

PLANT VARIETY PROTECTION



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

No. 98
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GAZETTE

NEW MEMBERS OF UPOV

JORDAN

On September 24, 2004, the Government of the Hashemite Kingdom of Jordan 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 Hashemite Kingdom of Jordan one month after the deposit of its instrument of accession, i.e. on October 24, 2004. The Hashemite Kingdom of Jordan became the fifty-sixth member of the Union.

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

PLANT FAMILY	SCIENTIFIC NAME	PLANT SPECIES
Solanaceae	<i>Lycopersicon esculantum</i>	Tomato
Solanaceae	<i>Solanum melongena</i>	Eggplant
Solanaceae	<i>Capsicum frutescens</i>	Pepper
Curcurbitaceae	<i>Cucumis sativus</i>	Cucumber
Curcurbitaceae	<i>Trichosanthes anguina</i>	Snake Cucumber
Curcurbitaceae	<i>Cucurbita pepo</i>	Squash
Malvaceae	<i>Abelmoschus esculentus</i>	Okra
Amaryllidaceae	<i>Allium cepa</i>	Onion
Gramineae	<i>Triticum durum</i>	Durum Wheat
Gramineae	<i>Triticum aestivum</i>	Bread Wheat
Gramineae	<i>Hordeum vulgare</i>	Barley
Leguminosae	<i>Vicia ervilia</i>	Vetch
Leguminosae	<i>Vicia faba</i>	Broad Bean
Leguminosae	<i>Lens culinaris</i>	Lentil
Leguminosae	<i>Cicer arietinum</i>	Chick Pea
Oleaceae	<i>Olea europaea</i>	Olive
Rosaceae	<i>Vitis vinifera</i>	Grape
Rosaceae	<i>Prunus persica</i>	Peach
Rosaceae	<i>Pyrus malus</i>	Apple

UZBEKISTAN

On October 14, 2004, the Government of the Republic of Uzbekistan 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 Uzbekistan one month after the deposit of its instrument of accession, i.e. on November 14, 2004. The Republic of Uzbekistan became the fifty-seventh member of the Union.

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

No.	UZBEK	RUSSIAN	LATIN NAME
1	Arpa	??????	<i>Hordeum vulgare</i> L.
2	Astra	?????	<i>Aster</i> L.
3	Atirgul	????	<i>Rosa</i> L.
4	Beda	????????	<i>Medicago</i> L.
5	Gilos	????????	<i>Prunus avium</i> (L.) { <i>Cerasus avium</i> (L.) Moench}
6	Gorox	????? ???????	<i>Pisum arvense</i> L.
7	Gorox	????? ?????????	<i>Pisum sativum</i> L. sensu lato
8	Eryong'oq	??????	<i>Arachis hypogaea</i> L.
9	Jo'xori	?????	<i>Sorghum bicolor</i> (L.) Moench [S. <i>vulgaris</i> Pers.]
10	Ilongul	??????????	<i>Gladiolus</i> L.
11	Kartoshka	??????????	<i>Solanum tuberosum</i> L. [S. <i>tuberosum</i> L. Sensu lato]
12	Kartoshkagul	??????????	<i>Dahlia</i> Cav.
13	Kungaboqar	??????????????	<i>Helianthus annuus</i> L.
14	Lileynik	??????????	<i>Hemerocallis</i> L.
15	Lola	????????	<i>Tulipa</i> L.
16	Makkajo'xori	?????????	<i>Zea mays</i> L.
17	Mosh	? ?????? ???????????	<i>Phaseolus aureus</i> Roxb.
18	Nargiz	????????	<i>Narcissus</i> L.
19	No'xot	???	<i>Cicer arietinum</i> L.
20	Olma	???????	<i>Malus domestica</i> Borkh.
21	Olcha	??????	<i>Prunus cerasus</i> L.
22	Olxo'ri	??????	<i>Prunus domestica</i> L.
23	Pomidor	?????	<i>Lycopersicon lycopersicum</i> (L.) Karst ex Farwell. [<i>L. esculentum</i> P. Will., <i>Solanum lycopersicum</i> L.]
24	Soya	???	<i>Glycine max</i> (L.) Merr.
25	Suli	?????	<i>Avena sativa</i> L.
26	Tagetes	????????	<i>Tagetes</i> L.
27	Tarvuz	??????	<i>Citrullus lanatus</i> (Thunb.) Matsum et. Nakai
28	Tritikale	??????????	<i>Triticosecale</i> Wittmack (x <i>triticales</i> , <i>Triticum turgidosecale</i>)
29	Xashaki lavlagi	???????? ??????????	<i>Beta vulgaris</i> L. ssp. <i>vulgaris</i> var. <i>alba</i> DC. [var. <i>crassa</i> Alef., var. <i>crassa</i> Mansf.]
30	Xrizantema	?????????????	<i>Chrysanthemum</i> L.

No.	UZBEK	RUSSIAN	LATIN NAME
31	Xurmo	?????	Diospyros lotus L.
32	Chinnigul	?????????	Dianthus L.
33	Shaftoli	???????	Prunus persica (L.) Batsch [Prunus L.]
34	Shoyigul	?????	Canna L.
35	Sholi	???	Oryza sativa L.
36	Yumshoq bug'doy	? ? ????? ??????	Triticum aestivum L.
37	O'rik	?????????	Armeniaca vulgaris L.
38	Qand lavlagi	?????? ??????????	Beta vulgaris L. ssp. vulgaris var. altissima Doell
39	Qattig bug'doy	? ? ????? ??????????	Triticum durum Desf
40	Qovum	?????	Cucumis melo L. [Melo sativus Sarg.]
41	G'o'za	?????????????	Gossypium L.

AZERBAIJAN

On November 9, 2004, the Government of the Azerbaijani Republic 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 Azerbaijani Republic one month after the deposit of its instrument of accession, i.e. on December 9, 2004. The Azerbaijani Republic became the fifty-eighth member of the Union.

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

ENGLISH	LATIN NAME
Alfalfa	Medicago sativa L.
Apple	Malus domestica Borkh
Aubergine	Solanum melongena L.
Cotton	Gossypium hirsutum L.
Cucumber	Cucumis sativus L.
Green bean	Phaseolus vulgaris L.
Maize	Zea mays L.
Mulberry	Morus alba L.
Pepper	Capsicum annuum L. var grossum (L.) Sendt.
Pomegranate	Punica granatum L.
Potato	Solanum tuberosum L.
Silkworm*	Bombux mori L.
Tea	Thea sinensis L.
Tobacco	Nicotiana tabacum L.
Tomato	Lycopersicon esculentum Mill.
Triticale	Triticosecale Wittmack.
Watermelon	Citrullus Schrad.
Winter barley	Hordeum vulgare L.
Winter bread wheat	Triticum aestivum L.
Winter durum wheat	Triticum durum Desf.

* Not a plant

EXTENSION OF PROTECTION TO FURTHER GENERA AND SPECIES

AUSTRIA

Regulation of the Federal Minister for Agriculture, Forestry, Environment and Water Management on a List of Varieties Eligible for Protection 2001

Based on section 2 paragraph 1 of the 2001 Plant Variety Act, Federal Law Gazette I No 109, it is ruled as follows:

Section 1. Claims for the grant of plant variety rights shall be valid for varieties of the species and genera listed in the Annex.

Section 2. This Regulation shall enter into force as of September 1, 2001.

Annex:

List of species eligible for variety protection

1. Field Bean, Tick Bean (*Vicia faba* L.)
2. Alaska Brome Grass (*Bromus sitchensis*)
3. Berseem Clover (*Trifolium alexandrinum* L.)
4. Alpine Meadow-Grass (*Poa alpina* L.)
5. Amaranth (*Amaranthus* L.)
6. Apple (*Malus* Mill.)
7. (Hybrid) Lucerne (*Medicago x varia* T. Martyn)
8. Hybrid Ryegrass (*Lolium x boucheanum* Kunth)
9. Cotton (*Gossypium* ssp.)
10. Pear (*Pyrus communis* L.)
11. Blue Lupin (*Lupinus angustifolius* L.)
12. Fenugreek (*Trigonella foenum-graecum* L.)
13. Sprouting Broccoli, Calabrese (*Brassica oleracea* L. cv. *botrytis* (L.) Alef. var. *cymosa* Duch.)
14. Blackberry (*Rubus* L. subgenus *Eubatus* Sect. *Moriferi* & *Ursini* & *hybrides*)
15. Buckwheat (*Fagopyrum esculentum* Moench)
16. Chinese Cabbage (*Brassica pekinensis* (Lour.) Rupr.)
17. Cardoon (*Cynara cardunculus* L.)
18. Spelt (*Triticum spelta* L.)
19. Durum Wheat (*Triticum durum* Desf.)
20. Mountain Ash (*Sorbus aucuparia* L.)
21. Eggplant, Aubergine (*Solanum melongena* L.)
22. Annual Meadow-Grass (*Poa annua* L.)
23. Endive (*Cichorium endivia* L.)
24. Perennial Ryegrass (*Lolium perenne* L.)
25. Pea (*Pisum sativum* L.)
26. Strawberry (*Fragaria* L.)
27. Peanut (*Arachis hypogaea* L.)
28. Sainfoin (*Onobrychis viciifolia* Scop.)
29. Cornsalad, Lamb's Lettuce (*Valerianella locusta* (L.)
30. Fennel (*Foeniculum vulgare* Miller)
31. Runner Bean, Kidney Bean (*Phaseolus coccineus* L.)
32. Creeping Bent (*Agrostis stolonifera* L.)
33. Fodder Kale (*Brassica oleracea* L. cv. *acephala* (DC.) Alef. var. *medullosa* Thell. und var. *viridis* L.)
34. Fodder Beet (*Beta vulgaris* L. ssp. *vulgaris* var. *crassa* Mansf.)
35. French Bean (*Phaseolus vulgaris* L.)
36. Yellow Lupin (*Lupinus luteus* L.)
37. Yellow Mustard, White Mustard (*Sinapis alba* L.)
38. Rough-Stalked Meadow-Grass (*Poa trivialis* L.)
39. Barley (*Hordeum vulgare* L. sensu lato)
40. Tall Oatgrass (*Arrhenatherum elatius* (L.) P. Beauv. ex J. S. et K. B. Presl)
41. Golden Oatgrass (*Trisetum flavescens* (L.) P. Beauv.)
42. Cucumber (*Cucumis sativus* L.)
43. Oats (*Avena sativa* L.)
44. Wood Meadow-Grass (*Poa nemoralis* L.)
45. Hemp (*Cannabis sativa* L.)
46. Raspberry (*Rubus idaeus* L. & *hybrides*)
47. Hop (*Humulus lupulus* L.)
48. Black Medick, Yellow Trefoil (*Medicago lupulina* L.)
49. Bird's Foot Trefoil (*Lotus corniculatus* L.)
50. Rescue Grass (*Bromus catharticus* Vahl)
51. Velvet Bent (*Agrostis canina* L.)
52. Bermuda Grass (*Cynodon dactylon* (L.) Pers.)
53. Crimson Clover (*Trifolium incarnatum* L.)
54. Italian Ryegrass (*Lolium multiflorum* Lam. ssp. *non alternativum*)
55. Crested Dog's Tail (*Cynosurus cristatus* L.)
56. Canary Grass (*Phalaris canariensis* L.)
57. Cauliflower (*Brassica oleracea* L. cv. *botrytis* (L.) Alef. var. *botrytis* L.)
58. Carrot (*Daucus carota* L.)

59. Potato (*Solanum tuberosum* L.)
60. Chervil (*Anthriscus cerefolium* (L.) Hoffm.)
61. Cocksfoot (*Dactylis glomerata* L.)
62. Small Timothy (*Phleum bertolonii* DC.)
63. Harding's Grass (*Phalaris aquatica* L.)
64. Kohlrabi (*Brassica oleracea* L. cv. *acephala* (DC.) Alef. var. *gongylodes* L.)
65. Swede (*Brassica napus* L. var. *napobrassica* (L.) Rchb.)
66. Cornelian Cherry (*Cornus mas* L.)
67. Curly Kale (*Brassica oleracea* L. cv. *acephala* (DC.) Alef. var. *sabellica* L.)
68. Caraway (*Carum carvi* L.)
69. Courgette, Marrow (*Cucurbita pepo* L.)
70. Flax, Linseed (*Linum usitatissimum* L.)
71. Lucerne, Alfalfa (*Medicago sativa* L.)
72. Maize (*Zea mays* L.)
73. Spinach Beet, Leaf Beet (*Beta vulgaris* L. ssp. *vulgaris* var. *cicla* (L.) Alef.)
74. Apricot (*Prunus armeniaca* L.)
75. Plum (Mirabelle) (*Prunus insititia* L.)
76. Poppy (*Papaver somniferum* L.)
77. Fodder Radish (*Raphanus sativus* L. var. *oleiformis* Pers.)
78. Hungarian Vetch (*Vicia pannonica* Crantz)
79. Poplar (*Populus* L.)
80. Sweet Pepper, Capsicum, Chili (*Capsicum annum* L.)
81. Persian Clover (*Trifolium resupinatum* L.)
82. Parsley (*Petroselinum crispum* (Mill.) Nym. ex A. W. Hill)
83. Peach (*Prunus persica* (L.) Batsch)
84. Plum (*Prunus domestica* L.)
85. Phacelia (*Phacelia tanacetifolia* Benth.)
86. Leek (*Allium porrum* L.)
87. Quince (*Cydonia* Mill.)
88. Radish, Black Radish (*Raphanus sativus* L.)
89. Rapeseed (*Brassica napus* L.)
90. Grapevine (*Vitis* L.)
91. Rice (*Oryza sativa* L.)
92. Quinoa (*Chenopodium quinoa* Willd.)
93. Pumpkin, Squash (*Cucurbita maxima* Duch.)
94. Common Millet (*Panicum miliaceum* L.)
95. Rye (*Secale cereale* L.)
96. Reed Canary Grass (*Phalaris arundinacea* L.)
97. Tall Fescue (*Festuca arundinacea* Schreb.)
98. Rose (*Rosa* L.)
99. Red Currant (*Ribes sylvestre* (Lam.) Mert. et W. D. J. Koch)
100. Garden Beet, Beetroot (*Beta vulgaris* L. ssp. *vulgaris* var. *conditiva* Alef.)
101. Brown Top (*Agrostis capillaris* L.)
102. Red Clover (*Trifolium pratense* L.)
103. Red Cabbage (*Brassica oleracea* L. cv. *capitata* (L.) Alef. var. *rubra* DC.)
104. Red Fescue (*Festuca rubra* L. sensu lato)
105. Turnip Rape (*Brassica rapa* L. var. *silvestris* (Lam.) Briggs)
106. Common Vetch (*Vicia sativa* L.)
107. Dyer's Saffron (*Carthamus tinctorius* L.)
108. Lettuce (*Lactuca sativa* L.)
109. Brown Mustard (*Brassica juncea* (L.) Czernj. et Coss.)
110. Sour Cherry (*Prunus cerasus* L.)
111. Sheep's Fescue (*Festuca ovina* L. sensu lato)
112. Black Currant (*Ribes nigrum* L.)
113. Common Elder (*Sambucus nigra* L.)
114. Black Mustard (*Brassica nigra* (L.) Koch)
115. Black Salsify (*Scorzonera hispanica* L.)
116. Alsike Clover (*Trifolium hybridum* L.)
117. Celery (*Apium graveolens* L.)
118. Soya Bean (*Glycine max* (L.) Merrill)
119. Common Sunflower (*Helianthus annuus* L.)
120. Sorghum (*Sorghum bicolor* (L.) Moench)
121. Sorghum x Sudan Grass (*Sorghum bicolor* (L.) Moench x *Sorghum sudanense* (Piper) Stapf)
122. Spanish Esparcet (*Hedysarum coronarium* L.)
123. Asparagus (*Asparagus officinalis* L.)
124. Spinach (*Spinacia oleracea* L.)
125. Brussels Sprout (*Brassica oleracea* L. cv. *oleracea* var. *gemmifera* DC.)
126. Gooseberry (*Ribes uva-crispa* L.)
127. Turnip (*Brassica rapa* L. var. *rapa* (L.) Thell.)
128. Sudan Grass (*Sorghum sudanense* (Piper) Stapf)
129. Swamp Meadow-Grass (*Poa palustris* L.)
130. Sweet Cherry (*Prunus avium* L.)
131. Timothy (*Phleum pratense* L.)
132. Tomato (*Lycopersicon lycopersicum* (L.) Karst. ex Farwell)
133. Triticale (X *Triticosecale* Wittm.)
134. Clematis (*Clematis* L.)
135. Watermelon (*Citrullus lanatus* (Thunb.) Matsum. et Nakai)
136. Wheat (*Triticum aestivum* L. emend. Fiori et Paol.)
137. Willow (*Salix* L.)
138. White Currant (*Ribes niveum* Lindl.)
139. White Lupin (*Lupinus albus* L.)
140. Red Top, Black Bent (*Agrostis gigantea* Roth)
141. White Clover (*Trifolium repens* L.)
142. White Cabbage (*Brassica oleracea* L. cv. *capitata* (L.) Alef. var. *alba* DC.)

143. Westerwold Ryegrass (*Lolium multiflorum* Lam. ssp. *alternativum*)
144. Meadow Foxtail (*Alopecurus pratensis* L.)
145. Kentucky Bluegrass, Smooth-Stalked Meadow-Grass (*Poa pratensis* L.)
146. Meadow Fescue (*Festuca pratensis* Huds.)
147. Savoy Cabbage (*Brassica oleracea* L. cv. *capitata* (L.) Alef. var. *sabauda* L.)
148. X *Festulolium braunii* (X *Festulolium braunii* (K. Richter) A. Camus)
149. Chicory (*Cichorium intybus* L.)
150. Flowering Quince (*Choenomeles* Lindl.)
151. Hairy Vetch (*Vicia villosa* Roth)
152. Melon (*Cucumis melo* L.)
153. Sugar Beet (*Beta vulgaris* L. ssp. *vulgaris* var. *altissima* Doell)
154. Onion (*Allium cepa* L.)

PORTUGAL

By virtue of Ministerial Order No. 1418/2004 of November 20, 2004, the Government of Portugal

extended the scope of national plant breeders' rights protection to all botanical species.

MODIFICATION OF FEES

AUSTRIA

Regulation of the Federal Minister for Agriculture, Forestry, Environment and Water Management Concerning a Scale of Variety Protection Fees 2001

Based on section 23 paragraph (2) of the Austrian Plant Varieties Act 2001¹, Federal Law Gazette I No 109, the Federal Minister for Agriculture, Forestry, Environment and Water Management in accordance with the Federal Minister for Finance Affairs, rules as follows:

Section 1

The application fee shall for all plant varieties be ATS 2,700 (€200) and shall be paid upon filing of the application.

Section 2

(1) The examination fees for variety examinations (examinations for registration) conducted by the Variety Protection Office or by other domestic examination offices shall, for each vegetation period, be:

1. ATS 4,800 (€350) for cereals, maize, potatoes, beet, pea, Swede rape, sunflower, and soy;
2. ATS 700 (€50) for trees;
3. ATS 3,500 (€250) for all other types of plants.

(2) The costs of the variety examinations (examinations for registration) conducted by a plant variety office of another EEA state, Member State or Member of the Union shall be deemed cash outlays pursuant to section 76 of the Austrian General Law on Administrative Procedures (AVG).

Section 3

(1) Where the Plant Variety Office, at the beginning of the vegetation period following the application for grant of the variety protection right, takes over complete examination results of the authority responsible for the granting of plant variety rights or of another domestic examination office which were obtained outside a procedure under the Plant Variety Act or based on a procedure for the grant of a plant variety right under the 1997 Seed Act (“Saatgutgesetz”), Federal Law Gazette I No 72 as amended by Federal Law Gazette I No 109/2001, and which confirm compliance with the requirements set forth in section 3³ paragraphs (2) through (5) of the Plant Variety Act, the take-over fee shall be ATS 2,400 (€170).

(2) Where the Plant Variety Office, at the beginning of the vegetation period following the application for grant of the variety protection right, takes over complete examination results of a plant variety office of another EEA state, Member State or Member of the Union which were obtained outside an official procedure for the grant of a plant variety right or based on an official procedure for the grant of a plant variety right, and which confirm compliance with the requirements set forth in section 3³ paragraphs (2) through (5) of the Plant Variety Act, the take-over fee shall be ATS 2,700 (€200).

Section 4

- (1) The annual fee shall for each and every protected variety be
1. ATS 1,500 (€110) for the first year of protection.
 2. For every other year of protection, until the 16th year of protection, the annual fee shall, compared to the annual fee of the respective preceding year, increase
 - (a) by ATS 700 (€50) in the case of common wheat, barley, oats, rye, durum wheat, triticale, spelt wheat, maize, potatoes, beet, pea, Swede rape, sunflower, and soy;
 - (b) by ATS 400 (€30) in the case of all other species;
 3. from the 17th year of protection
 - (a) by ATS 12,000 (€870) in the case of common wheat, barley, oats, rye, durum wheat, triticale, spelt wheat, maize, potatoes, beet, pea, Swede rape, sunflower, and soy;
 - (b) by ATS 7,500 (€550) in the case of all other species.
- (2) The annual fee for the first year of protection shall be due two months following the grant of the plant protection right. The annual fee for any other year of protection that has begun shall be due on the anniversary of the grant of the plant variety right in advance.

Section 5

- (1) This Regulation shall enter into force as of September 1, 2001.
- (2) The fees to the amount of the respective Euro amounts given in brackets shall enter into force as of January 1, 2002.

(Endnotes)

¹ Austrian Federal Law on the Protection of Plant Varieties 2001. German title: Bundesgesetz über den Schutz von Pflanzensorten (Sortenschutzgesetz).

² Translator's note: Error in the German original, which reads "§ 5" (section 5).

³ Translator's note: Error in the German original, which reads "§ 5" (section 5).

LITHUANIA

REGULATION No. 1473 OF THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA OF
19 SEPTEMBER 2002 REGARDING REPLACEMENT OF REGULATION OF THE REPUBLIC OF
LITHUANIA No. 1458 OF 15 DECEMBER 2000 CONCERNING FEES RATES

(Official Journal, 2002, No 93-3987)

Applicant.....350 Lt;
Annual fee for the maintenance of the protected variety in the List of Protected Varieties.....600 Lt;
Fee for registration of licensing agreements.....20 Lt;

THE ORDER OF THE MINISTER OF AGRICULTURE
OF THE REPUBLIC OF LITHUANIA

REGARDING REMUNERATION

23 of June 2004 No 3 D-371

Vilnius

Leading on the 4 part of 28 Article of the Law on Plant Variety Protection of the Republic of Lithuania (Official Journal, 2001, No 104-3701) and Commission Regulation (EC) No 1768/95 of 24 July 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 (with last amendments made by Commission Regulation (EC) No 2605/98 of 3 December 1998)

I do hereby establish that remuneration may not be paid if areas on which following plant species have been grown is not larger:

1. in case of triticale, soft and durum wheat, barley, oat, rye, swede rape, turnip rape, linseed (with the exclusion of flax), yellow lupin, lucerne, field bean, common vetch, field pea - 30 ha;
2. in case of potatoes - 10 ha.

Minister of Agriculture

Jeronimas Kraujelis

POLAND

FEE RATES FOR PLANT BREEDER'S RIGHTS PROTECTION (PBR) IN POLAND

By virtue of the Decree of the Polish Minister of Agriculture and Rural Development of February 17, 2004 (Polish Official Journal No 60/2004, item 567) the fee rates are as follows:

No	Fee type	Fee rates depending on the plant group (in PLN)				
		I	II	III	IV	V
1	Application fee	500				
2	Examination fee for DUS (for each vegetation season)	700	650	600	550	500
3	Issue (award) fee	100				
4	Annual maintenance fee first to fifth year	200				
	subsequent years	400				

1. Plant groupsGroup I

- spring barley, fodder maize, wheat, winter triticale, oats, winter rye, sugar beet, potato, winter oilseed rape;

Group II

- winter barley, red clover, hybrid lucerne, lucerne, durum wheat, spring oilseed rape, perennial ryegrass, Italian and Westerwold ryegrass;

Group III

- field bean, fodder beet, festulolium, black mustard, pea, white clover, golden oatgrass, hemp, red fescue, meadow fescue, safflower, cocksfoot, flax/linseed, poppy, canary grass, spring triticale, turnip rape, sunflower, tufted hairgrass, timothy, smooth-stalked meadowgrass, swamp meadowgrass, wood meadowgrass, annual meadowgrass, rough-stalked meadowgrass, meadow foxtail,
- beetroot, chard, chive, onion, chicory, endive, runner bean, French bean, garden pea, cauliflower, kohlrabi, Brussels sprouts, white cabbage, Savoy cabbage, red cabbage, Chinese cabbage, cardoon, artichoke, fennel, sweet maize, carrot, egg plant, cucumber/gherkin, tomato, leek, rhubarb, Lamb's lettuce, lettuce, celery/celeriac, scorzonera, shallot, asparagus, chervil,
- apple, plum, sour cherry (fruiting varieties and rootstocks),
- vine (fruiting varieties and rootstocks);

Group IV

- swede, sainfoin, California bluebell, white mustard, brown mustard, fodder kale, caraway, birdsfoot trefoil, crimson clover, Persian clover, Alsike clover, sheep's fescue, tall fescue, trefoil, white lupin, blue lupin, yellow lupin, red top, creeping bent, brown top, velvet bent, Harding grass, fodder radish, soya bean, rescue grass, Alaska brome grass, timothy-smaller cat's tail, tall oatgrass, common vetch, hairy vetch, hybrid ryegrass, spring rye,
- broad bean, sprouting broccoli, garlic, gourd, marrow, curly kale, watermelon, pepper, melon, parsley, black radish, radish, turnip, spinach,
- raspberry, strawberry,
- anthurium, chrysanthemum, gerbera, rose (varieties grown under covers);

Group V

- all other plants not included in groups I-IV.

2. Time Limits for Fee Remittance

- **Application fee** shall be remitted jointly with an application.
 - **Examination fee** for the first and each consecutive vegetation season, during which DUS tests is carried out should be remitted within 30 days from the date of delivery of the notification on the beginning of testing.
 - **Issue fee** (grant of PBR) shall be remitted within 60 days from the date of the decision on grant of PBR delivery.
 - **Maintenance fee** should be remitted:
 - for the first calendar year within 60 days from the date of delivery of the decision on grant of PBR
 - for the second and each subsequent calendar year by the end of June.
4. If DUS testing is carried out for the purpose of an entry into NLI and grant of PBR - only one fee for DUS testing is in force.
 3. Fee for the DUS testing of a hybrid variety, regardless of its structure, is a double amount of the relevant fee, if the components of this variety are examined.
 5. Maintenance fee shall not be remitted for a given calendar year, if the variety has been withdrawn from the PBR in the first half-year.

Plant Groups

Group I: spring barley, fodder maize, wheat, winter triticale, oats, winter rye, sugar beet, potato, winter oilseed rape;

Group II: winter barley, red clover, hybrid lucerne, lucerne, durum wheat, spring oilseed rape, perennial ryegrass, Italian and Westerwold ryegrass;

Group III: field bean, fodder beet, festulolium, black mustard, pea, white clover, golden oatgrass, hemp, red fescue, meadow fescue, safflower, cocksfoot, flax/linseed, poppy, canary grass, spring triticale, turnip rape, sunflower, tufted hairgrass, timothy, smooth-stalked meadowgrass, swamp meadowgrass, wood meadowgrass, annual meadowgrass, rough-stalked meadowgrass, meadow foxtail, beetroot, chard, chive, onion, chicory, endive, runner bean, French bean, garden pea, cauliflower, kohlrabi, Brussels sprouts, white cabbage, Savoy cabbage, red cabbage, Chinese cabbage, cardoon, artichoke, fennel, sweet maize, carrot, egg plant, cucumber/gherkin, tomato, leek, rhubarb, Lamb's lettuce, lettuce, celery/celeriac, scorzonera, shallot, asparagus, chervil,

apple, plum, sour cherry (fruiting varieties and rootstocks),
vine (fruiting varieties and rootstocks);

Group IV: swede, sainfoin, California bluebell, white mustard, brown mustard, fodder kale, caraway, birdsfoot trefoil, crimson clover, Persian clover, Alsike clover, sheep's fescue, tall fescue, trefoil, white lupin, blue lupin, yellow lupin, red top, creeping bent, brown top, velvet bent, Harding grass, fodder radish, soya bean, rescue grass, Alaska brome grass, timothy-smaller cat's tail, tall oatgrass, common vetch, hairy vetch, hybrid ryegrass, spring rye,

broad bean, sprouting broccoli, garlic, gourd, marrow, curly kale, watermelon, pepper, melon, parsley, black radish, radish, turnip, spinach,

raspberry, strawberry,

anthurium, chrysanthemum, gerbera, rose (varieties grown under covers);

Group V: all other plants not included in groups I-IV.

Time Limits for Fee Remittance

Application fee shall be remitted jointly with an application.

Examination fee for the first and each consecutive vegetation season, during which DUS tests is carried out should be remitted within 30 days from the date of delivery of the notification on the beginning of testing.

Issue fee (grant of PBR) shall be remitted within 60 days from the date of the decision on grant of PBR delivery.

Maintenance fee should be remitted for the first calendar year within 60 days from the date of delivery of the decision on grant of PBR for the second and each subsequent calendar year by the end of June.

If DUS testing is carried out for the purpose of an entry into NLI and grant of PBR - only one fee for DUS testing is in force.

Fee for the DUS testing of a hybrid variety, regardless of its structure, is a double amount of the relevant fee, if the components of this variety are examined.

5. Maintenance fee shall not be remitted for a given calendar year, if the variety has been withdrawn from the PBR in the first half-year.

CASE LAW

A new section has been created to publish information on case law relevant to plant breeders' rights. The Office of the Union welcomes the submission of summaries of recent decisions and/or, if possible, a direct link to the full text of the decision.

Please send your contributions to:
upov.mail@upov.int.

Disclaimer: The views expressed in the summaries under this section and/or in the contents of the Court decisions are not necessarily those of UPOV. They are provided for information purposes only.

AUSTRALIA

Subject: Federal Court Decision – *Cultivaust Pty Ltd & The State of Tasmania v Grain Pool Pty Ltd & The State of Western Australia* [2004] FCA 638 (May 2004).

The following is a brief overview of the outcome of this case provided by the Australian authorities. The comprehensive and authoritative judgment is available at: http://www.austlii.edu.au/au/cases/cth/federal_ct/2004/638.html

Cultivaust is the holder of an exclusive licence, granted by the State of Tasmania, in relation to its barley variety 'Franklin' as allowed under the *Plant Breeder's Rights Act 1994* (PBR Act)

In a single judge Federal Court of Australia decision handed down on May 21, 2004, all of the causes of action pleaded by Cultivaust Pty Ltd were unsuccessful:

Intellectual Property – whether the conduct of Grain Pool Pty Ltd (formerly the Grain Pool of Western Australia, GPWA) contravened the applicants' PBR rights under the *Plant Variety Rights Act 1987* (Cth) (PVR Act) and the PBR Act.

The Court found that the GPWA had not infringed Tasmania's PBR for a number of reasons including (i) neither Cultivaust nor Tasmania had sought to exercise the PBR in relation to the commercial disposal by growers of crops grown from farm-saved seed; and (ii) the then allowable exemptions allowed the GPWA to store and sell Franklin for malting purposes.

Contract – whether Cultivaust and the GPWA entered into a contract or reached an agreement concerning the payment of production levies and/or end point royalties

The Court found that (i) no agreement was entered into and (ii) the exchange of communications between the parties, even though it contained a very general offer of "future assistance", did not amount to an enforceable agreement or commitment by the GPWA with respect to its future conduct.

Estoppel – whether the GPWA was estopped by its conduct from denying that:

1. Cultivaust agreed to supply Franklin barley seed in 1992 for the limited purpose of growing trials in that year;

2. The GPWA agreed to recognize, and act upon, that limited purpose so that it would not receive and sell Franklin barley grain other than for that limited purpose, without the further authorization of Cultivaust; and
3. In any event, the knowledge by GPWA of the conditions on which Franklin barley seed was provided for the 1992 growing trial in Western Australia was sufficient to preclude the GPWA from acting inconsistently with those conditions.

The Court found that Cultivaust's hopes or expectations for an agreement with the GPWA, including a production levy on Franklin barley, were the result of its commercial judgments and strategies, and not an assumption of fact resulting from the conduct of the GPWA.

Equity – fiduciary relationship – whether there existed a fiduciary relationship between Cultivaust and the GPWA

The claim of fiduciary duty is an alternative to the claim of infringement of Tasmania's PBR rights.

The Court found that the dealings between Cultivaust and the GPWA were those of arms-length commercial negotiations and the GPWA did not assume any obligation to act other than in its own interests or the interests of Western Australian barley growers.

Trade Practices – whether the GPWA unlawfully attempted to reach an understanding with other statutory grain marketing boards about the level of any production levy or end point royalty to be paid in respect of Franklin barley.

The Court found that "there was no actual interference, even if there was an attempt to do so".

On July 21, 2004, Cultivaust Pty Ltd lodged an appeal to the Full Bench of the Federal Court against the adverse judgment from the single judge of the Federal Court that their rights in relation to 'Franklin' barley had not been infringed by the Grain Pool Pty Ltd. There is no indication that the other commercial matters will be pursued. The hearing date is yet to be set, though it is unlikely to be heard before February 2005.

Other interesting aspects of this case so far relate to the Court's view that:

- the opportunity to impose a production levy or end point levy is intended to be exercised with respect to lawfully acquired propagating material at the time of its acquisition;
- the harvest from farm-saved seed, except for further farm-saved seed, is to be treated as if it were propagating material to which section 11 operates, i.e., it is propagating material the subject of PBR;
- authorized sale of the initial seed does not exclude from the operation of PBR all subsequent generations of crop from seed originally purchased from the grantee;
- exhaustion of PBR by the sale of initial seed does not extend to cover the sale of second and subsequent generations of crops, assuming they are grown from retained farm-saved seed.

EUROPEAN COMMUNITY

Extract from the Internet Site of the Court of Justice of the European Communities concerning the Judgment of the Court (First Chamber) of October 14, 2004:

“(Plant varieties – System of protection – Article 14(3) of Regulation (EC) No 2100/94 and Article 9 of Regulation (EC) No 1768/95 – Use by farmers of the product of the harvest – Suppliers of processing services – Obligation to provide information to the holder of the Community right)

In Case C-336/02

REFERENCE for a preliminary ruling under Article 234 EC

from the Landgericht Düsseldorf (Germany), made by decision of 8 August 2002, received at the Court on 23 September 2002, in the proceedings

Saatgut-Treuhandverwaltungsgesellschaft mbH
v Brangewitz GmbH

[...]

Judgment

1. This reference for a preliminary ruling concerns the interpretation of the sixth indent of Article 14(3) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p.1) and Article 9 of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Regulation No 2100/94 (OJ 1995 L 173, p. 14).

2. The reference was made in the course of the proceedings between Saatgut-Treuhandverwaltungsgesellschaft mbH (‘STV’) and Brangewitz GmbH (‘Brangewitz’) concerning the information which Brangewitz, as a supplier of processing services, is required to provide on request to STV relating to the operations it effected on the product of the harvest of plant varieties protected by Regulation No 2100/94 and/or by national legislation.”

The comprehensive and authoritative judgment is available at: www.curia.eu.int

NEWSLETTER

LEGISLATION

AUSTRIA

ARTICLE 8 FEDERAL LAW ON THE PROTECTION OF PLANT VARIETIES (VARIETY PROTECTION ACT 2001¹)*

<p>INDEX</p> <p>PART I: General Provisions</p> <p>Section 1: Definitions</p> <p>Section 2: Scope of applicability</p> <p>Section 3: Conditions of protection</p> <p>Section 4: Effect of plant variety rights</p> <p>Section 5: Duration and termination of plant variety rights</p> <p>Section 6: Compulsory licenses</p> <p>PART II: Grant of Plant Variety Rights</p> <p>Section 7: Application for plant variety rights</p> <p>Section 8: Rights of priority</p> <p>Section 9: Publication of applications</p> <p>Section 10: Objections to the grant of a plant variety right</p> <p>Section 11: Examination of varieties</p> <p>Section 12: Grant of a plant variety right</p> <p>Section 13: Transfer of a plant variety right</p> <p>Section 14: Cancellation of plant variety rights</p> <p>Section 15: Revocation and official transfer of plant variety rights</p> <p>Section 16: Obligations of the holder of the plant variety right</p> <p>PART III: Variety Denomination</p> <p>Section 17: Proposed and final variety denominations</p> <p>Section 18: Applications concerning the cancellation of variety denominations</p> <p>PART IV: Authorities</p> <p>Section 19: Jurisdiction and rules of procedure</p> <p>Section 20: Jurisdiction of the Patent Office</p> <p>Section 21: Variety and Seed Journal (“Sorten- und Saatgutblatt”)</p> <p>Section 22: Plant Variety Register (“Sortenschutzregister”)</p> <p>PART V: Other Provisions</p> <p>Section 23: Fees</p> <p>Section 24: Civil law claims</p> <p>Section 25: Penal infringements of plant variety rights</p>	<p>Section 26: Fines</p> <p>Section 27: Transitional provisions</p> <p>Section 28: Entry into force</p> <p>Section 29: Execution</p> <p style="text-align: center;">PART I GENERAL PROVISIONS</p> <p style="text-align: center;">DEFINITIONS</p> <p style="text-align: center;">Section 1</p> <p>For the purposes of this Federal Law</p> <p>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;</p> <p>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</p> <p style="margin-left: 20px;">a) defined by the expression of the characteristics resulting from a given genotype or combination of genotypes;</p> <p style="margin-left: 20px;">b) distinguished from any other plant grouping by the expression of at least one of the said characteristics and</p> <p style="margin-left: 20px;">c) considered as a unit with regard to its suitability for being propagated unchanged;</p> <p>3. “variety essentially derived from another variety” shall mean a variety which</p> <p style="margin-left: 20px;">(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</p> <p style="margin-left: 20px;">(b) is clearly distinct from the initial variety; and</p> <p style="margin-left: 20px;">(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;</p>
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* Text provided by the Austrian authorities. The Law was published in the Official Gazette of August 10, 2001, and entered into force on September 1, 2001.

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

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.

REVOCAION 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.
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

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;
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 registration 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, Environment and Water Management – EUG-LFUW², 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.

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

AZERBAIJAN

LAW ON SELECTION ACHIEVEMENTS

This Law shall govern the creation, use and legal protection of selection achievements in the Azerbaijani Republic.

TITLE

GENERAL PROVISIONS

Article 1

Basic Definitions

The following basic definitions shall be used in this Law:

“Selection achievement” means created as a result of a selection work and useful for the society varieties of plants, animal breed, their hybrids, genotypes, crossings and clones;

“Plant material” means seeds, bulbs, tubers, branches or other parts used for purposes of reproduction of the variety;

“Breed” (products, material) means high-producing animals as well as gametes and embryos thereof having State certificate;

“State Register of Selection Achievements” means State Register of legal protection of copyright and patents of plant material and pedigree animals;

“Protected selection achievements” means patented plant material and pedigree animal registered in the State register;

“Applicant” means legal entity or natural person who has filed an application for a grant of a selection achievement patent;

“Patent” means a document certifying an exclusive right of a patent owner to an innovation and protection of selection achievements;

“Author” means a natural person or a group of persons who have created a selection achievement;

“License contract” means a legal contract concerning the use of selection achievements, concluded between patent owners and natural persons or legal entities.

Article 2

Legislation of the Azerbaijani Republic
on Selection Achievements

The legislation of the Azerbaijani Republic on selection achievements consists of this Law and regulations made in conformity with it.

Article 3

Conditions of Patentability of Selection Achievements

An application for selection achievement patent shall meet the following conditions:

(a) Novelty

A selection achievement shall be deemed new if, at the date of filing of the application, the field plants or pedigree animals have not been sold or otherwise disposed of to others for the purposes of exploitation in the territory of the Azerbaijani Republic during one year, in the territory of any other State during four years, and in the case of grapevines, medicinal plants, forest and fruit trees – during six years.

(b) Distinctness

A selection achievement shall be clearly distinguishable from other well-known selection achievements existing on the filing date of the application;

A selection achievement entered in official catalogues or reference files or in a publication shall be deemed well-known;

A selection achievement with a patent granted shall be deemed well-known from the filing date of an application for a grant of a patent;

Elements and distinctive characteristics of selection achievements shall correspond to their comparison and correct description.

(c) Uniformity

A selection achievement shall be a sufficiently uniform subject to some variations of genotype or phenotype due to particular features of propagation.

(d) Stability

The relevant characteristics of a selection achievement shall remain unchanged after repeated propagation or at the end of each cycle of propagation.

Article 4

Objects and Subjects of Selection Achievements

The used plant varieties, animal breeds, their hybrids, genotypes, crossings, clones, seeds, gametes, embryos or other plant material and high-producing animals selected for propagation are the objects of selection achievements.

* Translation into English by the Office of the Union based on the Russian translation provided by the Azerbaijani authorities. The Law was signed by the President of the Azerbaijani Republic on November 17, 1996, and published in the Official Journal on January 29, 1997.

All legal entities and natural persons possessing a selection achievement and undertaking selection work are the subjects of selection achievements.

Article 5

State Authority Responsible for Protection of Selection Achievements Patent

The protection of selection achievements patent in the Azerbaijani Republic shall be effected by a competent State authority to be designated by a respective executive body of the Azerbaijani Republic.

TITLE II

GENERAL RULES OF EXAMINATION, TESTING AND REGISTRATION OF SELECTION ACHIEVEMENTS

Article 6

Right to File an Application for the Grant of a Patent

The right to file an application for the grant of a patent shall belong first of all to the author of a selection achievement or to his successor in title.

Where the selection has been carried out jointly by several persons or the applicants are successors in title of the author, the application shall be filed by several persons and relations between them are governed by a contract between them.

Where a selection achievement have been bred, created or discovered in the line of duty and unless otherwise provided in a contract between the author and the employer, the right to file an application for the grant of a patent shall belong to the employer. In that case the contract shall provide a compensation to the author (authors) for the exploitation of selection achievements.

The author retains the right to be granted a patent if the contract does not include a provision concerning the grant of a patent to the employer as an author or where the employer breaks the terms of the contract.

The right to file an application for the grant of a patent may be extended to a person mentioned in the author's application. In that case the author's application shall be filed before the grant of a patent by a competent authority.

Legal entities and natural persons of any other country are entitled to file an application for the grant of a patent in case of existence of an international treaty between the Azerbaijani Republic and this State.

During the whole period of their employment contract and three years after leaving this service the employees of the competent authorities have no right to file an application for the grant of a patent.

A separate application shall be filed for each selection achievement.

The documents of the application shall be submitted in official language of the Azerbaijani Republic or in other language. If the documents are submitted in another language, the application shall be accompanied by their translation into Azerbaijani.

The following documents shall be submitted for the grant of a patent:

- the request for a grant of a patent;
- technical questionnaire with description of the selection achievement;
- proof of payment of the prescribed fee.

The examination of documents submitted shall be carried out in conformity with the approved regulations.

Article 7

Selection Achievement Denomination

A selection achievement shall have a denomination proposed by the applicant and approved by the competent authority.

The denomination shall enable the selection achievement to be identified. It shall be short and different from any selection achievement denomination of the same or of a closely related botanical or zoological species.

Where the application for the grant of a patent for the same selection achievement is filed in the Azerbaijani Republic or in another country, the selection achievement shall remain under the same denomination.

Where the denomination proposed by the author does not satisfy the established requirements it shall be modified in accordance with the proposal of a competent authority.

The denomination of a selection achievement may be changed at the request of the applicant before the grant of a patent.

Article 8

Priority of the Selection Achievement

The priority of the selection achievement shall be determined by the filing date of the application with a competent authority.

Where two or more applications claiming the same selection achievement are filed, the priority shall be given to the first application received.

If after the filing of the selection achievement application a competent authority of the Azerbaijani Republic finds that an application for the same selection achievement had been filed in another country, the priority shall be determined by the application whose sending date is earlier and shall remain in force 12 months.

In such cases the applicant shall be required to indicate the date of priority of the first application. The applicant shall be

required to furnish a copy of the first application, certified by a competent authority of the respective State.

Article 9

Preliminary Examination of an Application for the Grant of a Patent

A preliminary examination of an application for the grant of a patent shall be carried out within one month. Its aim is to verify the compliance of the required documents with the prescribed conditions.

Over a period of preliminary examination the applicant shall have the right to supplement, amend or correct the documents of the application on his own initiative.

If the applicant fails, within the prescribed time limit, to make the necessary amendments or to submit documents missing on the date of receipt of the application, the application shall not be accepted for the purpose of examination with a due notification to the applicant.

Article 10

Examination of the Novelty of Selection Achievements

In accordance with the instructions concerning the selection novelty a competent authority shall examine the application received.

Within six months following the date of the publication of the particulars of the application any interested person may send to a competent authority a notice contesting novelty of the filed selection achievement.

The competent authority shall notify the applicant of the receipt of a grounded contest. In the case of disagreement with the contest the applicant may, within three months from the date of receipt of the said notice, send to the competent authority a grounded opposition. On the basis of additional documents the competent authority takes a decision and notifies the interested person accordingly.

Where the selection achievement does not comply with conditions (criterion of novelty) it is withdrawn from testing.

Article 11

Testing of Selection Achievements for Compliance thereof with the Conditions of Distinctness, Uniformity and Stability

The testing of a selection achievement for compliance with the conditions of distinctness, uniformity and stability shall be carried out in accordance with established methodology.

The applicant shall be bound to furnish for the purposes of testing the required seeds/pedigree material within the fixed time limit. A pedigree testing shall be carried out jointly with the Pedigree Animal Inspection of the Azerbaijani Republic.

In the case of disagreement with the examination and the results of the testing the applicant may, within three months from the

date of receipt of the decision, lodge an appeal with the Board of Appeals of the competent authority. The Board of Appeals shall act in accordance with the approved regulations.

If the examination and testing results are approved, the competent authority will take a decision to grant a patent.

Article 12

Registration of Selection Achievements.

A decision of the competent authority to grant a patent for a selection achievement shall constitute a ground for its registration in the State Register.

Article 13

On Publication of Selection Achievements

The registered selection achievements shall be published by the competent authority.

TITLE III

RIGHTS AFFORDED BY A PATENT TO THE AUTHOR

Article 14

Author

A natural person who has created a selection achievement shall be recognized as the author thereof. Where the selection achievement had been created by several persons those persons shall be recognized as joint authors.

Person (persons) who have given the author technical, technological, organizational or material assistance but not participated in the creation itself of the selection achievement may not be recognized as the author thereof.

A competent authority shall grant a certificate of authorship of the selection achievement.

The certificate of authorship attests the entitlement of the author to remuneration from the patent owner for the use of the selection achievement.

Right of the author is inviolable and may not be transferred to other person.

Right of the author may be transferred to successor in title in conformity with the legislation of the Azerbaijani Republic.

Article 15

Patent Owner

In response to the application concerning selection achievement included in the State Register the competent authority shall grant the patent within one month. Where several persons have been mentioned in the application they shall be granted one patent for all.

The grant of patents and certificates shall be carried out by a competent authority in accordance with approved regulations.

Article 16

Rights of the Patent Owner

A patent shall give the exclusive right to use a selection achievement and this right shall be protected by the State. It is not permissible to use the selection achievement without the patent owner's knowledge.

The patent related rights may be transferred in full or in part to another person by way established in the legislation of the Azerbaijani Republic. In those cases a contract concluded between the patent owner and those persons in the manner specified by legislation shall be registered with a competent authority.

To use a selection achievement any natural persons or legal entities shall be required to obtain from the patent owner the permission to do the following:

- production and reproduction;
- conditioning of seeds for the purpose of their propagation;
- offering for sale;
- selling or other marketing;
- exporting from the territory of the Azerbaijani Republic;
- importing to the territory of the Azerbaijani Republic;
- stocking for any of the aforementioned purposes.

The right of the patent owner shall extend also to plant material and marketable animals derived from the selection achievement or from pedigree animals and used for commercial purposes without authorization from the patent owner.

The authorization from the owner of the patent for protected selection achievement shall be required for the performance of the acts provided for in the third paragraph of this Article in relation to the seed of the variety or pedigree material:

- that are essentially derived from initial selection achievement and do not retain the characteristics of other variety or breed;
- that are not clearly distinguishable from the protected variety or breed;
- that require the repeated use of the protected selection achievement for production of seed.

A variety shall be deemed to be essentially derived from the initial variety when whilst clearly distinguishable from the initial variety,

- it retains the expression of the essential characteristics reflecting the genotype or combination of genotypes of the initial variety or breed;

- it conforms to the genotype or combination of genotypes of the initial variety or breed except for the differences due to the origin.

A variety that is predominantly derived from the initial variety could be obtained as individual selection from the initial variety or breed, selection of an induced mutant, back-crossing or genetic engineering.

The right of the patent owner shall not be deemed infringed when the selection achievement is being used for the following purposes:

- (a) private and non-commercial;
- (b) experimental.

Article 17

Protection of the Interests and Rights of the Subjects of the Existing Selection Achievements

Until the adoption of the Azerbaijani Republic Law "On selection achievements" the provisions of this Law shall extend also to the authors of the selection achievements created in the Azerbaijani Republic as well as to the patent owners.

Article 18

Term of the Patent

The term of a selection achievements patent shall be 20 years from the date of the registration in the State Register and for grapevines, ornamental, fruit or forest trees and pedigree animals shall be 25 years.

The term of a patent may be extended by the competent authority for a period not exceeding 10 years.

Article 19

Invalidation of a Patent

Any person may file with the competent authority a request for invalidation of a patent. The competent authority shall send a copy of the request to the patent owner. The patent owner shall, within three months from the sending date of the copy, furnish his grounded reply.

Where it is necessary, the competent authority shall carry out an additional testing and shall take within one year an appropriate decision.

The patent may be deemed invalid in the following cases:

- where a selection achievement at the filing date of the application no longer complies with the conditions of novelty and distinctness, or the patent had been granted on the grounds of the information concerning uniformity and stability that has not been confirmed;
- where the person indicated in the patent as a patent owner had no legitimate grounds for obtaining the patent.

Article 20

Cancellation of a Patent

The patent may be cancelled where:

- the owner of the patent has filed an appropriate request;
- a selection achievement no longer complies with the conditions of uniformity and stability;
- the patent owner fails to provide, after the request of the competent authority, seeds, pedigree material, documents and information deemed to be necessary for testing the protectability of the selection achievement or fails to provide opportunity for in-site inspection;
- the patent owner fails to pay a maintenance fee by the prescribed time limit.

TITLE IV

PROTECTION OF THE SELECTION ACHIEVEMENT

Article 21

Maintenance of Selection Achievements

The patent owner shall, throughout the life of the patent, maintain the selection achievement in such a way that all characteristics thereof are maintained.

On the request of the competent authority the patent owner shall be obliged to furnish seed of the variety or pedigree material for the purpose of testing and provide the opportunity for in-site inspection.

Article 22

Provisional Legal Protection of Selection Achievements

Throughout the period between the date of receipt of the application by the competent authority and the date of the grant of a patent, the applicant shall be afforded a right of protection of the selection achievement.

During this period of protection the selection achievement may be used only for scientific and testing purposes.

TITLE V

USE OF THE SELECTION ACHIEVEMENT

Article 23

License Contract

The use of the patented selection achievement shall be possible on the basis of a license contract.

Under a license contract the patent owner (in case of an exclusive or non-exclusive license) transfers the right to use

the selection achievement to another person (the licensee) within procedures of payments.

Under an exclusive license the licensee is afforded the exclusive right to use the selection achievement, but the patent owner retains at the same time a right to its part.

Under non-exclusive license the patent owner retains all rights, granted by the selection achievement patent, including the right to grant licenses to third parties.

Where the patent owner sells his right of patent ownership he shall lose completely his right to use a selection achievement.

A license contract shall be concluded in written form and enter into force accordingly after the registration by the competent authority.

The liability of parties and legal terms of the license contract shall be governed by the Azerbaijani Republic legislation.

Article 24

Open Licenses

The patent owner may publish in the Official Gazette of the competent authority a notice concerning the use of the selection achievement by any person. The patent owner and person who have concluded a license contract file a request with the competent authority for using an open license.

The competent authority shall enter particulars of the grant of an open license, including the amount of payments, in the State Register of Protected Selection Achievements.

Article 25

Compulsory Licenses

Any person may file a request with the competent authority for granting to him a compulsory license for a selection achievement.

The competent authority may grant a compulsory license where the following conditions are met:

- the application for the grant of a compulsory license has been filed after expiry of a three years period;
- the patent owner has refused the applicant the right to use the selection achievement or does not intend to grant such a right;
- a person requesting a compulsory license has proved that he was in a position, financially or otherwise to use the license in an efficient manner.

The compulsory license does not deprive the patent owner of the right to the selection achievement, including his right to grant license to another person.

When granting a compulsory license the competent authority determines the amount of payment to be paid by the compulsory license owner to the patent owner.

On the request of the competent authority the patent owner shall be obliged to furnish, at extra cost and on acceptable terms, to the compulsory license owner seeds of the variety and pedigree material of the breed in a quantity sufficient for the purpose of use.

A compulsory license shall be granted for a period not exceeding four years (extendable).

A compulsory license may be cancelled if its owner has infringed the terms under which the license was granted.

Article 26

Use of Selection Achievements for Purposes of Production

Only patented and registered selection achievements in the State Register shall be used in the Azerbaijani Republic for the purpose of production.

The plant and pedigree materials intended for realization shall be accompanied by certificate of quality issued by the competent authority.

The certificate shall be issued for the selection achievements entered in the State Register and having zoning assignment.

Article 27

Fees

The competent authority shall collect a fee for the following acts:

- examination and testing of selection achievements for the purpose of patenting;
- protection of selection achievements;
- grant of a patent;
- maintenance of a patent.

The fee shall be payable by the customer, the patent owner or by interested natural persons or legal entities.

The amount of the fee, terms of payment and possible compromises shall be governed by the legislation of the Azerbaijani Republic.

TITLE VI

STIMULATION OF SELECTION WORK BY THE STATE

Article 28

Profit of the Patent Owner and Remuneration to the Authors

The profit of a patent owner is consisting of the payment for the use of the selection achievements for the purpose of production and of proceeds from the sale of licenses. The amount of payments for selected achievements and of sale of

licenses shall be determined by a license contract concluded between the parties.

During the patent life the author of the selection achievement shall be entitled to receive a remuneration from the patent owner for the use of this selection achievement. The amount and terms of payment of a remuneration shall be determined by a contract.

Nevertheless, the amount of the remuneration shall not be less than 15% of the annual proceeds received by the patent owner for the use of the selection achievement, including proceeds from the sale of licenses.

Where a selection achievement has been created or discovered jointly by several authors the remuneration shall be divided among them in accordance with their shares.

The remuneration shall be payable to the author not later than three months after the expiry of each year during which the selection achievement had been used.

Article 29

Stimulation of Selection Work by the State

In accordance with the State Target Program the fundamental research and selection works, protection of genetic resources, most important activities, international symposiums, publication of catalogues, methodological instructions, bulletins and scientific reports shall be financed from the State budget of the Azerbaijani Republic.

TITLE VII

INTERNATIONAL COOPERATION

Article 30

Right to File an Application Abroad

To patent a selection achievement natural persons and legal entities of the Azerbaijani Republic shall be entitled to file applications with a competent authority of any other State and to be granted a patent.

Persons filing an application for the grant of a patent have to notify the competent authority of the Azerbaijani Republic.

The cost of obtaining a patent for the selection achievement in other States shall be borne by the applicant.

Article 31

Right of Foreign Natural Persons or Legal Entities to file an Application for the Grant of a Patent in the Azerbaijani Republic

The natural persons and legal entities of other States shall be entitled to file an application for the grant of a selection achievement patent with the competent authority of the Azerbaijani Republic.

Applications for the selection achievement in the Azerbaijani Republic filed by foreign natural persons and legal entities may be patented if they comply with the legislation of the Azerbaijani Republic.

Article 32

International Treaties

Where an international treaty to which the Azerbaijani Republic is a party contains provisions on testing, protection and use of selection achievements which differ from those of this Law the provisions of the international treaty shall prevail.

TITLE VIII

SETTLEMENT OF DISPUTES AND LIABILITY FOR INFRINGEMENT OF THE LEGISLATION ON SELECTION ACHIEVEMENTS

Article 33

Liability for Infringement of the Legislation

The natural persons and legal entities shall be liable for the following acts:

- use of a denomination for the produced and marketable selection achievement which differs from the registered denomination;
- intentional change of the selection achievement denomination or of the registered variety and pedigree material denomination;

- attribution to a selection achievement of a denomination which corresponds so closely to a registered denomination that it is misleading;
- use of selection achievements without conclusion of a license contract;
- misleading of a customer by selling a selection achievement patent under another denomination;
- sale of selection achievements without certificates;
- making a false entry in the State Register or in documents concerning application, examination or testing;
- forgery of documents, ordering to make forgery or other wrongful acts being in conflict with the legislation of the Azerbaijani Republic.

Any official or natural person infringing the Law “On Selection Achievements” shall be liable under the legislation in force of the Azerbaijani Republic.

Article 34

Settlement of Disputes

The settlement of disputes concerning examination, testing, use or protection of selection achievements shall be carried out judicially in accordance with the legislation of the Azerbaijani Republic.

President of the Azerbaijani Republic
Geydar Aliev
Baku, November 17, 1996
No. 197-1Q

JORDAN

LAW No. (24) OF THE YEAR 2000

THE LAW FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Article 1

This Law shall be known as (The Law for the Protection of New Varieties of Plants of the Year 2000), and shall come into force thirty days after the date of its publication in the Official Gazette.

DEFINITIONS

Article 2

The following terms and phrases, wherever mentioned in this Law, shall have the meanings designated hereunder, unless otherwise indicated by context:

Ministry: Ministry of Agriculture.

Minister: Minister of Agriculture.

Plant Variety: The hierarchy of the plants in the Plant Kingdom shall be from the grouping, to the rank, to the family, to the genus, to the species, to the variety.

Variety: Any plant grouping within a single botanical taxon of the lowest known rank, irrespective of whether the conditions for the grant of the protection right are fully met, and is defined by the expression of the characteristics resulting from a genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one of the said characteristics, and considered as one unit with regard to its suitability for being propagated without changing any of its characteristics.

The Protected Variety: The variety that is registered according to the provisions of this Law.

Breeding: To breed, or to discover and develop, a new plant variety.

Breeder: The person who bred, or discovered and developed, a new plant variety, or his successor in title.

The Registrar: The New Plant Variety Registrar, nominated by the Minister.

The Register: The New Plant Variety Register.

Article 3

The provisions of this Law shall apply to varieties under the plant genera or species which shall be specified in the Regulation to be issued in accordance with the provisions of this Law.

Article 4

A- A Register named "The New Plant Variety Register" shall be established at the Ministry, under the supervision of the Registrar, in which records shall be maintained of all information related to the new plant varieties, their denominations, names of their breeders, addresses, certificates of registration, and any changes thereto resulting from procedures and legal acts including the following:

- 1- Any assignment, transfer of ownership, or license to use it granted by the owner to others, subject to the provisions of confidentiality in the license agreement.
- 2- The hypothecation or detention placed upon the protected variety or any restriction on the use of the variety.

B- The Register and the documents related to the rights granted for the breeder shall be available to the public. The growing tests and any other necessary tests provided for in this Law should also be available to the public, in accordance with the Instructions issued by the Minister for this purpose, which shall be published in the Official Gazette.

C- The Ministry may maintain computerized records for the registration of varieties and the related data. Such data and documents retrieved therefrom and certified by the Registrar shall be valid proof against others, unless the interested party proves otherwise.

Registration of New Plant Varieties

Article 5

The variety may be registered if the following conditions are met:

A- If it is new, in the sense that, at the date of filing the application or the date of the priority stated in paragraph (A) of Article (9) of this Law, as the case may be, the propagating

* Text provided by the Jordanian authorities. The Law entered into force on August 2, 2000.

or multiplication or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety according to the following:

- For more than a year inside the Kingdom, and for more than four years outside the Kingdom.
- For more than six years outside the Kingdom, in the case of trees and vines.

B- If it is distinct, in the sense that, it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the date of the filing of the application. In particular, the filing of an application for registering another variety, or for the entering in an official register of varieties in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the registration of the variety and to the granting of a breeder's right.

C- If it is uniform, in the sense that it is sufficiently uniform in its relevant characteristics, subject to the variation that may be expected from the particular features of its propagation.

D- If it is stable, if its relevant characteristics remain unchanged after repeated propagation, or in the case of a particular cycle of propagation, at the end of each such cycle.

Article 6

The right to register the variety shall be as follows:

A- To the breeder or to whom the variety right passes thereafter.

B- To all the persons participating in its breeding, if it was the result of their joint efforts, provided that it is registered equally and jointly between them, unless agreed otherwise.

C- To the first breeder to file an application, if the breeding was independently made by more than one person.

D- To the employer, if the breeding was a result of an employment contract, which requires the employee to carry out such breeding, unless otherwise stipulated by the contract.

Article 7

The registration of a variety shall be as follows:

A- An application for registration shall be filed with the Registrar on the form designated for this purpose, stating the botanical taxon of the variety, the suggested denomination, and any other issues or data specified in the Regulation issued in accordance with the provisions of this Law.

B- The application shall be limited to only one variety, and the required fees shall be collected.

C- If the application was filed by a non-national person in the Kingdom or a non-resident, the breeder shall appoint a legal representative in the Kingdom.

Article 8

A- The date of receiving the application by the Registrar shall be considered the date of filing, provided that the application fulfills all the legal requirements, and attached thereto all the data indicating the identity of the applicant and a sample of the variety to be registered.

B- Where the Registrar finds that the application has not fulfilled the requirements stated in paragraph (A) of this Article, he shall invite the applicant to fulfill such requirements or to make the necessary amendments within thirty days of notification, and shall record the date of fulfilling such requirements as the date of filing of the application. Otherwise the Registrar may consider, by a decision taken for this purpose, the applicant as abandoning the application, and his decision maybe appealed to the Higher Court of Justice within sixty days of its notification.

Article 9

A-1. The applicant for a variety registration may claim application priority, for an application submitted by him and filed on a prior date in a country with which the Kingdom is a party in a treaty to protect the intellectual property, provided that the application is filed in the Kingdom within a period not exceeding twelve months, calculated from the day following the date of filing of the first application.

2. If the application for registration includes a priority right, according to clause (1) of this paragraph, the Registrar may require the applicant within three months from the date of filing of an application, to submit a copy of the documents which constitute the first application certified to be a true copy by the office with which it was filed. The Registrar may also request the applicant to submit any samples or evidence to prove that the variety which is the subject matter of both applications is the same. The date of filing of the application for registration in this case shall be the same date by which the application was filed in the other country.

B- If the applicant fails to prove the priority right according to paragraph (A) of this Article, the application shall be registered as of the date of filing with the Registrar.

C- The applicant may request an additional period of two years after the expiration of the priority period, to provide the Registrar with the information, documents and materials required according to the Law, for the purpose of examination according to Article (10) of this Law. However, if the first application was rejected or withdrawn in the other country, the applicant shall be given six months from the date of rejection or withdrawal of the application, to submit the information, documents, and material required for the test.

Article 10

A- The variety shall undergo a technical examination to verify the following:

1. It belongs to the botanical taxon stated in the application for registration.

2. It fulfills the requirements of distinction, uniformity and stability stated in paragraphs (B, C and D) of Article (5) of this Law.

B- The examination provided for in clause (2) of paragraph (A) of this Article shall be made under the supervision of the Ministry in one of the following methods:

1. To rely on growth and germination examinations, and any other essential exams or tests, made by a technical authority inside or outside the Kingdom, if such tests or exams are carried out in environmental conditions consistent with the environmental conditions in the Kingdom; or,
2. The Ministry itself may carry out the tests and exams stated in clause (1) of this paragraph, or through any authority on its behalf and on the breeder's expense.

C- A Technical Committee of experts shall be formed by virtue of Instructions issued by the Minister to verify the results of the tests and exams stated in paragraph (B) of this Article in order to conclude the procedures of the registration of the variety, provided that such Instructions specify the other tasks of the Committee, including the way it functions, makes its decisions, and all other matters related thereto.

Article 11

A- The Registrar may require the applicant to furnish all the related information, documents, and required materials to carry out the technical examination provided for in Article (10) of this Law, within the period specified in the Regulation issued according to this Law. If such information, documents and materials are not furnished, the Registrar shall have the right to issue a decision that would deem the applicant to have abandoned his application. The Registrar's decision in this regard may be appealed to the Higher Court of Justice within sixty days of its notification.

B- The exam provided for in Article (10) of this Law is for the purpose of approving of the registration. The exam may also be carried out after the registration for the purpose of verifying the stability and uniformity of the variety.

Article 12

A- If the application fulfilled all the conditions and requirements provided for in this Law, the Registrar shall announce its acceptance, and shall grant the applicant with a preliminary approval, which shall be published in the Official Gazette after collecting the required fees. The announcement shall include the plant variety and its denomination.

B- Any person shall be entitled to oppose the registration of any new plant variety at the Registrar within ninety days of the publication of the preliminary approval in the Official Gazette.

C- The period for publication, information to be published, procedures for opposition of preliminary approval of accepting the registration, conditions for extending the periods for opposition, notifications, and other matters shall be specified

in a Regulation issued in accordance with the provisions of this Law.

Article 13

The applicant shall be entitled to a temporary protection between the period of the publication of the application in the Official Gazette and the date of the registration of the variety; the applicant may use the variety within this period, and take the procedures to prove any infringement thereof.

Article 14

If no opposition on the registration of the variety was submitted, or if it was rejected, the Registrar shall register the variety and grant the breeder with a certificate for this purpose after collecting the required fees.

PROTECTION OF THE VARIETY

Article 15

Subject to the provisions of Articles (16) and (17) of this Law:

A- The breeder shall have the right after the registration of the variety to protect it, by preventing others not having his consent from doing the following, in respect of the propagating material of the protected variety for commercial use:

1. Production or reproduction (multiplication),
2. Conditioning for the purpose of propagation,
3. Offering for sale,
4. Selling or other marketing activities,
5. Exporting,
6. Importing,
7. Stocking for any of the purposes mentioned in this paragraph.

B- The acts referred to in paragraph (A) of this Article in respect of harvested or reaped material, including entire plants or parts of the plants, obtained through the unauthorized use of propagating material of the protected variety shall require the authorization of the breeder, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

C- The provisions of paragraphs (A) and (B) of this Article shall also apply to the following varieties:

1. Varieties, which are essentially, derived from the protected variety where the protected variety is not itself an essentially derived variety. A variety shall be deemed to be essentially derived from another variety if the following conditions are met:
 - if it is predominantly derived from the initial variety, or from a variety that is itself

predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety,

- if it is clearly distinguishable from the initial variety,
- and if, except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

2. Varieties which are not clearly distinguishable in accordance with paragraph (B) of Article (5) of this Law from the protected variety.
3. Varieties whose production requires the repeated use of the protected variety.

D- In particular, essentially derived varieties may be obtained as a result of the selection of natural or induced mutants, or the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

E- Any person committing any of the acts stated in paragraphs (A) and (B) of this Article, shall be considered committing an act of infringement upon the breeder's right of the protected variety, and shall be subject to legal liability, if he knew or if he should have known that he is infringing upon the breeder's rights of the protected variety.

Article 16

Notwithstanding what is stated in Article (15) of this Law, the breeder's right shall not include to the following:

A- Acts done privately and for non-commercial purposes, for experimental purposes, or for the purpose of breeding new varieties.

B- Preventing farmers from using for propagating purposes, on their own lands, the product of the harvest which they have obtained by planting any protected variety, or any variety covered by clauses (1) and (2) of paragraph (C) of Article (15) of this Law.

Article 17

A- The breeder's right does not extend to the acts related to the materials of the protected variety, or the materials of any variety stated in paragraph (C) of Article (15) of this Law, or any materials derived from the said material, which the breeder had sold or marketed in any other mean in the territory of the Kingdom by himself or with his consent, unless such acts:

1. Involve further propagation of the variety in question, or
2. Involve the export of the material of the variety, which enables the propagation of the variety, into a country,

which does not protect varieties of the plant genus, or species to which the variety belongs, unless the exportation is for consumption purposes.

B- For purposes of paragraph (A) of this Article, "material" means propagating material of any kind and harvested material, including entire plants or parts of plants.

Article 18

The protection period for the protected variety shall be for twenty years beginning from the date of filing of an application for registration. As for trees and vines, the protection period shall be for twenty-five years.

TRANSFER OF OWNERSHIP, HYPOTHECATION AND DETENTION OF THE VARIETY

Article 19

A- The breeder's rights may be transferred, completely or partially, with or without compensation, and may be subject to hypothecation or detention.

B- The right on the protected variety may pass, by succession, to the successors.

C- The procedures of the transfer of ownership of the protected variety, its hypothecation, detention and all other legal acts related thereto, shall be specified in Instructions issued by the Minister for this purpose, which shall be published in the Official Gazette.

D- The transfer of ownership of a variety and its hypothecation shall not be effective against third parties prior to the date of its recording in the Register, which shall be published in the Official Gazette.

LICENSING TO EXPLOIT THE VARIETY

Article 20

The breeder may grant others a license to exploit the protected variety, by virtue of a written contract to be registered with the Registrar.

Article 21

A- The Minister may, upon a recommendation from the Registrar, grant the others, without the breeder's consent, a license for the exploitation of the variety if the public interest necessitates it. In such case, the breeder shall have an adequate remuneration taking into consideration the economic value of the license.

B- The Minister may, upon his own initiative, or upon the breeder's request, cancel the license stipulated in paragraph (A) of this Article if the licensee violates any of the conditions thereof, or if the reasons for granting it are no longer applicable. This cancellation shall not affect the related rights of others having interest in the license.

NULLIFICATION AND CANCELLATION OF THE
REGISTRATION OF THE VARIETY

Article 22

The Registration of a variety shall be considered null in any of the following cases:

- A- If it is proved that the variety was not new, or distinct, at the date of filing of the application, or the date of priority, as the case may be.
- B- If it is proved that the variety was not uniform or stable at the date of filing of the application or the date of priority, as the case may be, if the grant of the breeder's right has been essentially based upon information and documents furnished by the breeder on the said date.
- C- If the registration was made for a person other than the breeder, contrary to the provisions of this Law.

Article 23

A- The Registrar may cancel the registration of a variety in any of following cases:

1. If the technical test stipulated in Article (10) of this law reveals that the stability and uniformity of the variety is not available anymore.
2. If the breeder does not provide the Registrar with the information, documents or materials deemed necessary for verifying the maintenance of the characteristics of the variety.
3. If the breeder fails to pay the annual required fees.
4. If the breeder does not propose, where the denomination of the variety is cancelled after the registration, a suitable denomination for the protected variety.

B- For purposes of implementing clauses (2), (3), and (4) of paragraph (A) of this Article, the Registrar shall notify the breeder of the cancellation decision, provided that the cancellation takes place only after the period specified in the Regulation issued in accordance with this Law.

Article 24

The Registrar shall record in the Register, the decision of the nullification of the registration of the variety or its cancellation, and such, decision shall be published in the Official Gazette.

Article 25

All the Registrar's decisions are subject to appeal to the Higher Court of Justice within sixty days from the date of its notification.

THE VARIETY DENOMINATION

Article 26

A- Each variety shall be registered with a denomination, which shall be considered its designation. The denomination may consist of a word, combination of words, combination of words and figures, or combination of letters and figures, whether it has a meaning or not. It may not consist solely of figures except where this is an established practice for designating varieties, provided that the denomination enables the variety to be identified in all cases.

B- If the denomination had already been used for the variety in the Kingdom, or in any country, or proposed or registered in any other country, no other denomination may be used for the purpose of registration, unless there is ground for the refusal of the denomination, and another denomination shall be registered for the variety in the Register.

C- It is prohibited to use, or register any denomination identical or similar to another denomination which designates the variety, in a manner that might cause confusion in relation to an existing variety of the same plant species or a closely related species, whether such denomination was registered or known in the Kingdom, or any other country. Such prohibition shall remain even after the expiration of the exploitation of the variety, if the denomination acquired a certain connotation relating to the variety.

D- Subject to paragraph (E) of this Article, any person who offers for sale, sells or otherwise markets propagating material of a protected variety shall be obliged to use the denomination of the variety, even after the expiration of the protection period.

E- Prior rights of third parties shall not be affected, by reason of the use of a denomination of a variety, in such a case, the Registrar shall require the breeder to propose another denomination for the variety.

F- When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, tradename or other similar indication with a registered variety denomination, if such denomination is easily recognized.

Article 27

A denomination of a variety may not be registered if:

- A- It is contrary to the provisions of the Law.
- B- It is contrary to the public order and morality.
- C- It is liable to mislead or to cause confusion concerning the characteristics, value, identity, or geographical origin of the variety, or the identity of the breeder.

Article 28

The proposed denomination of the variety shall be specified in the application. The registration of denominations, its publication and periods related to such, shall be specified in a Regulation issued according to the provisions of this Law.

PROVISIONAL MEASURES AND PENALTIES

Article 29

A- The breeder of a protected variety, when filing a civil lawsuit to prevent the infringement on his rights in the protected variety, or during the hearings, may petition the competent Court for the following, provided that the petition is attached with a bank guaranty or a cash deposit accepted by the Court to take any of the following measures:

- 1- Stop the infringement.
 - 2- Place a provisional detention on the infringed variety wherever found.
 - 3- Preserve the evidence related to the infringement.
- B-1. The breeder of a protected variety, may, prior to filing a lawsuit petition the Court to take any of the measures provided for in paragraph (A) of this Article, provided that the petition is attached with a bank guarantee or a cash deposit accepted by the Court, without notifying the counter-party. And the Court may approve his petition if he proves any of the following:
- That his rights had been infringed upon,
 - That such infringement is imminent and there is a possibility to cause damages of irreparable harm,
 - That there is a demonstrable risk of evidence being disappeared or destroyed.
2. If the breeder of the protected variety fails to file the lawsuit within eight days from the date the Court approves his petition, all measures taken in this regard shall be nullified.

3. The counter-party may appeal the court's decision regarding the provisional measures to the Court of Appeal within eight days of his notification or acknowledgment. The decision of the Court of Appeal in this regard shall be final.

4. The counter-party may claim compensation for damages he suffered, if it was proved that the petitioner was unlawful in his petition regarding provisional measures, or if the petitioner failed to file his lawsuit within the period specified in clause (2) of this paragraph.

C- The defendant may claim compensation for the damages he suffered if the end-result of the lawsuit proved that the plaintiff's claims are invalid.

D- The Court may request expert opinions in all cases.

E- The Court may order the confiscation of the infringed variety, and the tools and materials mainly used in the infringement upon the protected variety. The Court may also order destruction of the variety, and materials and tools, or their use for non-commercial purposes.

GENERAL PROVISIONS

Article 30

A- The Council of Ministers shall issue the necessary Regulations for implementing the provisions of this Law, including specifying the annual fees for renewal of registration, and all other fees that should be collected in accordance with the provisions of this Law.

B- The Instructions referred to in this Law shall be published in the Official Gazette.

Article 31

The Prime Minister and the Ministers shall be responsible for implementing the provisions of this Law.

UZBEKISTAN

LAW OF THE REPUBLIC OF UZBEKISTAN
ON SELECTION ACHIEVEMENTS OF 2002

I. GENERAL PROVISIONS

Article 1

Aim of this Law

The aim of this Law is to regulate relations in the sphere of creation, legal protection and use of selection achievements.

Article 2

Basic concepts

In this Law, the following basic concepts are used:

breed – a group of animals (including birds, insects and silkworms) or their hybrids, which is defined by genetically determined biological and morphological characteristics and features, some of which are specific to the group in question and distinguish it from other groups of animals. The protected subjects of the breed are the breeding group, the intra-breed (zonal) type, factory type, factory strain, family, parthenoclones, strains and hybrids;

employer – a natural or legal person providing the task of creating a selection achievement and providing funding for this task;

licensor – a patent owner who transfers the right to a licensee to use a selection achievement on the basis of a licensing agreement;

licensee – a natural or legal person obtaining the right to use a selection achievement from a licensor, on the basis of a licensing agreement;

variety – a group of plants which is defined by the characteristics, continuously inherited, characterizing a given genotype or combination of genotypes, and is distinguished from other groups of plants of a similar botanical taxon by one or more features. Protected subjects of the variety shall be the clone, strain, first generation hybrid and population;

patent owner – the owner of a patent for a selection achievement;

selection achievement – a new variety of plants or a new breed of animals;

applicant – a natural or legal person who files an application for the grant of a patent for a selection achievement.

Article 3

Legislation on selection achievements

The legislation on selection achievements shall consist of this Law and other legislative acts.

If an international agreement, to which the Republic of Uzbekistan is a party, provides for rules other than those which are laid down by the legislation of the Republic of Uzbekistan on selection achievements, the rules of the international agreement shall apply.

Article 4

Organizational principles of the legal protection of selection achievements

The State Patent Office of the Republic of Uzbekistan (hereinafter the Patent Office) shall implement State policy in the sphere of legal protection of selection achievements.

The Patent Office shall receive and examine applications for the grant of patents for selection achievements (hereinafter – application for the grant of a patent), conduct a formal examination thereon, keep a State Register of Varieties of Plants and a State Register of Breeds of Animals (hereinafter the Register), grant patents for selection achievements, be responsible for the official publication of information on application materials and registered selection achievements protected in the Republic of Uzbekistan, apply the rules and provide clarifications regarding the application of the legislation on selection achievements.

The State Commission for Variety Testing of Agricultures, Central State Inspectorate for Breeding in Animal Husbandry of the Ministry of Agriculture and Water Culture of the Republic of Uzbekistan (hereinafter – specialized organizations) shall examine the patentability of claimed selection achievements.

Article 5

The creator of a selection achievement

The creator of a selection achievement shall be recognized as the natural person through whose creative labor the new variety of plants or new breed of animals has been created (bred or discovered).

* Translation into English prepared by the Office of the Union from Russian text provided by the Uzbek authorities.
The Law was adopted on August 30, 2002.

If more than one natural person has participated in the creation of a selection achievement, all such persons shall be recognized as its joint creators. The procedure for use of the rights belonging to the joint creators shall be defined by legislation and agreement between the persons concerned.

The right of creation shall be an inalienable personal right and shall be protected indefinitely.

The creator (joint creators) shall have the right to be mentioned in an application for the grant of a patent, in the patent and in all publications relating to a selection achievement.

Article 6

Patent owner

A patent for a selection achievement shall be granted to:

- the creator (joint creators) of the selection achievement or his (their) heir(s);
- the natural and/or legal persons (with their consent) who are indicated by the creator or his heir in an application for the grant of a patent or in an application for a change of applicant, filed with the Patent Office prior to registration of the selection achievement;
- an employer in the cases provided for by Article 7 of this Law.

Article 7

The patent owner of a selection achievement created in the course of employment

A selection achievement shall be considered to have been created in the course of employment if, during its creation, the creator (joint creators):

- carried out duties inherent in the position occupied by him (them);
- carried out duties specially entrusted to him (them) in order to create the selection achievement;
- used material or financial resources granted to him (them) by an employer;
- used knowledge and experience constituting the specific features of an organization-employer, acquired by him (them) in the course of employment.

If, within four months of the date on which he is informed by a creator (joint creators) of a created selection achievement, an employer does not file an application for the grant of a patent with the Patent Office, does not transfer the right to file an application for the grant of a patent to another person, and does not inform the creator (joint creators) of the preservation of a selection achievement in secret, the creator (joint creators)

shall be entitled to file an application and to obtain a patent in his (their) own name(s). In such a case, the employer shall be entitled to use a selection achievement in his own production activities and shall pay to the patent owner compensation, as defined by agreement.

In cases where an employer preserves a selection achievement in secret, he shall be obliged to pay the creator (joint creators) appropriate remuneration, the level of which shall be determined by agreement.

The creator (joint creators) of a selection achievement, who are not the patent owner(s), shall be entitled to remuneration for the use or sale of a license for a selection achievement, the size of and procedure for which shall be defined by agreement with the patent owner or his legal successor.

Remuneration for a creator (joint creators) shall be paid by a patent owner or his legal successor during the period of validity of a patent, unless otherwise specified by agreement on the procedure for and periods of payment of remuneration for the use of a selection achievement.

Remuneration shall be paid to a creator (joint creators) not later than six months after the expiry of the reporting period in which a selection achievement has been used.

II. PATENTABILITY OF A SELECTION ACHIEVEMENT

Article 8

Conditions for the granting of legal protection of selection achievements

A selection achievement shall be granted legal protection if it meets the following criteria: novelty, distinctness, uniformity and stability.

A selection achievement shall bear a name in accordance with the requirements of Article 13 of this Law.

Article 9

Novelty

A selection achievement shall be considered novel if, at the date of filing of an application for the grant of a patent, the seeds, plant material of the variety or the breeding material of the breed has not been sold or transferred to other persons by the creator, his heir or with their consent for exploitation:

- on the territory of the Republic of Uzbekistan – more than one year before this date;
- on the territory of another State – more than four years or, where this relates to grapes, tree, ornamental, fruit crops and forest species – more than six years before the date in question.

Article 10

Distinctness

A selection achievement at the date of filing of an application for the grant of a patent shall be clearly distinguished from any other commonly known selection achievement.

A selection achievement shall be considered commonly known at the application filing date, if the application for the grant of a patent therefor was filed in any country and, following this application, a patent was granted, or some similar form of protection provided, or the selection achievement was included in the official register of selection achievements of this country.

Common knowledge shall be established:

- in relation to a selection achievement which has become part of a commonly known level of knowledge as a result of its production, reproduction, bringing the selection achievement to a variety or breeding condition with the aim of subsequent propagation, storage and maintenance for the above-mentioned purposes;
- in relation to a selection achievement which has been offered for sale, sold, imported or exported.

Article 11

Uniformity

A selection achievement shall be considered uniform if, taking into account the features of propagation, plants of a particular variety or animals of a particular breed are uniform according to selected characteristics.

Article 12

Stability

A selection achievement shall be considered stable, if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular propagation cycle, at the end of each propagation cycle.

Article 13

Name of a selection achievement

A selection achievement shall have a name proposed by an applicant and adopted by the Patent Office.

The name of a selection achievement shall allow the selection achievement to be identified, be brief, differ from the names of existing selection achievements of the same or of a close related botanical or zoological species. It shall not consist solely of figures, lead to confusion as regards the characteristics, origin or meaning of the selection achievement, personality of the creator (joint creators), or contravene the principles of humanity and morality.

The name of a selection achievement shall be entered in the appropriate register at the same time as information on the protected selection achievement is entered therein.

If an application for the grant of a patent is filed in the Republic of Uzbekistan and other States, the name of the selection achievement in these applications shall be identical.

Any person offering for sale or selling in the Republic of Uzbekistan, or on the territory of a country with which the Republic of Uzbekistan has concluded an agreement on legal protection of selection achievements, seeds, plant material of a variety or breeding material of a breed, shall use the name of the selection achievement even after the period of validity of a patent for a selection achievement has ended, only if the rights of third parties shall not hinder such use.

III. OBTAINING A PATENT FOR
A SELECTION ACHIEVEMENT

Article 14

A patent for a selection achievement

A patent shall be granted for a selection achievement meeting the criteria of patentability and relating to botanical and zoological genera and species protectable in the Republic of Uzbekistan.

A patent for a selection achievement (hereinafter – patent) shall attest to the novelty, distinctness, uniformity and stability of the selection achievement, as well as the right of a patent owner to the name, ownership, use and disposal of the selection achievement.

The right of the patent owner shall be considered valid from the date of publication of information on the registration of the selection achievement in the Patent Office Official Gazette.

The period of validity of a patent shall be twenty years from the date of entry of a selection achievement in the appropriate register. For varieties of grapes, tree, ornamental, fruit crops, and forest species, including their tree stocks, this period shall be twenty-five years.

The period of validity of a patent may be extended at the request of the patent owner, but by not more than ten years.

Article 15

Right to a patent

The right to a patent shall belong to a creator (joint creators) or to his heir(s).

If more than one person has jointly created a single selection achievement, the right to a patent shall belong to all such persons. A refusal by one or more of them of the right to a patent shall not be extended to the others in the performance of their duties and participation in the procedure for obtaining a patent.

The right to a patent for a selection achievement created by a creator (joint creators) as a result of the performance of his (their) duties, or of a specific task, or with the knowledge and experience constituting specific features of an organization-employer, shall belong to the employer, provided this is specified by agreement between them.

If several persons have created a selection achievement independently of each other, the right to a patent shall belong to the person whose application for the grant of a patent has been filed with the Patent Office earlier, provided that the application has not been withdrawn or rejected.

A creator (joint creators), for whose selection achievement an application has been filed or a patent obtained as the result of unlawful borrowing, shall be entitled to challenge the grant of the patent or to demand that the patent should be transferred to him (them), as the patent owner(s), in accordance with judicial procedure.

Employees of the Patent Office and the specialized organizations shall not be entitled to obtain a patent, or to be referred to as the creator (joint creators), either throughout the period of their employment therein, or for a year after their employment has ceased.

Article 16

Filing an application for the grant of a patent

An application for the grant of a patent shall be filed with the Patent Office by the creator (joint creators), employer or their legal successor.

An application for the grant of a patent may be filed personally, through a patent agent, registered with the Patent Office, or through an attorney. Citizens of other States not having a permanent place of residence, and legal persons of other States, not having their main place of business in the Republic of Uzbekistan, their patent agents or attorneys shall conduct the matters relating to obtaining a patent and maintaining it in force through patent agents of the Republic of Uzbekistan. The powers of a patent agent shall be attested by a power of attorney granted to him by an applicant or by an attorney.

Article 17

Content of an application for the grant of a patent

An application for the grant of a patent shall contain:

- a request for the grant of a patent with an indication of the creator (joint creators) and person(s) in whose name the patent is requested, together with information on their place of residence or business;
- a proposed name for the selection achievement;
- a description of the selection achievement (technical questionnaire);

- photographs of samples of the selection achievement;
- documents concerning tests on the selection achievement carried out by the applicant;
- a declaration by the applicant confirming that the selection achievement has not been exploited, sold or transferred, and meets the requirements of novelty;
- a document confirming the priority of the selection achievement (where necessary);
- an obligation on the part of the applicant to submit to a specialized organization, within the prescribed period, material for testing the selection achievement;
- a power of attorney where an application is filed through a patent agent or an attorney;
- a document confirming payment of the patent fee at the prescribed level or the grounds for exemption from payment of the patent fee, and also for reducing its level.

An application for the grant of a patent shall relate to a single selection achievement.

The filing date of an application for the grant of a patent shall be established according to the date on which the Patent Office receives the documents in accordance with the requirements of the first part of this article.

The documents indicated in sub-paragraphs seven and eight of the first part of this article shall be submitted by the applicant within three months of the filing date of the application for the grant of a patent. If, within the prescribed period, the applicant does not submit these documents or does not request the extension of the period in question, the application shall be considered not to have been filed.

The requirements for the application materials for the grant of a patent shall be established by the Patent Office jointly with the specialized organizations.

The application materials for the grant of a patent shall be kept secret by the Patent Office and information on them shall not be provided during the period of formal examination of applications without the applicant's consent.

Article 18

Priority of a selection achievement

The priority of a selection achievement shall be established according to the date on which an application for the grant of a patent is filed with the Patent Office, the application being compiled in accordance with the requirements of this Law.

If identical applications for the grant of a patent have the same priority date, the patent shall be granted for the application with the earlier date of dispatch to the Patent Office or with the earlier incoming registration number.

If an application for the grant of a patent received by the Patent Office preceded an application filed by the applicant in another State (hereinafter – first application), with which the Republic of Uzbekistan has concluded an agreement on the legal protection of selection achievements, the applicant shall have the right to priority according to the first application for a period of twelve months from the filing date of that application.

In an application for the grant of a patent sent to the Patent Office, the applicant shall indicate the priority date of the first application. Within three months of the filing date of the application with the Patent Office, the applicant shall submit a copy of the first application and a translation thereof. Where these requirements are satisfied, the applicant shall be entitled not to submit additional documentation and material essential for testing within three years of the filing date of the first application.

Failure to observe the deadline in the third part of this article, and also the non-payment of the prescribed patent fees, shall lead to the non-recognition of the claimed priority.

The filing of a subsequent application for the grant of a patent, publication or use of the selection achievement which is the subject of the first application, where they do not occur during the period specified in the third part of this article, may not serve as grounds for rejecting a subsequent application. Such facts may not serve either as grounds for the emergence of certain rights of third parties.

Article 19

State examination of a selection achievement

A State examination of a claimed selection achievement shall include a formal examination of the application and an examination of patentability, consisting of an examination of novelty and tests of distinctness, uniformity and stability.

Article 20

Formal examination of an application

A formal examination of an application shall be conducted two months after the filing date of the application. During the examination, a priority date shall be established and the requisite documents shall be verified for the purposes of compliance with the stated requirements.

Within two months of the application filing date, the applicant shall be entitled, at his own initiative, to add to, clarify or correct the application materials.

If the necessary additions, clarifications or corrections have not been made within the prescribed period or the documents missing on the date on which the application for the grant of a patent was received have not been submitted, the application shall not be accepted for consideration.

A deadline missed by an applicant may be re-established by the Patent Office at the applicant's request, filed not later than six months after the deadline has expired.

On the basis of the results of the formal examination of the application, the applicant shall be informed of the Patent Office's decision.

Where he does not agree with the Patent Office's decision, an applicant shall be entitled, within three months of the date of dispatch of the decision, to appeal to the Patent Office Appeal Board (hereinafter – Appeal Board). The appeal shall be examined by the Appeal Board within two months of the date of its receipt.

An Appeal Board decision may be appealed in the courts within six months of the date of its adoption.

An application for the grant of a patent, undergoing formal examination, shall be sent by the Patent Office to the corresponding specialized organization for an examination of the patentability.

Article 21

Temporary legal protection of a selection achievement

Temporary legal protection shall be granted for a selection achievement for which protection is claimed from the date of publication of information on an application for the grant of a patent, prior to the date of entry of the selection achievement in the appropriate register.

For the period of temporary legal protection of a selection achievement, the right of the patent owner shall be extended to the applicant in accordance with Article 30 of this Law.

Temporary legal protection shall be considered not to have ensued, if a decision is taken to refuse to grant a patent, for which the possibilities of appeal have been exhausted.

A person using selection achievements claimed for protection within the period of temporary legal protection shall, at the patent owner's request, pay the latter monetary compensation, once a patent has been obtained, the level of which shall be determined by agreement with the patent owner.

Article 22

Examination of a selection achievement for the purposes of novelty

An examination of a selection achievement for the purposes of novelty shall be carried out by a specialized organization on the basis of the documents and evidence available, including the information obtained at its own initiative, and a report shall be submitted to the Patent Office on compliance or non-compliance with the criterion of novelty of the claimed selection achievement. The Patent Office shall inform the applicant in writing of the presence or absence of novelty.

Any interested person may, within six months of the date of publication of information on an application for the grant of a patent, send to the corresponding specialized organization a complaint regarding the novelty of the claimed selection achievement.

The appropriate specialized organization shall inform the applicant in writing of the receipt of a complaint. Where there is disagreement with the complaint, the applicant shall be entitled, within three months of the day on which notification is received, to send a reasoned objection to the specialized organization. That organization shall take a decision on the basis of the materials received and shall inform the person concerned and the applicant accordingly.

If a claimed selection achievement does not meet the criterion of novelty, the Patent Office shall take a decision to refuse to grant a patent.

An applicant may, within three months, appeal to the Appeal Board a decision of the Patent Office to refuse to grant a patent. The Appeal shall be examined by the Appeal Board within two months of the date of its receipt.

The Appeal Board decision may be appealed in the courts within six months of the date of its adoption.

Article 23

Testing of a claimed selection achievement

Testing of a selection achievement shall consist of tests of distinctness, uniformity and stability.

Testing of a claimed selection achievement shall be carried out according to the methods and within the periods established by the specialized organizations at State variety-testing stations, State variety-testing installations and other organizations, a list of which is approved by the Cabinet of Ministers of the Republic of Uzbekistan.

An applicant shall submit seeds, plant material or breeding material in the quantities required for testing purposes, to the address and within the deadlines prescribed by a specialized organization.

A specialized organization shall be entitled to use the results of testing provided by an applicant, and also by enterprises, institutions and organizations of the Republic of Uzbekistan, and competent bodies of other States.

On the basis of the results of testing, a specialized organization shall issue a conclusion on whether the selection achievement meets the patentability criteria.

If the selection achievement meets the patentability criteria and its name meets the established requirements, a specialized organization shall prepare an official description of the selection achievement, and the Patent Office shall decide to grant a patent.

If the selection achievement does not meet the patentability criteria, the Patent Office shall decide to refuse to grant a patent.

Within three months, an applicant may appeal a Patent Office decision with the Appeal Board. The appeal shall be examined by the Appeal Board within two months of it being received, unless additional testing of the selection achievement is required.

An Appeal Board decision may be appealed in the courts within six months of the date of its adoption.

Article 24

Withdrawal of an application for the grant of a patent

An application for the grant of a patent may be withdrawn at the written request of the applicant, prior to a decision being taken on whether to grant or to refuse to grant the patent.

Where there are several applicants, an application for the grant of a patent may be withdrawn only with the consent of each of the applicants.

Article 25

Registration of a selection achievement

After a decision has been taken to grant a patent, the Patent Office shall enter a selection achievement in the appropriate register.

Article 26

Official publication of information on a selection achievement

Information on applications for the grant of a patent, accepted for consideration, registered selection achievements and legally significant acts of the Patent Office, full descriptions of selection achievements, registered agreements on the transfer of rights and licensing agreements, and also other communications relating to selection achievements, shall be published in the Patent Office Official Gazette.

Article 27

Grant of a patent

A patent shall be granted by the Patent Office on behalf of the Republic of Uzbekistan.

Any person shall be entitled, within six months of the date of publication of information on the registration of a selection achievement, to file an objection to the grant of a patent.

An objection to the grant of a patent shall be examined by the Appeal Board with the participation of representatives of the appropriate specialized organization, within six months of its filing date.

The Patent Office shall grant a patent six months after the date of publication of information on the registration of a selection achievement, provided that no objections to the grant of the patent have been filed or that such objections were rejected.

Where a patent is requested in the name of several persons, one patent shall be granted to those persons.

The form of the patent and content of the information contained therein shall be determined by the Patent Office.

At the request of the patent owner, the Patent Office shall correct obvious and technical errors occurring in a granted patent.

Once a patent has been obtained, the patent owner shall send the requisite material of the protected selection achievement for deposit.

Article 28

Preservation of a selection achievement

A patent owner shall maintain a variety or breed during the period of validity of a patent such that the features indicated in the official description of the variety or breed, drafted at the time of their entry in the appropriate register, are preserved.

A patent owner shall, at the request of the specialized organizations and/or the Patent Office send seeds of the variety or the breeding material for verification tests to be carried out, and shall provide the possibility for an on-site inspection to be carried out.

Article 29

Patent fees

Patent fees shall be charged for the filing of an application for the grant of a patent, the conducting of examinations and tests of a claimed selection achievement, the grant of a patent, its maintenance in force, and also the performance of other legally significant acts connected with the legal protection of a selection achievement. The patent fees shall be paid to the Patent Office.

The levels of and periods for payment of patent fees, grounds for exemption from the payment thereof, reduction of the levels or the reimbursement thereof, and also the procedure for the use of patent fees shall be established by the Cabinet of Ministers of the Republic of Uzbekistan.

Patent fees shall be paid by the applicant, patent owner and other interested party.

In order to pay the patent fees for maintaining a patent in force, the patent owner shall be granted a special period of six months, provided that an additional patent fee is paid.

If a patent fee for maintaining a patent in force and an additional patent fee are not paid during the special period, the validity of the patent shall be terminated from the day of non-payment of the patent fee within the prescribed period.

IV. RIGHT OF THE PATENT OWNER

Article 30

Exclusive right of a patent owner

The exclusive right to use a selection achievement at his own discretion shall belong to a patent owner.

An interested party shall obtain from a patent owner permission to carry out, with the seeds or breeding material of a protected selection achievement, the following acts:

- production and reproduction (multiplication);
- bringing up to the condition of a variety or breeding level;
- offering for sale;
- selling and other forms of marketing;
- exporting from the territory of the Republic of Uzbekistan;
- importing into the territory of the Republic of Uzbekistan;
- stocking for the above purposes.

A patent owner shall be entitled, at his own discretion, to make the granting of permission dependent on certain conditions and/or limitations.

The right of a patent owner shall also be extended to plant material which was produced from seeds, planting material of a variety, or animals for sale, which were produced from bred animals, introduced into civilian circulation without the patent owner's permission.

It is essential to obtain the permission of a patent owner for the performance of the acts indicated in the second part of this article, with seeds or planting material of a variety, or breeding material of a breed, which:

- essentially inherit the features of a protected variety or breed, if this protected variety or breed is not a variety or breed essentially inheriting the features of another variety or breed;
- are not clearly distinguished from a protected variety or breed, in accordance with Article 10 of this Law;
- require repeated use of a protected variety or breed.

A variety or breed shall be deemed to be essentially inheriting the features of another variety or breed (initial), if they:

- inherit the most essential characteristics of the initial variety or breed, which themselves inherit the most essential characteristics of the initial variety or breed,

thereby preserving the essential characteristics reflecting a genotype or combination of genotypes of the initial variety or breed;

- are clearly distinguished from the initial variety or breed and correspond to the genotype or combination of genotypes of the initial variety or breed, excluding the deviations caused by the application of various methods – selection of a natural or induced mutant, selection of an individual mutant from plants or animals of the initial variety or breed, backcross, or transformation of variety or breed by genetic engineering methods.

Interaction involved in the use of a selection achievement protected by a patent belonging to several patent owners shall be defined by agreement between them. In the absence of such agreement, each patent owner may use a protected selection achievement at his own discretion, but shall not be entitled to provide an exclusive license therefor or to transfer a patent to another person, without the consent of the other patent owners.

Article 31

Exceptions to the right of a patent owner

The following acts, performed with a protected selection achievement, shall not be recognized as an infringement of the right of a patent owner:

- use for personal and non-commercial purposes;
- use for experimental purposes;
- use as an initial resource for breeding of other varieties or breeds;
- use by an enterprise or farm of variety seeds and breeding material, obtained from a patent owner, for reproduction for a two-year period on the territory of this enterprise or farm.

Article 32

Exhaustion of the right of a patent owner

The right of a patent owner shall not be extended to acts relating to any material of a protected variety or breed, following their introduction into civilian circulation by means of sale or other forms of marketing on the territory of the Republic of Uzbekistan by the patent owner himself or with his consent, or export for reprocessing and consumption purposes to countries where varieties or breeds of the corresponding botanical or zoological type are not protected.

The conditions of the first part of this article shall not be extended to varieties or breeds, if the sale and other forms of marketing are intended for subsequent propagation of a particular variety or breed, or are linked to the export of plant material of a variety or breeding material of a breed, for the

purposes of propagation in countries where varieties or breeds of the corresponding genera or species are not protected.

Article 33

Infringement of the right of a patent owner

An infringement of the right of a patent owner shall be recognized as unauthorized use for:

- production and reproduction (propagation) of a selection achievement;
- bringing a selection achievement up to a variety or breeding level;
- offering for sale, selling and other introduction into civilian circulation of a product created by using a protected selection achievement;
- stocking, importing and exporting;
- disclosure of information constituting a commercial secret concerning a selection achievement, excluding the cases where the information is disclosed to the Appeal Board or to a person carrying out official procedures aimed at protecting the rights of an applicant or patent owner.

V. TERMINATION OF VALIDITY OF A PATENT

Article 34

Recognition of a patent as invalid

A patent may, throughout its period of validity, be challenged and recognized as invalid in cases where:

- at the date of grant of the patent, a selection achievement did not meet the criterion of novelty or distinctiveness;
- the patent was granted on the basis of uncorroborated data concerning the uniformity and stability of the selection achievement, provided by the applicant.

Any person may lodge an appeal with the Appeal Board concerning recognition of the patent as invalid on the grounds provided for in the first part of this article.

The Appeal Board shall send a copy of an appeal to the patent owner who, within three months, shall provide a reasoned response.

The Appeal Board shall take a decision on an appeal within six months, unless there is a need for additional testing of the selection achievement.

An Appeal Board decision may be appealed in the courts within six months of the date of its adoption.

Article 35

Premature termination of the validity of a patent

The validity of a patent shall be terminated prematurely where:

- the patent fees for maintaining the patent in force are not paid within the prescribed period;
- the patent owner submits a request to the Patent Office concerning the refusal of the patent.

Information on the premature termination of the validity of a patent shall be published in the Patent Office Official Gazette.

Article 36

Cancellation of a patent

A patent shall be cancelled if:

- a selection achievement no longer meets the criteria of uniformity and stability;
- a patent owner has not provided, contrary to a request by a specialized organization or the Patent Office, and within twelve months, seeds, planting or breeding material, documents and information which are essential for verifying the integrity of a selection achievement, or has not provided the opportunity to inspect a selection achievement on site for these purposes;
- the name of a selection achievement has been cancelled and the patent owner has not proposed another suitable name.

Information on the cancellation of a patent shall be published in the Patent Office Official Gazette.

Article 37

Refusal of a patent

A patent owner shall, in accordance with a written request, be entitled to refuse a patent.

The refusal of a patent by one of several patent owners shall not lead to the validity of the patent being terminated.

The refusal of a patent shall enter into force from the date on which the Patent Office receives a written request from the patent owner.

A patent owner shall inform the creator of his intention to refuse a patent. In this case, the creator shall have a right of priority to own the patent.

If a patent is the subject of a licensing agreement, refusal of the patent shall be possible only with the consent of the license owner, unless otherwise provided for by agreement.

VI. FINAL PROVISIONS

Article 38

Transfer of rights to a selection achievement

The right to obtain a patent, rights stemming from the registration of an application for the grant of a patent with the Patent Office, and also rights stemming from a patent may be transferred to any natural or legal person.

Rights may be transferred on the basis of an agreement to assign rights or a licensing agreement, and also by means of inheritance in accordance with legislation.

An agreement to assign the rights to a selection achievement and also a licensing agreement shall be subject to registration with the Patent Office.

Article 39

Provision of the right to use a selection achievement

A variety or breed for which a patent is granted may be the subject of a licensing agreement.

Any natural or legal person who is not a patent owner shall be entitled to use a selection achievement protected by a patent, only with the patent owner's permission on the basis of a licensing agreement.

A patent owner may submit to the Patent Office a request to provide any person with the right to use a selection achievement (open license). In this case, the patent fee for maintaining a patent in force shall be reduced by fifty per cent.

A request by a patent owner to provide the right to an open license shall not be withdrawn.

A person expressing the wish to acquire an open license shall conclude a licensing agreement with the patent owner.

A patent owner may transfer the right to use a selection achievement, and grant an exclusive or non-exclusive (simple) license.

In the case of an exclusive license, a licensee shall obtain the exclusive right to use a selection achievement within the limits set by a licensing agreement, while the licensor shall retain the right to use the selection achievement insofar as it is not transferable to the licensee.

In the case of a non-exclusive (simple) license, a licensor shall grant a licensee the right to use a selection achievement and shall retain all the rights stemming from the patent, including to provide a license for other persons.

Article 40

Compulsory license

If a patent owner does not use a selection achievement in the Republic of Uzbekistan for a period of three years from the date of grant of a patent and refuses to conclude a licensing agreement, and if the use of the selection achievement in question affects public interests, a person wishing to use this selection achievement may make a request to the courts to grant him a compulsory license.

A compulsory license shall be granted in the form of a non-exclusive (simple) license and shall give its owner the right to obtain from the patent owner original seeding, planting or breeding material.

A compulsory license shall be granted only to a person who may guarantee the use of a selection achievement by accessible means and in accordance with a license.

A compulsory license shall not prevent a patent owner from using a protected selection achievement or from granting a license for its use to another person.

Article 41

Use of a selection achievement

A selection achievement shall be recognized as used, if seeds, planting or breeding material produced, reproduced, brought up to a variety or breeding level or subsequent propagation, according to morphological, physiological and other features, corresponds to the information contained in the official description of a protected selection achievement.

Article 42

Patenting of selection achievements in other States

Natural and legal persons of the Republic of Uzbekistan shall be entitled to patent selection achievements in other States, in accordance with the procedure established by legislation.

Article 43

Rights of foreign natural and legal persons

Foreign natural and legal persons shall enjoy the rights provided for by this Law, on an equal footing with natural and legal persons of the Republic of Uzbekistan, or on the basis of the principle of reciprocity.

Article 44

Settlement of disputes

Disputes relating to the creation, legal protection and use of selection achievements shall be settled in accordance with the procedure established by legislation.

Article 45

Liability for infringement of the legislation on selection achievements

Persons who have infringed the legislation on selection achievements shall be liable in accordance with the established procedure.

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UPOV GAZETTE AND NEWSLETTER
(as of December 2004)**

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¹ Enacted by Czechoslovakia

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