

# Industrial Property

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ORGANIZATION (WIPO)

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# WORLD INTELLECTUAL PROPERTY ORGANIZATION

## WIPO Convention

### I. Ratification

#### TUNISIA

The Government of Tunisia deposited on August 28, 1975, its instrument of ratification of the Convention Establishing the World Intellectual Property Organization (WIPO).

By virtue of Article 29<sup>bis</sup> of the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works, Tunisia, which was not bound by Articles 22 to 38 of the Stockholm Act (1967) of the said Convention, having ratified the Paris Act (1971), fulfills the condition set forth in Article 14(2) of the WIPO Convention.

Pursuant to Article 15(2), the WIPO Convention will enter into force with respect to Tunisia on November 28, 1975.

WIPO Notification No. 82, of August 29, 1975.

### II. Accession

#### CONGO

The Government of the Congo deposited on September 2, 1975, its instrument of accession to the WIPO Convention.

The Congo has fulfilled the condition set forth in Article 14(2) of the WIPO Convention by concurrently acceding to the Stockholm Act (1967) of the Paris Convention for the Protection of Industrial Property and ratifying the Paris Act (1971) of the Berne Convention as provided for in Article 29<sup>bis</sup> of that Act.

Pursuant to Article 15(2), the WIPO Convention will enter into force with respect to the Congo on December 2, 1975.

WIPO Notification No. 83, of September 5, 1975.

## INTERNATIONAL UNIONS

### Paris Convention

#### Accession to the Stockholm Act

#### CONGO

The Government of the Congo deposited on September 2, 1975, its instrument of accession to the Stockholm Act of

July 14, 1967, of the Paris Convention for the Protection of Industrial Property of March 20, 1883.

Pursuant to the provisions of Article 20(2)(c) and (3), the Stockholm Act of the Paris Convention will enter into force with respect to the Congo on December 5, 1975.

Paris Notification No. 76, of September 5, 1975.

# WIPO MEETINGS

## ICIREPAT

### Technical Coordination Committee

#### Fourteenth Session

(Geneva, June 3 to 6, 1975)

#### Note\*

The fourteenth session of the Technical Coordination Committee (TCC) of ICIREPAT<sup>1</sup> was chaired by Mr. G. Borggård, Director General of the Swedish Patent Office.

A list of participants follows this Note.

**Reorganization of ICIREPAT.** The TCC recommended to the Plenary Committee that the present structure of ICIREPAT on a three-tier basis should be retained, and that with effect from January 1, 1976, TCC membership should be open to all participating countries of ICIREPAT. The TCC recommended further that one of the two yearly TCC sessions be held directly before the yearly Plenary Committee session. The TCC finally suggested that in order to indicate more accurately its function, it should be renamed "Technical Steering Committee."

**Suggestions of the Technical Committees.** The TCC adopted the revised versions of Chapters 4.1.3 and 4.1.4 of the ICIREPAT Manual: "ICIREPAT Procedures for the Development and Introduction of Systems" and "Guide for the Implementation of Systems," as well as "General Guidelines for the Preparation of Abstracts," prepared by the Technical Committee for Search Systems (TCSS).

The TCC adopted a "Recommended standard for 35 mm roll microfilm in 8-up configuration for exchange between Patent Offices," a small amendment to the "Recommended standard for 16 mm roll microfilm for exchange between Patent Offices," and an amendment of the definition given of the terms "publication" and "published" in paragraph 6 of Standard SI.8, prepared by the Technical Committee for Standardization (TCST).

**Long-Term Program for Development of an Integrated System for Patent Search.** Because of the sudden illness of the representative of the Soviet Union on the TCC, the TCC acceded to the request of the Soviet Union to postpone discussion of its proposal for a long-term program for development of an integrated system for patent search till the next session (Geneva, December 10 to 12, 1975) of the TCC. In view of the importance of this question, the TCC decided that its

next session should be entirely devoted to the discussion of the long-term program proposals of the Soviet Union.

**Additional Items of the Program of the TCC for 1975.** The TCC decided that the two additional items on its 1975 program, proposed by Cuba, namely:

- study the usefulness of preparing guidelines for improving titles of inventions on patent documents,
  - promote the preparation of recommendations indicating how applications for patents and patent documents should be numbered,
- be included in the program for 1976 of the Technical Committee for Standardization (TCST).

**ICIREPAT Notes.** The TCC recommended to the Plenary Committee that the publication of ICIREPAT Notes be continued under the condition that:

- a strict selection was made of articles relevant to patent documentation problems and Patent Office operations,
- the International Bureau did not commit itself in writing abstracts for the selected articles,
- the cost of the publication of ICIREPAT Notes be kept to a minimum.

**Annual Technical Reports.** The TCC noted the Annual Technical Reports received from Canada, Cuba, Czechoslovakia, Finland, the German Democratic Republic, Germany (Federal Republic of), the Netherlands, Norway, Sweden, Switzerland, the Soviet Union, the United Kingdom, the United States of America and the International Patent Institute (IIB). The TCC discussed the question whether guidelines should be drawn up for the preparation of Annual Technical Reports and decided that no guidelines were needed in this respect. The TCC recommended that Annual Technical Reports be presented in a structured way and that each topic discussed in these reports should be clearly distinguishable, for instance, by the insertion of an appropriate sub-title.

**ICIREPAT Program for 1976.** The TCC prepared a draft ICIREPAT Program for 1976 based on comments and observations received from various Offices, and the proposals formulated by the Plenary Committee at its sixth (1974) session.

### List of Participants\*

#### I. Participating Countries

France: D. Cuvelot. Germany (Federal Republic of): W. Weiss. Sweden: G. Borggård; L. J. Björklund. United Kingdom: D. G. Gay. United States of America: E. A. Hurd.

\* This Note has been prepared by the International Bureau.

<sup>1</sup> The Note on the thirteenth session of the TCC was published in *Industrial Property*, 1975, p. 59.

\* A list containing the titles and functions of the participants may be obtained from the International Bureau.

## II. Intergovernmental Organizations

International Patent Institute (IIB): J. A. H. van Voorthuizen; F. C. R. de Laet. Commission of the European Communities (CEC): H. Bank.

## III. Chairmen of Technical Committees

Chairman of the Technical Committee for Search Systems (TCSS): D. G. Gay.

## IV. Officers

Chairman: G. Borggård (Sweden); Vice-Chairman: J. A. H. van Voorthuizen (IIB); Secretary: P. H. Claus (WIPO).

## V. WIPO

K. Pfanner (*Deputy Director General*); P. H. Claus (*Technical Counsellor, Head, ICIREPAT Section, Industrial Property Division*); H. Konrad (*Technical Counsellor, ICIREPAT Section*); V. N. Evgeniev (*Technical Assistant, ICIREPAT Section*).

# LEGISLATION

## BENELUX

### I

## PROTOCOL

concluded between Belgium, Luxembourg and the Netherlands for the amendment of the Executive Rules of the Uniform Benelux Trademark Law

(Brussels, November 21, 1974)

### Article 1

The Executive Rules<sup>1</sup> of the Uniform Benelux Trademark Law<sup>2</sup>, annexed to the Protocol of July 31, 1970, concluded under Article 2(1) of the Benelux Convention Concerning Trademarks<sup>3</sup>, are amended as follows:

1. Article 1(1)(d) is replaced by the following provision:

"(d) mention, where applicable, that the mark or part of the mark is in three dimensions (three-dimensional mark), and that it is constituted among other things by the shape of the product or of its packaging;"

2. A paragraph (6), worded as follows, is added to Article 1:

"6. Where colors are claimed as a distinctive feature of the mark, the applicant may attach a description of the elements of the mark with an indication of the corresponding colors. This description shall not exceed 50 words."

3. Subparagraphs (b) and (d) of Article 2 are replaced by the following provisions:

"(b) in the case of a collective mark, regulations for use and control, the number of copies of which shall be laid down in the Administrative Regulations;

.....

(d) proof of payment of the fees or charges provided for in Article 28(1)(a), (c), (e) or (k);"

4. Paragraph (3) of Article 3 is replaced by the following provision:

"3. Where the Articles referred to in paragraph (1) above have not been complied within the prescribed period, the file received shall be shelved and the fees and charges paid, reduced by 735 francs or 50 florins, shall be refunded, with the exception of those provided for in Article 28(1)(e), where the examination for anticipation has begun."

5. Article 3 is completed by a paragraph (5) with the following wording:

"5. However, failure to rectify the description provided for in Article 1(6), or failure to pay the fee provided for in Article 28(1)(k), shall result only in the description being regarded as not having been submitted."

6. In the last sentence of paragraph (2) of Article 4, the indication of subparagraph (d) is replaced by an indication of subparagraph (f).

7. Paragraph (2) of Article 7 is replaced by the following provision:

"2. If no confirmation of the maintenance of the filing is received within this period, the fees paid under Article 28(1)(a) or (c) shall be refunded after deduction of 735 francs or 50 florins."

8. Paragraph (1) of Article 8 is completed by the following subparagraph:

"(e) the numbers of the classes of the international classification of goods provided for in the Nice Agreement of

<sup>1</sup> *Industrial Property*, 1970, p. 369.

<sup>2</sup> *Industrial Property*, 1969, p. 307.

<sup>3</sup> *Industrial Property*, 1969, p. 305.

June 15, 1957, in which the goods appearing in the list of goods of the mark filed are placed."

9. Article 11 is replaced by the following provisions:

"1. An application for renewal of the registration of a Benelux filing shall be effected by the presentation to the Benelux Office of a form, signed by the applicant or his agent, giving the following particulars.

- (a) the name of the proprietor of the mark;
- (b) his address and, where applicable, the address referred to in Article 18(3);
- (c) a reproduction of the mark; such reproduction shall fulfill the requirements of the Administrative Regulations;
- (d) if it is limited in relation to the most recent publication, the list of goods, worded in precise terms and, as far as possible, in the terms of the alphabetical list of the international classification of goods provided for in the Nice Agreement of June 15, 1957; the goods shall, in all cases, be grouped according to the classes and in the order of classes of the said classification;
- (e) the most recent registration number;
- (f) in the case of a rectification of or addition to the indications relating to a filing, as provided for in Article 30 of the Uniform Law, the information required by Article 32(1) (a) and (b) of these Rules.

2. The pattern and number of copies of the form provided for in paragraph (1) shall be determined by the Administrative Regulations.

3. The application shall be accompanied by the following documents:

- (a) proof of payment of the fees provided for in Article 28(1)(b), (d) or (k);
- (b) a power of attorney, where the application for renewal is made through an agent;
- (c) a number, to be determined by the Administrative Regulations, of reproductions of the mark in color, where the proprietor has claimed color or colors as a distinctive feature of the mark."

10. Article 12(2) is replaced by the following provision:

"2. Where the application for renewal is not put in order within the period mentioned above, the applicant shall be informed that the registration will not be renewed, and the fees paid shall be refunded to him after deduction of 735 francs or 50 florins."

11. Article 13(1) is replaced by the following provisions:

- "1. The Benelux Office shall register renewals, mentioning:
  - (a) the serial number of the registration;
  - (b) the date of renewal and the number of the filing;
  - (c) the information required by Article 1, due account being taken of the information required by Article 11(1), and, where applicable, the claim of a right of priority and the information required by Article 4(1);
  - (d) the date on which registration expires;
  - (e) the numbers of the classes of the international classification of goods provided for in the Nice Agreement of

June 15, 1957, in which the goods appearing in the list of goods of the mark filed are placed."

12. The heading of Chapter V is amended as follows:

"Request for International Registration and for Renewal Thereof"

13. Paragraph (1) of Article 16 is replaced by the following provisions:

"1. Any person fulfilling the conditions provided for in the Madrid Agreement Concerning the International Registration of Marks who wishes to obtain protection for his mark in other countries party to the Agreement shall submit to the Benelux Office a request for international registration or territorial extension of protection. The renewal of an international registration may be applied for either through the intermediary of the Benelux Office or directly with the International Bureau."

14. In the second sentence of Article 17(1) the words "made by a recognized translator" are deleted.

15. In Article 19(1), subparagraph (b) is replaced by the following provision:

"(b) a reproduction of the mark and, where applicable, mention of the color or colors thereof and of the fact that the mark or part of the mark is in three dimensions (three-dimensional mark), constituted among other things by the shape of the mark or of its packaging."

16. The Dutch text of Article 22(1) reads as follows:

"1. De bevoegde instantie bevestigt de ontvangst van elk stuk, dat is afgegeven of per post is besteld en dat bestemd is voor inschrijving in het Benelux-register of in het register van de internationale inschrijvingen gehouden bij het Internationaal Bureau voor de bescherming van de industriële eigendom."

17. Paragraph (1) of Article 24 is replaced by the following provision:

"1. The Benelux Office shall supply interested parties with information or copies from the Benelux Register, subject to payment of the charges specified in Article 28."

18. Paragraph (2) of Article 27 is replaced by the following provision:

"2. The publication shall contain, in the language of registration only:

- (a) all the registered particulars relating to Benelux filings required by Articles 8, 10 and 13;
- (b) all the registered particulars relating to international filings required by Article 14(2) and (4)."

19. Article 28 is replaced by the following provisions:

"1. The fees and charges for Benelux filings shall be calculated on the basis of the various transactions mentioned below:

- (a) filing of an individual mark:
  - (i) basic fee 3,116 francs or 212 florins;
  - (ii) additional fee 559 francs or 38 florins for each class of goods in excess of the third class of the international classification in which the goods are classified;

(b) renewal of the registration of the filing of an individual mark:

- (i) basic fee 3,440 francs or 234 florins;
- (ii) additional fee 617 francs or 42 florins for each class of goods in excess of the third class of the international classification in which the goods are classified;

(c) filing of a collective mark:

- (i) basic fee 5,674 francs or 386 florins;
- (ii) additional fee 1,419 francs or 96.50 florins for each class of goods in excess of the third class of the international classification in which the goods are classified;

(d) renewal of the registration of the filing of a collective mark:

- (i) basic fee 6,262 francs or 426 florins;
- (ii) additional fee 1,566 francs or 106.50 florins for each class of goods in excess of the third class of the international classification in which the goods are classified;

(e) examination provided for in Article 6(B) or Article 9 (1) of the Uniform Law:

- (i) basic fee 1,470 francs or 100 florins;
- (ii) additional fee 147 francs or 10 florins for each class of goods in excess of the third class of the international classification in which the goods are classified;
- (iii) additional fee 294 francs or 20 florins for a collective mark;

(f) registration of the special declaration relating to priority referred to in Article 6(D) of the Uniform Law:

294 francs or 20 florins per mark;

(g) registration of assignment or transfer:

588 francs or 40 florins;

where the registration concerns several marks:

294 francs or 20 florins for each additional mark;

(h) registration or cancellation of a license:

588 francs or 40 florins;

where the registration or cancellation concerns several marks in respect of which the license is granted to one and the same person:

294 francs or 20 florins for each additional mark;

(i) registration of change of name or address of proprietor or licensee, or of change of postal address:

220 francs or 15 florins;

where the registration concerns several marks belonging to the same proprietor or assigned to the same licensee:

110 francs or 7.50 florins for each additional mark;

(j) registration of a limitation of the list of goods except in the case of renewal of registration:

588 francs or 40 florins;

(k) additional fee 735 francs or 50 florins for the publication of the description provided for in Article 1(6);

(l) registration of a change of postal address as a result of removal from the address at which domicile has been elected.

2. The fees for international filings shall be calculated on the basis of the various transactions mentioned below:

registration or cancellation of a license:

588 francs or 40 florins;

where the registration or cancellation concerns several marks in respect of which the license is granted to one and the same person:

294 francs or 20 florins for each additional mark.

3. The transactions mentioned below shall be subject to payment of fees or charges to be determined as follows:

(a) information referred to in Article 24(1):

426 francs or 29 florins, rising by 735 francs or 50 florins per hour when the time spent on search and collation of data exceeds one hour;

(b) copies referred to in Article 24(1):

19 francs or 1.30 florins per page;

(c) certified copies referred to in Article 24(1):

191 francs or 13 florins;

(d) priority documents referred to in Article 24(2):

294 francs or 20 florins;

(e) requests for international registration or renewal of international registration:

985 francs or 67 florins;

(f) correction, after registration, of drafting errors attributable to the proprietor, at the latter's request:

220 francs or 15 florins;

if the correction affects several filings belonging to the same proprietor:

110 francs or 7.50 florins for each additional filing.

4. The additional fee payable under Article 12(1) shall be 294 francs or 20 florins.

5. Payment shall be effected according to the procedure established by the Administrative Regulations."

20. Article 29 is replaced by the following provisions:

"The price of the *Recueil des Marques Benelux* shall be 294 francs or 20 florins per issue.

Annual subscription shall be 2,940 francs or 200 florins.

The aforementioned prices shall be increased by 29 francs or 2 florins per issue and 294 francs or 20 florins per annual subscription for deliveries outside Benelux territory.

Methods of payment shall be determined by the Administrative Regulations."

21. Paragraphs (1) and (3) of Article 31 are replaced by the following provisions:

"1. The Executive Board may adapt the rates established by these Rules in proportion to increases in the operating costs of the Benelux Office. Such adaptation may not be carried out more than once annually.

.....

3. New rates shall be published in the Official Gazette of each Benelux country and in the *Recueil des Marques Benelux*; they shall enter into force on the date set by the Executive Board, and not sooner than the date of the most recent publication in an Official Gazette."

## Article 2

This Protocol shall enter into force on January 1, 1975.

## II

# Administrative Regulations of the Uniform Benelux Trademark Law

(The Hague, October 29, 1974)

The Executive Board of the Benelux Trademark Office

.....

hereby decides to abrogate the Administrative Regulations of November 27, 1970<sup>1</sup>, with effect from January 1, 1975, and to replace them with the present Regulations:

## Article 1

1. The pattern of the forms (in format A4), referred to in Articles 1(2) and 11(2) of the Executive Rules, for filing, renewal of registration of a filing and renewal of registration of a filing with a claim to acquired rights is contained in the Annexes to these Regulations<sup>2</sup>.

2. The forms shall be submitted in quadruplicate.

## Article 2

1. In the forms referred to in Article 1, word marks shall be written in capital letters.

2. Marks requiring a particular typeface or special form of writing, figurative marks, marks in color and marks entirely or partly in three dimensions, constituted among other things by the shape of the article or of its packaging, shall be reproduced in black print on white paper and submitted in fifteen copies, four of which shall be affixed to the forms.

3. The reproductions referred to in paragraph (2) shall be photographic or graphic reproductions of the mark. Photographic reproduction shall consist of a direct, clear and well-contrasted black-and-white photograph; it shall be printed on glazed white rectangular paper. Graphic reproduction shall consist of a clear, well-contrasted reprographic copy in black on white paper.

4. Where color or colors are claimed as a distinctive feature of the mark, twenty reproductions in color of the mark shall in addition be submitted with the filing.

5. The length and width of the reproductions referred to in paragraph (2) may not be less than 15 millimeters (0.6 inches) nor more than 10 centimeters (3.9 inches). Where the mark consists of several separate parts, each of such parts shall conform to the dimensions mentioned above. The parts shall be assembled and pasted to one sheet of paper of format A4.

6. The dimensions of the reproductions referred to in paragraph (4) may not exceed the length and width of format A4.

## Article 3

The regulations referred to in Article 2(b) of the Executive Rules shall be submitted in triplicate.

## Article 4

1. The pattern of the forms (in format A4), referred to in Article 16(2) of the Executive Rules, for international registration, renewal of international registration and territorial extension of protection is contained in the Annexes to these Regulations<sup>3</sup>.

Where the list of goods contained in the request for international registration is in Dutch, it shall be accompanied by a French translation.

2. The forms and the translation shall be submitted in quadruplicate.

## Article 5

Any application for modifications or additions to the Benelux Register or to the International Register of the International Bureau for the Protection of Industrial Property shall be submitted in triplicate. Letters or communications addressed to the Benelux Office or to national Offices shall be sent in duplicate.

## Article 6

Acknowledgment of receipt of any document intended for registration in the Benelux Register or in the International Register of the International Bureau for the Protection of Industrial Property shall be effected by returning one copy of the document or of the accompanying letter, stamped according to Article 22 of the Executive Rules.

## Article 7

If a general power of attorney is exercised, a copy of such power shall be produced at the time of all transactions.

## Article 8

1. The Benelux Office and the services of national Offices shall be open to the public, for transactions affecting the date of Benelux filings, from Monday to Friday, from 10 a. m. to 12 noon and from 2 p. m. to 4 p. m., except on the following days: January 1, Good Friday, Easter Monday, April 30, May 1, Ascension Day, Whitmonday, June 23, July 21, August 15, November 1, 2, 11 and 15, and December 25 and 26.

2. If the Benelux Office and the services of national Offices are also closed at other hours or on other days than those specified above, a notice shall be made in the *Recueil des Marques Benelux*.

## Article 9

1. The payment of fees or charges due under Article 28 of the Executive Rules, for transactions carried out at the Benelux Office or at national Offices, may be effected in any of the following ways:

(a) by transfer or payment to the postal cheque account or bank account of the Benelux Office in the countries where the transactions are carried out;

(b) by a written request — in duplicate — for the amount to be debited to a current account opened by the applicant or his agent with the Benelux Office. In this case the holder of

<sup>1</sup> *Industrial Property*, 1971, p. 71.

<sup>2</sup> These Annexes are not published here.

<sup>3</sup> These Annexes are not published here.



the account shall receive at least quarterly a statement of the payments made and of the balance of the account.

2. Payment for issues of the *Recueil des Marques Benelux* and for annual subscriptions shall be effected by the means provided for in paragraph (1).

3. Every payment shall state clearly and completely the object of the payment, specifying, where applicable, each transaction.

4. The payments referred to in paragraph (1) shall precede each transaction, subject to Articles 3 and 12 of the Executive Rules. Proof of payment must be produced at the time of each transaction at the Benelux Office or the national Offices. The following shall be considered proof of payment:

(a) the document obtained from the postal service, postal cheque office or bank, or a copy of such document, evidencing that the transfer or payment has in fact been made;

(b) the written request for the amount to be debited to the current account with the Benelux Office, where there are sufficient funds in the current account.

#### Article 10

These Regulations shall enter into force on January 1, 1975.

### GHANA

#### Textile Designs (Registration) Decree, 1973

(of September 12, 1973)

##### *Register of Textile Designs*

1. — The Registrar shall maintain for the purposes of this Decree a register to be known as the Register of Textile Designs, in this Decree referred to as "the Register."

##### *Textile designs registrable under the Decree*

2. — (1) Subject to the other provisions of this Decree, a textile design may, upon application made by the person claiming to be the proprietor, be registered under this Decree in respect of any textile article or textile articles specified in the application.

(2) Subject to the other provisions of this Decree, a textile design shall not be registered—

- (a) if it has been copied exactly from a design belonging to a registered proprietor;
- (b) if it is similar to any textile design in such a way as to be likely to mislead purchasers in Ghana or to damage the business of any registered proprietor of a textile design;
- (c) if it differs from another textile design only in immaterial details or in features which are variants commonly used in the trade; or
- (d) if the design is substantially made up of well-known indigenous traditional motifs.

##### *Application for Registration*

3. — (1) An application for the registration of a textile design shall be made on the prescribed form and shall be lodged with the Registrar in the prescribed manner.

(2) For the purpose of deciding whether a textile design is registrable the Registrar may make such searches, if any, and request such information as he may think fit.

(3) Subject to the provisions of this Decree, the Registrar may refuse any application for registration of a textile design, or may accept it absolutely or subject to such amendments, modifications, limitations or conditions, if any, as he may think fit.

(4) Where separate applications are made by different persons to be registered as proprietors respectively of textile designs that are identical or are so similar as to be likely to mislead purchasers in Ghana if used by more than one proprietor, the Registrar shall, after such investigations as to authorship of the design as he may think fit or where there is no evidence to establish authorship, grant registration to the applicant who first lodged his application with the Registrar.

(5) In the case of refusal or conditional acceptance, the Registrar shall, if required by the applicant, state in writing the grounds of his decision, and the materials used by him in arriving thereat and the decision shall be subject to appeal to the High Court, in this Decree referred to as "the Court."

##### *Disclaimer*

4. — The Registrar may, for the purposes of section 3, request an applicant to disclaim part or parts of a textile design submitted for registration.

##### *Associated Textile Designs*

5. — Where a textile design which is the subject of an application for registration differs from another textile design of the same proprietor that is registered or is the subject of a pending application for registration only in immaterial details or in features which are variants used in the trade, or is similar to such other design in such a way as to be likely to mislead purchasers in Ghana if used by a person other than the proprietor, the Registrar shall not refuse the application but shall require that the textile design be entered on the Register as associated textile designs:

Provided that the period of copyright in the design shall not extend beyond the expiration of the original registered design.

##### *Notice of application to be published in the Gazette*

6. — (1) When an application for registration of a textile design has been accepted, whether absolutely or subject to conditions or limitations, the Registrar shall, as soon as possible, cause notice of the acceptance of the application to be published in the *Gazette*.

(2) Any person may, within the prescribed time from the date of the *Gazette* notice of an application, give notice to the Registrar of his opposition to the registration.



(3) The notice referred to in subsection (2) of this section shall be given in writing in the prescribed manner, and shall include a statement of the grounds of such opposition.

(4) The Registrar shall send a copy of the notice to the applicant, who shall, within the prescribed time, send to the Registrar in the prescribed manner a counter-statement stating the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned the application.

(5) If the applicant sends a counter-statement under subsection (4) of this section, the Registrar shall furnish a copy thereof to the person giving notice of opposition and shall, after hearing the parties, if so requested and considering the evidence, decide whether, and subject to what conditions or limitations, if any, registration is to be permitted and shall notify the applicant and the opponent accordingly.

(6) The applicant or the opponent may, subject to the provisions of this section, appeal to the Court against the decision of the Registrar.

(7) A person desiring to appeal against a decision of the Registrar under this section must apply to the Registrar within the prescribed time after the date of notification of the decision of the Registrar, for a written statement of the grounds of his decision.

(8) On the appeal the Court may hear the parties and the Registrar and shall make an order determining whether, and subject to what conditions or limitations, if any, registration is to be permitted.

(9) Except by leave of the Court, no appeal against a decision of the Registrar under this section shall be made except within a period of two months from the date of dispatch to the applicant of the statement in writing referred to in subsection (7) of this section or within such further period not exceeding three months as the Registrar may allow upon request received before the expiration of the said period of two months.

(10) On the hearing of an appeal against a decision of the Registrar under this section any party may, by special leave of the Court, bring forward further material for the consideration of the Court.

(11) On appeal against a decision of the Registrar under this section no further grounds of objection to the registration of a textile design shall be allowed to be taken by the opponent or the Registrar, other than those stated under subsection (3) of this section by the opponent, except by leave of the Court.

(12) Where any further grounds of objection are taken under subsection (11) of this section the applicant is entitled to withdraw his application without payment of the costs of the opponent on giving the prescribed notice.

(13) On an appeal against a decision of the Registrar under this section the Court may, after hearing the Registrar, permit the textile design proposed to be registered to be

modified in any manner not affecting substantially the identity thereof, and thereafter the modified textile design shall be registered subject to the provisions of this Decree.

### *Registration*

7. — (1) When an application for registration of a textile design has been accepted, the Registrar shall, unless the application has been accepted in error, upon the payment of the prescribed fee register the textile design.

(2) Where the Registrar registers a design under this Decree—

- (a) he shall issue a certificate of registration to the person claiming to be the proprietor who shall thereafter be referred to as the “registered proprietor” and be entered as such in the Register; and
- (b) he shall specify the date from which the registration is to take effect which, in the absence of circumstances considered by him to be special, shall be the date of the application for registration.

### *Right given by the registration*

8. — The registration of a textile design under this Decree shall give to the registered proprietor of such design, the copyright therein, that is to say, the exclusive right in Ghana to make or import for sale or for use for the purposes of any trade or business, or to sell, hire or offer for sale or hire, any textile article in respect of which the textile design is registered:

Provided that the registration of a textile design which includes any indigenous traditional motifs as described in subsection (2)(d) of section 2 of this Decree shall not give rise to the exclusive use of those motifs.

### *Period of copyright and renewal of registration*

9. — (1) The copyright in a registered design shall, subject to the provisions of this Decree, subsist for a period of five years and shall be renewable for two further periods of five years each.

(2) The Registrar shall, on application made by the registered proprietor in the prescribed manner and within the prescribed period, and on payment of the prescribed fee, in this Decree referred to as the “renewal fee,” renew the registration of a textile design for a period of five years from the date of the expiration of the original period or of the last renewal date as the case may be.

(3) The Registrar may send a notice in the prescribed manner to the registered proprietor three months before the expiration of the last registration informing him of the date of the expiration.

(4) If at the expiration of the prescribed time the registered proprietor has not paid the renewal fees aforesaid the Registrar shall remove the textile design from the Register.

(5) Failure to remove the design from the Register by the Registrar at the expiry date shall not give to the registered proprietor any copyright in the design after that date.

(6) Where a textile design has been removed from the Register for non-payment of renewal fee it shall nevertheless, for the purpose of any application for the registration of a textile design during one year next after the date of the removal, be deemed to be a textile design that is already on the Register.

#### *Assignment of title*

10. — (1) The Registrar may on application made in that behalf register the assignment in whole or in part of the title to a textile design registered under this Decree in the name of a registered proprietor to a person to whom such title has been assigned in whole or in part by such proprietor.

(2) The Registrar may on application made in that behalf by a person who has been granted a license (hereafter in this Decree called "the licensee") by the registered proprietor to use the design subject to such conditions, if any, enter his name, the particulars relating to his interest in the design and the date from which the license is to take effect.

(3) Registered associated textile designs shall be assignable and transmissible only as a whole, and not separately, but shall for all other purposes be deemed to have been registered as separate textile designs.

#### *Cancellation of Registration*

11. — (1) Copyright in a textile design registered under this Decree shall subsist in the registered proprietor until the registration is cancelled under this Decree by the Registrar.

(2) Registration of a textile design shall be cancelled by the Registrar for any of the following reasons:—

- (a) upon request by the registered proprietor;
- (b) if in the opinion of the Registrar such registration should be cancelled in the public interest;
- (c) if the prescribed fees for registration and renewal have not been paid;
- (d) after successful cancellation proceedings instituted by a third party;
- (e) if the application for registration has been accepted in error;
- (f) for contravention on the part of the registered proprietor of any of the provisions of this Decree or regulations under this Decree.

#### *Rectification of Register*

12. — (1) When an application is made to the Court or to the Registrar by any person aggrieved, a registered textile design may be cancelled from the Register for any of the following reasons:—

- (a) that the design has been copied exactly from a textile design belonging to a different proprietor which is currently registered under this Decree;
- (b) that the design is similar to a textile design belonging to a different proprietor which is currently registered under this Decree in such a way as to be likely to mislead purchasers in Ghana or damage his business;
- (c) that the design differs from a textile design belonging to a different proprietor which is currently registered

under this Decree only in immaterial details or in features which are variants commonly used in the trade;

(d) that the registered proprietor is not the proprietor of the textile design as defined in this Decree;

(e) that the registration of the textile design was obtained by fraud.

(2) Except in a case where the reason alleged for cancellation of a textile design from the Register is the reason set out in paragraph (e) of subsection (1) of this section, no application for cancellation under subsection (1) of this section shall be entertained unless it is made within five years from the date specified in subsection (2)(b) of section 7 in relation to the registration of the textile design concerned.

(3) After the expiration of the said period of five years the original registration of the textile design shall be taken to be valid in all respects unless that registration has been obtained by fraud.

(4) The Court or the Registrar may, upon an application made under this section and after such inquiry as may be necessary, make such order for maintaining, expunging or varying the registration of a textile design as may be deemed fit.

(5) Any Court order rectifying the Register made under this section shall direct that notice of the rectification be served in the prescribed manner on the Registrar, and the Registrar shall on receipt of the notice rectify the Register accordingly.

(6) Any party to proceedings before the Registrar under this section may appeal from the decision of the Registrar under this Decree to the Court.

#### *Rectification of Register in relation to assignee or licensee*

13. — (1) The Court or the Registrar may, on the application by any person aggrieved, order the Register of textile designs to be rectified by the making or variation or deletion of any entry therein relating to the title of any assignee or licensee.

(2) In any proceedings under this section the Court or the Registrar may determine any question which may be deemed necessary or expedient in connection with the rectification of the Register.

(3) Notice of any application to the Court under this section shall be given in the prescribed manner to the Registrar who shall be entitled to appear and be heard on the application, and shall appear if so directed by the Court.

(4) Any order made by the Court under this section shall direct that notice of the order shall be served on the Registrar in the prescribed manner and the Registrar shall, on receipt of the notice, rectify the Register accordingly.

#### *Power to correct errors*

14. — (1) The Registrar may, in accordance with the provisions of this section, correct any error in an application for the registration or any error in the Register of textile designs.

(2) A correction may be made in pursuance of this section either upon a request in writing made by any person interested and accompanied by the prescribed fee, or by the Registrar on his own and without such a request:

Provided that the correction shall not be allowed if it will substantially change the design.

#### *Appeals*

15. — In any appeal under this Decree from a decision of the Registrar the Court shall have all powers conferred upon the Registrar under this Decree and shall make such orders in accordance with the provisions of this Decree, as it thinks just.

#### *Exercise of discretionary powers of Registrar*

16. — Without prejudice to any provision of this Decree requiring the Registrar to hear any party to any proceedings, or to give to any such party an opportunity to be heard, the Registrar shall give to any applicant for the registration of a textile design an opportunity to be heard before exercising, adversely to the applicant, any discretion vested in the Registrar by or under this Decree.

#### *Cost and security for costs*

17. — (1) The Registrar may, in any proceedings before him under this Decree, by order award to any party such costs as he may consider reasonable and direct how and by what parties they are to be paid, and any such order may have the force of an order by a Court.

(2) In any proceedings before the Registrar he may require either or both parties to give security for costs for such amount as the Registrar may deem fit, and in default of such security being given by the applicant the Registrar may treat the application for the proceedings as abandoned.

#### *Offences*

18. — (1) If any person—

(a) makes or causes to be made a false entry in the Register of designs, or a writing falsely purporting to be a copy of an entry in the Register,

(b) produces or tenders or causes to be produced or tendered in evidence as genuine any such writing knowing the entry or writing to be false,

he shall be guilty of an offense punishable by a fine not exceeding C5,000.00 or five years imprisonment or both.

(2) If any person falsely represents that a design applied to any textile article sold by him is registered in respect of that textile article he shall be liable on summary conviction to a fine not exceeding C200.00.

(3) For the purpose of subsection (2) of this section a person who sells a textile article having stamped, engraved or impressed thereon or otherwise applied thereto the word "registered" or any other word expressing or implying that the design applied to is registered, shall be deemed to represent that the design applied to the article is registered in respect of that article.

(4) If any person, after the copyright in a registered textile design has expired, marks the textile to which the design

has been applied with the word "registered," or any word or words implying that there is a subsisting copyright in the design or causes any such article to be so marked, he shall be guilty of an offense and liable on summary conviction to a fine not exceeding C200.00.

(5) In the case of an offense by a body of persons—

(a) where the body of persons is a body corporate every director and officer of the body corporate shall be deemed to be guilty of the offense; and

(b) where the body corporate is a firm, every partner of the firm shall be deemed to be guilty of the offense:

Provided that a person shall not be deemed to be guilty of an offense by virtue of this subsection if he proves that the act constituting the offense was committed by a person other than himself and without his knowledge or connivance and that he exercised all due diligence to prevent the commission of the offense having regard to all the circumstances.

#### *Civil Suits in respect of registered designs*

19. — (1) Nothing in any other provision of this Decree shall affect the right of any registered proprietor to institute civil proceedings for any infringement under this Decree or to be granted in any such proceedings any remedy to which he may be entitled:

Provided that in proceedings for an infringement of a copyright in a registered design, damages shall not be awarded against a defendant who proves that he is duly registered under this Decree in respect of the textile design which is the subject-matter of the suit.

(2) In case of passing off actions between registered proprietors a certificate of registration issued by the Registrar to any defendant shall be a valid defense, and the plaintiff's remedy, if any, shall be the cancellation of the defendant's design.

#### *Searches*

20. — On the request of any person furnishing such information as may enable the Registrar to identify a design, and on the payment of the prescribed fee, the Registrar may inform him whether the design is registered, and is currently on the Register and may state the date of registration and the name and address of the registered proprietor and any other information required by that person.

#### *Resolution of doubt*

21. — If there is any doubt as to whether an article is a textile article or whether a design is a textile design, such doubt shall be resolved by the Registrar and his decision shall be final.

#### *Regulations*

22. — Subject to the provisions of this Decree, the Commissioner may make such regulations as he thinks expedient in relation to textile designs and for regulating all matters under this Decree, especially—

(a) the form of, the time for, and the procedure to be observed for any challenge, rectification or appeal under this Decree, and for matters connected therewith;

- (b) matters that are required by this Decree to be prescribed and for the fixing of fees that are not provided for under any other provision of this Decree;
- (c) any other matters for the purpose of carrying out the provisions of this Decree.

### *Interpretation*

23. — In this Decree unless the context otherwise requires:

- "Commissioner" means the Commissioner responsible for Justice;
- "copyright" has the meaning assigned to it in section 8 of this Decree;
- "Court" means the High Court;
- "prescribed" means prescribed by regulations made under section 22 of this Decree;
- "proprietor" means a person claiming to be the author of the textile design and includes—
  - (a) any other person who has acquired title from any person referred to in this section as proprietor;
  - (b) where the person who is the author is not ascertainable, the person who first applied for the registration of the design; and
  - (c) where such design is executed by the author for another person that other person shall be treated for the purposes of this Decree as the proprietor;
- "registered proprietor," in relation to a textile design, means the proprietor registered by or under this Decree for such design;
- "Register" means the Register of Textile Designs referred to in section 1 of this Decree;
- "Registrar" means Registrar-General or Assistant Registrar-General;
- "textile article" means any article made wholly or substantially from natural, man-made or synthetic textile fibres or from a combination thereof; and
- "textile design" means any pattern or ornamental feature applied to a textile article by printing weaving or other similar process.

### *Repeals and transitional provisions*

24. — (1) The Textile Designs (Registration) Act, 1965 (Act 317) and the Textile Designs (Registration) Act (Amendment) Decree, 1966 (N. L. C. D. 54) are hereby repealed.

(2) Notwithstanding the repeal of the Textile Designs (Registration) Act, 1965 (Act 317) the Textile Designs (Registration) Regulations, 1966 (L. I. 512) shall continue in exis-

tence as if made under section 22 of this Decree and with such modifications as may be necessary to give full effect to this Decree or with such modifications as the Commissioner may approve.

(3) Any textile design existing at the commencement of this Decree in the Register of designs maintained under section 2 of the said Act shall, after the commencement of this Decree, be deemed to have been registered under this Decree with effect from the date specified by the Registrar in relation to its original registration under subsection (2)(b) of section 2 of the said Act.

(4) Accordingly without prejudice to the application to any such textile design of the other provisions of this Decree, section 9 of this Decree shall apply to such registration; and, for the removal of doubts, the copyright in any textile design so registered shall not have effect for a period longer than fifteen years from the date referred to in subsection (3) of this section as having been specified under subsection (2) of section 2 of the said Act.

(5) Without prejudice to the application to any such textile design of the provisions of this Decree other than this section, the Registrar may cancel the registration of any such textile design if the registration of such design would have been prohibited by subsection (2) of section 2 of this Decree if an application had been made for such registration after the commencement of this Decree.

(6) Notwithstanding any provision in this Decree to the contrary, any textile design registered or protected under or by the copyright laws of another country shall not be protected by or under this Decree for a period exceeding the unexpired term of registration or protection under the copyright laws of that country so however that the protection conferred by this Decree shall not exceed fifteen years.

(7) No textile design shall qualify for registration under this Decree where:—

- (a) the design has been previously registered or protected under or by the copyright laws of another country; and
- (b) where the period of registration or protection under the copyright laws of that other country has expired.

(8) Where any textile design referred to in subsection (6) or (7) of this section exists on the Register (whether registered before or after the commencement of this Decree) and the period of its protection under this Decree has expired by virtue of the provisions of either of those subsections, the Registrar shall cancel its registration under section 11 of this Decree.

## GENERAL STUDIES

### UPOV — Present Situation and Future Development \*

1. In the October 1965 issue of this review, Bernard Laclavière, one of the leading protagonists of the protection of plant breeders' rights in France and Europe, who is now President of the Council of the International Union for the Protection of New Varieties of Plants (UPOV), described in detail the Convention of Paris of December 2, 1961 for the Protection of New Varieties of Plants — the UPOV Convention — and the developments which led to its conclusion as well as some of its basic principles<sup>1</sup>. In the December issue of the same year, Leslie J. Smith published a well-received study comparing the UPOV Convention with the British plant breeders' rights legislation<sup>2</sup>. Four years later Mr. Laclavière was able to announce, in the May 1969 issue of this review, that the UPOV Convention had entered into force<sup>3</sup>. In the meantime, the Council and Office of UPOV started their work. The Convention was supplemented by the Additional Act of November 10, 1972, which, however, has not yet entered into force. The number of member States of UPOV is still very small, but some States are preparing their accession to the Convention. This issue contains, in addition to a Law amending the plant variety law of one member State (the Federal Republic of Germany) as well as the Regulations provided for in the New Zealand Law<sup>4</sup>, two national laws of non-member States (Belgium and Spain) which might be the basis for their adherence to the Union. This fact seems to justify a brief survey here of the present situation of UPOV and of its expected future development.

#### The UPOV Convention and the Union

2. It should perhaps be recalled that the International Convention for the Protection of New Varieties of Plants of December 2, 1961<sup>5</sup>, is an independent Convention. It is not a special agreement under the Paris Convention for the Protection of Industrial Property of March 20, 1883.

\* Study by the Office of UPOV.

<sup>1</sup> Bernard Laclavière, "The Convention of Paris of December 2, 1961, for the Protection of New Varieties of Plants and the International Union for the Protection of New Varieties of Plants," *Industrial Property*, 1965, pp. 224 to 228.

<sup>2</sup> Leslie J. Smith, "International Convention for the Protection of New Plant Varieties and Some Comments on Present Breeders' Rights Legislation in the United Kingdom," *Industrial Property*, 1965, pp. 275 to 280.

<sup>3</sup> Bernard Laclavière, "A New Intellectual Property Union is Born: The International Union for the Protection of New Plant Varieties," *Industrial Property*, 1969, pp. 154 and 155.

<sup>4</sup> This Law was published in *Industrial Property*, 1975, pp. 118 to 125.

<sup>5</sup> UPOV publication No. 273, also comprising the Additional Act; available in English (E), Dutch (D), French (F), German (G), Italian (I) and Spanish (S). As to the history of the Convention and the Additional Act, see: *Actes des Conférences internationales pour la protection des obtentions végétales*, UPOV publication No. 316 (French only). The Convention was also published in *Industrial Property*, 1962, pp. 6 to 13, and the Additional Act in *Industrial Property*, 1972, p. 351.

3. As to the main contents of the UPOV Convention, it is recalled that the UPOV member States have to grant to the breeder of a new plant variety or his successor in title an exclusive right, either in the form of a special title or in the form of a patent (Article 2), according to which his authorization is required for the production — for the purposes of commercial marketing — of the seeds or other propagating material of the new plant variety and for the offering for sale and marketing of such material. While the new variety can be freely used by anybody as the initial source of variation for the creation of other new varieties and for marketing those varieties, the authorization of the breeder is required when his variety has to be continuously used for the commercial production of another variety. The exclusive right extends to the commercial use of ornamental plants or parts of plants which are normally marketed for purposes other than propagation for the production of new ornamental plants or cut flowers. Member States are free to extend the exclusive right also to the marketed product (Article 5).

4. The Convention provides further that, subject to certain restrictions, member States must grant residents and nationals of other member States the right to national treatment, in other words, they must give them, as far as the recognition and protection of plant breeders' rights are concerned, the same treatment as their own laws provide for their own nationals (Articles 3 and 4(4)). The Convention also contains explicit rules for denominations of new varieties of plants and the relationship of those denominations to trademarks (Article 13), and special rules on the right of priority (Article 12).

5. As can be seen from the preceding paragraphs, the UPOV Convention strongly resembles the Paris Convention for the Protection of Industrial Property. However, it goes beyond that Convention. Already in its preamble, the UPOV Convention expresses the desire of the Member States to resolve the problems connected with plant variety protection "in accordance with uniform and clearly defined principles." In other words, the objective of the UPOV Convention is to provide not only for the introduction and recognition of plant breeders' rights and the regulation of some basic principles, but also for the harmonization of national laws and practices for the granting of such rights. Consequently, the UPOV Convention contains a number of detailed rules which have to form part of the member States' national laws on the protection of plant breeders' rights. It contains rules on the conditions that a variety has to fulfill before a title can be granted to the breeder — distinctness and novelty, homogeneity and stability — and it expressly prescribes that the granting of a title cannot be made dependent on the fulfillment of any other conditions (Article 6). The UPOV Convention further prescribes that the variety has to be officially examined in the light of

these criteria before a title can be granted (Article 7). Moreover, it contains rules on the minimum period of protection (Article 8), on restrictions in the exercise of the breeders' rights which a member State may impose (Article 9), and on the remuneration which the breeder must receive in the case of restrictions on the exercise of his right (Article 9(2)). Finally, it enumerates the cases in which the breeder's right must — and can — be declared null and void (Article 10). The rules of the Convention on variety denominations (Article 13) are detailed to such an extent that they occupy ten paragraphs. It is understandable that a Convention which, in order to harmonize protection within the States that are party to it, contains such explicit rules can be ratified or acceded to only after years of careful preparation on the legislative and administrative side. Taking into account these factors, it is not surprising that at present UPOV has no more than six member States and is not expecting any considerable increase in its membership in the near future.

6. It should also be remembered that the Convention does not oblige member States to apply its provisions immediately to all genera and species of plants. The member States must, however, take all measures necessary for its progressive application to the largest possible number of botanical genera and species (Article 4). Furthermore, the Convention lists, in an Annex, a number of botanical genera and species to which, according to Article 4(3), it must be gradually applied within eight years.

7. Finally, it might be recollected that the UPOV Convention — not strongly deviating in this respect from similar conventions — lays down the necessary rules for the creation of the International Union for the Protection of New Varieties of Plants which has its headquarters in Geneva (Article 1(2) and (3) and Articles 15 *et seq.*). This Union has two organs: the Council, consisting of representatives of the member States, and the Office of the Union. The Council can set up subordinate bodies and has been making ample use of this power, as will be described later. It can invite non-member States to be represented by observers at its sessions and those of its subordinate bodies.

8. The Union is an independent intergovernmental organization, which, however, collaborates very closely with the World Intellectual Property Organization (WIPO), as provided in the UPOV Convention. The details of this cooperation are settled in the Rules of Procedure for Technical and Administrative Cooperation between the Union for the Protection of New Varieties of Plants and the World Intellectual Property Organization<sup>6</sup>; these Rules of Procedure were approved, in compliance with Article 25 of the UPOV Convention, by the Government of the Swiss Confederation on October 21, 1969. In order to avoid any problems in this cooperation, it has been agreed that the Director General of WIPO will at the same time be the Secretary-General of UPOV.

9. The Union is almost entirely financed by the contributions of its member States. As in the Unions which are administered

by WIPO, States are placed in classes for the purpose of determining their contributions. The class in which a member State is placed is a matter for the State itself to decide. The UPOV Convention provides for three classes. Some of the present member States pay, on a voluntary basis, higher contributions than those provided for in the class of their choice. The Additional Act of the Convention, which has not yet entered into force, provides for five classes. Furthermore, in order to take exceptional circumstances into account, that Act gives the Council power to allow a State to pay only one-half of the contribution corresponding to the lowest class. The main purpose of this faculty is to permit developing countries to accede to the Convention.

10. The present member States of UPOV are: Denmark, France, the Federal Republic of Germany, the Netherlands, Sweden and the United Kingdom. Three States — Belgium, Italy and Switzerland — which have signed the UPOV Convention, but not yet ratified it will most certainly do so in the near future. Non-signatory States may, with the approval of the UPOV Council, accede to the Convention, and one of the present member States — Sweden — has joined the Union in this way. The Additional Act, which, as stated in paragraph 9 above, will mainly change the contribution system, has been ratified so far by Denmark, France and Sweden.

11. Generally, it can be stated that UPOV has stood the test of time. Although the number of States party to the UPOV Convention is still very small, the fact must not be overlooked that UPOV comprises most of the leading Western European States so far as agriculture is concerned. It seems to be only a question of time before more European States join UPOV. The idea of granting plant breeders' rights is gaining ground throughout the world, and so is the interest in UPOV. This can be confirmed by mentioning those States which have so far sent observers to sessions of the UPOV Council: Australia, Austria, Canada, Finland, Gabon, Hungary, Ireland, Israel, Japan, Kenya, Luxembourg, New Zealand, Norway, South Africa, Spain and the United States of America. Czechoslovakia and Poland have also been invited to send observers to this year's session of the Council. The African and Malagasy Industrial Property Office<sup>7</sup>, the multi-national patent office for thirteen African States (Cameroon, Central African Republic, Chad, Congo, Dahomey, Gabon, Ivory Coast, Madagascar, Mauritania, Niger, Senegal, Togo, Upper Volta), intends to examine the question of the usefulness of the introduction of plant variety protection in its member States.

12. Within the member States of UPOV, the development of plant variety protection is very encouraging. All member States have constantly been extending the application of the Convention to further genera and species<sup>8</sup>. The number of species eligible for protection far exceeds 100 in several member States. This figure is extremely high compared with the minimum of 13 species to which each member State is obliged

<sup>7</sup> As to the establishment of that Office, see *Industrial Property*, 1963, pp. 66 to 84.

<sup>8</sup> As to the recent enlargement of the list of species eligible for protection in the Federal Republic of Germany and the Netherlands, see UPOV Newsletters, 1975, Nos. 1 and 2.

<sup>6</sup> Part I of UPOV publication "Rules and Regulations of UPOV" (UPOV/INF/1), available in English, French and German.



to apply the Convention within eight years after its entry into force on its territory. Furthermore, the number of applications for plant variety protection has shown a steady increase during recent years in all member States.

### Present-Day UPOV Activities

#### *Test Guidelines*

13. One of the most time and labor-consuming but rewarding tasks performed within UPOV in the last few years is the establishment of Test Guidelines for the Conduct of Tests for Distinctness, Homogeneity and Stability of new varieties of plants. It has already been mentioned that member States are obliged to carry out an official examination of new plant varieties for which protection is sought in order to determine whether they are distinct, homogeneous and stable. Without going into details, it can be said that a variety is distinct if it is different, by one or more important characteristics, from any existing variety, that it is homogeneous if all plants of the variety are as much alike in their basic characteristics as can be expected with regard to the particular features of its sexual or vegetative manner of propagation, that it is stable if it transfers its essential characteristics to the next generations, or, as the Convention puts it, if it remains true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle. The examination is carried out in national institutions of the member States. These institutions are either part of the office or the board competent in the member State for the acceptance of applications and for the grant of plant breeders' rights or they are special institutions acting on behalf of that office or board.

14. The purpose of the UPOV test guidelines is to facilitate the work of the institutions and to ensure that the examination of new varieties is conducted in all member States according to the same basic standards. Different test guidelines are established for each different plant species. All test guidelines start with technical recommendations, referring, for instance, to the kind and amount of propagating material which has to be delivered to the national offices by the applicant, the methods to be used by the offices in carrying out the tests, and the normal duration of the tests. The second part of these test guidelines lists, in the three working languages of UPOV (English, French and German), a number of those characteristics of the species under discussion which are expected to be tested and some others which are considered likely to be helpful to experts in the institutions in distinguishing the varieties of that species. For each of these characteristics, the test guidelines contain a scale of the possible expressions or states "in agreed terms." It is expected that these terms will be used when the national office describes the new variety. In addition, a code number is given to each expression or state which will in future enable the variety descriptions to be computerized.

15. These technical guidelines are drafted by Technical Working Parties established by the UPOV Council. At present, Technical Working Parties exist for the following groups

of plants: agricultural crops, forest trees, fruit crops, ornamental plants, and vegetables. The work of the Technical Working Parties takes place under the guidance of a Technical Steering Committee. First drafts of the test guidelines are regularly sent to the professional organizations in the field of plant variety protection and in the seed trade for comment. This practice started last year and the organizations concerned at present are the International Association of Horticultural Producers (AIPH), the International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL), the International Community of Breeders of Asexually Reproduced Ornamentals (CIOPORA), and the International Seed Trade Federation (FIS).

16. So far, test guidelines have been adopted for 19 species; further test guidelines are in preparation for almost 40 other species and some of those will be adopted soon; others again are planned for about 20 more species<sup>9</sup>.

17. In order to enable the national authorities to apply the test guidelines more easily and in a more uniform manner, and also to inform breeders on the standards used, UPOV has published a "General Introduction to the Guidelines for the Tests of Distinctness, Homogeneity and Stability"<sup>10</sup>. The test guidelines for the individual species are not binding on national offices of member States, nor is the General Introduction. Neither in Article 21(h) of the Convention nor elsewhere does the Council have the power to issue binding rules for member States. For that very reason, quite apart from other reasons, the proposal made by certain circles of breeders that national offices should not be permitted to examine a new variety on characteristics other than those listed in the test guidelines cannot be adopted. In general, it can be said that the test guidelines are usually followed by the national offices.

18. The UPOV test guidelines adopted so far have proved to be of great help to national offices and have served as a valuable instrument in achieving greater harmony in the application of the UPOV Convention. They are sometimes also used by institutions of non-member States.

#### *Further Technical Cooperation*

19. The technical bodies of UPOV — the Technical Steering Committee and the Technical Working Parties — have also started to harmonize the technical questionnaires which applicants in all member States are asked to fill in when filing an application to obtain a plant breeder's right. This work is part of a plan to harmonize the application forms used in offices of member States.

20. UPOV has recently started to work on the question of closer cooperation between offices of member States in the examination of new varieties of plants. The reasons for this project are the following.

<sup>9</sup> The present situation with regard to test guidelines is described in the UPOV General Information Brochure (UPOV publication No. 408), available in English (E), French (F) and German (G); this brochure also lists in its Annex all UPOV publications.

<sup>10</sup> UPOV publication UPOV/TG/I/1, available in English (E), French (F) and German (G).



21. The examination or testing of new plant varieties for distinctness, homogeneity and stability by governmental institutes is an onerous task. Each variety has to be grown for at least two growing seasons; it has to be examined at various stages; the results have to be listed and evaluated and samples have to be stored. In some cases the examination renders special action necessary, for instance in the case of the examination as to the disease resistance of a variety, the test plants have to be infected artificially. Moreover, it is necessary for the testing institute to keep, for the purpose of comparison, a number of standard varieties of the same species; these are the so-called "reference" varieties. Finally, it is necessary to employ staff who are, at least to some extent, experienced in the species concerned.

22. This work has to be performed separately in each member State. The drafters of the Convention were already aware of the duplication of effort involved in this connection, and they have created, in Article 30(2), the basis for the conclusion of special agreements between member States with a view to joint utilization of the examination facilities in the member States. This means that, for some species, and especially for those for which test guidelines exist, offices of member States will agree to have the examinations carried out by institutions of other member States. Moreover, the Diplomatic Conference which led to the conclusion of the UPOV Convention adopted, on December 2, 1961, a Recommendation in which it advised States to undertake as soon as possible the necessary studies for organizing examinations on an international basis. Some of the member States have even included special provisions in their national laws for the use of examination results obtained abroad.

23. In order to make sure that the necessary cooperation between offices of member States gets started, the Council of UPOV established, during its eighth session, held in October 1974, a Committee of Experts on International Cooperation in Examination. This Committee of Experts has elaborated a UPOV Model Agreement for International Cooperation in the Testing of Varieties, which, after having been discussed with the professional organizations in the field of plant breeding and in the seed trade (AIPH, ASSINSEL, CIOFORA and FIS)<sup>11</sup>, will now be presented to the UPOV Council for adoption. This Model Agreement will serve as a basis for the conclusion of agreements primarily between two — but possibly also between more — offices of member States. It envisages mainly two types of cooperation: for certain species agreed upon by the offices concerned in a particular agreement, all varieties will be examined by the services of one of the offices and the results will be transmitted to the other office or offices. This has been called "centralized testing." For the other species, it is provided that each office can ask any of the other offices to transmit to it the results of examination work already done or being done in that office. This has been called "exchange of test results." Furthermore, it is provided that the envisaged cooperation can be applied also in the examination of varieties for distinctness, homogeneity and stability for

purposes other than plant variety protection, for instance for the purpose of entering a variety in a national list or catalogue of commercialized varieties.

24. It is especially hoped that this first step towards cooperation between the offices of member States will considerably reduce the senseless costs and efforts caused at present, both for the offices and for breeders, when the breeders file applications for the same variety in several member States. It is also hoped that the reduction of the work of the offices thus achieved will enable member States to extend the protection to still further species.

25. The conclusion of a number of bilateral or multilateral agreements though following the pattern of the existing Model Agreement might nevertheless lead to a lack of consistency and might also make it harder for the interested public and non-member States to keep abreast of developments. Therefore, it has been proposed to base cooperation on a multilateral arrangement — either in the form of an agreement or in the form of a mere Council decision — which would provide that offices which are ready to perform examination work for other offices or at least to communicate examination results to other offices, as well as offices which are ready to give any effect to the examination results obtained by the services of other offices, will announce this fact to the Office of the Union, which will report thereon to the Council. The Office of the Union would publish the information received in its gazette or in a special document. Breeders would thus get a clearer picture of the state of cooperation existing between offices of member States; so also would non-member States considering accession to the UPOV Convention. These States would be in a better position to judge for which species they could most likely expect assistance from offices of other States for the performance of the examination under Article 7 of the Convention.

26. The professional organizations in the field of plant breeding and in the seed trade have also been aware of the recent developments in the related field of patents, where, on the international level, the Patent Cooperation Treaty<sup>12</sup>, signed on June 19, 1970, in Washington, and, on the European level, the European Patent Convention<sup>13</sup>, signed on October 5, 1973 in Munich, will probably soon enter into force, while a Convention for the European Patent for the Common Market<sup>14</sup> will be the subject of a Diplomatic Conference still to be held this year in Luxembourg. Whereas the Patent Cooperation Treaty will introduce a world-wide system under which applicants can file international patent applications centrally and their inventions are searched centrally, the European Patent Convention even envisages the grant of a patent with effect for several States, and the planned Convention for the European Patent for the Common Market will give this European Patent the character of a unitary patent for the member States of the European Communities. It is not surprising that the question should be asked whether, in the

<sup>12</sup> *Industrial Property*, 1970, pp. 259 to 306.

<sup>13</sup> *Industrial Property*, 1974, pp. 51 to 129.

<sup>14</sup> As to the basic concepts of that Convention, see Kurt Haertel, *Industrial Property*, 1971, pp. 87 and 88, and François Savignon, *Industrial Property*, 1971, pp. 308 to 315.

<sup>11</sup> A report on this discussion is given in UPOV Newsletter, 1975, No. 2.

field of plant variety protection, a system similar to one of these patent conventions could be introduced. The International Seed Trade Federation (FIS) thought this question to be important enough to be dealt with in the opening session of its Congress held at Poznan (Poland) from May 26 to 28, 1975. Professor Pierre Chabrand, President of the French Committee for the Protection of Plant Varieties, made an interesting speech on the above-mentioned three conventions and the outlook for a comparable development in the field of plant breeders' rights<sup>15</sup>. Naturally enough, the competent bodies of UPOV are also planning to study the question whether a system is conceivable under which applications for plant breeders' rights could be filed and whereby plant breeders' rights could even be granted with effect in more than one member State of UPOV. Any system of this kind could, of course, only be achieved either by revising the UPOV Convention or, more likely, by concluding a special agreement between all or some of the member States of UPOV. According to experience gained in the patent field, the elaboration of a revised text of the Convention or of a special agreement and the subsequent entry into force of such texts would take a long time. Therefore, it will be necessary not to let these studies drag on for too long a time.

27. For various reasons, the possibility of harmonizing the fees which are levied by the national offices in the field of plant variety protection has been considered by the bodies of UPOV. A particular reason for this is in order to facilitate the centralized testing or the exchange of test results. A Fee Harmonization Working Party has been set up for this purpose. Furthermore, the Committee of Experts on International Cooperation in Examination has spent some time on the study of this question. On October 12, 1973, the Council of UPOV adopted a "Resolution on Fee Questions"<sup>16</sup> in which it recommended that member States ask national offices using the results of a technical examination performed in another member State to refrain from requiring the breeders to pay a fee for that technical examination, unless the breeder has not paid the relevant fee for the examination in that other member State. In adopting this resolution, the Council's intention was to ensure that the breeders would fully benefit from any savings achieved by such technical cooperation.

#### *Administrative Cooperation*

28. The UPOV Council has achieved close cooperation on other matters also. One example is cooperation in the exchange of variety denominations. Article 13(6) of the UPOV Convention provides that each denomination of a new variety which is proposed to the national office of a member State shall be notified by the Office of UPOV to the offices of the other member States. It is also provided that all denominations which are registered with a member State shall be notified by the Office of UPOV not only to the other member States of UPOV but also to all member States of the Paris Union for the Protection of Industrial Property. This provi-

sion was included in the UPOV Convention in the hope that all member States of the Paris Union for the Protection of Industrial Property would treat a variety denomination which is registered in the office of any UPOV member State as a generic term and refuse to grant it trademark protection. At the moment, the Office of UPOV lacks the necessary staff and facilities to carry out the task imparted to it under Article 13(6). In order to achieve the aims of the Convention, the member States have adopted "Provisional Rules of Procedure for the Exchange of Variety Denominations"<sup>17</sup>. Under these provisional rules, the offices of member States publish any denomination proposed by an applicant as soon as possible in their bulletins. For this purpose, the information in the bulletins is presented in accordance with agreed rules. Copies of the bulletins are sent immediately on publication of each issue to the offices of the other member States. These offices examine the proposed denominations and forward any objection they may have to make within three months to the competent office which published the proposed denominations, stating the reason for the objection. A copy of any objection is at the same time sent to the offices of the other member States. The offices of the member States are also required to publish all registrations of variety denominations and all rejections or withdrawals of proposed denominations in their bulletins.

29. In order to ensure a uniform application of the rules contained in Article 13 of the UPOV Convention, the Council of UPOV adopted, on October 12, 1973, a set of recommendations entitled "Guidelines for Variety Denominations"<sup>18</sup>. The recommendations contained in these guidelines have met with some objections from interested circles and in one member State — the Federal Republic of Germany — have partly failed to obtain the approval of Parliament. It can be expected therefore that these guidelines will be subject to renewed discussion within UPOV.

#### *Interpretation and Revision of the Convention*

30. Article 27 of the Convention provides that the Convention will be periodically reviewed to improve the working of the Union and that, for this purpose, revision conferences will be held every five years, unless the Council considers that the convening of such a conference should be brought forward or postponed. The main subject of a future revision conference will certainly be the amendment of those provisions of the Convention which have proved to be an obstacle to the accession of new member States. In October 1974, UPOV held a meeting between member and non-member States<sup>19</sup> on this subject. At that meeting, it was alleged that some of the difficulties which prevented some non-member States from acced-

<sup>17</sup> UPOV publication UPOV/C/V/33, available in English (E), French (F) and German (G).

<sup>18</sup> UPOV publication UPOV/C/VII/22, available in English (E), French (F) and German (G).

<sup>19</sup> Records of this meeting in UPOV publication No. 330 English edition (French and German editions in preparation), with opening address by Ludwig Pielen and contributions by Walter R. Smith, "The Importance of Plant Breeding for the Development of Agriculture;" Bernard Laclavère, "Historique de la Convention de Paris du 2 décembre 1961 pour la protection des obtentions végétales et principales dispositions;" Halvor Skov, "The Work of UPOV, Past Achievements — Present Tasks — Plans for the Future;" Carl-Ernst Büchting, "The Value and Benefit of the Convention to Plant Breeders."

<sup>15</sup> Reprint on pages 7 to 11 of Bulletin No. 34 of the International Seed Trade Federation (FIS Bulletin).

<sup>16</sup> UPOV publication UPOV/C/VII/23, available in English (E), French (F) and German (G).

ing to the Convention were due rather to a special interpretation of the Convention than to its wording. In order to examine whether member States could agree on a more flexible interpretation of some provisions of the Convention, and at the same time to discuss any possible revision of certain provisions, the Council established a Committee of Experts on the Interpretation and Revision of the Convention. At its first meeting, this Committee of Experts considered a number of proposals for a different interpretation or a revision of the Convention. Some of these proposals stemmed from the meeting of member and non-member States, some from earlier discussions in the Consultative Committee of UPOV, a body which has been created in order to assist the Council. This Committee of Experts, together with other UPOV bodies, will consider very carefully these and other proposals to improve the system and to make it available to more States. On the other hand, these bodies will certainly not overlook the fact that the UPOV Convention has generally proved to be satisfactory for the present member States and they will therefore approach the question of revising the Convention with great caution.

31. In order to prepare the position to be adopted inside UPOV with regard to certain proposals for amending the Convention which come from the United States of America and from Canada, a special group of UPOV experts will visit these two countries in September 1975 to obtain on-the-spot information on the situation there. The position in the United States is of a rather special character in so far as two national systems for the protection of plant varieties exist there. For plants propagated by vegetative means protection can be obtained under the US Patent Act, as amended in 1954<sup>20</sup>, while sexually reproduced plants can be protected under the US Plant Variety Protection Act of December 24, 1970<sup>21</sup>. Under both systems, plant varieties do not seem to be examined, before the grant of the title, in the same way as they are examined in the present UPOV member States. By visiting these two countries, the group of experts hopes to create a safer basis for discussing the interpretation or possible revision of Article 7 of the UPOV Convention, which prescribes an official examination of each variety before the title is granted. At the time of writing, it seems that the exact meaning of Article 7 and its practical application will be one of the basic questions which the Committee of Experts on the Interpretation and Revision of the Convention and, later, the Council will have to consider in the coming year.

32. It is premature to discuss in detail the proposals for amendment of the Convention. One of the proposals should, however, be mentioned here since it is of major importance for some non-member States and does not seem to be controversial within the member States. The proposal is to delete or amend the list of genera and species annexed to the Convention. It has already been mentioned that member States are obliged to apply the Convention to all these species within eight years from the entry into force of the Convention on their territory, and to at least five as from that entry into force. It has been pointed out that the genera and species

listed in the Annex are of great importance to European countries but of little or no importance to some other countries<sup>22</sup>. Since it is desirable that other countries should join the Union, the provisions concerning this list and the list itself will have to be amended. This could be done either by increasing the number of the genera and species appearing on the list and obliging member States to apply the Convention to only a limited number of these genera and species, or by completely abolishing the list. The intention of the Convention that a certain number of genera and species should exist to which all member States would apply the Convention could be achieved by mutual encouragement in the Council or in other bodies of UPOV. Already, in the ordinary sessions of the Council, the list of species eligible for protection in each member State is regularly discussed with a view to creating harmony in the application of the Convention. For the present member States, the list annexed to the Convention is no longer of any relevance. It can therefore be expected that this problem will be solved in a satisfactory manner during the next revision conference.

33. In addition to the proposals for improving the provisions of the Convention which seem to hamper the enlargement of the Union, other proposals of a more basic character have been advanced with a view to further revision. In the study by Blum referred to above<sup>23</sup> some proposals were made with a view to a better adjustment of plant variety protection to the needs of developing countries. This is indeed a very important question and it will certainly be taken into serious consideration. In Blum's view, plant variety protection can become an important tool for the improvement of living conditions in the developing countries. At a time when the role of the patent in developing countries and the question of a revision of the Paris Convention for the Protection of Industrial Property are being seriously considered, it is obvious that the plant variety protection system will also have to undergo similar examination.

### Summary

34. In conclusion, it can be stated that the Convention for the Protection of New Varieties of Plants has made a good start and that cooperation between the member States is about to be improved. The number of member States is still small but a few more States are expected to join within a short time, and UPOV has started the necessary work to remove the obstacles which are presently hampering the accession of further States. For the future, it can be expected that one of the important problems which will have to be discussed is the question whether a truly international system of protection along the lines of the Patent Cooperation Treaty can be introduced, and another is the extent to which it is necessary to adjust the system to the requirements of States not yet members of the Union. At the time of writing, UPOV appears to have the necessary machinery for tackling these problems.

<sup>22</sup> Rudolf E. Blum, "The Threat to Our Environment and the Protection of Intellectual Property," *Industrial Property*, 1972, pp. 273 to 248; Pielen, "Records of a Meeting of Member and Non-Member States of UPOV," UPOV publication No. 330 (E), pp. 21 and 22.

<sup>23</sup> See footnote 22.

<sup>20</sup> 35 U. S. C., *La Propriété industrielle*, 1956, p. 172.

<sup>21</sup> *Industrial Property*, 1972, pp. 160 et seq.

# PLANT VARIETIES

## BELGIUM

### Law on the Protection of New Plant Varieties

(of May 20, 1975)

#### Chapter I: General Provisions

1. — This Law governs the protection of new plant varieties.

Without prejudice to the provisions of the Law of July 11, 1969, on Pesticides and Raw Materials for Agriculture, Horticulture, Forestry and Animal Husbandry, or to the provisions of the rules made under that Law, a new plant variety certificate, which confers on its owner the exclusive right to produce and commercialize the protected plant variety, may be granted for new plant species and varieties specified by the King which meet the conditions laid down in this Law.

The protection provided for in this Law excludes any protection provided for in the legislation on patents.

2. — For the purposes of the implementation of this Law:

(a) (i) "variety" means any clone, line, stock or hybrid that is susceptible of cultivation, and any cultivar;

(ii) "reproductive or propagating material" means seeds, seedlings, plants or parts of plants that are intended for the reproduction of plants;

(iii) "breeder" means the natural or legal person who has bred or discovered a new variety, or his successor-in-title;

(iv) "applicant" means the natural or legal person who has filed an application for the recognition of breeders' rights;

(v) "commercialize" means to offer for sale, place on sale, stock for sale or delivery, exchange, sell, supply gratuitously or for a consideration, import or export.

(b) (i) "Convention" means the Paris Convention for the Protection of New Varieties of Plants, signed on December 2, 1961;

(ii) "State of the Union" means a State party to the Convention.

(c) (i) "Service" means the Service for the Protection of New Plant Varieties;

(ii) "Council" means the Council referred to in Section 14;

(iii) "Minister" means the Minister with responsibility for agriculture.

3. — (1) New plant variety certificates shall be granted only in respect of new varieties that are sufficiently homogeneous and stable and have a denomination complying with the provisions of Sections 7 and 8, and provided that the applicant meets the requirements arising under this Law.

(2) New plant variety certificates shall be granted in respect of a variety only if an examination reveals that the conditions prescribed in Sections 3 to 8 are fulfilled.

4. — (1) A variety shall be considered new when, whatever the origin, artificial or natural, of the initial variation from which it resulted, it is clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by reference to various factors such as: cultivation or marketing already in progress, entry, or an application for entry, in an official register of varieties, inclusion in a reference collection or precise description in a publication.

A new variety may be defined and distinguished by morphological or physiological characteristics. In all cases, such characteristics must be susceptible of precise description and recognition.

(2) The fact that a variety has been entered in trials, or has been submitted for registration or entered in an official register, may not be set up against the breeder of that variety or his successor-in-title.

(3) With the exception of the varieties referred to in Section 49, a variety shall not be considered new if, at the time of the application, it is commercialized in Belgium, or has been commercialized abroad for more than four years, with the agreement of the breeder or his successor-in-title.

5. — The new variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.

6. — The new variety must be stable in its essential characteristics, that is, it must remain true to the description given of it at the time of the grant of the new plant variety certificate after repeated reproduction or multiplication or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each such cycle.

7. — The applicant shall give the variety a denomination.

8. — The King shall specify, taking due account of the provisions of the Convention, the conditions to be fulfilled by the variety denomination and the conditions under which it may be used.

9. — (1) If the variety has been bred outside Belgium, the new plant variety certificate shall be granted when Belgium is bound to do so under the Convention or any other international convention.

(2) If the variety has been bred outside Belgium and paragraph (1) is not applicable, the new plant variety certificate shall be granted when the State in which it was bred grants equivalent protection to similar new varieties bred in Belgium.

(3) If the variety has been bred outside Belgium without there being the obligation referred to in paragraph (1) or the reciprocity referred to in paragraph (2), the Minister may,

on the advice of the Service, and after the Council has been heard, specify the conditions for the grant of a new plant variety certificate in respect of a variety bred outside Belgium which he considers to be beneficial to Belgian agriculture, horticulture or forestry. The Minister may impose limitations that are not provided for in the Convention.

10. — An applicant who has filed an application for the recognition of breeders' rights in another State of the Union in accordance with the provisions in force in that State shall enjoy a right of priority with respect to the grant in Belgium of a new plant variety certificate for the same variety, provided that he:

(a) files a request for the protection of the new variety and claims the priority of the first application within twelve months following the filing of that application;

(b) submits, within three months from the filing of the request referred to under (a), copies, certified by the competent authority of the State of the Union that received the original application, of the documents that were filed with that application, and

(c) submits, within four years following the expiration of the period referred to under (a), the additional documents and material in compliance with the conditions specified by the King.

11. — The King shall specify the duration of protection to be granted in respect of each species or group of species subject to this Law.

The duration of protection shall not be less than fifteen years, or eighteen years in the case of fruit trees and their rootstocks, vines, forest trees and ornamental trees. The maximum duration shall not exceed twenty-five years.

The period of protection shall commence on the date of the grant of the new plant variety certificate.

## Chapter II: Grant of the New Plant Variety Certificate

12. — A special service for the grant of new plant variety certificates, called the Service for the Protection of New Plant Varieties, shall be created by the King at the Ministry of Agriculture.

13. — The Service shall maintain a Register of Applications for new plant variety certificates, and a register of new plant variety certificates granted called the Register of Varieties.

14. — The Service shall be assisted by a Scientific Council composed of persons specially qualified in law, genetics, botany and plant phytotechnics.

The tasks, composition and functions of the Council and of its sections shall be specified by the King. The members of the Council shall be appointed and dismissed by the King.

15. — Applications for new plant variety certificates shall be filed with the Service. The King shall specify the conditions subject to which they shall be recorded in the Register of Applications and which shall determine the order in which they are entered. He shall lay down the procedure for publi-

cation of the entry and fix the period during which any person giving evidence of a legitimate interest may submit observations.

The applicant may at any time renounce his application. He shall inform the Service of such renunciation in compliance with the conditions specified by the King. Fees paid under Section 45 shall remain the property of the Service.

16. — Any alteration of the application entered in the Register of Applications shall be treated as a new application.

Incomplete applications shall be treated as not having been received. The respective applicant shall be responsible for the storage and return, where applicable, of material and documents.

17. — New plant variety certificates shall be granted after verification of the existence of the requirements provided for in Sections 3 to 8 and after examination of any observations that may have been submitted.

The variety for which a new plant variety certificate has been granted shall be entered by the Service in the Register of Varieties.

18. — (1) Examinations shall be carried out under the direction of the Service; the Service may seek the assistance of the Council referred to in Section 14.

The findings of the Service and the Council shall be communicated to the applicant. The applicant may inspect the examination file and submit observations.

Any person having submitted observations shall be sent the results of the examination concerning them. The Service may authorize that person, at his request, to inspect the part of the examination file that relates to his observations. He shall be entitled to enlarge upon those observations.

The King shall specify the periods during which the observations referred to in this Section have to be submitted.

(2) The decision of the Service to reject the application for a new plant variety certificate or to disregard observations shall state the reasons on which it is based.

19. — The applicant and the party having submitted observations shall be obliged to provide the Service with all information, documents, propagating material and seeds that are considered necessary for the examination.

20. — The King shall have power to conclude agreements with foreign scientific institutions with a view to the examination of new plant varieties and to take all such executive measures as are required to that end.

## Chapter III: Rights and Obligations of the Owner of a New Plant Variety Certificate

### Part I

#### *Licenses and Compulsory Licenses*

21. — The owner of a new plant variety certificate shall have the exclusive right to render the production for commercial purposes and the commercialization of reproductive or vegetative propagation material for the respective variety



subject to his prior authorization and to conditions specified by him. He may grant licenses.

Vegetative propagation material shall be deemed to include whole plants.

The right of the owner shall extend to ornamental plants or parts thereof that are normally marketed for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

22. — The provisions of Section 21 shall not apply in so far as the production and maintenance of the propagating material for a variety takes place only with a view to scientific research or the production of new varieties.

The authorization of the owner of the new plant variety certificate shall be required, however, when the repeated use of the new variety is necessary for the commercial production of another variety.

23. — The owner of the new plant variety certificate shall inform the Service without delay, in the manner specified by the King, of licenses granted by him in Belgium. Such licenses shall be entered in the Register of Varieties.

24. — The owner of a new plant variety certificate must grant such licenses as are necessary to supply the market with propagating material and to provide the licensee with the material necessary for the exercise of his license.

Such licenses shall be granted at fair prices and shall not contain provisions liable to disrupt the normal conditions of competition.

25. — The exclusive right of the owner of a new plant variety certificate may only be subject to limitation for reasons of public interest and only by means of a compulsory license granted by the Service in compliance with conditions specified by the King.

Such compulsory licenses shall be granted when the Minister considers, on the advice of the Service, and after the Council has been heard, that the provisions of Section 24 have not been fulfilled.

The compulsory license may only be granted to one or more natural or legal persons offering the required scientific, professional and material guarantees. It shall be entered in the Register of Varieties.

The owner of the new plant variety certificate shall be entitled to fair remuneration to be paid by the grantee of the compulsory license, except where there is reason to make such remuneration payable by the Treasury.

## Part II

### *Entitlement*

26. — Breeders' rights shall belong to the person who has bred or discovered the new variety or to his successor-in-title.

If the breeder is working for an employer, the right shall belong to that employer, unless otherwise agreed.

If two or more natural or legal persons have bred the same new variety independently, the breeders' rights shall belong to the first applicant.

27. — Actions claiming breeders' rights in their entirety or an indivisible part thereof shall be brought within five years following the grant of the new plant variety certificate.

The Service shall be informed of the action brought by the claimant, according to the procedure specified by the King.

28. — Licenses acquired in good faith before an action claiming breeders' rights was brought shall remain valid in relation to the new owner of the new plant variety certificate.

## Part III

### *Renunciation and Assignment*

29. — The owner of a new plant variety certificate may renounce his rights.

Renunciation shall be effective only as from its entry in the Register of Varieties.

30. — Renunciation may not be entered if, according to the entries in the Register of Varieties, there are persons who, in relation to the breeders' rights, possess rights or have obtained licenses, or who have initiated an action claiming the breeders' rights, except where those persons consent to the renunciation.

31. — The King shall specify the formalities and the time limits to be observed for the implementation of Sections 29 and 30.

32. — The owner of the new plant variety certificate may assign his rights in whole or in part.

Such assignment shall be evidenced in writing and notified to the Service according to the formalities and within the time limits specified by the King.

It shall not be binding on third parties until it has been entered in the Register of Varieties.

## Chapter IV: Forfeiture and Nullity

### Part I

#### *Forfeiture*

33. — (1) The Service shall declare the forfeiture of the right to the new plant variety certificate, in the manner specified by the King, when the owner of the certificate or the licensee is no longer able to provide, on being required to do so by the Service, reproductive or propagating material capable of producing the new variety with the morphological and physiological characteristics defined at the time of the grant of the new plant variety certificate.

(2) The owner of a breeder's certificate may be deprived of his rights by the Service when he:

(a) fails to provide the Service, on being requested to do so and within the prescribed period, with the reproductive or propagating material, the documents and the information deemed necessary for examining the new variety, or who

opposes the examination of the measures taken with a view to selection for maintenance;

(b) who has not complied with the obligation referred to in Section 44(ii) after expiration of the periods specified by the King.

(3) Forfeiture shall be entered in the Register of Varieties.

## Part II

### Nullity

34. — The new plant variety certificate shall be declared null and void by the Service if it appears that the requirements laid down in Section 4 were not complied with at the time when it was granted.

Nullity shall be pronounced either at the request of any interested party or ex officio; it shall be notified to the owner of the certificate.

Nullity shall be entered in the Register of Varieties.

## Chapter V: Infringement

35. — Either of the following acts, committed knowingly and without the consent of the owner of the new plant variety certificate, shall be considered acts of infringement:

(a) the commercial production and commercialization of reproductive or vegetative propagating material of a variety protected by a new plant variety certificate, including ornamental plants or parts thereof that are normally marketed for purposes other than propagation;

(b) the repeated use in each reproduction cycle of the reproductive or propagating components of a variety protected by a new plant variety certificate in order to produce another variety for the purposes of commercialization.

36. — An infringement action may be brought after the grant of the new plant variety certificate.

The purpose of the action may be:

(i) confiscation of the objects produced by means of the infringement;

(ii) cessation of the infringement;

(iii) payment of compensation for the loss caused by the infringement.

Notwithstanding the first paragraph of this Section, an order to desist may be sought as soon as the application for a new plant variety certificate has been entered in the Register of Applications provided for in Section 15.

37. — Until such time as the Service has ruled on the application for the grant of a new plant variety certificate, the court may order the cessation of acts of infringement.

It may require the applicant to deposit security.

If the decision of the Service is favorable, the security shall be returned on presentation of the new plant variety certificate.

If the Service rejects the application for the grant of a new plant variety certificate, the party having sought the order to desist shall indemnify the other party.

## Chapter VI: Disputes

38. — (1) Disputes relating to civil rights which arise out of this Law shall be within the jurisdiction of the court of first instance.

Disputes relating to the validity of applications for new plant variety certificates and to the refusal, grant, forfeiture and nullity of such certificates shall also be within the jurisdiction of the said court. Actions shall not stay the procedure. However, if the dispute arises in the course of the administrative processing of the application for a certificate, the Service may, at the request of one of the parties to the court proceeding, suspend the grant of the certificate until the court has delivered its decision.

In cases where the action concerns intellectual property rights and is not directed against the State, the plaintiff shall be obliged to call upon the State to take part in the proceedings.

(2) Any action referred to in paragraph (1) and any decision delivered on such an action shall be entered in the Register of Applications or the Register of Varieties, as the case may be.

39. — Section 569, first paragraph, of the Civil Procedure Code is hereby completed by the following provision:

"20. Actions referred to in Section 38 of the Law of May 20, 1975, on the Protection of New Plant Varieties."

40. — Section 627(5) of the same Code is hereby replaced by the following provision:

"(5) the court of the place where the infringement occurred in the case of actions brought in matters of infringement of copyright, patents and plant variety protection."

41. — Section 1481\*, first paragraph, of the same Code is hereby replaced by the following provision:

"Patentees, owners of new plant variety certificates or of applications therefor, successors-in-title and owners of copyright may, with the judge's authorization, obtained on application, cause a description to be made, by one or more experts appointed by the judge, of the apparatus, machines, works, varieties, reproductive and propagating material and all other articles and processes alleged to constitute infringement, together with any plans, documents, calculations, writings, plants or parts of plants which may prove the infringement alleged, and any instruments which have served directly in the manufacture proceeded against."

42. — In Section 1482 of the same Code, the words "the patent" are hereby replaced by the words "the patent, the new plant variety certificate or a copy of the registered application, certified by the Service for the Protection of New Plant Varieties."

43. — The registrar shall communicate free of charge to the Service, within a month of their being delivered, copies

\* For Sections 1481-1488 of this Code see *Industrial Property*, 1971, p. 122.



of court rulings on the disputes referred to in Section 38(1), without prejudice to the application of Section 792 of the Civil Procedure Code to the other disputes referred to in Section 38.

#### Chapter VII: Final and Transitional Provisions

44. — The King shall specify, according to the genus, species or variety:

(i) the fee to be paid by the applicant for the filing of his application;

(ii) the annual fee payable by the owner of breeders' rights.

45. — The King shall also specify:

(i) the fees payable for the entries made by the Service under Sections 15, 17, 23, 25, 29 and 32;

(ii) the fees payable for the issue of extracts and copies by the Service.

Advance payment of the fees provided for in this Article may be demanded.

46. — The income generated by fees shall be applied to the expenditure incurred by the Service.

Income and expenditure shall be credited and debited to a special fund created in the special section of the budget of the Ministry of Agriculture.

The special fund shall be managed by the Minister of Agriculture; the accountant who collected the income shall have direct access to the assets of the special fund.

At the close of every fiscal year, any surplus of receipts over expenditure in excess of 250,000 francs shall be paid to the Treasury. This amount may be amended by the King.

47. — Applications for the grant of new plant variety certificates and all instruments, requests and documents relating to the implementation of this Law or the rules made thereunder shall, when they issue from a person residing abroad, be written in French or Dutch or be accompanied by a translation into one of those languages.

48. — The entries and observations required by Sections 15, 16, 17, 23, 25, 27, 29, 32, 33 and 34 shall be published by the Service in the manner specified by the King.

49. — (1) Where, prior to the entry into force of this Law, a variety has been the subject:

(a) of a patent acquired in Belgium;

(b) of a patent or title of protection acquired in one of the States of the Union;

(c) of an entry in a Belgian list of varieties established under the Royal Decree of March 25, 1952, Organizing the Control of Agricultural and Horticultural Seeds and Seedlings, or under the Royal Decree of May 17, 1968, Organizing the Control of Basic Materials and Reproductive Materials for Forest Plants, or of an entry in the National Catalogue of Varieties of Agricultural Plant Species established under the Royal Decree of May 12, 1972, on the National Catalogue of Varieties of Agricultural Plant Species, or of an entry in the Catalogue of Varieties of Vegetables established under the

Royal Decree of June 13, 1973, on the Commercialization of Vegetable Seeds, or of an entry in the register of a Belgian professional association that fulfills the conditions specified by the King;

the breeder may, within one year following the entry into force of this Law with respect to the species and varieties specified by the King under Section 1, request application of this Law without the possibility of common knowledge within the meaning of Section 4, relating to facts subsequent to the date of the grant of the said patent or title or of the entries referred to in paragraph (c) above, being invoked against such application.

(2) Where the provisions of this Section are applied, and subject to the examination for novelty, stability, homogeneity and of the denomination:

(i) the variety in question must have fulfilled these conditions at the time of the filing of the application for a patent or title of protection, or at the time of the entry in an official Belgian list of varieties or in a national catalogue or in the register of a Belgian professional association;

(ii) the duration of the protection granted under the provisions of Section 11 of this Law shall be reduced by the time that has elapsed between the date of the initial entry, as defined above, and that of the entry in the Register of Varieties.

This provision shall apply also to varieties which, prior to the entry into force of this Law, have enjoyed the protection provided for in the Convention in one or more States of the Union.

50. — This Law shall enter into force on the date set by the King and at the latest one year after its publication in the *Moniteur Belge*.

#### GERMANY (Federal Republic of)

##### I

#### Law Amending the Plant Varieties Protection Law of May 20, 1968

(of December 9, 1974) \*

##### Article 1

The Plant Varieties Protection Law of May 20, 1968 (*Bundesgesetzblatt I*, p. 429) <sup>1</sup>, as amended by Article 203 of the Introductory Law on the Penal Code of March 2, 1974 (*Bundesgesetzblatt I*, p. 469), is amended as follows:

1. — Article 2 is amended as follows:

The following sentence is added to paragraph (3):

"The fact that reproductive or other harvested material of a variety has been commercialized in the territory where

\* Translation of the text published in the *Bundesgesetzblatt I*, p. 3416.

<sup>1</sup> *Industrial Property*, 1969, p. 236.

this Law is in force by the owner of the variety or his predecessor-in-title during the four years preceding the inclusion of the species to which it belongs in the List of Species, pursuant to Article 7(1)2, may not be held against the novelty of that variety. ”

2. — Article 3 is amended to read as follows:

“ Article 3  
*Propagation Material*

(1) Within the meaning of this Law, propagation material shall be understood to be:

1. seeds,
2. plants and parts of plants of species which normally reproduce by vegetative propagation, when intended for plant production.”

3. — Article 7 is amended to read as follows:

“ Article 7  
*List of Species*

(1) The Federal Minister of Food, Agriculture and Forestry (hereinafter referred to as “ the Federal Minister ”) shall be empowered to do the following by order:

1. compile the List of Species in the same form as in the former Annex to this Law (*Bundesgesetzblatt* 1968 I, pp. 429, 441);
2. include plant genera, plant species and sub-species (hereinafter referred to as “ species ”) in the List of Species;
3. amend the denomination of species in the List of Species as required by developments in scientific language or the national language.

(2) A species may only be included in the List of Species when such inclusion is necessary in view of the importance of the commercialization of its varieties in the territory where this Law is in force, and when the requirements are met for the carrying-out of such tests on varieties of that species as are necessary for the grant of variety production. The requirements for the carrying-out of tests referred to in the foregoing sentence need not be met in the territory where this Law is in force if they are met for the species concerned in another State and the Federal Minister has established by ordinance that the testing methods in that State correspond to the requirements of this Law. ”

4. — Article 8 is amended as follows:

(a) paragraph (1) is amended to read as follows:

“ (1) The denomination registered as the denomination of the variety shall be that figuring in the application for protection. The denomination of a variety may consist of one or more words, combinations of letters and figures or combinations of words and figures.”;

(b) the following paragraph (1a) is inserted after paragraph (1):

“ (1a) Denominations shall be excluded from such registration when they:

1. do not allow the variety to be distinguished, for example, when they are composed entirely of figures;

2. correspond to, or may be confused with, a denomination under which, in the territory in which this Law is in force or in another member State, a variety of the same botanical species or a related species has already been entered in an official list of varieties or where propagating material of the same variety is already commercialized, except where the variety is no longer either registered or grown and the variety denomination has not acquired any special significance;

3. may cause offense or mislead, in particular when they consist of the botanical or common name of another species or are likely to lead to confusion as to the origin, characteristics or value of the variety, or the identity of the breeder or owner of the variety.

The Federal Office of Plant Varieties (*Bundessortenamt*) shall communicate, in a journal specified by the Federal Minister, the species that it considers to be related in terms of the first sentence, under 2, for the purposes of the examination of denominations of a variety.”;

(c) in paragraph (2) the reference “ paragraph (1) ” is replaced by the reference “ paragraph (1a). ”

5. — In Article 9(1), first sentence, the word “ botanical ” after the word “ related ” is deleted.

6. — Article 10 is amended as follows:

(a) paragraph (1) is amended to read as follows:

“ (1) Any person commercializing propagation material of a protected variety shall use the denomination of that variety; if the denomination of that variety is indicated in writing it shall be readily distinguishable and clearly legible. The first sentence shall apply also to plants that are commercialized for cultivation purposes or as potted plants intended for cultivation. The first and second sentences shall apply also after the expiration of the protection of that variety;

(b) in paragraph (2) the word “ botanical ” after the word “ related ” is deleted.

7. — Article 11 is amended as follows:

(a) in Article 11(1)1 the indication “ Article 8(1)3 ” is replaced by the indication “ Article 8(1a), first sentence, 3; ”

(b) in Article 11(2), first sentence, the words “ a different ” are replaced by the word “ another.”

8. — In Article 14, first sentence, the words “ sought by the applicant ” are inserted after the words “ protection for the variety,” and the words “ from the holder of the protection right ” after the word “ transferred. ”

9. — Article 18 is amended as follows:

(a) item 1 is amended to read as follows:

“ 1. in the case of hops, potatoes, vines and vine stocks, trees and their rootstocks — to the end of the twenty-fifth year following the grant of the protection right, and ”;

(b) the following second sentence is added:

"Where variety protection has been granted in respect of a variety of which reproductive or other harvested material under Article 2(3), second sentence, has already been commercialized during the period mentioned therein, the period of variety protection shall be shortened by the number of complete years that have elapsed since the beginning of the commercialization of reproductive or other harvested material in the variety."

10. — Article 19 is amended to read as follows:

"Article 19  
Yearly Fees

A holder of a protection right in respect of a variety shall be required to pay each year (hereinafter referred to as "protection year") a yearly fee for the duration of such protection. For the purposes of the payment of the yearly fee, the first protection year shall be the first calendar year following the decision to grant the protection right."

11. — Article 20 is amended as follows:

the following second sentence is added to Article 20(2):

"If the fees due are not paid, the Federal Office of Plant Varieties shall notify the applicant that the application is regarded as not having been filed if the fees are not paid within one month of delivery of the notification."

12. — Article 21 is amended as follows:

(a) paragraph (8) is amended to read as follows:

"(8) Where the holder of the protection right grants a license in respect of a variety of a species subject to the Seed Trade Law (*Saatgutverkehrsgesetz*), he may request information from the competent authority:

1. regarding the person who has applied for the recognition of seed, as propagation material of the protected variety in terms of the Seed Trade Law;

2. regarding the size of the propagation areas proposed for the purposes of the recognition of that seed;

3. regarding the weight or amount indicated for the batches of seed material that have been recognized;"

(b) the following paragraph (9) is added:

"(9) If, in the cases provided for in paragraph (7), first and fourth sentences, the fees due are not paid, the Federal Office of Plant Varieties shall notify the applicant that the application is regarded as not having been filed if the fees are not paid within one month of delivery of the notification."

13. — Article 22 is amended as follows:

(a) paragraph (5) is amended to read as follows:

"(5) In the cases provided for in paragraph (1), first and second sentences, the provisions of Article 21(7), fourth and fifth sentences, and (8) shall apply, *mutatis mutandis*;"

(b) the following paragraph (6) is added:

"(6) If, in the cases provided for in paragraph (1), first and second sentences, and paragraph (5), the fees due are not paid, the Federal Office of Plant Varieties shall notify the applicant that the application is regarded as not having been filed if the fees are not paid within one month of delivery of the notification."

14. — Article 24 is amended as follows:

(a) paragraph (2), third sentence, is amended to read as follows:

"They shall be appointed by the Federal Minister for the duration of their activity with the Federal Office of Plant Varieties;"

(b) the following new paragraph (4) is inserted:

"(4) The President of the Federal Office of Plant Varieties may, should the need arise for a period expected to be of limited duration, entrust to persons who have the qualifications required of members the functions of members of the Federal Office of Plant Varieties (auxiliary members). Such appointments may be made for a specified period or for as long as the need persists, and they may not be revoked during that time. In all other respects the provisions on members apply also to auxiliary members;"

(c) the existing paragraphs (4) and (5) become paragraphs (5) and (6) respectively.

15. — Article 25 is amended as follows:

(a) paragraph (2) is amended to read as follows:

"(2) The examining sections shall be competent in the following matters:

1. examination of variety applications, objections and observance of the requirements for the grant of variety protection, and decisions on the grant of variety protection in examination procedures;

2. decisions on the deletion of a denomination of a variety;

3. decisions on the registration of alternative denominations of a variety;

4. establishment of provisional denominations of a variety;"

(b) the following second sentence is added to paragraph (4):

"The President may specify that decisions on costs lie within the competence of a service other than the Federal Office of Plant Varieties."

16. — In Article 27(4), first sentence<sup>2</sup> the word "Vertreter" is replaced by the word "Stellvertreter"<sup>3</sup>.

17. — Article 29, first sentence, is amended to read as follows:

"Honorary advisers shall receive an allowance as provided for in Articles 2 to 5, 8(a) and 9 to 11 of the Law on

<sup>2</sup> German text.

<sup>3</sup> No change in English translation published in *Industrial Property*, 1969, p. 241

Allowances for Honorary Judges, in the form published on October 1, 1969 (*Bundesgesetzblatt I*, p. 1753). ”

18. — Article 30 is amended as follows:

(a) paragraph (1), second sentence, is amended as follows:

(aa) item 1 is amended to read as follows:

“1. the species and the denomination of the variety;”

(bb) item 2 is amended to read as follows:

“2. the morphological and physiological characteristics specified in the decision on the grant of variety protection; also, for varieties where plants are produced by crossing between certain hereditary components, an indication of that fact;”

(cc) in item 5 the words “and of an appointed representative (Article 23(2))” are inserted after the words “right of exploitation;”

(b) paragraph (2) is amended as follows:

(aa) the first sentence is amended to read as follows:

“Entries in the Register of Protected Plant Varieties concerning:

1. the owner of an exclusive right of exploitation;

2. changes regarding the owner of the exclusive right of protection or the appointed representative;

3. changes regarding the appointed representative of the holder of an exclusive right of exploitation; shall be made or deleted only on the instructions of the Federal Office of Plant Varieties;”

(bb) the second sentence is deleted.

19. — Article 31 is amended to read as follows:

#### “Article 31

##### Access

(1) Consultation of the Register of Protected Plant Varieties, of documents relating to the *Jedermannserlaubnis*<sup>4</sup> and other documents under Article 30(1), third sentence, and, until variety protection is granted, access to the documents relating to a published application for variety protection and to test growings of the variety which is the subject of that application, shall be open to all.

(2) Access to documents relating to variety protection that has been granted and to test growings for the subsequent verification of the durability of the variety shall be open to all persons supplying reasonable evidence of a legitimate interest in such access.”

20. — The following Article 31a is inserted after Article 31:

#### “Article 31a

##### Communication of Information

The Federal Office of Plant Varieties may communicate information on test results to authorities and services outside the territory where this Law is in force in so far as this is necessary for the mutual exchange of information in connection with variety testing.”

21. — Article 32 is amended as follows:

(a) paragraph (1), second sentence, is amended to read as follows:

“The application shall be accompanied by the required documents;”

(b) the following new paragraph (2) is inserted:

“(2) The applicant may, with the consent of the Federal Office of Plant Varieties, indicate a provisional designation instead of a denomination of a variety for the purposes of the variety protection grant procedure;”

(c) the existing paragraphs (2) to (4) become paragraphs (3) to (5) respectively;

(d) the new paragraph (4) shall read as follows:

“(4) If the application fees due are not paid, the Federal Office of Plant Varieties shall notify the applicant that the application is regarded as not having been filed if the fees are not paid within one month of delivery of the notification.”

22. — Article 34 is amended to read as follows:

#### “Article 34

##### Examination of and Publicity for Applications

(1) The Federal Office of Plant Varieties shall examine the application for variety protection and publish it in the bulletin prescribed by the Federal Minister, mentioning the species, the denomination of the variety or provisional designation submitted, the application date, the name and address of the applicant and the name and address of the original breeder.

(2) If, after publication, an application is withdrawn or rejected, the circumstances shall likewise be published by the Federal Office of Plant Varieties.”

23. — Article 35 is amended to read as follows:

#### “Article 35

##### Objections

(1) Any person may lodge objections to the grant of variety protection with the Federal Office of Plant Varieties. Objections may be directed against the variety or against the denomination of the variety. They shall be made in writing and state the reasons on which they are based.

(2) Objections to the variety may only be based on the allegation that:

1. the variety to which the application relates is not eligible for protection under Articles 2, 5 or 6;

2. the applicant is not entitled to variety protection under Article 12.

The period for filing objections under 1 lasts until the grant of variety protection and for objections under 2 until three months have elapsed after publication of the application in respect of the variety. The supporting facts and elements of proof accompanying either of the above allegations shall be furnished in detail. Except where already set forth in the official submission, they shall be furnished before the expiration of the period for filing objections.

<sup>4</sup> See Article 21 of the Law of 1968.

(3) Objections to the denomination of the variety may only be based on the allegation that the denomination of the variety is excluded from registration under Article 8. The period for filing objections lasts until the expiration of a period of three months following the publication of the denomination of the variety submitted. The third and fourth sentences of paragraph (2) shall apply."

24. — Article 36 is amended as follows:

(a) paragraphs (1) and (2) are amended to read as follows:

"(1) The Federal Office of Plant Varieties shall examine whether the conditions for the grant of variety protection are met. It may waive examination if it already has earlier examination findings in its possession.

(2) For the purposes of examination the Federal Office of Plant Varieties must grow the variety. It may entrust to other technically qualified services the task of growing the variety or such further research as may be necessary, or base its own examination on the results of test growings or further research carried out by such services. However, results of test growings and research obtained outside the territory where this Law is in force may only be used as a basis for examination if the services concerned are included in a list published by the Federal Office of Plant Varieties;"

(b) the following paragraph (4) is added:

"(4) If the examination fees due are not paid, the Federal Office of Plant Varieties shall notify the applicant that the application is rejected if the fees are not paid within one month of delivery of the notification."

25. — Article 37 is amended as follows:

(a) paragraph (1) is amended to read as follows:

"(1) The Federal Office of Plant Varieties shall call upon the applicant to do the following within a specified time:

1. submit a denomination of the variety, where the applicant has given a provisional designation in accordance with Article 32(2);

2. submit another denomination of the variety, where the denomination of the variety originally submitted does not meet the requirements of Article 8.

If the applicant fails to comply with this request, the application in respect of the variety shall be rejected;"

(b) in paragraph (2), the words "in his application" are replaced by the words "when submitting his denomination of the variety," and the word "botanical" after the word "related" is deleted.

26. — Article 38 shall read as follows:

#### "Article 38

##### *Submission of a Denomination of a Variety*

Where the Federal Office of Plant Varieties demands the submission of a denomination of a variety in accordance with Article 37(1)1, or of another denomination of

a variety in accordance with Article 11(2), or with Article 37(1)2, Article 32(1), first sentence and (5) and Article 34 shall apply *mutatis mutandis*, as well as Article 35(3) and, in the case of Article 11(2), first sentence, also Article 37(2)."

27. — The following second sentence is added to Article 39:

"In its decision regarding the grant of variety protection, the Federal Office of Plant Varieties shall specify the morphological and physiological characteristics that have to be registered; the number and types of those characteristics may be altered *ex officio*."

28. — Article 40 is amended as follows:

(a) paragraph (1) is amended to read as follows:

"(1) Persons having participated in the procedure before the examining committee may file an extra-judicial appeal against the decision of the said committee. Those persons are the applicant or the owner of variety protection rights and third parties who have lodged objections under Article 35. Such appeals shall stay the proceedings except in cases relating to the establishment of a provisional designation;"

(b) paragraph (4) shall read as follows:

"(4) If the appeal fees due are not paid within the period allowed for appeals, the appeal shall be regarded as not having been filed. With respect to the examination fees due in the appeal procedure, Article 36(4) shall apply *mutatis mutandis*."

29. — Article 42 is amended as follows:

(a) the heading is amended to read as follows:

"Parties Concerned in Certain Proceedings";

(b) paragraph (2) is deleted.

30. — Article 44 is amended as follows:

(a) in paragraph (1), the reference "first sentence" is added after the reference "Article 25(4);"

(b) in paragraph (2), the words "scale of fees" are replaced by the words "second part of the scale of fees appended to the Law on the Charging of Fees by the Federal Office of Plant Varieties and on the Fees of the Patent Court in Variety Protection Matters."

31. — Article 51 is amended as follows:

(a) paragraph (1) is amended as follows:

(aa) item 1 is amended to read as follows:

"1. in contravention of the provisions of Article 10(1), first sentence, fails to make use of the variety denomination in the commercialization of propagation material, or, in contravention of the provisions of Article 10(1), second sentence, fails to make use of the denomination of the variety in the commercialization of plants so designated or does not indicate the denomination of the variety in a readily distinguishable and clearly legible manner; or;"

(bb) in item 2 the word "botanical" before the words "or related" is deleted<sup>5</sup>;

(b) the following paragraph (3) is added:

"(3) The administrative authority in terms of Article 36(1)1 of the Law on Offenses Against Order (*Gesetz über Ordnungswidrigkeiten*) is the Federal Office of Plant Varieties."

32. — Article 57 is amended as follows:

(a) paragraph (1) is amended to read as follows:

"(1) Article 1(2)2 of the Patent Law shall not apply to patent applications for varieties if the patent application has been filed before the inclusion in the List of Species of the species to which the variety belongs;"

(b) in paragraph (2), first sentence, the words "entry into force of this Law" are replaced by the words "inclusion of the species to which it belongs in the List of Species."

33. — The annex is deleted.

## Article 2

Article 4(4), third sentence, of the Trademark Law, in the form published on January 2, 1968 (*Bundesgesetzblatt I*, pp. 1, 29)<sup>6</sup>, last amended by the Law Amending the Law on the Authorization of Costs of June 23, 1970 (*Bundesgesetzblatt I*, p. 805), is amended to read as follows:

"The provisions of paragraph (2)6 shall not apply in so far as the goods in respect of which the application for registration of the trademark is filed are neither varieties of the same botanical species as the variety for which the denomination of the variety is registered, nor varieties of a related species."

## Article 3

In the case of species not subject to Article 18.1 of the Plant Varieties Protection Law, variety protection for varieties which, on the entry into force of this Law, still benefit from variety protection under the Seed Law of June 27, 1973 (*Saatgutgesetz*; *Bundesgesetzblatt I*, p. 450), and in respect of which variety protection was granted prior to December 31, 1962, shall be extended to December 31, 1982.

## Article 4

The Federal Minister of Food, Agriculture and Forestry is authorized to publish the Plant Varieties Protection Law in its currently applicable form with the new date, and in doing so to eliminate inconsistencies of wording and paragraph sequence.

## Article 5

This Law shall apply also to the *Land* of Berlin, pursuant to Article 13(1) of the Third Transitional Law of January 4, 1952 (*Bundesgesetzblatt I*, p. 1). Rules made under the pres-

ent Law shall apply to the *Land* of Berlin pursuant to Article 14 of the said Third Transitional Law.

## Article 6

This Law shall enter into force on December 31, 1974. Notwithstanding the first sentence, Article 1.3 and Article 4 shall enter into force on the day following the promulgation of this Law.

## II

### Order Concerning the List of Species under the Plant Varieties Protection Law

(of December 12, 1974)

1. — The List of Species under the Plant Varieties Protection Law (*Sortenschutzgesetz*) shall be as in Annex 1 hereto.

2. — The methods used for the examination necessary for the grant of variety protection shall comply, with respect to the species indicated in Annex 2 hereto and in the corresponding State specified therein, with the requirements of the Plant Varieties Protection Law.

3. — This Order shall apply also in the *Land* of Berlin, pursuant to Article 14 of the Third Transitional Law of January 4, 1952 (*Bundesgesetzblatt I*, p. 1), in conjunction with Article 62 of the Plant Varieties Protection Law.

4. — This Order shall enter into force on December 31, 1974.

### Annex 1 (pursuant to Article 1)

#### List of Species \*

|  |                          |
|--|--------------------------|
| Agrostis spec.   | Bentgrass                |
| Allium cepa L.   | Onion                    |
| Allium porrum L.   | Leek                     |
| Alopecurus pratensis L.  | Meadow foxtail           |
| Apium graveolens L.  | Celery, Celeriac         |
| Arrhenatherum elatius (L.) Beauv.<br>ex J. S. et K. B. Presl     | Tall oatgrass            |
| Asparagus officinalis L.   | Asparagus                |
| Avena nuda L.  | Naked oat                |
| Avena sativa L.  | Common oat               |
| Begonia-Elatior-Hybrid.  | Elatior Begonia          |
| Beta vulgaris L. ssp. vulgaris var.<br>alba DC.                  | Fodder beet              |
| Beta vulgaris L. ssp. vulgaris var.<br>altissima Doell           | Sugar beet               |
| Beta vulgaris L. ssp. vulgaris var.<br>conditiva Alef.           | Garden beet,<br>red beet |
| Beta vulgaris L. ssp. vulgaris var.<br>vulgaris                  | Mangelwurzel             |
| Brassica juncea (L.) Czern. et Coss.<br>ssp. juncea              | Brown mustard            |
| Brassica napus L. emend. Metzger<br>var. napobrassica (L.) Rchb. | Swede                    |

<sup>5</sup> Translation adapted to the translation of the Law of 1968 appearing in *Industrial Property*, 1969, p. 246.

<sup>6</sup> *Industrial Property*, 1969, p. 23.

\* The English translation has been prepared by the Office of UPOV.



|  |   |   |  |
|--|---|---|--|
| <i>Brassica napus</i> L. emend. Metzger<br>var. <i>napus</i>   | Rape  | <i>Lathyrus sativus</i> L.  | Grass pea vine                                     |
| <i>Brassica nigra</i> (L.) W. Koch   | Black mustard                                   | <i>Lathyrus tingitanus</i> L.                                     | Tangier pea  |
| <i>Brassica oleracea</i> L. convar. <i>acephala</i><br>(DC.) Alef. var. <i>gongylodes</i> L.                                   | Kohlrabi  | <i>Lens culinaris</i> Med.  | Lentil   |
| <i>Brassica oleracea</i> L. convar. <i>acephala</i><br>(DC.) Alef. var. <i>sabellica</i> L.                                    | Kale  | <i>Linum usitatissimum</i> L.                                     | Flax, linseed                                      |
| <i>Brassica oleracea</i> L. convar. <i>acephala</i><br>(DC.) Alef. var. <i>viridis</i> L.; and var.<br><i>medullosa</i> Thell. | Marrow stem<br>Kale                             | <i>Lolium spec.</i>   | Rye-grass  |
| <i>Brassica oleracea</i> L. convar. <i>botrytis</i><br>(L.) Alef. var. <i>botrytis</i>   | Cauliflower                                     | <i>Lotus corniculatus</i> L.                                      | Bird's foot trefoil                                |
| <i>Brassica oleracea</i> L. convar. <i>capitata</i><br>(L.) Alef. var. <i>capitata</i>   | Head cabbage (white<br>cabbage, red<br>cabbage) | <i>Lotus uliginosus</i> Schkuhr                                   | Greater bird's foot<br>trefoil                     |
| <i>Brassica oleracea</i> L. convar. <i>capitata</i><br>(L.) Alef. var. <i>sabauda</i> L.                                       | Savoy cabbage                                   | <i>Lupinus albus</i> L.   | White lupin  |
| <i>Brassica oleracea</i> L. convar. <i>oleracea</i><br>var. <i>gemmifera</i> DC.   | Brussel's sprouts                               | <i>Lupinus angustifolius</i> L.                                   | Blue lupin   |
| <i>Brassica rapa</i> L. emend. Metzger<br>var. <i>rapa</i>   | Turnip  | <i>Lupinus luteus</i> L.  | Yellow lupin                                       |
| <i>Brassica rapa</i> L. emend. Metzger<br>var. <i>silvestris</i> (Lam.) Briggs   | Rape  | <i>Lycopersicon lycopersicum</i> (L.)<br>Karst. ex Farw.          | Tomato   |
| <i>Bromus inermis</i> Leyss.   | Awnless brome,<br>smooth brome                  | <i>Malus sylvestris</i> Mill.                                     | Apple  |
| <i>Cannabis sativa</i> L.  | Hemp  | <i>Medicago falcata</i> L.  | Sickle medick                                      |
| <i>Capsicum annuum</i> L.  | Paprika, red pepper                             | <i>Medicago lupulina</i> L.                                       | Black medick,<br>Trefoil                           |
| <i>Chamaecyparis spec.</i>   | <i>Chamaecyparis</i>                            | <i>Medicago sativa</i> L.   | Lucerne  |
| <i>Chrysanthemum-Indicum-Hybrid.</i>   | <i>Chrysanthemum</i>                            | <i>Medicago x varia</i> Martyn                                    | Hybrid lucerne                                     |
| <i>Cichorium endivia</i> L.  | Endive  | <i>Nicotiana rustica</i> L.                                       | Aztec Tobacco                                      |
| <i>Cichorium intybus</i> L. var. <i>sativum</i><br>DC.   | Chicory   | <i>Nicotiana tabacum</i> L.                                       | Tobacco (common)                                   |
| <i>Cucumis sativus</i> L.  | Cucumber, gherkin                               | <i>Onobrychis viciifolia</i> Scop.                                | Sainfoin   |
| <i>Cucurbita maxima</i> Duch.  | Squash  | <i>Ornithopus sativus</i> Brot.                                   | Serradella   |
| <i>Cucurbita pepo</i> L.   | Pumpkin, vegetable<br>marrow                    | <i>Panicum miliaceum</i> L.                                       | Common millet                                      |
| <i>Cynosurus cristatus</i> L.  | Crested dog's tail                              | <i>Papaver somniferum</i> L.                                      | Poppy  |
| <i>Dactylis glomerata</i> L.   | Cocksfoot                                       | <i>Petroselinum crispum</i> (Mill.) Nym.<br>ex A. W. Hill         | Parsley  |
| <i>Daucus carota</i> L. ssp. <i>sativus</i><br>(Hoffm.) Arcang.  | Carrot  | <i>Phacelia tanacetifolia</i> Benth.                              | (No English common<br>name known)                  |
| <i>Dianthus-Caryophyllus-Hybrid.</i>   | Carnation                                       | <i>Phalaris arundinacea</i> L.                                    | Reed canary grass                                  |
| <i>Euphorbia fulgens</i> Karw.   | <i>Euphorbia fulgens</i>                        | <i>Phaseolus coccineus</i> L.                                     | Runner bean  |
| <i>Euphorbia pulcherrima</i> Willd. ex<br>Klotzsch   | Poinsettia                                      | <i>Phaseolus vulgaris</i> L. var. <i>nanus</i> (L.)<br>Aschers.   | Dwarf French bean                                  |
| <i>Fagopyrum esculentum</i> Moench   | Buckwheat                                       | <i>Phaseolus vulgaris</i> L. var. <i>vulgaris</i>                 | Climbing French<br>bean                            |
| <i>Festuca spec.</i>   | Fescue  | <i>Phleum bertolonii</i> DC.                                      | Timothy  |
| <i>Fragaria spec.</i>  | Strawberry                                      | <i>Phleum pratense</i> L.   | Timothy  |
| <i>Freesia-Hybrid.</i>   | Freesia   | <i>Picea spec.</i>  | Spruce   |
| <i>Glycine max</i> (L.) Merrill  | Soya Bean                                       | <i>Pisum sativum</i> L. s. lat.                                   | Pea  |
| <i>Helianthus annuus</i> L.  | Common sun flower                               | <i>Poa spec.</i>  | Meadow grass                                       |
| <i>Helianthus tuberosus</i> L.   | Jerusalem artichoke                             | <i>Populus spec.</i>  | Poplar   |
| <i>Hordeum vulgare</i> L. convar.<br><i>distichon</i> (L.) Alef.   | Two-row barley                                  | <i>Prunus avium</i> L.  | Sweet cherry                                       |
| <i>Hordeum vulgare</i> L. convar. <i>vulgare</i>   | Six-row barley                                  | <i>Prunus cerasus</i> L.  | Morello  |
| <i>Humulus lupulus</i> L.  | Hops  | <i>Pseudotsuga spec.</i>  | Pseudotsuga  |
| <i>Juniperus spec.</i>   | Juniper   | <i>Pyrus communis</i> L.  | Pear   |
| <i>Lactuca sativa</i> L.   | Lettuce   | <i>Raphanus sativus</i> L. var. <i>niger</i> (Mill.)<br>S. Kerner | Black radish                                       |
| <i>Larix spec.</i>   | Larch   | <i>Raphanus sativus</i> L. var. <i>oleiformis</i><br>Pers.        | Fodder radish                                      |
| <i>Lathyrus cicera</i> L.  | Dwarf chickling<br>vetch                        | <i>Raphanus sativus</i> L. var. <i>sativus</i>                    | Radish   |
|  |   | <i>Rhododendron spec.</i>   | <i>Rhododendron</i> ,<br>Azalea,<br>Azaleandendron |
|  |   | <i>Ribes nigrum</i> L.  | Blackcurrant                                       |
|  |   | <i>Ribes niveum</i> Lindl.  | Whitecurrant                                       |
|  |   | <i>Ribes sylvestre</i> (Lam.) Mert. et<br>W. Koch                 | Redcurrant   |
|  |   | <i>Ribes uva-crispa</i> L.  | Gooseberry   |
|  |   | <i>Rosa spec.</i>   | Rose   |



|   |                                   |
|---|-----------------------------------|
| Rubus subg. Eubatus Focke                     | Blackberry                        |
| Rubus idaeus L.                               | Raspberry                         |
| Saintpaulia ionantha H. Wendl.                | African violet                    |
| Salix spec.                                   | Salix, willow                     |
| Scorzonera hispanica L.                       | Black salsify                     |
| Secale cereale L.                             | Rye                               |
| Setaria italica (L.) Beauv.                   | Foxtail millet,<br>Italian millet |
| Sinapis alba L.                               | White mustard                     |
| Solanum tuberosum L.                          | Potato                            |
| Sorghum dochna (Forssk.) Snowden              | Sweet sorghum,<br>Broom-corn      |
| Spinacia oleracea L.                          | Spinach                           |
| Thuja spec.                                   | Thuja (arborvitae)                |
| Trifolium alexandrinum L.                     | Berseem clover                    |
| Trifolium hybridum L.                         | Alsike clover                     |
| Trifolium incarnatum L.                       | Crimson clover                    |
| Trifolium pratense L.                         | Red clover                        |
| Trifolium repens L.                           | White clover                      |
| Trifolium resupinatum L.                      | Persian clover                    |
| Trisetum flavescens (L.) Beauv.               | Golden oatgrass                   |
| x Triticale                                   | Triticale                         |
| Triticum aestivum L. emend. Fiori<br>et Paol. | Wheat                             |
| Triticum durum Desf.                          | Durumwheat                        |
| Triticum spelta L.                            | Spelt                             |
| Valerianella locusta (L.) Laterrade           | Cornsalad, Lamb's<br>lettuce      |
| Vicia articulata Hornem.                      | One-flowered vetch                |
| Vicia faba L. var. major Harz                 | Broad bean,<br>Horse bean         |
| Vicia faba L. var. minor Harz                 | Tick bean                         |
| Vicia pannonica Crantz                        | Hungarian vetch                   |
| Vicia sativa L.                               | Common vetch                      |
| Vicia sepium L.                               | Bush vetch                        |
| Vicia villosa Roth                            | Hairy vetch                       |
| Vitis spec.                                   | Vine (including<br>rootstocks)    |
| Zea mays L.                                   | Maize                             |

## Annex 2 (pursuant to Article 2)

| Species             | State          |
|---------------------|----------------|
| 1 Chamaecyparis     | Denmark        |
| 2 Chrysanthemum     | United Kingdom |
| 3 Carnation         | Netherlands    |
| 4 Euphorbia fulgens | Denmark        |
| 5 Poinsettia        | Denmark        |
| 6 Freesia           | Netherlands    |
| 7 Juniper           | Denmark        |
| 8 Apple             | United Kingdom |
| 9 Sweet cherry      | France         |
| 10 Morello cherry   | France         |
| 11 Pear             | France         |
| 12 Thuja            | Denmark        |

## NEW ZEALAND

## The Plant Varieties Regulations 1975 \*

## Title and commencement

1. — (1) These regulations may be cited as the Plant Varieties Regulations 1975.

(2) These regulations shall come into force on the day after the date of their notification in the *Gazette* <sup>1</sup>.

(3) These regulations shall apply to the plant varieties specified in the First Schedule to these regulations.

## Interpretation

2. — (1) In these regulations, unless the context otherwise requires,—

“The Act” means the Plant Varieties Act 1973:

“Denomination” means the proposed description which, if approved, will form part of the grant of plant selectors' rights:

“Genus” includes species:

“Species of plant variety” means any genus specified in the First Schedule to these regulations.

(2) Unless expressly defined for the purposes of these regulations, terms and expressions defined in the Act shall, when used in these regulations, have the meanings defined in the Act.

## Part I

## Plant Varieties Office Requirements

## Date of application or document

3. — Any application made to or document filed with the Registrar under the Act shall be deemed to have been made or filed when it is received in the Plant Varieties Office.

## Rectification of errors, omissions and irregularities

4. — (1) Any document delivered to the Registrar relating to any matter arising under the Act or under these regulations may, with the consent of the Registrar and on application by the person delivering the document, be amended and any irregularity of procedure rectified upon payment of the prescribed fee and under such terms, if any, as the Registrar may specify, and thereupon no proceeding shall be invalidated in consequence of any error, omission, or irregularity so rectified.

(2) The Registrar may rectify any error, omission, or irregularity contained in any document of the Plant Varieties Office.

(3) Where rectification of any error, omission, or irregularity under subclause (1) or subclause (2) of this regulation

\* Adopted by Order in Council on June 9, 1975, pursuant to Section 37 of the Plant Varieties Act 1973 (see *Industrial Property*, 1975, p. 118).

<sup>1</sup> These regulations were notified in the *Gazette* on June 12, 1975.

may affect the interests of a third party under the Act or these regulations, the Registrar shall notify details of the rectification in the *Gazette*.

#### *Loss or destruction of document*

5. — Where the Registrar is satisfied that any document issued by him has been lost or destroyed he may issue a duplicate thereof to the person entitled thereto on payment of the prescribed fee.

#### *Fees*

6. — The fees payable under these regulations shall be those prescribed in the Second Schedule to these regulations<sup>2</sup>.

#### *Details in register of plant varieties*

7. — (1) The register of plant varieties kept by the Registrar for the purposes of subsection (3) of section 20 of the Act shall, in relation to each grant, include the following and such additional details as the Registrar may determine:

- (a) The name of the grantee and his address for service in New Zealand;
- (b) The date of the application;
- (c) The date of the grant;
- (d) The period of the grant (including any extended period);
- (e) The date of the expiry, lapse, or termination of the grant;
- (f) The species to which the plant variety belongs;
- (g) The denomination of the plant variety;
- (h) Reference to the record kept of distinctive features of the variety;
- (i) Details of any compulsory licence issued under subsection (2) of section 23 of the Act;
- (j) Details of any revocation or notification of the grant;
- (k) Details of any assignment or transmission of the grant.

(2) A grantee who has changed his name or address for service shall notify the Registrar in writing, to enable the Registrar to amend the register.

#### *Public inspection*

8. — (1) The register of plant varieties shall be open to public inspection during the hours fixed in accordance with subsection (2) of section 5 of the Act and notified in the *Gazette*.

(2) The Registrar may, on request, supply a copy of any entry in the register on payment of the prescribed fee.

### **Part II**

#### **Application for Grant or Protective Direction**

##### *Form of application*

9. — (1) An application for a grant, or for a protective direction under section 18 of the Act, shall be—

- (a) In the English language; and

(b) In the form set out in the Third Schedule to these regulations<sup>3</sup>, or in a form provided by the Registrar for the purpose, or in a form acceptable to the Registrar.

(2) The application shall be accompanied by the prescribed fee.

##### *Denomination of variety*

10. — (1) The denomination submitted in an application for a grant or protective direction under subclause (1) of regulation 9 of these regulations shall—

- (a) Be denoted by one designation only; and
- (b) Conform to international usage for the nomenclature of cultivated plants; and
- (c) Not be the same as, or likely to be confused with, any trade mark.

(2) The Registrar may at any time request the Commissioner of Trade Marks to search his records under subclause (1) of regulation 103 of the Trade Marks Regulations 1954.

(3) Where a variety has already been submitted for registration or registered in another country, only the denomination under which the variety has been registered in that country shall be accepted by the Registrar, unless he decides that the denomination is unsuitable in New Zealand for linguistic or other reasons.

(4) The Registrar may accept temporarily or reject any denomination submitted in an application for a grant or protective direction where, in his opinion, the denomination does not comply with the provisions of subclauses (1) and (3) of this regulation.

(5) The Registrar may accept a breeder's reference as a temporary denomination while a protective direction is in force.

(6) The Registrar shall notify the applicant in writing of a rejection of denomination under subclause (4) of this regulation and request him to submit an alternative denomination.

##### *Gazette notice of application*

11. — (1) The Registrar shall, after he has acknowledged receipt of an application,—

- (a) Notify receipt of the application in the *Gazette* stating—
  - (i) The name and address of the applicant;
  - (ii) The date of receipt of the application for the grant or protective direction;
  - (iii) The species of plant variety;
  - (iv) The denomination submitted;
  - (v) The breeder's reference, where available;
  - (vi) The date of the grant of protective direction, if applicable; and

(b) Notify the applicant in writing of any protective direction granted.

(2) In addition to the provisions of subclause (1) of this regulation, the Registrar may publish such other information as he thinks fit.

<sup>2</sup> This Schedule is not reproduced here.

<sup>3</sup> This Schedule is not reproduced here.

*Lapse or withdrawal of application for grant*

12. — (1) An application for a grant shall lapse if the applicant fails to comply with any requisition of the Registrar within one year from the date of the requisition or such extension of time as the Registrar may grant.

(2) Any request to withdraw an application for a grant shall be in writing addressed to the Registrar.

*Withdrawal of protective direction*

13. — (1) Except where the grantee of a protective direction has applied for withdrawal, the Registrar shall in all other cases notify the grantee of a protective direction in writing of any proposal to withdraw the protective direction.

(2) The Registrar shall notify withdrawal of a protective direction in the *Gazette*.

*Objection*

14. — When any person wishes to lodge an objection pursuant to section 19 of the Act the objection shall be lodged in writing and shall be accompanied by the prescribed fee.

**Part III****Procedure Following Application for Grant***Test growing trials*

15. — (1) Before making a grant the Registrar may require the applicant to pay the prescribed fee, and—

(a) To have the variety test grown by the applicant himself under such conditions, at such locations, and over such periods as the Registrar may specify in writing, or by an appropriate organisation, or a Government or national testing authority in New Zealand or overseas under terms and conditions acceptable to the Registrar, including the provision of test trial reports; or

(b) To supply, for the purpose of such trials,—

(i) Such additional information, diagrams, coloured photographs or slides, records, and illustrations; and

(ii) Such reproductive and other plant material as the Registrar may require, on such conditions and from such sources in New Zealand or overseas as the Registrar may determine.

(2) Where independent trials have been conducted overseas and where test reports acceptable to the Registrar are available from other national authorities in a language other than English the cost of translating the reports shall be met by the applicant.

*Notice of grant*

16. — The Registrar shall notify the applicant in writing of the proposed grant and the term and conditions thereof, and upon receipt of the fee prescribed for the purposes of this regulation the Registrar shall publish in the *Gazette* the following details of the grant:

(a) The name and address for service of the grantee:

(b) The species to which the plant variety belongs:

(c) The denomination of the plant variety to which the grant relates:

(d) The breeder's reference where available:

(e) The date on which the grant was made:

(f) The term of the grant.

*Renewal fees*

17. — A renewal fee at the rate prescribed in the Second Schedule to these regulations shall be paid annually in respect of each grant not later than one month after the last anniversary of the date of the grant or the expiration of such further period as the Registrar may permit.

*Extension of term of grant*

18. — (1) An application for the extension of the term of a grant shall be in writing delivered to the Registrar.

(2) Every application shall give reasons therefor, and shall be accompanied by the prescribed fee.

(3) The Registrar shall advise the grant holder of his decision in writing and, by notice in the *Gazette*, publish details of any extension that is approved.

*Surrender of grant*

19. — (1) An application offering to surrender a grant shall be in writing delivered to the Registrar.

(2) The Registrar shall publish receipt of the application by notice in the *Gazette*, which notice shall allow one calendar month for persons to lodge objections to the proposed surrender.

(3) Any objection to an application offering to surrender a grant shall be in writing addressed to the Registrar and shall be accompanied by the prescribed fee.

(4) The Registrar shall not terminate a grant until he has considered any objection to a proposed surrender thereof and given the objector and the grantee a reasonable opportunity to be heard.

(5) The Registrar shall notify the grantee in writing of his acceptance of the surrender of the grant and the date of the termination of the period of the grant, and shall, by notice in the *Gazette*, publish his acceptance and the date of the termination of the grant.

*Revocation of grant*

20. — (1) The Registrar shall notify the grantee in writing of any decision made under any of the provisions of subsections (1), (2), and (3) of section 24 of the Act.

(2) The Registrar shall, by notice in the *Gazette*, publish the date of revocation of a grant.

**Part IV****Compulsory Licences***Application for licence*

21. — (1) An application made pursuant to subsection (2) of section 23 of the Act for the issue of a compulsory licence shall be made in writing to the Registrar.

(2) An application shall give reasons for the request, and shall be accompanied by the prescribed fee.

(3) The Registrar shall notify the grantee of the application for a compulsory licence, and shall give the applicant and the grantee a reasonable opportunity to be heard thereon.

(4) The Registrar shall send the grantee a copy of any licence issued pursuant to subsection (2) of section 23 of the Act.

#### *Notice of compulsory licence*

22. — The Registrar shall, by notice in the *Gazette*, publish the following details of any compulsory licence issued under subsection (2) of section 23 of the Act:

- (a) The name and address of the licensee:
- (b) The name and address of the grantee:
- (c) The genus of the plant variety to which the compulsory licence relates:
- (d) The denomination of that plant variety:
- (e) The period of the licence.

#### *Variation or revocation of licence*

23. — (1) An application to extend, limit, or vary in any other respect, or revoke, a compulsory licence shall be made in writing to the Registrar, and shall be accompanied by the prescribed fee.

(2) The decision of the Registrar shall be notified in writing to the applicant, licensee, or grantee, as the case may be, and shall be published by notice in the *Gazette*.

### **Part V**

#### **Miscellaneous Provisions**

##### *Application by an agent*

24. — When an application for a grant is made by or through a patent attorney or other agent, the patent attorney or agent shall satisfy the Registrar that he has the necessary authority to act for the applicant.

##### *Application by a successor in title*

25. — When an application for a grant is made by a person claiming to be a successor in title of a breeder, it shall be accompanied by the assignment, the original or an official copy of the grant of administration within the meaning of the Administration Act 1969, or such other documentary evidence as, in the opinion of the Registrar, is sufficient to establish the title of the applicant.

##### *Execution of documents*

26. — When an application for a grant or other communication to the Registrar is completed by—

- (a) An individual person, it shall be signed by him:
- (b) A partnership, it shall be signed by all the partners or by one of them on behalf of the partnership:
- (c) A registered company, it shall be signed by a director, or the secretary or other principal officer of the company authorised to sign on behalf of the company:
- (d) An incorporated society, Government department, or other organisation, it shall be signed by a person satisfying the Registrar that he is qualified to do so.

### **FIRST SCHEDULE**

#### **Plant Varieties to Which These Regulations Apply**

Reg. 1(3)

| <i>Common Name</i> | <i>Genus</i>   | <i>Test Trial Requirements</i>   |
|--------------------|----------------|--|
| Rose               | <i>Rosa L.</i> | Quantities:<br>Bush variety: 6 trees<br>Shrub variety: 6 trees<br>Climbing Variety: 2 trees<br><br>Quality:<br>(a) First quality, visually healthy, maiden (or 2-year-old trees at the discretion of the Registrar):<br>(b) Plants typical of the variety. |

### **SPAIN**

#### **Law on the Protection of Plant Varieties**

(No. 12/1975, of March 12, 1975) \*

##### *I. Purpose and Scope of this Law*

1. — The purpose of this Law is to recognize and to ensure to the breeder of a new plant variety protected by a "Grant of Title to a Plant Variety," and to his successor in title, a right, the content and conditions of exercise of which are defined hereinafter.

This Law may be applied to all botanical genera and species.

##### *II. Definition of the Plant Varieties covered by the Protection and Definition of the Breeder*

2. — For the purpose of this Law, the words "plant variety" shall apply to any commercial variety (internationally "cultivar"), clone, line, stock or hybrid which satisfies the conditions established in this Law.

3. — "Breeder" means any natural or legal person who proves that he is responsible for any improvement, selection or discovery by which a new plant variety has been obtained in compliance with the requirements established by this Law.

##### *III. Conditions Required for Protection of a Plant Variety*

4. — (1) Protection of a plant variety under this Law shall be granted when the following conditions are satisfied:

(a) the new variety must be clearly distinguishable from any other variety already existing by one or more morphological or physiological characteristics, which must be important,

\* Official Journal of March 14, 1975.

subject to only trivial change, and capable of precise description and recognition;

(b) it must be homogeneous having regard to the particular features of its sexual reproduction or vegetative propagation;

(c) it must be stable in its essential characteristics, that is to say, it must remain true to the description given by the breeder at the end of each cycle of multiplication.

(2) Investigation as to whether a new variety satisfies the above-mentioned conditions shall constitute the so-called "preliminary examination" for which Rules shall be made.

(3) A variety which, at the time of the application for a "Grant of Title to a Plant Variety," has been marketed or offered for sale in Spain, with the authorization of the breeder or his successors in title, or has been marketed or offered for sale in any foreign state more than four years before or has been subject to enough publicity to be used, shall not, for the purposes of this Law, be considered as new.

A variety shall also not be considered as new if it has been described in an application for a "Grant of Title to a Plant Variety," in a title not yet published, or in any application submitted in a foreign state, carrying the priority provided for by Section 10(3).

The fact that a variety has been entered in an official register as such variety, shall not prejudice the novelty of such variety.

(4) Under this Law, the following shall not be considered as marketing or offering for sale:

(a) disclosure in contests, collections or exhibitions, provided no commercial transactions are carried out in them;

(b) production or distribution on an experimental scale.

#### IV. Breeder's Rights

5. — (1) Any breeding of a new plant variety may be the subject-matter of a "Grant of Title to a Plant Variety" which, upon entry thereof in the Register of Protected Plant Varieties at the National Institute of Seeds and Nursery Plants, gives the holder the exclusive right to produce, introduce in the territorial area to which this Law applies, sell or offer for sale or lawfully use elements of sexual reproduction or vegetative propagation. The breeder's right shall extend to plants or parts thereof normally marketed for purposes other than propagation especially as regards the commercial production of ornamental plants or cut flowers, provided these plants or parts thereof are used as propagating material. The breeder's right shall not be infringed by the use made by a farmer, in his own farm, of seeds or any other vegetative material produced by him.

(2) Authorization by the breeder or his successors in title shall not be required either for the utilisation of the new variety as an initial source of variation for the purpose of creating other new varieties or for the marketing of such varieties.

(3) Authorization shall be required when the repeated or systematic use of the plants or parts thereof of the original

variety is necessary for the commercial production of plants or propagating material of the new variety.

6. — (1) The issue and enjoyment of a "Grant of Title to a Plant Variety" for a new variety shall not be subject to conditions other than those set forth under Articles 4, 10 and 11, provided the said grant and enjoyment comply with the administrative formalities established by this Law and in Rules made thereunder.

(2) The "Grant of Title to a Plant Variety" shall be granted without prejudice to the rights of third parties and within the limitations established under this Law. Disregard of the same shall render the grant null and void pursuant to Article 11 of this Law and, where appropriate, its registration in the Register of Protected Plant Varieties at the National Institute of Seeds and Nursery Plants shall be cancelled.

(3) The holder of a "Grant of Title to a Plant Variety," after notification to the Register of Protected Plant Varieties, may grant licenses to use the plant variety in respect of which title has been granted to any person who applies for such license, provided the conditions established by the holder and those laid down by this Law and in Rules made thereunder are fulfilled. To this end the National Institute of Seeds and Nursery Plants shall record the above-mentioned contracts.

(4) Where the holder of a "Grant of Title to a Plant Variety" is an official body established in Spain, it shall be obliged to grant a license to use the plant variety in respect of which title has been granted to any person who applies for it and who presents legal, technical and professional guaranties. This license shall in no instance be of an exclusive nature. Whenever the applicant for a license is a foreigner, the principle of reciprocity shall apply.

7. — (1) The Courts of Justice shall be competent in all questions related to the ownership of a "Grant of Title to a Plant Variety."

(2) The holder of a "Grant of Title to a Plant Variety" may prosecute under civil and criminal law, before the Courts of Justice, any person who infringes the rights granted by this Law.

(3) Those legal proceedings in the matter of plant breeders' rights, which are within the competence of the Courts of Justice, can only be brought by one of the parties.

(4) Plant breeders' rights are transferable by any means admitted in law, without prejudice to the limitations established by law: transfer shall only be effective in respect of third parties when they have been registered in the Register of Protected Plant Varieties.

(5) Except in the case of express agreement to the contrary, a licensee may be party to legal proceedings to the same extent as may a holder of a "Grant of Title to a Plant Variety," without any formality other than notification in writing to the holder of having become a party to legal proceedings, in case the latter should think it advisable to be a party to the proceedings.

8. — (1) The "Grant of Title to a Plant Variety" shall be granted by Order of the Ministry of Agriculture, on a proposal of the Central Board of the National Institute of Seeds and Nursery Plants, pursuant to Article 16 of this Law.

(2) The issuing of a "Grant of Title to a Plant Variety" shall immediately give rise to an entry in the Register of Protected Plant Varieties at the National Institute of Seeds and Nursery Plants, which is mentioned in Law No. 11/1971, of March 30, 1971, and to its inclusion in the List of Protected Varieties which shall be periodically published by the above-mentioned Institute in the "Bulletin" mentioned in Article 17 of this Law.

(3) The "Grant of Title to a Plant Variety" shall be provisional for two years, after which time it shall automatically become definitive if, within that two-year period, no objection is submitted against the act of making the said grant. Once definitive, either because the provisional period has expired or by decision made upon the above-mentioned objection pursuant to Section 121 of the Law on Administrative Procedure, the appropriate legal proceedings may be brought. The provisional character of the title, whilst in force, must be clearly stated on any document, packaging or advertisement relative to the product protected by the said title.

(4) During the period within which the title is provisional the breeder shall enjoy all the rights granted under this Law. The said period shall be included, in each case, in the period of protection.

9. — (1) The rights conferred on the breeder of a new plant variety shall be granted for a limited period, which may not be less than fifteen years for herbaceous plants and eighteen years for trees; this period shall run from the date of the issue of the "Grant of Title to a Plant Variety."

(2) For each species or group of species the period of protection, which shall never exceed twenty years, shall be established by the Rules.

10. — (1) Every foreign breeder shall enjoy the same rights as national breeders, provided that the legislation of his country of origin applies the principle of reciprocity or that other international agreements to which Spain is party establish such reciprocity.

(2) The above-mentioned foreign breeders shall, in their relations with the Spanish Public Administration and with the private producers or growers of the propagating material, be represented by a person lawfully resident in Spain, who shall be given sufficient authority to guarantee the commitments which the breeder or his successors in title may contract. The grant and the rights derived from it shall remain subject, in all cases, to the performance of the obligations of the title holder.

(3) When applying for a "Grant of Title to a Plant Variety" the applicant shall be able to claim the benefit of priority attaching to any applications previously filed for the same plant variety, in any State with which Spain has an agreement in this respect, on condition that the application presented in

Spain be filed within a period of twelve months from the filing of the first application.

11. — (1) The "Grant of Title to a Plant Variety" shall be declared null and void:

(a) when the title holder does not have a right to obtain it in accordance with the provisions laid down in Article 3 of this Law;

(b) when the plant variety in respect of which the title has been granted does not meet the requirement of novelty laid down in Article 4 of this Law.

(2) The action for nullity may be brought by any interested party during the entire period for which protection is given by the "Grant of Title to a Plant Variety."

(3) The right of the breeder or his successors in title shall lapse in the following cases:

(a) at the request of the title holder himself;

(b) when there has been a failure to maintain the conditions of homogeneity and stability laid down in Article 4;

(c) when neither the title holder nor his licencees have the reproductive or propagating material capable of producing the new variety, as defined when the "Grant of Title to a Plant Variety" was granted;

(d) when neither the title holder nor his licencees submit within the required time-limit, the reproductive or propagating material, or the information and documents deemed necessary for examining the variety, or do not allow inspection of the measures which have been taken for the maintenance of the said variety, in compliance with the requirements which shall be established by Rules;

(e) when the legally established fees have not been paid within the prescribed period or the demands for payment have not been met;

(f) when the title holder does not agree to grant a license to use the new variety, pursuant to Article 12(1);

(g) when the objection or the administrative action has been upheld, where submitted or brought pursuant to Article 8(3) by a final and definitive decision;

(h) when the period of time, laid down by Article 8, expires.

(4) Upon lapse, for whatever reason, of the right of the breeder or his successors in title, the plant variety protected by this right shall fall into the public domain.

12. — (1) The Ministry of Agriculture shall be entitled to order that a plant variety, for which a "Grant of Title to a Plant Variety" has been issued, shall be subject to a compulsory license, in compliance with the conditions to be established in the Rules, either because of unjustified failure to use or because the public interest so requires.

(2) For the purposes of the previous paragraph, any person who presents legal, technical and professional guarantees, shall be entitled to apply to the Ministry of Agriculture for the grant of a license, which shall not be exclusive in any case.

(3) Should the compulsory license referred to in the above-mentioned paragraphs be granted, the breeder's rights shall remain protected.

### V. Denomination of New Plant Varieties

13. — (1) A new plant variety shall be given a sole denomination which permits its identification. Such denomination shall be considered the generic designation of the variety.

(2) Denominations of new varieties shall not be exclusively composed of figures, nor be liable to mislead or to cause confusion concerning their characteristics, the usefulness of the variety or the identity of the breeder. They must be different from every denomination which designates other existing varieties of the same or closely-related botanical species and must be adapted to the provisions of the rules of nomenclature laid down by Rules and to the international agreements on this subject ratified by Spain.

(3) A plant variety may not be denominated in a way different from that used in the first country in which it has been registered, except in the cases to be laid down in Rules; in such cases, after approval, a translation of the original denomination, or a different one, shall be used.

14. — (1) The denomination of a new plant variety shall be registered at the same time as the issue of the "Grant of Title to a Plant Variety."

(2) The breeder or his successors in title may not submit as the denomination of a new variety either a denomination already protected by a trademark relating to products which are identical or similar in Spain or in countries with which agreements on plant variety protection have been established, or a denomination liable to cause confusion with such a trademark, unless he undertakes to renounce his right to the trademark as from the grant of the "Title to a Plant Variety." If the breeder or his successors in title nevertheless submits such a denomination, he may not, as from the time when the title to the plant variety is registered, continue to exercise his right to the trademark in respect of the above-mentioned products, unless international agreements require otherwise.

(3) If it is found that the denomination submitted by the breeder or his successors in title does not satisfy the requirements laid down by this Law, the Ministry of Agriculture shall require that a new denomination be proposed.

(4) Before a "Grant of Title to a Plant Variety" is entered in the Register of Protected Plant Varieties at the National Institute of Seeds and Nursery Plants, the denomination submitted for the new plant variety shall be notified to the Industrial Property Register, in order that the latter may report on it.

(5) The denomination given to a protected plant variety cannot be registered as a trademark.

(6) Notwithstanding the provision of the foregoing paragraph, it shall be permitted, for marketing purposes, to add a trademark to the denomination of the new plant variety, if the breeder owns the trademark or is authorized to use it.

### VI. Body in Charge of Plant Variety Protection

15. — The functions entrusted to the Ministry of Agriculture under this Law shall be exercised by the National Insti-

tute of Seeds and Nursery Plants, established by Law No. 11/1971 of March 30, 1971.

16. — A Protected Plant Variety Commission shall be established within the Central Board of the above-mentioned Institute, the composition of which shall be as follows:

President: the President of the Central Board of the National Institute of Seeds and Nursery Plants;

Vice-President: the Director of the National Institute of Seeds and Nursery Plants;

Legal Adviser: the head of the legal department of the Ministry of Agriculture;

Technical Advisers: persons with recognized competence in botany, genetics, the production of seeds and nursery plants and legal problems related to plant variety protection, appointed by the President;

Members: those members of the Central Board appointed by its President, among whom there shall be a representative of the National Institute of Agrarian Research and two agrarian representatives of the Trades Union Organization;

Secretary: the Technical Administrator of laboratories and registers of protected commercial varieties.

The tasks of the Commission shall be to:

(a) propose to the Minister of Agriculture through the Central Board of the Institute, the issuing, revocation, declaration of lapse and, if appropriate, the nullity of a "Grant of Title to a Plant Variety;"

(b) propose to the Minister of Agriculture, through the Central Board of the Institute, the measures and Rules intended for the protection of breeders' rights;

(c) propose regulations for the application of breeders' rights to the different genera or species;

(d) report on matters concerning plant variety protection submitted by the President for study; and

(e) carry out any other tasks which may be entrusted to it according to any law or rules.

17. — (1) The National Institute of Seeds and Nursery Plants shall periodically publish a "Bulletin of the Register of Protected Plant Varieties," in which the applications for registration, the denominations submitted and the denominations approved shall be stated, as well as the granting of a "Title to a Plant Variety" and other non-confidential information, in order to ensure better public knowledge of the sector.

(2) It shall also issue reports requested by the Courts of Justice concerning breeders' rights.

### VIII. Infringement and Penalties

18. — (1) For the purposes of Article 7, any person who infringes the breeder's rights in any of the following ways shall incur civil liability, and be obliged in all cases to furnish compensation for the damage and loss caused thereby:

(a) producing for commercial purposes, or marketing reproductive material of the protected plant variety, in disregard of the provisions of Article 5(1);

(b) marketing plants or parts thereof normally marketed for purposes other than propagation, in disregard of the provisions of Article 5(1);



(c) repeatedly using reproductive material of a protected plant variety for the production of propagation material of a new plant variety;

(d) contracting for the transport of the propagation material of a protected plant variety to a territory outside the scope of application of this Law, without special authorization from the title holder.

(2) All those performing any other act of utilisation of the protected plant variety or those who in any other way infringe the breeder's rights granted by this Law shall be obliged to furnish compensation for the damage and loss caused thereby only when their conduct involves fault or negligence. The existence of fault shall be presumed from the time when the person responsible for such acts has been warned by the person holding the "Grant of Title to a Plant Variety" about the existence of the same and required to cease infringing the said title.

(3) The compensation for damage and loss in favor of the person holding the "Grant of Title to a Plant Variety" shall include not only the actual loss and the profit which would otherwise have been obtained, but also damages for loss of goodwill attaching to the plant variety caused by inadequate use made by the infringer.

(4) The relevant general legislation on limitation of actions shall apply to the civil action for compensation of damage and loss.

(5) In addition to compensation for damage and loss, the injured title holder shall be entitled to:

(a) the cessation of the acts infringing his right;

(b) the withdrawal from circulation of all the plant material, obtained through illegal acts, that is in the possession of any of the persons responsible, and its destruction if this is indispensable;

(c) reversion to himself, as his own property, of the plant material referred to in the last-mentioned subparagraph, in which case allowance for its value shall be made in calculating the compensation for damage and loss. If the value of the above-mentioned plant material exceeds the damages granted, the injured title holder shall compensate the infringer for the excess;

(d) the publication of the judgment, at the expense of the losing party, in the "Bulletin" referred to in Article 17.

19. — (1) Any wilful infringement of the exclusive right given by the "Grant of Title to a Plant Variety" to its holder shall be punished according to the provisions of Section 534 of the Criminal Code.

(2) Criminal proceedings may only be brought by the injured title holder or his licensee, or his successors in title.

(3) The relevant general legislation on limitation of actions shall apply to criminal proceedings and to the civil action resulting from the crime.

20. — (1) Acts carried out that are not in compliance with the provisions of this Law and the Rules made thereunder shall be considered as administrative offences and shall be punished according to the following articles, without pre-

judice to the competence of the Courts of Justice, as regards the civil or criminal liabilities resulting from these acts.

(2) Administrative offences shall be categorized according to the nature of the acts concerned; they may be fraudulent, clandestine or against the Rules.

(3) The following shall be considered fraudulent:

(a) acts of assignment of plant material which, while purporting to be protected by a "Grant of Title to a Plant Variety," does not correspond to the features recorded in the Register of Protected Plant Varieties;

(b) acts of non-compliance, imputable to any of the interested parties, with the conditions included in the license to use a protected plant variety and affecting the intrinsic qualities of the material and the circumstances upon which the decision to issue the "Grant of Title to a Plant Variety" was based.

(4) Those acts which evade or attempt to evade or make difficult the supervision of the activities governed by this Law, and of compliance with the rules established in it for its successful application and financial viability shall be considered clandestine.

(5) Any other offence shall be considered as merely against the Rules.

21. — The laws and rules on the suppression of fraud in respect of agricultural products or of materials necessary for agriculture shall apply as subsidiary legislation.

22. — (1) Fraudulent offences shall be punished with fines of between 20,000 and 100,000 pesetas; the expenses incurred in the verification of the fraud shall be borne by the offender and, where appropriate, the plant material giving rise to the fine shall be confiscated.

(2) Clandestine offences shall be punished with fines of between 10,000 and 50,000 pesetas and by the confiscation of the merchandise.

(3) Offences which are merely against the Rules shall be punished with fines of between 1,000 and 25,000 pesetas.

23. — The determination, within the given limits, of the amount of the fines established in the last-mentioned Article, shall be fixed in each case according to the importance of the offence, the injury caused, the degree of bad faith on the part of the infringer, his behavior and his previous record and, in general, to any circumstances which render him the more or the less responsible.

24. — (1) In the case of a second offence the fines shall be 50 per cent higher than those applicable under this Law.

(2) Should the person committing a second offence have committed a clandestine or fraudulent offence, the fines may be raised to three times those applicable, and the suspension of the activity in relation to which the offence arose may be ordered for a period of up to one year.

(3) A person who has, within the preceding five years, been punished for disregarding the provisions of this Law shall be considered a second offender.

(4) The Ministry of Agriculture may decide, if appropriate, on the publication in the Official Journal, for exemplary purposes, of the sanctions imposed.

### VIII. Fees

25. — Fees for the protection of plant varieties shall be payable; they shall be subject to the legislation contained in the Laws of December 26, 1958 on Fees and on Duties, the Consolidated Taxation Law of December 28, 1963, and the Rules made under those Laws, and shall be governed by the provisions of those Laws and of this Law.

26. — For the purposes of the fees established in the last-mentioned Article, the plant species or groups thereof which are subject to the protection established by this Law shall be divided into the following groups:

First group: Cereals, oil seeds, lucerne, cotton, sugar and fodder beet, vetch, potatoes, peas, beans and broad butter beans.

Second group: fruit trees, roses, carnations and strawberries.

Third group: lettuce, tomatoes, onions, melons, sainfoin, red clover and white clover.

Fourth group: the other species not included in the above-mentioned groups.

27. — (A) The following fees shall be paid for the services listed below, according to the types which are also included:

1. For processing an application for a "Grant of Title to a Plant Variety" . . . . . 3,000 *Pesetas*

2. For carrying out the trials which constitute the preliminary examination:

For each year of examination:

First and second group . . . . . 7,000  
Third group . . . . . 5,000  
Fourth group . . . . . 4,000

3. For granting a "Grant of Title to a Plant Variety" . . . . . 3,000

4. For the annual maintenance of the breeder's rights:

For the first year:

First group . . . . . 2,500  
Second group . . . . . 1,500  
Third and fourth groups . . . . . 1,000

For the second year:

First group . . . . . 3,500  
Second group . . . . . 2,500  
Third group . . . . . 2,000  
Fourth group . . . . . 1,500

For the third year:

First group . . . . . 5,000  
Second group . . . . . 4,000  
Third group . . . . . 3,000  
Fourth group . . . . . 2,500

For the fourth year:

First group . . . . . 6,500  
Second group . . . . . 5,000  
Third group . . . . . 4,000  
Fourth group . . . . . 3,000

For the fifth and following years (until the expiration of the protection):

First group . . . . . 7,000  
Second group . . . . . 6,000  
Third group . . . . . 5,000  
Fourth group . . . . . 4,000

5. For the claiming of a priority right, the changing of a denomination, the issuing of copies, certificates and duplicates of any document, as well as the registration of licenses . . . . . 1,000

6. For the restoration of a cancelled title . . . . . 3,000

7. For the issuing of copies of titles and of certificates specifying that they have been refused . . . . . 500

(B) The natural or legal persons who receive either from the Public Administration or from the Register of Protected Plant Varieties any of the services listed in the above-mentioned paragraph, whatever the nature of their request, shall be obliged to pay these fees.

(C) The fees shall be payable when the appropriate services are requested. When these services are rendered without the need for a prior request, the fees shall be payable at the time of their execution.

(D) The amount collected in fees shall be paid to the Public Treasury, according to provisions to be established in Rules, for its inclusion in the State General Budget.

(E) The Ministry of Finance shall be the body responsible for all matters appertaining to the fees; it may decide that the clearing, notification, and collection of such fees be performed by the Ministry of Agriculture and, within that Ministry, by the National Institute of Seeds and Nursery Plants.

### IX. Procedure and Appeals

28. — (1) The procedure to be followed for the processing of the dossiers governed by this Law shall be that established in the Law on Administrative Procedure of July 17, 1958, which shall also regulate the appeals which interested parties may bring against any act or decision pronounced.

(2) It shall be a function of the National Institute of Seeds and Nursery Plants to collect all available evidence and information on dossiers likely to involve a decision imposing a fine and to formulate proposals as to how such dossiers should be decided, doing so on its own initiative or pursuant to a request from the interested parties or from the competent authorities.

(3) The decision shall be taken by:

(a) the service for Defence against Frauds and for Agricultural Analyses, when the amount of the fine is not over 25,000 pesetas;

(b) the competent Director General, when the amount of the fine is over 25,000 and does not exceed 50,000 pesetas;

(c) the Minister of Agriculture, when the amount of the fine is over 50,000 pesetas.

(4) The limitation period for infringements of this Law shall be five years from when they are committed.

#### *Additional provisions*

1. — Article 48 of the Royal Decree-Law of July 26, 1929, reforming the Law on Industrial Property<sup>1</sup>, is hereby completed as follows:

“ A patent shall not be granted for the following:

7° Plant varieties subject to the protection system established by the Law on the Protection of Plant Varieties. ”

2. — The amount of the fines established in absolute quantities in pesetas may be revised by the Government, through the application of coefficients of correction, according to the average price of the objects or products in question.

#### *Temporary provisions*

1. — The breeder of a plant variety which is no longer new at the time when protection for the corresponding species is established, may, in the following instances and in accordance with this Law, request the protection of his rights:

(a) if a patent of invention has been granted for the plant variety in Spain or in any other country with which an international agreement related to the protection of breeders' rights has been established;

(b) if a “Grant of Title to a Plant Variety” has been issued in any country or countries with which Spain has established an international agreement related to the protection of breeders' rights;

(c) if the plant variety has been registered in a List of Commercial Varieties officially published in Spain. In this

<sup>1</sup> *La Propriété industrielle*, 1929, p. 218.

case, the application for the protection of rights for this plant variety shall be submitted within a period of twelve months from the time of entry into force of the Rules mentioned in the first final provision for the genera, species or group of species to which this plant variety belongs.

2. — A “Grant of Title to a Plant Variety” shall be effective from the date when the application was filed. The period of time elapsed since an application for a patent was filed, or since a “Grant of Title to a Plant Variety” was granted or since its registration in the List of Commercial Varieties, shall, where the conditions set forth in paragraph (c) of the first temporary provision have been complied with and where the other cases provided for in the said temporary provision are applicable, be deducted from the period of protection.

3. — Those plant varieties that have been marketed before this Law came into force, may continue to be produced and offered for sale freely, as long as the breeder does not make use of the right granted to him by the first temporary provision.

4. — Until the Rules for applying this Law to the different species or groups of species come into force, the provisions of the Law on Industrial Property shall continue to apply to them.

#### *Final provisions*

1. — This Law shall apply throughout the national territory. The Government shall, within a period of one year from the publication of this Law, and on a proposal of the competent Ministries, establish the Rules for implementing this Law; in these Rules the administrative provisions in force on matters concerning this Law shall be included.

2. — The provisions necessary for the entry into force of this Law, as regards each genera and species or group of species, which shall be set forth in Rules, shall be established by the Ministry of Agriculture.

## CALENDAR

### WIPO Meetings

September 23 to 30, 1975 (Geneva) — WIPO Coordination Committee; Executive Committees of the Paris and Berne Unions; Assembly and Committee of Directors of the Madrid Union; Assembly of the Nice Union

October 1 to 3, 1975 (Geneva) — Scientific Discoveries — Committee of Experts

October 1 to 3, 1975 (Geneva) — International Patent Classification (IPC) — Bureau

October 6, 1975 (Geneva) — International Patent Classification (IPC) — Joint ad hoc Committee

October 7 to 9, 1975 (Geneva) — International Patent Classification (IPC) — Assembly and Committee of Experts

- October 13 to 17, 1975 (Nairobi) — Conference on Industrial Property Laws of English-Speaking Africa — Committees of Experts (convened jointly with the Economic Commission for Africa of the United Nations)
- October 13 to 17, 1975 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)
- October 20 to 24, 1975 (Washington) — ICIREPAT — Technical Committee for Standardization (TCST)
- October 27 to 31, 1975 (Mexico City) — Latin American and Caribbean Seminar on the Rights of Performers, Producers of Phonograms and Broadcasting Organizations  
(Meeting organized jointly with ILO and Unesco)
- October 27 to November 3, 1975 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees
- November 3 to 7, 1975 (Geneva) — International Classification of Goods and Services for the Purposes of the Registration of Marks — Committee of Experts
- November 3 to 14, 1975 (Berne) — International Patent Classification (IPC) — Working Group II
- November 10 to 14, 1975 (Geneva) — Revision of the Model Law on Inventions — Working Group (3<sup>rd</sup> session)
- December 1 to 5, 1975 (Geneva) — International Protection of Appellations of Origin and Other Indications of Source — Committee of Experts
- December 1 to 12, 1975 (Munich) — International Patent Classification (IPC) — Working Group III
- December 3, 9 and 16, 1975 (Geneva) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee — Ordinary Session (organized jointly with ILO and Unesco)
- December 10 to 12, 1975 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)
- December 10 to 16, 1975 (Geneva) — Executive Committee of the Berne Union (Extraordinary Session)
- December 15 to 19, 1975 (Geneva) — International Classification of the Figurative Elements of Marks — Provisional Committee of Experts
- December 15 to 22, 1975 (Geneva) — Revision of the Paris Convention for the Protection of Industrial Property — Group of Governmental Experts
- March 15 to 19, 1976 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Permanent Committee (3<sup>rd</sup> session)
- September 27 to October 5, 1976 (Geneva) — WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Nice, Lisbon, Locarno, IPC and Berne Unions; Conferences of Representatives of the Paris, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Council of the Lisbon Union — Ordinary Sessions
- March 14 to 18, 1977 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Permanent Committee (4<sup>th</sup> session)
- September 26 to October 4, 1977 (Geneva) — WIPO Coordination Committee and Executive Committees of the Paris and Berne Unions

## UPOV Meetings

Council: October 7 to 10, 1975 — Consultative Committee: October 6 and 10, 1975 — Technical Steering Committee: November 6 and 7, 1975 — Committee of Experts on International Cooperation in Examination: November 4 and 5, 1975 — Committee of Experts on the Interpretation and Revision of the Convention: December 2 to 5, 1975; February 17 to 20, 1976  
 Note: All these meetings will take place in Geneva at the headquarters of UPOV

## Meetings of Other International Organizations concerned with Intellectual Property

- October 1 to 3, 1975 (Berlin) — International Literary and Artistic Association — Working Session
- October 13 and 14, 1975 (Paris) — International Confederation of Societies of Authors and Composers — Legal and Legislative Commission
- October 21 to 23, 1975 (Rijswijk) — International Patent Institute — Administrative Board
- November 2 to 4, 1975 (London) — International Association for the Protection of Industrial Property — Council of Presidents
- November 3 to 12, 1975 (Paris) — United Nations Educational, Scientific and Cultural Organization (UNESCO) — Committee of Governmental Experts on the Double Taxation of Copyright Royalties
- November 17 to December 15, 1975 (Luxembourg) — General Secretariat of the Council of Ministers of the European Communities — Luxembourg Conference on the Community Patent
- November 24 to 28, 1975 (Sydney) — East Asian Pacific Copyright Seminar
- December 10 to 16, 1975 (Geneva) — United Nations Educational, Scientific and Cultural Organization (UNESCO) — Intergovernmental Copyright Committee established by the Universal Copyright Convention (as revised at Paris in 1971) — First extraordinary session
- December 17 to 19, 1975 (Rijswijk) — International Patent Institute — Administrative Board
- February 2 to 6, 1976 (Strasbourg) — Council of Europe — Legal Committee on Broadcasting and Television
- May 25 to June 1, 1976 (Tokyo) — International Publishers Association — Congress
- September 26 to October 2, 1976 (Montreux) — International Association for the Protection of Industrial Property — Executive Committee