concerned.

(6) Matters relating to keeping the seeds in accordance with the provisions of Paragraph (3) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

#### Article 146

#### Stockpiling of the Seeds (Deleted)

#### Article 147

#### Keeping the Seed Samples

(1) The Minister of the Ministry of Agriculture and Forestry shall keep and manage a prescribed amount of the seed sample, in case of the seed falling under any of the following items:

- (i) the seed of a variety of which establishment of the protection variety right has been registered in accordance with the provisions of Paragraph (2) of Article 55;
- (ii) the seed of a variety which has been entered in a catalogue of varieties in accordance with the provisions of Paragraph (4) of Article 116; and
- (iii) the seed of a variety which has been reported in accordance with the provisions of Paragraph (3) of Article 138.

(2) Matters relating to keeping the seed samples under Paragraph (1) shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

#### Article 148

#### *Disputes Concerning Circulated Seeds*

(1) Where there is a dispute concerning the seeds under circulation, the interested party in the dispute may request for materials on seed certification of the variety to the Minister of the Ministry of Agriculture and Forestry or seed quality manager who has certified the seed of the variety.

(2) The interested party in the dispute under Paragraph (1) may request the Minister of the Ministry of Agriculture and Forestry to undertake a comparative examination between the seed which is subject to the dispute and the seed sample which has been kept and managed under Article 147.

(3) When interested parties in the dispute file an application for a comparative examination under Paragraph (2), the interested parties shall verify collection of the seed samples in dispute jointly and submit sealed seed samples to the Minister of the Ministry of Agriculture and Forestry.

(4) Upon receipt of an application for a comparative examination under Paragraph (2), the Minister of the Ministry of Agriculture and Forestry shall undertake the comparative

examination and notify the interested parties in the dispute of the results thereof without delay.

(5) The Minister of the Ministry of Agriculture and Forestry may have the interested parties in the dispute under Paragraph (1) submit materials necessary for the comparative examination prescribed in Paragraph (4).

(6) Where damages related to the variety under circulation have occurred due to defects in the seeds, the injured party may demand a compensation thereof from the seed merchant as prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

### PART VII THE SEED FUND

Article 149-Article 157 (deleted on June 1st, 2000)

### PART VIII SUPPLEMENTARY PROVISIONS

#### Article 158

#### *Seed Council*

(1) The Seed Council shall be established in the Ministry of Agriculture and Forestry to advise the Minister of the Ministry of Agriculture and Forestry on the matters concerning development of the seed industry, protection of the variety protection right, catalogue of variety system, etc.

(2) The Seed Council is composed of eight (8) or less council members including professional experts in each seed industry field and one (1) lawyer.

(3) Matters relating to the composition and operation of the Seed Council shall be prescribed by a Presidential Decree.

#### Article 159

#### *Hearing*

The Minister of the Ministry of Agriculture and Forestry, Mayors, or Provincial Governors desiring to take a measure falling under either of the following items shall give hearing:

- (i) cancellation of the qualification of seed quality managers in accordance with Paragraph (2) of Article 127; and
- (ii) cancellation of the registration of seed business in accordance with Paragraph (1) or (2) of Article 139.

#### Article 160

#### *Official Fees*

(1) A person falling under any of the following items shall pay the official fees:

- (i) a person desiring to register the appointment or change of a variety protection agent under Paragraph (4) of Article 3;

- (ii) a person desiring to file an application for variety protection under Paragraph (1) of Article 26;
- (iii) a person desiring to claim the right of priority under Paragraph (1) of Article 27;
- (iv) a person who has filed an application for variety protection, where an application is to be published under Paragraph (1) of Article 38;
- (v) a person desiring to register variety protection under Article 53 (excluding the registration of establishment of the variety protection right);
- (vi) a person desiring to request for an arbitration decision on the grant of a non-exclusive license under Paragraph (1) of Article 68;
- (vii) a person desiring to demand a trial on the variety protection right under Articles 92 through 94;
- (viii) a person desiring to demand a retrial under Article 101;
- (ix) a person desiring to file an application for the entry in a catalogue of varieties under Paragraph (1) of Article 115;
- (x) a person desiring to request for an extension of the duration of the entry in a catalogue of varieties under Paragraph (2) of Article 118;
- (xi) a person desiring to obtain national certification under Item (ii) of Paragraph (1) of Article 125;
- (xii) a person desiring to be issued of a certification of the seed under Article 133;
- (xiii) a person desiring to report the seed to be sold by producing or importing under Paragraph (3) of Article 138;
- (xiv) a person desiring to have the seeds be subject to an import adaptability test under the main provision of Paragraph (1) of Article 141; and
- (xv) a person desiring to apply for a certified copy, abstract copy, duplicate copy, or certificate.

#### Article 161

##### *Exemption of Official Fees*

Notwithstanding the provisions in Article 160, a case falling under either of the following items shall be granted for an exemption from the payment of official fees:

- (i) where the Government or a District Self-Ruling Entity is taking the procedure for variety protection or the entry in a catalogue of varieties; and

- (ii) where a life protectee under Article 3 of the Life Protection Act is taking the procedure for variety protection or the entry in a catalogue of varieties.

#### Article 162

##### *Refund of Official Fees*

The official fees that have been paid shall not be refunded, except where those fees have been paid by mistake.

#### Article 163

##### *Language Used*

All documents specified in this Law shall be in Korean; however, where it is necessary to use Chinese characters and other foreign letters, they shall be indicated in parentheses, except for the case prescribed by the Ordinance of the Ministry of Agriculture and Forestry.

#### Article 164

##### *Storage, Etc. of the Documents*

(1) The Minister of the Ministry of Agriculture and Forestry shall store the documents relating to the variety protection application or variety protection right for five (5) calendar years from the date of abandonment, invalidation, or withdrawal of the variety protection application, rejection ruling, or extinguishment of the variety protection right.

(2) Any interested party in variety protection may request inspection or copying of the documents related to variety protection applications, variety protection right, or an examination given in accordance with Article 35 or Paragraph (2) of Article 83 to the Minister of the Ministry of Agriculture and Forestry.

(3) The Minister of the Ministry of Agriculture and Forestry shall not grant a request referred to in Paragraph (2), if it is related to any of the following items:

- (i) where the variety falls under Item (ii) of Paragraph (3) of Article 57, and the applicant of variety protection has requested non-disclosure of the variety;
- (ii) where the documents are for an application for variety protection which has not been published; and
- (iii) where it is contrary to *ordre public* or morality.

#### Article 165

##### *Development of Seed Industry*

(1) The Minister of the Ministry of Agriculture and Forestry may support the promotion of the seed industry; the collection, evaluation, preservation, and management of agricultural germplasms; and the development of superior varieties. (revised on 7/1, 2001).

(2) The Minister of the Ministry of Agriculture and Forestry may prescribe matters which are necessary for the col-

lection and registration of agricultural germplasms for the biodiversity and increase usage. (revised on 7/1, 2001)

(3) The Minister of the Ministry of Agriculture and Forestry may prescribe matters which are necessary for the classification by the utilization and distribution of agricultural germplasms for systematic management of agricultural germplasms. (revised on 7/1, 2001)

(4) The Minister of the Ministry of Agriculture and Forestry may assist an agent of variety production under Article 121 by providing with the entire or partial expenses necessary for the production, distribution, etc. of the variety for him.

(5) The necessary matters for the effective management of agricultural germplasms and paragraph 2 and 3, shall be prescribed by the Ordinance of the Ministry of Agriculture and Forestry. (Established on 7/1, 2001)

#### Article 166

##### *Entrustment and Consignment of the Authority*

A portion of the authority of the Minister of the Ministry of Agriculture and Forestry prescribed in this Law may be entrusted or consigned to the Administrator of the Rural Development Administration, Administrator of the Forestry Administration, or Minister of the Ministry of Ocean Industry, Mayor, Provincial Governor, mayor of city, magistrate of county, office of attached Ministry of Agriculture and Forestry, or a legal entity or organization involved in agricultural, forestry, and fishery business as prescribed by a Presidential Decree. (revised on 7/1, 2001)

#### Article 167

##### *Relationship with Other Law Provisions*

Matters relating to the seeds for forestry, mulberry nursery stocks and silkworm eggs, trees, tobacco seeds, seeds for marine plants, and ginseng seeds shall be prescribed by this Law, except where there are special law provisions concerning these seeds in the Forestry Law, Seri-culture Law, Tobacco Business Law, Fishery Law, and Ginseng Industry Law.

#### Article 168

##### *Mutatis Mutandis Application of Patent Law*

To the transmittal of the documents, etc. in the procedure relating to variety protection, the provisions of Articles 217 through 220, and 222 of the Patent Act shall apply.

### **PART IX PENAL PROVISIONS**

#### Article 169

##### *Offense of Infringement*

(1) Any person falling under any of the following items shall be punished by imprisonment for not more than five (5) years or a fine not exceeding thirty million (30,000,000) Won:

- (i) a person who infringes a variety protection right or exclusive license;
  - (ii) a person who infringes a right under Paragraph (1) of Article 39; however, this provision shall apply only where the establishment of a variety protection right has been registered; and
  - (iii) a person who is rendered a variety protection ruling or trial decision through a fraudulent act or any unlawful method.
- (2) Prosecution for offenses under Items (i) and (ii) of Paragraph (1) shall be initiated upon filing of a complaint by an injured party.

#### Article 170

##### *Offense of Perjury*

(1) Where a witness, expert witness or interpreter, having taken an oath under Article 154 or 157 of the Patent Act which is applied to in accordance with Article 100 of this Law, has made a false statement or given a false expert opinion or interpreted falsely before the Examination Committee, he shall be punished by imprisonment for not more than five (5) years, or a fine not exceeding ten million (10,000,000) Won.

(2) Any person, having committed an offense under Paragraph (1), who admits it before the examiner's decision is rendered or before a trial decision on the case becomes final and conclusive, may be partially or entirely exempted from the application of the sentence.

#### Article 171

##### *Offense of False Marking*

Any person who has violated Article 90 shall be punished by imprisonment for not more than three (3) years or a fine not exceeding twenty million (20,000,000) Won.

#### Article 172

##### *Offense of Divulging Secrets*

Where any present or former employee of the Ministry of Agriculture and Forestry (including an employee of any organization if the authority is entrusted by the Minister of the Ministry of Agriculture and Forestry under Article 166) or Examination Committee has divulged or appropriated a variety of which application for variety protection is pending to which he had access in the course of his duties, he shall be punished by imprisonment for not more than two (2) years or a fine not exceeding five million (5,000,000) Won.

#### Article 173

##### *Offense of Non-Registration of the Seed Business*

Any person falling under any of the following items shall be punished by imprisonment for not more than one (1) year or a fine not exceeding ten million (10,000,000) Won:

(i) a person who has sold, distributed, imported, or exported the seed through appropriation of a variety denomination of another person's variety other than the protected variety in violation of Paragraph (1) of Article 112;

(ii) (Deleted)

(iii) a seed quality manager who has issued a certification prescribed in Article 133 falsely;

(iv) a person who has practiced the seed business without registration thereof in violation of Paragraph (1) of Article 137;

(v) a person who has sold or distributed the crop seed in violation of Paragraph (3) of Article 138;

(vi) a person who has sold by producing or importing the seed of a variety without report thereof in violation of Paragraph (3) of Article 138;

(vii) a person, who has continuously practiced the seed business of which registration had been cancelled, or who has continuously practiced the seed business after having been ordered suspension of the business, in violation of Paragraph (1) of Article 139;

(viii) a person who has exported or imported, or circulated the imported seed in violation of Paragraph (3) of Article 140;

(ix) (Deleted);

(x) a person who has imported the seed without having the imported seed be subject to an adaptability test of imported seeds in violation of Paragraph (1) of Article 141;

(xi) a person who has produced or sold the seed, of which production or sale had been stopped, in violation of Paragraph (2) of Article 145.

#### Article 174

##### *Dual Liability*

Where a representative of a legal entity, or an agent, serviceman, or other employee of a legal entity or natural person has committed an act in violation of Paragraph (1) of Article 169, Article 171 or 173 with regard to the business of the legal entity or natural person, the penalty of fine as prescribed in each corresponding article shall also be imposed on the legal entity or natural person, in addition to the punishment of the offender.

#### Article 175

##### *Confiscation*

(1) The Court shall confiscate, or sentence to deliver to the injured party upon request of the injured party, any article which is the subject of an act falling under Item (i) or (ii) of Paragraph (1) of Article 169, or any article which is produced by such act.

(2) Where the article is delivered to the injured party under Paragraph (1), he may claim the compensation for damages only in the limit to the amount of loss exceeding the value of the article.

#### Article 176

##### *Administrative Fine*

(1) Any person falling under any of the following items shall be punished by an administrative fine not exceeding five million (5,000,000) Won:

(i) a person who has sold or distributed the seed by using a variety denomination which had not been registered (including a variety denomination of which an application for the registration of the variety denomination has been filed or of which an application for the registration of the variety denomination is deemed to have been filed) in violation of Paragraph (2) of Article 112; (revised on 7/1, 2001);

(ii) (Deleted);

(iii) (Deleted);

(iv) (Deleted);

(v) (Deleted);

(vi) (Deleted);

(vii) a person who has exported or imported the seed without reporting in violation of the main provision of Paragraph (1) of Article 140;

(viii) (Deleted);

(ix) a person who has sold or distributed the seed without indicating quality of the circulated seed in violation of Article 143; and

(x) a person who has refused, hindered, or evaded the inspection or seizure prescribed in Paragraph (1) of Article 145;

(xi) (Deleted).

(2) Any person falling under any of the following items shall be punished by an administrative fine not exceeding five hundred thousand (500,000) Won:

(i) the concerned party, who has taken an oath under Article 271 of the Code of Civil Procedure which is applied to under Paragraph (2) of Article 48, or his legal representative, and has made a false statement before the Ministry of Agriculture and Forestry;

(ii) a person who has failed to report the purport of the inheritance of a variety protection right, exclusive license, or pledge, or other general successions in violation of Paragraph (2) of Article 63;

(iii) a person who has failed to comply with an order to report exploitation as prescribed in Article 82:

(iv) a person other than a witness, expert witness, or interpreter, who has taken an oath under Paragraph (8) of Article 154 which is applied to under Article 100, and has made a false statement before the Examination Committee;

(v) a person who has failed without any justifiable reason to comply with an order of the Examination Committee to submit or present the documents or articles relating to evidence investigation or evidence preservation as prescribed in Article 157 of the Patent Act which is applied to under Article 100;

(vi) a person, who has been summoned by the Examination Committee as a witness, expert witness, or interpreter under Article 154 or 157 of the Patent Act which is applied to under Article 100, and has failed to comply with the subpoena, or has refused to take an oath, make a statement, testify, given an expert opinion, or interpret without any justifiable reason.

(3) The administrative fine prescribed in Paragraph (1) or (2) shall be imposed and collected by the Minister of the Ministry of Agriculture and Forestry, Mayors, or Provincial Governors (hereinafter referred to as an "imposer") as prescribed by a Presidential Decree.

(4) Any person who objects to the imposition of an administrative fine under Paragraph (3) may file an opposition with the imposer within thirty (30) days from the date of notification of the imposition.

(5) The imposer shall, upon receipt of an opposition filed by a person under Paragraph (4) who has been disposed of an administrative fine under Paragraph (3), notify the opposition without delay to the competent court, which shall adjudicate upon the case of an administrative fine in accordance with the provisions of the act on non-contentious procedures.

(6) Where no opposition has been filed within the period prescribed in Paragraph (4) and the fine has not been paid, the fine shall be collected on the basis of examples of the disposition of national taxes in arrears.

## ADDENDUM

### Article 1

#### *Entry into Force*

This Law shall enter into force as of December 31, 1997; provided that the provisions in Articles 91 through 107 shall enter into force as of March 1, 1998.

### Article 2

#### *Abrogation of Other Laws*

Main Crops Seed Law and Seed and Seedling Control Law shall be abrogated.

### Article 3

#### *Examples in Mutatis Mutandis Application of Patent Law*

In applying Articles 3 and 9, Paragraphs 1, 2, and 4 of Article 10, Articles 17, 19 through 23 of the Patent Act under Article 10 of this Law, as well as applying Article 157, Paragraphs 3 through 6 of Article 165, and Article 166 of the Patent Act under Article 48 of this Law, the corresponding provisions in the same law to be effective as of March 1, 1998 shall be deemed to be applied; however, from the enforcement date of this Law to February 28, 1998, the corresponding provisions in the Patent Law at the time of enforcement of this Law shall be deemed to be applied.

### Article 4

#### *Interim Measures for Known Varieties at the time of Enforcement of this Law*

(1) Among the varieties which have been known at the time of enforcement of this Law, notwithstanding Paragraph (1) of Article 13, a variety falling under any of the following items shall be entitled for variety protection under this Law, where an application for variety protection thereof is filed within one (1) year from the enforcement date of this Law:

- (i) a variety which has been registered under Article 6 of the previous Seed and Seedling Control Law;
- (ii) a variety of a superior seed specified under Article 2 of the previous Main Crops Seed Law;
- (iii) a variety which has been registered under Paragraph (2) of Article 45 of the Forestry Law;
- (iv) a variety of which establishment of the variety protection right has been registered in a foreign country; and
- (v) a variety for which identification of the breeder and initial circulation date can be verified.

(2) The duration of the variety protection right for a protected variety under Paragraph (1) shall be calculated from the date falling under any of the following items; however, where the variety falls under two (2) or more items, the earliest date shall be used:

- (i) the date of the registration of the variety, if the variety falls under Item (i) of Paragraph (1);
- (ii) the date of being rendered a ruling of the Variety Committee, if the variety falls under Item (ii) of Paragraph (1);
- (iii) the date of the registration of the variety, if the variety falls under Item (iii) of Paragraph (1);
- (iv) the date of the registration of establishment of the variety protection right of the variety, if the variety falls under Item (iv) of Paragraph (1); and

(v) the date of initial circulation of the variety, if the variety falls under Item (v) of Paragraph (1).

(3) The effect of the variety protection right of which establishment has been registered under Paragraph (1) shall not be extended to any exploitation that has been initiated before the filing of an application for variety protection of the variety.

(4) Where variety protection has been granted under Paragraph (1), a person, who has been exploiting the protected variety or has been making preparation therefor, in good faith, in the Republic of Korea, prior to the filing date of an application for variety protection, shall have a non-exclusive license on that variety protection right, but such non-exclusive license shall be limited to the purpose of commercial and industrial exploitation of the protected variety, which is being made or for which preparations have been made. In this case, the non-exclusive licensee shall pay an adequate remuneration as consideration to the variety protection right holder.

(5) Paragraph (2) of Article 75 shall apply *mutatis mutandis* to the non-exclusive license under Paragraph (4).

#### Article 5

##### *Interim Measures on the Registration of Variety Denomination*

The variety denomination of the variety falling under any of the items in Paragraph (1) of Article 4 of Addendum shall be deemed to be a variety denomination, which has been registered under Paragraph (8) of Article 111.

#### Article 6

##### *Interim Measures on the Entry of the Seed*

Among the superior varieties which have been produced by the Minister of the Ministry of Agriculture and Forestry in accordance with the previous Main Crops Seed Law and the varieties which have been registered in accordance with the previous Seed and Seedling Control Law, at the time of the enforcement of this Law, the variety which is subject to the entry in a catalogue of varieties under Article 114 shall be deemed to be a variety entered in a catalogue of varieties and published under Article 117, while the variety other than those which are subject to the entry in a catalogue of varieties shall be deemed to be a variety reported under Paragraph (3) of Article 138.

#### Article 7

##### *Interim Measures on Seed Certification*

Among the superior varieties produced by the Minister of the Ministry of Agriculture and Forestry in accordance with the previous Main Crops Seed Law at the time of the enforcement

of this Law, the seed of a variety which is subject to the entry in a catalogue of varieties under Article 114 shall be deemed to have been certified in accordance with Article 124.

#### Article 8

##### *Interim Measures on the Registration of Seed Business, Etc.*

A person who has reported practice of the seed business under the previous Seed and Seedling Control Law, at the time of the enforcement of this Law, shall be deemed to have registered the seed business under Paragraph (1) of Article 137; a person who has registered the seed and seedling business under the previous Seed and Seedling Control Law shall be deemed to have reported practice of the seed trade under Paragraph (3) of the same article; and a person who has reported the seed and seedling business under the previous Main Crops Seed Law shall be deemed to have reported the seed trade under Paragraph (3) of the same article. In this case, a person who is deemed to have registered the seed business shall furnish proper facilities for satisfying the standards prescribed in Paragraph (1) of Article 137 and employ one (1) or more seed quality managers as prescribed in Paragraph (2) of the same article.

#### Article 9

##### *Interim Measures on Report of Import and Export of the Seed*

(1) Application of Paragraph (1) of Article 138 to imported varieties which have been imported and sold at the time of the enforcement of this Law shall be rerieved for two (2) years.

(2) A person who has reported import and export of the seed under the previous Main Crops Seed Law at the time of the enforcement of this Law shall be deemed to have reported import and export of the seed under Paragraph (1) of Article 140.

(3) A person who has been recommended import of the seed under the previous Main Crops Seed Law or Seed and Seedling Control Law at the time of the enforcement of this Law shall be deemed to have been recommended import of the seed under Article 142.

#### Article 10

##### *Interim Measures on an Adaptability Test of Imported Seeds*

The seed which has been or is subject to a domestic adaptability test under the previous Main Crops Seed Law or Seed and Seedling Control Law at the time of the enforcement of this Law shall be deemed to be the seed which has been or is subject to an adaptability test of imported seeds under the main provision of Paragraph (1) of Article 141.

## Article 11

*Interim Measures on Quality Indication  
of the Circulated Seeds*

A person who has indicated quality of the seed on a package of the seed and seedling under the previous Seed and Seedling Control Law at the time of the enforcement of this Law shall be deemed to have indicated the quality of the circulated seed under Article 143.

## Article 12

*Interim Measures on Establishment of the Seed Fund*

The seed fund established in accordance with the previous Main Crops Seed Law at the time of enforcement of this Law shall be deemed to be the seed fund established in accordance with Article 149.

## Article 13

*Interim Measures on Application of Penal Provisions*

The previous Law shall govern application of the penal provisions against actions committed in violation of the previous Main Crops Seed Law or Seed and Seedling Control Law at the time of enforcement of this Law.

[End of Document]

In case of discrepancy caused by the translation of these provisions into another language, the Korean text will prevail.

**REPUBLIC OF TRINIDAD AND TOBAGO**

**THE PROTECTION OF NEW PLANT VARIETIES REGULATIONS, 2000**

**REGULATIONS  
MADE BY THE MINISTER UNDER  
SECTION 46 OF THE PROTECTION OF NEW PLANT VARIETIES ACT, 1997**

*Citation*

1. These Regulations may be cited as the Protection of New Plant Varieties Regulations, 2000.

*Interpretation of Act, No. 7 of 1997*

2. In these Regulations, “the Act” means the Protection of New Plant Varieties Act, 1997.

*Fees, First Schedule*

3. The fees to be paid in respect of matters arising under the Act or these Regulations shall be those specified in the First Schedule.

*Forms, Second Schedule*

4. (1) The Forms referred to in these Regulations shall be those set out in the Second Schedule.

(2) A requirement under these Regulations to use a Form is satisfied by the use of a replica of that Form or of a Form which is acceptable to the Controller and contains the information required by the Form set out in the Second Schedule.

*Agency*

5. (1) The appointment of an agent or representative under section 12 of the Act shall be by an authorisation of agent which shall be signed by the applicant or person making the application or, if there are more than one, by each applicant or person making the application.

(2) The authorisation of agent appointing an agent or representative may be filed together with the application of within two months from the date such application is filed, and if the appointment is not thus made or is not in accordance with section 12 of the Act and subregulation (1), any procedural steps taken by the agent or representative, other than the filing of the application, shall be deemed not to have been taken.

*Application for grant*

6. (1) An application for the grant of a plant breeder’s right filed pursuant to section 20(1) of the Act shall be made on Form No. 1 and shall be accompanied by the prescribed fee.

(2) A technical questionnaire filed pursuant to section 20(2) of the Act shall be in the form set out as Form No. 2.

*Variety denomination*

7. A proposal for a variety denomination made pursuant to section 24 of the Act shall be in the form set out as Form No. 2.

*Withdrawal of application for grant*

8. (1) The withdrawal of an application pursuant to the Act shall be addressed to the Controller in writing and signed by each application, agent or representative.

(2) The application fee shall not be refunded if the application is withdrawn.

*Marketing of application for grant*

9. (1) Upon receipt, the Controller shall mark, on each document making up the application for grant of a plant breeder’s right the actual date of receipt and the application number consisting of the letters TT, slant, the letter B, slant, the numbers of the year in which the initial papers were received, slant, and a five-digit number allotted in the sequential order in which applications are received, and where any corrections or other later filed documents are received on different dates, the Controller shall also mark their actual date of receipt in the appropriate place on the application.

(2) The application number allotted under subregulation (1) shall be quoted in all subsequent communications concerning the application.

\* Regulations made by the Minister on October 24, 2000, and published in Legal Notice No. 298, Legal Supplement Part B - Vol. 39, No. 244 - December 5, 2000.



*Notification of action for assignment or transfer*

10. Where an action is filed under section 11 of the Act the person filing the action shall notify the Controller in writing and upon the furnishing of proof to the satisfaction of the Controller, the Controller shall, immediately upon receipt thereof, defer any decision on the application until the Court has made a final order.

*Request for registration of assignment or transfer*

11. (1) A request for the registration of an assignment or transfer pursuant to section 13(3) of the Act shall be made on Form No. 4 and shall be accompanied by an original or a certified copy of the document which establishes the assignment or transfer and by the prescribed fee.

(2) Where in the case of a request under subregulation (1), the successor in title does not claim under any document or instrument which is capable, in itself, of establishing the assignment or transfer, he shall, unless the Controller otherwise directs, either upon or with the request, set out the circumstances under which his claim to be the proprietor of the variety is based.

(3) If the Controller so requires the circumstances shall be verified by a statutory declaration made on Form No. 5.

*Annual fees*

12. (1) The annual fees payable under section 18 of the Act are set out in the First Schedule.

(2) Upon payment of the annual fee the Controller shall, within two weeks from the date payment is received, furnish or send to the application for, or to the owner of the plant breeder's right, a receipt of payment.

(3) Annual fees shall not be refundable.

*Renunciations*

13. A declaration by the holder of a plant breeder's right of the renunciation of his right pursuant to section 19(1) of the Act shall be on Form No. 6.

*Request for annulment*

14. (1) A request for an annulment of a plant breeder's right filed pursuant to section 19(3) of the Act shall be on Form No. 7 and shall include a full statement of the grounds upon which the person making the request relies and be accompanied by –

- (a) a duplicate of the request; and
- (b) the prescribed fee.

(2) Upon receipt of a request referred to in subregulation (1) the Controller shall forthwith send the duplicate of the request, together with any annexes, to the holder of the plant breeder's right.

(3) The withdrawal, under section 33(4) of the Act, of a request for an annulment shall be addressed to the Controller, in writing.

*Declaration of forfeiture*

15. (1) Where the Controller declares a plant breeder's right forfeit pursuant to section 19(4) of the Act, the declaration shall be in writing and a duplicate thereof shall forthwith be sent to the holder of the plant breeder's right.

(2) A request for the forfeiture of a plant breeder's right filed pursuant to section 34 of the Act shall be, in duplicate, on Form No. 8 and shall include a statement setting out fully the grounds upon which the person making the request relies.

*Cancellation of registered variety denomination*

16. A request for the cancellation of a registered variety denomination pursuant to section 28(1) of the Act shall be on Form No. 9 and shall be made in duplicate.

*Notification of non-compliance*

17. (1) Where any of the requirements under section 30(1) of the Act have not been complied with, the Controller shall notify the applicant, his agent or representative in writing of the non-compliance specifying the actions to be taken to complete the application.

(2) A notice under subregulation (1) shall be sent to the applicant, his agent or representative where possible, not later than one month from the date of the application or the date fixed for submission of the propagating material, as the case may be.

(3) Where the applicant, his agent or representative does not comply with the notification under subregulation (1), or where, despite the corrections made by the applicant, his agent or representative, the Controller is of the opinion that the requirements under section 30(1) of the Act have still not been complied with he shall reject the application pursuant to section 30(2) of the Act and notify the applicant, his agent or representative in accordance with regulation 19.

*Invitations*

18. An invitation under section 31(2) of the Act shall –

- (a) be in writing; and
- (b) specify the fee to be paid.

*Rejections*

19. (1) A rejection of any application, request or opposition under the Act shall be in writing and shall specify the reasons therefor.

(2) Where the Controller rejects an application under section 31(8) of the Act, the rejection shall be accompanied by a copy of the examination report, if any, upon which the rejection of the application was based.

*Oppositions*

20. (1) An opposition to the grant of a plant breeder's right pursuant to section 32(1) of the Act shall be made, in duplicate, on Form No. 10 and shall be accompanied by the prescribed fee.

(2) The Controller shall forthwith send to the applicant for the grant of the plant breeder's right a duplicate of the Form in subregulation (1).

*Procedure upon receipt of request for annulment, etc.*

21. (1) Upon receipt of any request for annulment or forfeiture or of any opposition, the holder of the plant breeder's right or the applicant, as the case may be, shall, within three months from the receipt of such request or such opposition, file a counter-statement, in duplicate, setting out fully the grounds upon which he contests such request or opposition and the Controller shall send a copy of the counter-statement to the person making the request or to the opponent.

(2) Subject to the provisions of the Act, the Controller may give such directions as he may think fit with regard to the subsequent procedure.

*Request for registration of licence contract*

22. A request for the registration of a licence contract pursuant to section 39(3) of the Act shall be on Form No. 11 and shall be accompanied by-

- (a) an original or a certified copy of the licence contract, including all amendments, annexes, riders and other supplements thereto or modifications thereof; and
- (b) the prescribed fee.

*Cancellation of registered licence of right*

23. (1) A request for the cancellation of a registered licence of right pursuant to section 43(5) of the Act shall be on Form No. 12 and shall state the name of each beneficiary and whether or not they have agreed to the cancellation.

(2) A request under subregulation (1) shall be accompanied by such evidence as the Controller may require.

*Request for registration of compulsory licence*

24. (1) Any person to whom a compulsory licence has been granted pursuant to section 44 of the Act may, in writing, notify the Controller of the grant of the licence and request on Form No. 11 the registration of such grant in the Register.

(2) A request made pursuant to subregulation (1) shall be accompanied by an office copy of the order of the Court and by the prescribed fee.

*Register of Plant Breeder's Rights*

25. The Register of Plant Breeder's Rights shall contain, in addition to the matters required under section 47 of the Act, at least the following information-

- (a) the names and addresses of the holders of plant breeder's rights;
- (b) the names and addresses of the agents or representatives, if any for the time being, of the holders of plant breeder's rights;
- (c) a description of the characteristics of the plant variety;
- (d) if available, the reference number under which the plant variety is recorded in any register of varieties kept by a recognised professional association or in any reference collection of plant material accepted by the Controller;
- (e) the date upon which and the period for which plant breeder's rights in the plant variety were granted; and
- (f) the date upon which such rights expired or were otherwise terminated or declared null and void, as the case may be.

*Examination of Register*

26. (1) The fee for the examination of the Register under section 48 of the Act shall be set out in the First Schedule.

(2) Subject to the payment of the prescribed fee, the Register shall be made available to the public for examination between the hours of 8.30 a.m. and 3.30 p.m. on any weekday other than Saturdays, Sundays and public holidays.

*Requests for copies or extracts from Register*

27. Requests made pursuant to section 48 of the Act for copies of, or for extracts from the information contained in the Register, shall be made to the Controller in writing and shall be subject to payment of the prescribed fee.

*Address for service*

28. (1) There shall be furnished to the Controller-
- (a) by every applicant for the grant of a plant breeder's right; and
  - (b) by every person (including the applicant for, or the owner of the plant breeder's rights, as the case may be) concerned in any proceedings to which the Act or these Regulations relate,

an address for service in Trinidad and Tobago and the address so furnished or, where another address (being an address in Trinidad and Tobago) has been furnished in place thereof, that address shall be treated for the purposes of the application or those proceedings as the address of that applicant or, as the case may be, of that person.

(2) Where an attorney-at-law has been appointed, the address of the attorney-at-law shall, for all purposes connected with the Act and these Regulations, be treated as the address to which communications to the person or persons who appointed the attorney-at-law shall be transmitted.

*Excluded days*

29. When the last day for doing any act or taking proceedings falls on a day when the office is not open to the public for business, it shall be lawful to do the act or to take the proceeding on the day when the office is next open for business.

*Service by mail*

30. (1) Any notice, request or other document sent to the Controller by mail shall be deemed to have been given, mailed or filed at the time when it would be delivered in the ordinary course of the mail and in providing such sending, it shall be sufficient to prove that the letter containing such notice, request or other document was properly addressed and sent by registered mail.

(2) Subregulation (1) does not apply to the accordance of a filing date.

*Extension of time limits*

31. The time or periods prescribed by these Regulations for doing any act or taking any proceedings thereunder, other than times or periods prescribed in regulation 17(2), may be extended by the Controller if he thinks fit, upon such notice to the parties and upon such terms as he may direct, and such extensions may be granted, although the time or period for doing such act or taking such proceeding has already expired.

*Amendment of documents and correction of irregularities*

32. Any application, notice, request or other document required by these Regulations may be amended and any irregularity in procedure may be excused by the Controller, upon receipt of a request in writing or on his own initiative and upon such terms as he may direct, if in the opinion of the Controller such amendment or correction would be without detriment to the interest of any other person.

*Dispensation by Controller*

33. Where, under these Regulations, any person is required to do any act or thing, or any document or evidence is required to be produced or filed, and it is shown to the satisfaction of the Controller that for any reasonable cause that person is unable to do that act or thing, or that that document or evidence cannot be produced or filed, the Controller may, upon the production of such evidence and subject to such terms as he thinks fit, dispense with the doing of such act or thing, or the production or filing of such document or evidence.

*Publication*

34. The publication of any matter required to be published under the Act shall contain such details of the matter as the Controller considers appropriate.

## FIRST SCHEDULE

## FEES

<i>Matter</i>	<i>Amount of fee</i>	<i>Form No.</i>
1. Filing of application for grant of plant breeder's right [section 20(1); regulation 6]	\$1,000.00	1
2. Filing of request for registration of assignment or transfer [section 13(3); regulation 11]	\$150.00	4
3. Renewal of protection 1 <sup>st</sup> year 2 <sup>nd</sup> year – 5 <sup>th</sup> year 6 <sup>th</sup> year – 10 <sup>th</sup> year 11 <sup>th</sup> year – 18 <sup>th</sup> year [section 18; regulation 12]	No fee \$150.00 per year \$500.00 per year \$1000.00 per year	-
4. Filing of request for annulment [sections 19(3) and 33(1); regulation 14]	\$150.00	7
5. Testing for distinctness, conformity and stability [section 31(2)]	\$500.00 plus the amount payable to the Testing Authority	-
6. Filing of opposition [section 32(1); regulation 20]	\$150.00	10
7. Registration of licence contract and grant of compulsory licence [sections 39(3) and 44; regulations 22 and 24]	\$150.00	11
8. Examination of Register [section 48; regulation 26]	\$40.00	-
9. Provision of certified copies/extracts from Register [section 48; regulation 27]	\$5.00 per page plus \$50.00 certification	-

## SECOND SCHEDULE

## FORMS

(Regulation 4)

[Regulation 6(1)]

Form No. 1.	
Protection of New Plant Varieties Act, 1997	
INTELLECTUAL PROPERTY OFFICE, TRINIDAD AND TOBAGO	
	For Official use
	Application No. Date of Filing:
	Date of Filing of corrections or later documents:
APPLICATION FOR GRANT OF A PLANT BREEDER'S RIGHT (To be accompanied by the prescribed fees) (Note: Please consult the instructions before completing)	
An official copy of the submitted application showing the date of filing is requested as a certification of priority for an application in the following States:	
1.(a) Applicant(s) name(s) and address(es)	
(b) Nationality(ies)	
2.(a) Address to which correspondence is to be sent:	
(b) Address // of the applicant // of one of the applicants // of the agent/representative // for service	
3. Species and crop	
4.(a) Proposed denomination: (in block letters)	
(b) Breeder's reference:	
5.(a) The original breeder(s) is/are // the (all) applicant(s) // the following person(s)  To the best of my/our knowledge there is no other original breeder	

## SECOND SCHEDULE – Continued

(Regulation 4)

## FORMS

[Regulation 6(1)]

Form No. 1 -Continued		
(b)	The variety was transferred to the applicant(s) by: // contract // succession // other (specify)	
(c)	The variety was bred in:  [State(s)]	
6.	Further State(s) applications      Filing Date:  Application No.      Stage  Denomination or breeder's reference:  Type of Protection  Official variety list	
7.	Priority is claimed in respect of the application filed in (State)  on (date)      under the denomination	
8.	The variety has been offered for sale      // not yet      // for the first time (date)  or marketed in (State of application)  under the denomination      and in other States // not yet // for the first time in (State)      under the denomination	
9.(a)	The technical examination of the variety  // has already been completed // is in progress // will be carried out in (State(s))	

SECOND SCHEDULE – Continued

(Regulation 4)

FORMS

(Regulation 6(1))

Form No. 1 –Continued	
(b) I/We declare that the material provided with the first application is representative of the variety and relevant to this application.	
(c) // Authorization is hereby given to the Intellectual Property Office to exchange with the competent authorities of any UPOV member State all necessary information and material related to the variety, provided that the rights of the applicant(s) are safeguard.	
Other forms and documents attached  /1/ /2/ /3/ /4/ /5/	
I/We hereby apply for the grant of a plant breeder’s right and declare that to the best of my/our knowledge the information necessary for the examination of the application given in this Form and in the annex(es) is complete and correct.  Signature(s)  ..... (Applicant/ Agent/Representative) ..... (Applicant/ Agent/Representative)	..... Date/place ..... Date/place

INSTRUCTIONS

FORM No. 1

Item 1(a)

State the full name and address (including the country/State) of the applicant whether a natural person or a firm. Where there is more than one applicant, state the names and addresses of all of them. If the space under item 2(a) is insufficient state only the name(s) of the applicant(s). Add the address(es) on a separate page annexed to this Form. Where the applicant wishes to have correspondence sent to his own address the address must be sufficiently complete to ensure delivery by

post. Telephone and fax numbers would be appreciated.

Item 1(b)

If the applicant is a person, nationality shall be indicated by the name of the State of which the person is a national.

If the applicant is a legal entity, indicate the name of the State under whose laws they have been constituted and their registered office.

Residence shall be indicated by the name of the State under whose laws they have been constituted and their registered office.

## Item 2

This must be an address in Trinidad and Tobago and must be sufficiently complete to ensure delivery by post. Telephone and fax numbers would also be appreciated. If there is no address in Trinidad and Tobago an address for service must be given. Please refer to regulation 28 of the Protection of New Plant Varieties Regulations, 2000.

Where one joint applicant has been authorised to act for the other joint applicants or an agent or representative has been named, attach a power of attorney issued by the applicant(s) on whose behalf the joint applicant, agent or representative is authorised to act.

## Item 3

The particulars stated must allow for the exact identification of the variety under both its botanical and technical aspects. The Latin name of the most suitable taxonomical unit (genus, species subspecies) should be stated together with the common name.

## Item 4

The variety must be filed in each member State under the same denomination. Accents may not be deleted from a variety denomination. Please state the breeder's reference, whether or not a proposal for a variety denomination (as in Form No. 3) has been filed together with this application.

## Item 5(a)

Mark the first box with a cross if the applicant(s) are the breeders of the variety. Mark the second box with a cross if the applicant(s) is/are not the breeder(s) of the variety and/or if a third person(s) is/are the breeder(s) of the variety. State the name(s) and address(es) of the breeder(s) on a separate page, if necessary and if not stated under Item 2.

## Item 5(b)

If the first box has been marked under item 5(a), enter nothing under this Item.

## Item 6

Specify all prior applications without exception, in chronological order, including those filed in States that are not members of the International Union for the Protection of New Varieties of Plants (UPOV).

In the column headed "Stage" use the following abbreviations:

- A- application pending.
- B- denomination rejected.
- C- denomination withdrawn.
- D- plant breeder's right granted or variety entered in official variety list.

The term "type of protection" comprises special titles of protection, plant patents and industrial patents.

"Official variety list" means any list of varieties whose marketing is authorized by the competent authorities.

## Item 7

A right of priority may only be claimed within a period of twelve months from the date of filing of the earliest application duly filed for the same variety either by the applicant himself or his predecessor in title but the day of filing shall not be included in that period.

## Item 8

"State of application" means the State in which the application was filed.

Item "Other forms and documents attached"

Mark a cross in the box if any of the following documents is attached to this application:

- /1/ Technical Questionnaire as in Form No. 2
- /2/ Proposal for a Variety Denomination as in Form No. 3
- /3/ Authorisation of agent/representative
- /4/ Under section 21 of the Act, if the priority of the first application is claimed a certified copy of the documents which constitute that application must be forwarded to the Intellectual Property Office within three months of the date of filing this application. Mark a cross in box 4 if that copy is attached.

The additional boxes have been added to allow for the attachment of additional documents/information.

## General

\* State name (in block letters) under signature(s) and delete whichever is not applicable.

\*\* This Form must be signed by the applicant or by the agent or representative where an authorisation of agent exists.

Please refer to section 20 and 21 of the Protection of New Plant Varieties Act, 1997, before completing this Form.



## SECOND SCHEDULE – Continued

## FORMS

(Regulation 6(2))

Form No. 2 –Continued		
Protection of New Plant Varieties Act, 1997		
INTELLECTUAL PROPERTY OFFICE, TRINIDAD AND TOBAGO		
		For Official use:
		Application No.:
		Date of Filing:
<b>TECHNICAL QUESTIONNAIRE</b> (To be completed together with an application for the grant of a plant breeder's right)		
1. Species:		
2. Applicant(s) name(s) and address(es):		
3. Proposed denomination or breeder's reference:		
4. Information on origin, maintenance and reproduction of the variety:		
5. Characteristics of this variety (the number in brackets refers the corresponding characteristics in the Test guidelines). Please mark the state of expression which best corresponds.		
Characteristics	Example Variety	Note
6. Similar varieties and differences from these varieties:		
Denomination of similar	Characteristics in which the similar variety is different*	State of expression of similar variety
		State of expression of candidate variety
*In case of the identical states of expression of both varieties, please indicate the size of the difference.		

SECOND SCHEDULE – Continued

FORMS

(Regulation 6(2))

Form No. 2 –Continued	
7.	Additional information which may help to distinguish the variety.
7.1	Resistance to pests and disease (Please specify races/strains, if possible)
7.2	Special conditions for the examination of the variety:
7.3	Other information:

INSTRUCTIONS

FORM No. 2

General

Dates should be written in the year, month, date order (for examples 99-01-10).

Please consult section 20 of the Protection of New Plant Varieties Act, 1997, before filing in this Form.

Item 1

The particulars stated must allow for the exact identification of the variety under both its botanical and technical aspects. The Latin name of the most suitable taxonomical unit (genus, species, subspecies) should be stated together with the common name.

Item 2

If the address is the same as that used in the application for plant breeder’s right (Form No. 1), add only the name(s) of the applicant(s) under this Item.

Item 3

The variety must be filed in each member State under the same denomination. Accents may not be deleted from a variety denomination. Please state the breeder’s reference.



SECOND SCHEDULE – Continued

FORMS

(Regulation 7)

Form No. 3	
7. Trademark renunciation in according with section 26 of the Protection of New Plant Varieties Act, 1997	
<p>I/We hereby propose the variety denomination and declare that to the best of my/our knowledge the information given in this Form and in the annex(es) is complete and correct.</p> <p>Signature(s)*</p> <p>.....</p> <p style="text-align: center;">(Applicant/ Agent/Representative*</p> <p style="text-align: center;">Date/place</p> <p>.....</p> <p style="text-align: center;">(Applicant/ Agent/Representative*</p> <p style="text-align: center;">Date/place</p>	

## INSTRUCTIONS

## FORM No. 3

## General

Dates should be written in the year, month, date order (for example 99-01-10).

“State of application” means the State in which the application was filed.

“UPOV” means the International Union for the Protection of New Varieties of Plants.

\*State name (in block letters) under signature(s) and delete whichever is not applicable.

\*\* This Form must be signed by the applicant or by the agent or representative where an authorisation of agent exists.

Please refer to section 24 of the Protection of New Plant Varieties Act, 1997, before completing this Form.

## Item 1

Where this Form is filed simultaneously with the application for the grant of a plant breeder’s right (Form No. 1) nothing is to be entered under this Item. However, where this Form is filed at a later stage the number which the Intellectual Property Office has allotted the application for plant breeder’s right is to be stated under Item 1(a).

## Item 2

If the address(es) is/are the same as that used in the application for grant of a plant breeder’s rights, add only the name(s) of the proposer(s). Please refer to the instructions for Form No. 1, Item 2.

## Item 3

The particulars stated under this Item must allow for the exact identification of the variety under both its botanical and technical aspects. The Latin name of the most suitable taxonomical unit (genus, specie, subspecies) should be stated together with the common name.

## Item 4

The variety must be filed in each member State under the same denomination. Accents may not be deleted from a variety denomination.

## Item 5

Specify all prior variety denominations without exception in chronological order. The variety denominations used are to be stated at the end of the list.

In the column headed “Stage” use the following abbreviations:

- A- application pending
- B- denomination is rejected
- C- denomination withdrawn
- D- denomination accepted

SECOND SCHEDULE – Continued  
FORMS

(Regulation 11(1))

Form No. 4	
Protection of New Plant Varieties Act, 1997	
INTELLECTUAL PROPERTY OFFICE, TRINIDAD AND TOBAGO	
	For Official use
	File No.: Date of filing:
REQUEST FOR REGISTRATION OF AN ASSIGNMENT OR TRANSFER (to be accompanied by an original or a certified copy of the deed of assignment or transfer or other document which establishes title or by a statement of claim to ownership of the variety and by the prescribed fee)	
REQUEST IS HEREBY MADE for the registration of the assignment or transfer of: // grant of a plant breeder's right application number* // plant breeder's right registration number*	
1. Name(s) and address(es) of person(s) making the request:	
2.(a) The application/right was assigned/transferred by/to the person(s) making this request by: // contract // court // succession // other  2.(b) State particulars of contract, etc.	
3. Name(s) and address(es) of assignor(s):	
4. Name(s) and address(es) of assignee(s):	
5. My/Our address for service in Trinidad and Tobago is:	
6. Documents attached: // Original or certified copy of deed of assignment or transfer // Original or certified copy of contract // Other document establishing title // Statement of claim to ownership of the variety // Form No. 5	
I/We declare that to the best of my/our knowledge the information given in this Form and in the annex(es) is complete and correct.  Signature(s)**  ..... Date/place  ..... Date/place	
To: The Controller, Intellectual Property Office Ministry of the Attorney General and Legal Affairs, Port-of-Spain	

INSTRUCTIONS

FORM No. 4

General

\* State the number which has been allotted to the application for the plant breeder’s right or under which the plant breeder’s right has been registered by the Intellectual Property Office.

\*\* State name (in block letters) under signature(s).

Dates should be written in the year, month, date order (for example 99-01-10).

Both the person(s) making the request as well as the assignor(s) or assignee(s) are required to sign this request.

Where the Controller, Intellectual Property Office so requests, this Form must be followed by the filing of Form No. 5.

Please refer to sections 9 to 11 and to section 13 of the Protection of New Plant Varieties Act, 1997, before filling in this Form.

Item 1

State the name(s) and address(es) of the person(s) making the request who may either be the assignor(s) or the assignee(s)/ transferee(s).

Item 2

State by what means the application for the grant of a plant breeder’s right was assigned or transferred and give particulars. If by the court, please state High Court action number and date of judgement.

Item 3

State the name(s) and address(es) of the assignor(s) or person(s) making the assignment or transfer, if different from Item 1.

Item 4

State the name(s) and address(es) of the assignee(s) or person(s) in whose favor the assignment or transfer was made, if different from item 1.

Item 5

Please refer to regulation 28 of the Protection of New Plant Varieties Regulations, 2000.





Form No. 6		
Protection of New Plant Varieties Act, 1997		
INTELLECTUAL PROPERTY OFFICE, TRINIDAD AND TOBAGO		
		For Official use
		Date of receipt:
DECLARATION OF RENUNCIATION (IN MATTER OF plant breeder's right registration number)		
1.	I/We*  of  being the holder(s) of the above mentioned plant breeder's right hereby declare that I/we renounce and surrender all interest in said plant breeder's right.	
2.	The date of termination of my/our interest is:	
3.	The date of expiration of the above mentioned plant breeder's right is:	
4.	Is the plant breeder's right held jointly. If so, please state the name(s) and address(es) of the other holder(s) of the right:  I/We declare that to the of my/our knowledge the information given in this Form is complete and correct.  Signature(s)*** ..... Date/place  ..... Date/place	
To: The Controller, Intellectual Property Office Ministry of the Attorney General and Legal Affairs, Port-of-Spain		

INSTRUCTIONS

FORM No. 6

General

- \* Delete whichever is not applicable
- \*\* State the number under which the plant breeder's right has been registered by the Intellectual Property Office
- \*\*\* State name (in block letters) under signature(s)

Date(s) should be written in the year, month, date order (for example 99-01-10)

Item 1

State the name(s) and address(es) of the person(s) making this declaration. Such persons may be one or more of the holders of the plant breeder's right.

Item 2

If the renunciation is to take effect from or on a specific date, please state date. Otherwise, in accordance with section 19(1) of the Protection of New Plant Varieties Act, 1997, the date of termination shall be the date of receipt of this Form by the Intellectual Property Office.

Item 3

The date of expiration of the plant breeder's right shall be stated under this Item.

(Regulation 14(1))

Form No. 7	
Protection of New Plant Varieties Act, 1997	
INTELLECTUAL PROPERTY OFFICE, TRINIDAD AND TOBAGO	
	For Official use
	File No.:
	Date of Receipt:
REQUEST FOR ANNULMENT OF PLANT BREEDER'S RIGHT (To be accompanied by a duplicate and the prescribed fee)	
REQUEST IS HEREBY MADE that plant breeder's right registration number* be declared null and void.	
1. The right // is subsisting // has expired.	
2. Name(s) and address(es) of person(s) making the request	
3. Name(s) and address(es) of // rightholder(s) // former rightholder(s)	
4.(a) The ground(s) for the request is/are as follows:  (b) // A written statement of the ground(s) for my/our request is attached.	
5. My/Our address for service in Trinidad and Tobago is:	
I/We declare that to the of my/our knowledge the information given in this Form is complete and correct.	
Signature(s)**  ..... Date/place  ..... Date/place	
To: The Controller, Intellectual Property Office Ministry of the Attorney General and Legal Affairs, Port-of-Spain	

## INSTRUCTIONS

FORM No. 7

## General

\* State the number under which the plant breeder's right has been registered by the Intellectual Property Office.

\*\* State name (in block letters) under signature(s).

Date(s) should be written in the year, month, date order (for example 99-01-10)

## Item 1

State whether to the best of your knowledge the plant breeder's right is subsisting or has expired. If expired, state also the date of expiration, if known.

## Item 2

State the name(s) and address(es) of the person(s) making the request.

## Item 3

Where the right is subsisting state the name(s) and address(es) of the rightholder(s). Where the right is expired the name(s) and address(es) of the former rightholder(s) should be stated.

## Item 4

Details of the ground(s) relied on for making this request should be stated under this Item. Alternatively, if a statement of the grounds is attached, please state. Please refer to sections 19 and 33 of the Protection of New Plant Varieties Act, 1997.

(Regulation 15(2))

Form No. 8	
Protection of New Plant Varieties Act, 1997	
INTELLECTUAL PROPERTY OFFICE, TRINIDAD AND TOBAGO	
	For Official use
	File No.:
	Date of Receipt:
<b>REQUEST FOR FORFEITURE OF PLANT BREEDER'S RIGHT</b> (To be accompanied by a duplicate)	
1. Name(s) and address(es) of person(s) making the request:	
2. Name(s) and address(es) of rightholder(s):	
3.(a) The ground(s) for the request is/are as follows:	
(b) // A written statement of the ground(s) for my/our request is attached.	
4. My/Our address for service in Trinidad and Tobago is:	
I/We declare that to the of my/our knowledge the information given in this Form is complete and correct.	
Signature(s)**	
.....	..... Date/place
.....	..... Date/place
To: The Controller, Intellectual Property Office Ministry of the Attorney General and Legal Affairs, Port-of-Spain	



INSTRUCTIONS

FORM No. 8

General

\* State the number under which the plant breeder's right has been registered by the Intellectual Property Office.

\*\* State name (in block letters) under signature(s).

Date(s) should be written in the year, month, date order (for example 99-01-10)

Item 1

State the name(s) and address(es) of the person(s) making the request.

Item 2

State the name(s) and address(es) of the rightholder(s).

Item 3

Details of the ground(s) relied on for making this request should be stated under this Item. Alternatively, if a statement of the ground(s) is attached, please state.

Item 4

Please refer to regulation 28 of the Protection of New Plant Varieties Regulations, 2000.

(Regulation 16)

Form No. 9	
Protection of New Plant Varieties Act, 1997	
INTELLECTUAL PROPERTY OFFICE, TRINIDAD AND TOBAGO	
	For Official use
	File No.:
	Date of Receipt:
REQUEST FOR CANCELLATION OF REGISTERED VARIETY DENOMINATION (To be made in duplicate)	
REQUEST IS HEREBY MADE that the variety denomination registered as number* be cancelled.	
1. Name(s) and address(es) of person(s) making this request:	
2. Nature of the right(s)/interest(s) of person(s) making the request:  // entitled to offer for sale or market the variety // holder(s) of plant breeder's right // other (please specify)	
3.(a) The ground(s) for the request is/are as follows:  (b) // A written statement of the ground(s) for this request is attached.  (c) // Evidence in support of the ground(s) for this request is attached.	
4. Name(s) and address(es) of owner(s) of variety:	
I/We declare that to the of my/our knowledge the information given in this Form is complete and correct.  Signature(s)**  ..... Date/place  ..... Date/place	
To: The Controller, Intellectual Property Office Ministry of the Attorney General and Legal Affairs, Port-of-Spain	

INSTRUCTIONS

FORM No. 9

General

\* State the number under which the plant breeder's right has been registered by the Intellectual Property Office.

\*\* State name (in block letters) under signature(s).

Date(s) should be written in the year, month, date order (for example 99-01-10)

Item 1

State the name(s) and address(es) of the person(s) making the request.

Item 2

The nature of the right(s) or interest(s) of the person(s) making this request should be stated. If the person making the request is not the holder of the registered right, please state whether the right holder has agreed to the cancellation of the right or has participated in cancellation proceedings.

Item 3

Details of the ground(s) relied on for making this request should be stated. Alternatively if a statement or evidence of the ground(s) is attached, please state. Please refer to section 28 of the Protection of New Plant Varieties Act, 1997.

Item 4

The name(s) and address(es) of the owner(s) of the variety should be stated, if different from Item 1.



(Regulation 20(1))

Form No. 10	
Protection of New Plant Varieties Act, 1997	
<b>INTELLECTUAL PROPERTY OFFICE, TRINIDAD AND TOBAGO</b>	
	For Official use
	File No.:
	Date of Receipt:
<b>OPPOSITION</b> (To be accompanied by a duplicate and the prescribed fee)	
IN THE MATTER OF the application number* for a grant of a Plant breeder's right	
1. I/We  of  hereby give notice of my/our intention to oppose the grant of a plant breeder's application number* which was published under  the above number in the periodical of the day of  No. page	
2.(a) The grounds of opposition are as follows:  (b) // A written statement of the grounds for my/our request is attached. (c) // Evidence in support of the grounds for the request is attached.	
3. My/our address for service in Trinidad and Tobago is	
I/We declare that to the of my/our knowledge the information given in this Form is complete and correct.  Signature(s)**  ..... Date/place  ..... Date/place	
To: The Controller, Intellectual Property Office Ministry of the Attorney General and Legal Affairs, Port-of-Spain	

INSTRUCTIONS

FORM No. 10

General

\* State the number under which the plant breeder's right has been registered by the Intellectual Property Office.

\*\* State name (in block letters) under signature(s).

Date(s) should be written in the year, month, date order (for example 99-01-10)

Please refer to section 32(2) of the Protection of New Plant Varieties Act, 1997, before filling in this Form.

Item 1

State the name(s) and address(es) of the person(s) filing this opposition. State also the particulars of the periodical in which the application for plant breeder's right was published by the Intellectual Property Office.

Item 2

State in detail the grounds on which the application is opposed. Alternatively, attach a statement of the grounds. If evidence in support of the ground(s) is attached, please state.

Item 3

Please refer to regulation 28 of the Protection of New Plant Varieties Regulations, 2000.

(Regulations 22 and 24(1))

Form No. 11	
Protection of New Plant Varieties Act, 1997	
INTELLECTUAL PROPERTY OFFICE, TRINIDAD AND TOBAGO	
	For Official use
	Date of Receipt:
REQUEST FOR THE REGISTRATION OF A LICENCE CONTRACT OR COMPULSORY LICENCE (To be accompanied by the prescribed fee)	
REQUEST IS HEREBY MADE for the registration of a  // Licence Contract      // Compulsory Licence  the particulars of which are as follows:	
1. Name(s) and address(es) of person(s) making the request:	
2. Applicant(s)/Rightholder(s) name(s) and address(es):	
3. Number of // application for the grant of a plant breeder's right // registered plant breeder's right	
4. Document(s) attached: // original or certified copy of licence // office copy of the Order of the Court // other documents relating to the licence	
I/We declare that to the of my/our knowledge the information given in this Form and in the annex(es) is complete and correct.  Signature(s)**  ..... (Place/date)  ..... (Place/date)  Applicant/Holder (Place/date)  Applicant/Holder (Place/date)	
To: The Controller, Intellectual Property Office Ministry of the Attorney General and Legal Affairs, Port-of-Spain	

## INSTRUCTIONS

## FORM No. 11

## General

\* State name (in block letters) under signature(s). This request must be signed both by the person(s) making the request and the applicant(s) or holder(s) of the plant breeder's right.

This Form may be used to request registration of any of the types of licences mentioned in the Form. For the particular legal provisions relevant to each type of licence, please consult Part XIV of the Protection of New Plant Varieties Act, 1997, particularly sections 39 to 42 and section 44 of the Act.

Date(s) should be written in the year, month, date order (for example 99-01-10)

## Item 1

State the name(s) and address(es) of the person(s) making the request.

## Item 2

Delete whichever is not applicable. Where the request is made in respect of an application for a plant breeder's right state the name(s) and address(es) of the applicant(s). Where the request is made in respect of a plant breeder's right state the name(s) and address(es) of the holder(s) of the right.

## Item 3

State either the number which has been allotted to the application for plant breeder's right or the number under which the plant breeder's right has been registered by the Intellectual Property Office.

## Item 4

If the request is in respect of a licence contract, the Form should be accompanied by an original or certified copy of the licence contract together with all relevant annexes. If the request is in respect of a compulsory licence, the Form should be accompanied by an office copy of the Order of the Court. The prescribed fee is payable in respect of both requests.



## INSTRUCTIONS

FORM No. 12

## General

\* State the number of the entry in the Register of Plant Breeder's Right which is to be cancelled.

\*\* State name (in block letters) under signature(s).

Date(s) should be written in the year, month, date order (for example 99-01-10)

Please refer to section 43 of the Protection of New Plant Varieties Act, 1997, and regulation 23 of the Protection of New Plant Varieties Regulations 2000, before completing this Form.

## Item 1

State the name(s) and address(es) of the person(s) making this request. Where the request is made in respect of an application for a plant breeder's right state the name(s) and address(es) of the applicant(s). Where the request is made in respect of a plant breeder's right state the name(s) and address(es) of the applicant(s). Where the request is made in respect of a plant breeder's right state the name(s) and address(es) of the holder(s) of the right.

## Item 2

State the number which has been allotted to the application for the plant breeder's right or under which the plant breeder's right has been registered by the Intellectual Property Office.

## Item 3

Details of the ground(s) relied on for making this request should be stated. Alternatively, if a statement or evidence of the grounds is attached, please state.

## Item 4

If the person making the request is not the holder of the plant breeder's right, please signify the name(s) and address(es) of each beneficiary and whether or not they have agreed to this request. The Controller may request evidence of agreement. If so, please state whether such evidence is attached.

Made by the Minister this 24<sup>th</sup> day of October, 2000.

R.L. MAHARAJ  
Attorney General and  
Minister of Legal Affairs

## PLANT VARIETY PROTECTION LEGISLATION INDEX

(As of December 2001)

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Andean Community</u></b>		
Decision 345 of the Subregional Integration Agreement (Cartagena Agreement), Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties, of October 21, 1993	75	Dec. 1994
<b><u>Argentina</u></b>		
Law No. 20247/73 on Seed and Phytogenetic Creations	70	Feb. 1993
Implementing Decree No. 2183/91 to the Law on Seed and Phytogenetic Creations	70	Feb. 1993
Resolution No. 35/96 of February 28, 1996	81	Apr. 1997
<b><u>Australia</u></b>		
Plant Breeder's Rights Act 1994 (No. 110 of 1994) (amend. 1999)	88	June 2000
Taxa Covered by Plant Variety Protection Legislation (All species of plants including fungi and algae, but excluding bacteria, bacterioids, mycoplasmas, viruses, viroids and bacteriophages)	77	May 1995
<b>Miscellaneous Information</b>		
Tariff of Fees	64	Aug. 1991
Accession to the 1991 Act of the UPOV Convention	87	Mar. 2000
<b><u>Austria</u></b>		
Federal Law on the Protection of Plant Varieties (Variety Protection Law 2001)	92	Dec. 2001
Federal Law on the Protection of Plant Varieties (Variety Protection Law) as amended by the Federal Law BGB1.I No. 72/1997	84	Apr. 1998
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	92	Dec. 2001
Taxa Covered by Plant Variety Protection Legislation	79	July 1996
	86	Dec. 1999
Tariff of Fees	78	June 1995
<b><u>Belgium</u></b>		
Law on the Protection of New Plant Varieties (of May 20, 1975)	59	Jan. 1990

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Bolivia</u></b>		
Decision 345 (see “Andean Community”)	75	Dec. 1994
General Regulations on Seed Certification and Inspection Secretariat Resolution No. 064/96	87	Mar 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species)	85	Oct. 1999
<b><u>Brazil</u></b>		
Law No. 9,456 (April 28, 1997)	89	Sept. 2000
Decree No. 2,366 (November 5, 1997)	89	Sept. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<b><u>Bulgaria</u></b>		
Law on the Protection of New Plant Varieties and Animal Breeds	84	Apr. 1998
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	84	Apr. 1998
<b><u>Canada</u></b>		
The Plant Breeders’ Rights Act	62	Apr. 1991
Regulations Respecting Plant Breeders’ Rights	69	Nov. 1992
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All species of the plant kingdom, except bacteria, algae and fungi)	78 85	June 1995 Oct. 1999
Tariff of Fees	69	Nov. 1992
<b><u>Chile</u></b>		
Law No. 19.342 on the Rights of Breeders of New Varieties of Plants	81	Apr. 1997
Decree approving Regulations under Law No. 19.342	81	Apr. 1997
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species)	79	July 1996



State <i>Title of Law, etc.</i>	Plant Variety Protection	
	Issue No.	Date
<b><u>People's Republic of China</u></b>		
Regulations of the People's Republic of China on the Protection of New Varieties of Plants	85	Oct. 1999
Decree No. 3 – Implementing Rules for Regulation of the Protection of New Varieties of Plants (Forestry Part)	90	Dec. 2000
Decree No. 13 – Implementing Rules for Regulation of the Protection of New Varieties of Plants (Agriculture Part)	90	Dec. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<b><u>Colombia</u></b>		
Decision 345 (see "Andean Community")	75	Dec. 1994
Decree No. 533 of March 8, 1994, introducing Regulations to the Common Provisions on the Protection of the Rights of Breeders of New Plant Varieties as Amended by Decree No. 2468 of November 4, 1994	83	Dec. 1997
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species)	80	Dec. 1996
<b><u>Czech Republic</u></b>		
Law on the Legal Protection of the Varieties of Plants and Breeds of Animals <sup>1</sup>	64	Aug. 1991
Decree of the Federal Ministry of Agriculture and Food Concerning the Implementation of Certain Provisions of Law No. 132/1989 of the Collection of Laws on the Legal Protection of New Varieties of Plants and Breeds of Animals <sup>1</sup>	64	Aug. 1991
Declaration of Continued Application	70	Feb. 1993
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<b><u>Denmark</u></b>		
The Danish Plant Variety Protection Act Order No. 51 of 5 February, 1996	87	Mar. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All plant genera and species)	79	July 1996
Modification of Fees	73	April 1994

<sup>1</sup> Enacted by Czechoslovakia

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Ecuador</u></b>		
Decision 345 (see “Andean Community”)	75	Dec. 1994
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species)	82	Aug. 1997
<b><u>Estonia</u></b>		
Plant Variety Rights Act	89	Sept. 2000
<b>Miscellaneous Information</b>		
Taxa covered by Plant Variety Protection Legislation (all botanical genera and species)	89	Sept. 2000
<b><u>European Union</u></b>		
Council Regulation (EC) No. 2100/94 of July 27, 1994 on Community Plant Variety Rights	77	May 1995
Commission Regulation (EC) No. 1238/95 of May 5, 1995 Establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards the fees payable to the CPVO	89	Sept. 2000
Commission Regulation (EC) No. 1239/95 of May 5, 1995 Establishing implementing rules for the application of Council Regulation (EC) No. 2100/94 as regards proceedings before the CPVO	89	Sept. 2000
Commission Regulation (EC) No. 1768/95 of July 24, 1995 Implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No. 2100/94 on Community Plant Variety Rights	89	Sept. 2000
Council Regulation (EC) No. 2470/96 of December 17, 1996 Providing for an extension of the terms of a Community plant variety right in respect of potatoes	89	Sept. 2000
Commission Regulation (EC) No. 2605/98 of December 3, 1998 Amending Regulation (EC) No 2100/94 on Community plant variety rights	89	Sept. 2000
<b><u>Finland</u></b>		
The Act on Plant Breeder’s Right (No. 789/1992) as amended (No. 238/1999, 5.3.1999)	88	June 2000
Decree on the Plant Variety Board (No. 906 of October 9, 1992)	71	July 1993

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>France</u></b>		
Law on the Protection of New Plant Varieties (No. 70-489 of June 11, 1970) <sup>1</sup>	33	Apr. 1983
Decree Concerning the Committee for the Protection of New Plant Varieties (No. 71-454 of June 7, 1971) <sup>3</sup>	33	Apr. 1983
Order Concerning the Denomination of Plant Varieties in respect of which either an Entry has been made in the Catalogue of Species and Varieties of Cultivated Plants or a New Plant Variety Protection Certificate has been Issued (of September 1, 1982)	34	June 1983
Decree No. 95-1047 of December 28, 1995 amending the Intellectual Property Code (Regulatory Part) with respect to the scope of application of New Plant Variety Certificates and the Term and Scope of Breeders' Rights	81	Apr. 1997
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All species of the plant kingdom)	80	Dec. 1996
Tariff of Fees	55	June 1988
<b><u>Germany</u></b>		
The Plant Variety Protection Law (Consolidated text of the Plant Variety Protection Law of December 11, 1985, as amended by: Article 7 of the Law of March 7, 1990 (entered into force on July 1, 1990); Article 1 of the Law of March 27, 1992 (entered into force on April 8, 1992); Article 2 of the Law of July 23, 1992 (entered into force on July 31, 1992); Article 72 of the Law of April 27, 1993 (entered into force on January 1, 1994); Article 18 of the Law of September 2, 1994 (entering into force partly on January 1, 2000, and partly on January 1, 2005); Article 40 of the Law of October 25, 1994 (entered into force on January 1, 1995); Article 1 of the Law of July 17, 1997 (entered into force on July 25, 1997))	86	Dec. 1999
Order on the Procedure Before the Federal Office of Plant Varieties of December 30, 1985	51	Sept. 1986
<b>Miscellaneous Information</b>		
Reunification	61	Feb. 1991
Tariff of Fees	78	June 1995
<b><u>Hungary</u></b>		
Law No. XXXIII on the Protection of Inventions by Patents of April 25, 1995 (Part IV Patent Protection for Plant Varieties and Animal Breeds)	84	Apr. 1998
Joint Decree Relating to the Execution of the Law on the Protection of Inventions by Patents (No. 4/1969 XII. 28) OMFB-IM of the President of the National Committee for Technical Development and the Minister	49	Jan. 1986

<sup>1</sup> These texts have been integrated into the Intellectual Property Code.

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Ireland</u></b>		
Plant Varieties (Proprietary Rights) Act, 1980	32	Feb. 1983
Plant Varieties (Proprietary Rights) (Amendment) Act, 1998 No. 41, 1998	88	June 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	78	June 1995
Tariff of Fees	72	Nov. 1993
<b><u>Israel</u></b>		
Law on the Rights of the Breeders of Plant Varieties (Consolidated Text of the Plant Breeders' Rights Law, 5733-1973, as Amended by the Plant Breeders' Rights (Amendment) Law, 5744-1984 and as Amended by the Plant Breeder's Rights (Amendment No. 2) 5756-1996)	86	Dec. 1999
<b>Miscellaneous Information</b>		
Tariff of Fees	67	Feb. 1992
<b><u>Italy</u></b>		
Legislative Decree No. 455 (November 3, 1998)	91	June 2001
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	76	Feb. 1995
	79	July 1996
Tariff of Fees	70	Feb. 1993
<b><u>Japan</u></b>		
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
Tariff of Fees	66	Dec. 1991
<b><u>Kenya</u></b>		
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<b><u>Kyrgyz Republic</u></b>		
Law on the Legal Protection of Selection Achievements (May 26, 1998)	90	Dec. 2000
<b>Miscellaneous Information</b>		
Accession to the 1991 Act of the UPOV Convention	88	June 2000

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Mexico</u></b>		
Federal Law on Plant Varieties	82	Aug. 1997
Regulations of the Federal Plant Variety Law (Sept. 24, 1998)	87	Mar. 2000
<b><u>Netherlands</u></b>		
Territorial Extension of the Application of the UPOV Convention Seeds and Planting Material Act (Consolidated Text of the Act of October 6, 1966, as Last Amended by the Act of January 28, 1999)	52	June 1987
	88	June 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All taxa of the plant kingdom)	61	Feb. 1991
Tariff of Fees	71	July 1993
<b><u>New Zealand</u></b>		
Plant Variety Rights Act 1987, as Amended by the Plant Variety Rights Amendment Act 1990 of August 1, 1990, and the Plant Variety Rights Amendment Act of July 1, 1994	78	June 1995
Plant Variety Rights Amendment, an Act to Amend the Plant Variety Rights Act 1987, 2 September 1996	82	Aug. 1997
Plant Variety Rights Amendment Regulations 1997	82	Aug. 1997
Act No. 122 - Plant Variety Rights Amendment	90	Dec. 2000
<b>Miscellaneous Information</b>		
Tariff of Fees	85	Oct. 1999
<b><u>Norway</u></b>		
Act of March 12, 1993, Relating to the Plant Breeder's Rights	74	July 1994
Regulations concerning the Plant Breeder's Right as amended on February 6, 1995 and July 16, 1997	90	Dec. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All plant genera and species)	80	Dec. 1996
Tariff of Fees	72	Nov. 1993
<b><u>Panama</u></b>		
Law No. 23 of July 15, 1997 on Industrial Property, Title V	90	Dec. 2000
Executive Decree No. 13 Regulating Title V of Law No. 23	90	Dec. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999

State Title of Law, etc.	Plant Variety Protection	
	Issue No.	Date
<b><u>Paraguay</u></b>		
Law 385/94 on Seeds and Cultivar Protection	83	Dec. 1997
Decree No. 7797/00 enacting Regulations under Law 385/94	90	Dec. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	81	Apr. 1997
<b><u>Poland</u></b>		
Extract from Decree of the Minister for Agriculture, Forestry and Food Economy Concerning the Register of Varieties, the Role of Exclusive Rights on Varieties and the Control of Propagating Materials of April 14, 1988, as Amended on September 25, 1990	68	Apr. 1992
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	80	Dec. 1996
<b><u>Portugal</u></b>		
Decree-Law No. 213/90 of June 28, 1990	83	Dec. 1997
Ministerial Order No. 940/90 of October 4, 1990, as Amended by Ministerial order No. 351/91 of April 20, 1990	66	Dec. 1991
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	79	July 1996
Tariff of Fees	66	Dec. 1991
<b><u>Republic of Korea</u></b>		
Seed Industry Law of January 26, 2001, under Law No. 6374	92	Dec. 2001
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	92	Dec. 2001
<b><u>Republic of Moldova</u></b>		
Law on the Protection of Plant Varieties	85	Oct. 1999
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<b><u>Romania</u></b>		
Law on the Protection of New Varieties of Plants No. 255/1998	91	June 2001
Implementing Regulations of the Law on the Protection of New Varieties of Plants No. 255/1998	91	June 2001

<i>State</i> <i>Title of Law, etc.</i>	<b>Plant Variety Protection</b>	
	<b>Issue No.</b>	<b>Date</b>
<b><u>Russian Federation</u></b>		
Law on the Protection of Selection Achievements (of August 6, 1993)	76	Feb. 1995
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
Taxa Covered by Plant Variety Protection Legislation	87	Mar. 2000
Taxa Covered by Plant Variety Protection Legislation	92	Dec. 2001
<b><u>Slovakia</u></b>		
Declaration of Continued Application	70	Feb. 1993
Law on the Protection Rights of New Varieties and Animal Breeds No. 132/1989 Coll. Laws, dated 15 Nov. 1989 (amended 22/1996 Coll. Laws)	87	Mar. 2000
<b><u>Slovenia</u></b>		
Law on Plant Variety Protection	86	Dec. 1999
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
<b><u>South Africa</u></b>		
Plant Breeder's Rights Act No. 15 of 1976 as amended by Plant Breeders' Amendment Act No. 5 of 1980, Plant Breeders' Amendment Act No. 14 of 1981, Plant Breeders' Amendment Act No. 38 of 1983, Transfer of Powers and Duties of the State President, Act. No. 97 of 1983 and Plant Breeders' Amendment Act, No. 15 of 1996	82	Aug. 1997
Regulations Relating to Plant Breeder's Rights No. R 1186 of 12 September, 1997	87	Mar. 2000
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	85	Oct. 1999
Tariff of Fees	85	Oct. 1999

State <i>Title of Law, etc.</i>	Plant Variety Protection	
	Issue No.	Date
<b><u>Spain</u></b>		
Law on the Protection of Plant Varieties No. 12/1975 of March 12, 1975	67	Feb. 1992
General Rules on the Protection of Plant Varieties (Approved by Royal Decree No. 1674/1977 of June 10, 1977)	67	Feb. 1992
Law 3/2000 Governing the Protection of Plant Varieties	91	June 2001
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All plant genera and species)	72	Nov. 1993
	90	Dec. 2000
<b><u>Sweden</u></b>		
Act of the Protection of Plant Breeders' Rights	91	June 2001
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation (All botanical genera and species)	81	Apr. 1997
Tariff of Fees	85	Oct. 1999
<b><u>Switzerland</u></b>		
Federal Law on the Protection of New Plant Varieties (Consolidated Text of the Federal Law of March 20, 1975, as Amended by the Federal Law of October 10, 1980)	56	July 1988
Ordinance on the Protection of Plant Varieties	61	Feb. 1991
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	61	Feb. 1991
Tariff of Fees	75	Dec. 1994
Tariff of Fees (Corrigendum)	76	Feb. 1995
<b><u>Trinidad and Tobago</u></b>		
The Protection of New Plant Varieties Regulations, 2000	92	Dec. 2001
The Protection of New Plant Varieties Act, 1997	85	Oct. 1999
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	84	Apr. 1998



State <i>Title of Law, etc.</i>	Plant Variety Protection	
	Issue No.	Date
<b><u>Ukraine</u></b>		
Law on the Protection of Plant Variety Rights (of April 21, 1993)	76	Feb. 1995
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	86	Dec. 1999
<b><u>United Kingdom</u></b>		
Plant Varieties Act 1997	85	Oct. 1999
The Plant Breeder's Rights (Information Notices) (Extension to European Community Plant Variety Rights Regulations 1998)	87	Mar. 2000
Statutory Instrument No. 1023 of 1998 The Plant Breeders' Rights (Information Notices) (Extension to European Community Plant Variety Rights) Regulations 1998	87	Mar. 2000
Statutory Instrument No. 1024 of 1998 The Plant Breeders' Rights (Information Notices) Regulations 1998	87	Mar. 2000
Statutory Instrument No. 1025 of 1998 The Plant Breeders' Rights (Farm Saved Seed) (Specification of Species and Groups) Order 1998	87	Mar. 2000
Statutory Instrument No. 1026 of 1998 The Plant Breeders' Rights (Farm Saved Seed) (Specified Information) Regulations 1998	87	Mar. 2000
Statutory Instrument No. 1027 of 1998 The Plant Breeders' Rights Regulations 1998	87	Mar. 2000
<b><u>United States of America</u></b>		
Plant Variety Protection Act (Consolidated Text of Public Law 91-577 of December 24, 1970, as Amended by Public Law 96-574 of December 22, 1980, Public Law 97-164 of April 2, 1982, Public Law 100-203 of December 22, 1987, Public Law 102-560 of October 28, 1992, Public Law 103-349 of October 6, 1994 and Public 104-127 of April 4, 1996)	80	Dec. 1996
Regulations and Rules of Practice, 7 CFR, Part 97, as of January 4, 1996	80	Dec. 1996
Plant Patent Amendments Act of 1998	91	June 2001
<b><u>Uruguay</u></b>		
Law No. 15.173, Enacting Provisions to Regulate the Production Certification, Marketing, Export and Import of Seed (Extract)	76	Feb. 1995
Decree No. 84/983, Introducing Law No. 15.173, Regulating the Production, Certification and Marketing of Seed, as Amended by Decree No. 418/987 of August 12, 1987, and Decree No. 519/991 of September 17, 1991 (Extract)	76	Feb. 1995
Law No. 16.811	82	Aug. 1997
<b>Miscellaneous Information</b>		
Taxa Covered by Plant Variety Protection Legislation	76	Feb. 1995