

HUNGARY

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

PART V PROTECTION OF PLANT VARIETIES

Chapter XIII PLANT VARIETIES AND PROTECTION OF PLANT VARIETIES

General provisions Article 105

For the purposes of this Act:

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

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

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

Object of plant variety protection Article 106

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

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

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

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

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

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

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

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

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

Plant varieties eligible for protection
Article 107

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rights conferred by plant variety protection
Article 109

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

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

(a) production or reproduction (multiplication),

(b) conditioning for the purpose of propagation,

(c) offering for sale,

(d) selling or other marketing,

(e) exporting,

(f) importing,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7)–(8) [repealed]

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

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

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

(a) Fodder plants:

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

(b) Cereals:

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

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

(c) Potatoes:

1. Potatoes – *Solanum tuberosum*

(d) Oil and fibre plants:

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

(3) For the purposes of this Act:

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

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

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

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

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

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

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

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

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

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

Article 109/B

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 109/C

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

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

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

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

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

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

Term of plant variety protection Article 111

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

Maintenance of plant variety protection Article 111/A

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

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

Remuneration of the breeder of the plant variety Article 112

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

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

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

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

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

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

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

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

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

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

Exploitation contracts Article 114/A

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

Compulsory licenses Article 114/B

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

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

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

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

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

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

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

Revocation of plant variety protection Article 114/D

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter XIV

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

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

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

(a) grant of plant variety protection,

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

(c) revocation of plant variety protection,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Date of filing
Article 114/J

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

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

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

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

(d) the provisional variety denomination,

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

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

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

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

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

Priority
Article 114/L

(1) The date establishing priority shall be:

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

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

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

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

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

Examination on filing Article 114/M

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

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

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

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

Communication of certain data Article 114/N

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

Examination as to formal requirements Article 114/O

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

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

Publication, observations Article 114/P

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

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

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

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

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

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

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

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

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

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

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

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

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

Information to the examination authority Article 114/S

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

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

Grant of plant variety protection Article 114/T

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

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

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

Other procedures concerning plant variety protection Article 114/U

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

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

Chapter XIV/A

COURT PROCEEDINGS IN CASES OF PLANT VARIETY PROTECTION

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

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

Chapter XIV/B

PROVISIONS CONCERNING THE SYSTEM OF COMMUNITY PLANT VARIETY RIGHTS

General provisions Article 115

For the purposes of this Act:

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

Forwarding applications for Community plant variety rights Article 115/A

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

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

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

Re-establishment of plant variety protection Article 115/B

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

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

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

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

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

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

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