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LEGISLATION

NETHERLANDS

Act

Containing New Regulations Governing Plant Breeder's Right and the Trade in the Propagating Material of Agricultural and Horticultural Species (Seeds and Planting Materials Act)

(October 6, 1966)¹⁾

CHAPTER I

Definitions

Section 1

For the purposes of this Act:

- "Our Minister" shall mean Our Minister of Agriculture and Fisheries;
- "The Board" shall mean the Board for Plant Breeder's Right, referred to in Section 5;
- "Union" shall mean the Convention for the Protection of New Varieties of Plants, signed at Paris on December 2nd, 1961;
- "Member State of the Union" shall mean a State that is a party to the afore-mentioned Convention.

Section 2

For the purposes of this Act:

- "Variety" shall mean any group of plants capable of cultivation and regarded as an independent unit for cultivation purposes;
- "Propagating material" shall mean plants or parts thereof intended for cultivation by planting or sowing or by any other means;
- "Commercialization" shall mean offering for sale, selling and supplying;
- "Putting on the market" shall mean the first act of commercialization.

Section 3

(1) The term "Agricultural species" used in this Act shall include:

- (a) poppy (*Papaver somniferum* L.), white mustard (*Sinapis alba* L.), caraway (*Carum carvi* L.) and white clover (*Trifolium repens* L.);
- (b) pea (*Pisum Sativum* L.), maize (*Zea mays* L.), turnip (*Brasica campestris* L. var. *rapa* [L.] Hartm.), winter radish (*Raphanus sativus* L. var. *niger* [Mill.] Pers.), dwarf bean (*Phaseolus vulgaris* L.) and carrot (*Daucus carota* L.), varieties not included under "horticultural species" under paragraph (2).

(2) When "horticultural species" are referred to in this Act, they shall include:

- (a) of pea, varieties suitable for cultivation solely or mainly for harvesting green for human consumption;
- (b) of maize, varieties of pop corn and sweet corn;
- (c) of turnip and winter radish, varieties suitable for cultivation solely or mainly for human consumption;
- (d) of dwarf bean, varieties suitable for cultivation solely or mainly for harvesting green;
- (e) of carrot, varieties of red carrot.

(3) Horticultural species shall likewise include:

- (a) varieties of agricultural species suitable for cultivation solely or mainly for ornamental purposes;
- (b) silvicultural species.

(4) It may be laid down by general administrative order that for the purposes of this Act species, varieties or groups of varieties other than those mentioned in the preceding paragraphs shall be regarded as either agricultural or horticultural species.

CHAPTER II

Netherlands Register of Varieties and Board for Plant Breeder's Right

Section 4

(1) A register shall be established in which shall be entered groups of plants recognized as varieties. The register shall be public and shall be called Netherlands Register of Varieties.

(2) The arrangement of the Netherlands Register of Varieties shall be laid down by or in virtue of a general administrative order.

Section 5

(1) There shall be a Board for Plant Breeder's Right with the following departments:

- (a) a Central Department;
- (b) an Agricultural Species Department;
- (c) a Horticultural Species Department;
- (d) an Appeals Department.

(2) The departments may be sub-divided into sections by general administrative order.

Section 6

(1) The Board shall have:

- (a) a President;
- (b) three Vice-Presidents;
- (c) a minimum of three or a maximum of seven members for each department or section.

(2) A secretary and one or more assistant secretaries shall be attached to the Board.

Section 7

(1) We shall appoint the President, Vice-Presidents and other members of the Board. The appointment shall be for a period of five years.

(2) The persons referred to in the preceding paragraph shall be eligible for re-appointment when they retire. They may be discharged by Us at their own request.

¹⁾ See *Staatsblad* 1966, Text 455, p. 1079. This translation, kindly supplied by the Ministry of Agriculture and Fisheries of the Netherlands, is reprinted here with the permission of the Food and Agriculture Organization (FAO).

(3) The President shall be sworn in by Our Minister, and the Vice-Presidents and other members shall be sworn in by the President, before they enter upon their duties.

(4) The President, Vice-Presidents and other members shall be discharged as from the first day of the month following the month in which they reach the age of seventy.

Section 8

(1) Spouses, blood relations and relations by marriage up to and including the third degree of relationship may not be members of the same department unless it is sub-divided into sections; in that event they may not be members of the same section.

(2) If the marriage has been contracted or the relationship by marriage has come into being after the appointment, the last appointed member may no longer be a member of the department or section in question, unless Our Minister has given his permission.

(3) The relationship by marriage shall cease to exist upon the dissolution of the marriage that established it.

(4) Members who have dealt with a case in the first instance shall not take part in the proceedings in the Appeals Department relating to that case.

Section 9

(1) The secretary and assistant secretaries shall be appointed by Our Minister.

(2) They shall have obtained the degree of doctor of law, or have qualified as lawyers, at a State University or at some other Netherlands University of equivalent status, provided the degree or qualification was awarded on the strength of an examination in Netherlands civil law and commercial law, constitutional law and criminal law.

Section 10

(1) Without prejudice to what is stated elsewhere, the President, Vice-Presidents and other members shall be discharged by Us:

- (a) if age, chronic physical disability or mental illness has rendered them unfit to perform their duties;
- (b) if they have been placed under guardianship.

(2) Without prejudice to what is stated elsewhere, the persons referred to in the preceding paragraph may be discharged by Us:

- (a) if they have contravened the provisions of Sections 11 and 12;
- (b) if they have been declared bankrupt, been granted suspension of payment or are in prison for debt.

(3) Before the person concerned is discharged on the strength of the preceding paragraph, he shall be heard, or at least be duly summoned.

(4) In the event of any of the contingencies referred to in paragraph (2) arising, Our Minister shall have the power immediately to suspend the person concerned; suspension shall be for a period not exceeding three months. The General Expiry of Periods Act shall not apply to this period.

Section 11

The President, Vice-Presidents, members, secretary and assistant secretaries shall be pledged to secrecy in respect of what comes to their knowledge in the course of their duties and in respect of any opinions expressed when a case is being dealt with.

Section 12

The persons referred to in the preceding Section shall not take part in proceedings involving cases in which they have any vested interest whatsoever.

Section 13

Our Minister shall lay down rules for the reimbursement of hotel and travelling expenses and for the payment of an attendance fee to the President, Vice-Presidents and members. Our Minister may grant an annual fixed sum to the President and the Vice-Presidents in lieu of an attendance fee.

Section 14

(1) The Board shall have the power to hear witnesses and experts.

(2) Any person called as a witness shall obey the summons.

(3) Sections 1946-1949 of the Civil Code shall apply analogously to witnesses.

(4) The Board may order witnesses who, though duly summoned, fail to appear, to be brought before it by the public authorities.

(5) The provisions of Sections 107, 108a and 109 of the Code of Civil Procedure shall apply analogously to the hearing of witnesses.

(6) The experts shall swear or affirm before the President that they will make their reports in good faith; if the Board so requires they shall also take the oath of secrecy or affirm that they will maintain secrecy.

Section 15

(1) Further regulations regarding the composition of and the procedure to be adopted by the Board and the swearing in of members shall be given by or in virtue of a general administrative order.

(2) The following and other matters shall be regulated in the general administrative order:

- (a) the composition of the departments and sections and their powers to carry out commissions entrusted to the Board;
- (b) the calling up of applicants, petitioners and other interested parties and of witnesses and experts;
- (c) the remunerations to be paid to witnesses and experts.

Section 16

(1) Our Minister shall fix a schedule of fees payable for work done by the Board when making entries and notes in, and issuing copies of or extracts from, the Netherlands Register of Varieties.

(2) The Board shall not deal with documents nor furnish applicants with copies of or extracts from the Netherlands Register of Varieties until the amount due under the preceding paragraph is paid.

Section 17

All documents addressed to and emanating from the Board shall be exempt from stamp duty and from the formality of registration.

CHAPTER III

The Entry of Varieties in the Netherlands Register of Varieties

Section 18

(1) The following varieties shall be entered in the Netherlands Register of Varieties:

- (a) varieties for which plant breeder's right has been granted;
- (b) varieties of agricultural species designated by or on behalf of Our Minister and of horticultural species designated by general administrative order meeting the requirements of sub-paragraphs (a), (b) and (c) of paragraph (1) of Section 29 but for which plant breeder's right cannot be granted.

(2) Subject to rules to be laid down by general administrative order varieties other than those referred to in sub-paragraph (b) of paragraph (1) for which plant breeder's right cannot be granted and which belong to agricultural species designated by general administrative order shall be entered in the Netherlands Register of Varieties at the breeder's request. The rules may impose upon the breeder the obligation to pay an annual fee specified in those rules.

(3) The Board shall enter the variety in the Register by recording the characteristics determined by the Board and its denomination.

(4) The denomination entered in the Register shall be taken as the generic name of the variety.

Section 19

(1) The denomination must be such as to identify the variety. It may not consist solely of figures and must not be liable to mislead or to lead to confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. Above all, it must be different from every denomination that designates, in any Member State of the Union, existing varieties of the same or a closely related botanical species.

(2) The denomination must not be inimical to public order or offend public morals.

(3) The denomination shall be the same as that already registered for the variety in any Member State of the Union, provided it is suitable for use in this country.

(4) No denomination shall be adopted in respect of which the Board finds that it so closely resembles a trade name or trade mark that it would be liable to cause confusion regarding the nature or origin of products.

Section 20

(1) Before adopting a denomination, the Board shall publish it in a manner to be determined by Our Minister.

(2) Interested parties may lodge objections to a denomination with the Board within two months of the date of its publication on the ground that it resembles a trade name or trade mark so closely that it would be liable to cause confusion regarding the nature or origin of products.

(3) The Board shall not adopt a denomination until it has arrived at a decision regarding the objections referred to in paragraph (2).

(4) The Office for the Protection of Industrial Property shall on demand furnish the Board with information concerning the trade names or trade marks registered with it.

Section 21

(1) The applicant shall suggest a denomination for the variety when applying for plant breeder's right and when making the application referred to in paragraph (2) of Section 18.

(2) The applicant may also use a provisional designation. If he does, he shall suggest a denomination at a time to be fixed by the Board.

(3) The denomination suggested shall be accompanied by a deed stating that the applicant will renounce any right accruing to him in any Member State of the Union with respect to that denomination for identical or similar products in the event of the denomination suggested being registered.

The Board shall send a copy of the deed to the Office for the Protection of Industrial Property and to the Office of the Union when the denomination has been registered.

(4) The Board shall adopt the denomination suggested or the designation referred to in paragraph (3) of Section 19, unless it is of the opinion that doing so would be contrary to the provisions of Section 19. In that event it shall call upon the applicant to suggest another denomination.

Section 22

(1) The Board may also lay down and register a provisional description of the characteristics of a variety.

(2) The Board may supplement the description and shall register the additional information:

- (a) at the request of the interested party;
- (b) *ex officio*, if such is required in view of the description of some other variety, in which case the interested party shall be heard; or for other reasons, but in the latter contingency only with the interested party's consent.

(3) The term "interested party" used in paragraph (2) shall be understood to mean the holder of a plant breeder's right or the breeder of a variety in the category described in paragraph (2) of Section 18.

Section 23

(1) If the use of a registered denomination for propagating material of the variety for which it was registered is prohibited by the decision of a Court on the ground of a right accruing to another person with respect to that denomination, the President of the Board shall delete the registered denomination at the request of the first party to take action and shall enter a provisional designation to serve as a denomination, if possible in consultation with the holder of plant breeder's right or with the breeder of a variety in the category described in paragraph (2) of Section 18.

(2) The Board shall adopt a new denomination after having enabled the holder of the plant breeder's right or the breeder

of the variety in the category described in paragraph (2) of Section 18 to suggest another denomination within a certain time limit and shall register the new denomination.

Section 24

(1) The applications and requests referred to in this Chapter and the withdrawal or refusal of such applications and requests shall be recorded in the Netherlands Register of Varieties.

(2) The registrations referred to in this Chapter and the entries pertaining to the applications referred to in paragraph (2) of Section 18 and the withdrawal and refusal of these applications shall be published in the Netherlands State Gazette.

Section 25

The decisions of the Board made in pursuance of the provisions of this Chapter shall contain the grounds on which they were taken and shall be communicated by registered letter to the interested party referred to in Section 20, the applicant referred to in Section 21 or the holder of a plant breeder's right referred to in Sections 22 and 23 or the breeder of a variety in the category described in paragraph (2) of Section 18. In the letter attention shall be drawn to the right of appeal under Section 26.

Section 26

(1) An appeal against the decisions referred to in Section 25, with the exception of the decisions made in pursuance of Section 20 and paragraph (2) of Section 23, may be lodged with the Appeals Department.

(2) An appeal against the final decisions of the Board in pursuance of Section 20 and paragraph (2) of Section 23 may be lodged with the Court of Justice at The Hague, which shall sit in chambers. The Clerk of the Court shall inform the Board of the appeal and of the Court's decision within three days.

(3) The appeal must be lodged within two months of the date of dispatch of the letter referred to in Section 25 by the person who is to be informed of the decision in pursuance of that Section.

(4) The appeal shall be made by petition, stating the reasons for making it.

Section 27

Further regulations shall be given by or in virtue of a general administrative order governing:

- (a) the applications and requests referred to in this Chapter;
- (b) the fixing of the date on which the applications and requests referred to under (a) shall be deemed to have been submitted to the Board;
- (c) the hearing of interested parties.

Section 28

The registrations and entries referred to in this Chapter in virtue of decisions against which an appeal may be lodged shall be inscribed when a decision has been taken on the appeal or if the period within which an appeal must be made

has expired without the appeal having been lodged or if the appeal has been withdrawn by means of a written notification to that effect addressed to the Board.

CHAPTER IV

Plant Breeder's Right

Part 1

Title to plant breeder's right

Section 29

(1) Plant breeder's right may be granted for a new variety as from a date, which may be different for different botanical species, to be fixed by general administrative order if the variety:

- (a) at the moment of making the application for plant breeder's right is clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time, whatever may have been the origin, artificial or natural, of the initial variation from which it resulted;
- (b) is sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation;
- (c) is stable in its essential characteristics, i. e. 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.

(2) The characteristics referred to in sub-paragraph (a) of paragraph (1) may be of a morphological or physiological nature and must be capable of precise description and clearly recognizable.

(3) A variety shall not be regarded as new if, at the time the application for plant breeder's right was made, propagating material of the variety had already been commercialized, unless:

- (a) it had been commercialized outside the Netherlands not longer than four years previously with the permission of the applicant or his successor in title;
- (b) it had been commercialized not longer than five years previously without the permission of the applicant or his successor in title and the person who commercialized the propagating material did not produce the variety by his own efforts.

(4) The fact that a variety has been given to others to test, or has been submitted for registration or registered in an official register, may not be held against the breeder of the variety or his successor in title.

Section 30

(1) Any person in respect of whom there are good reasons to believe that he or his predecessor in title developed the new variety by his own efforts shall be entitled to the plant breeder's right.

(2) If the variety has been produced outside the Netherlands, there shall only be a title to the plant breeder's right

in so far as the Netherlands is obliged to grant plant breeder's right under an international agreement and in so far as requirements concerning investigation and supervision of multiplication laid down by general administrative order have been met.

(3) If a variety has been developed outside the Netherlands and there is no obligation as that described in paragraph (2), plant breeder's right may be granted for the variety if Our Minister is of the opinion that granting that right will benefit agriculture or horticulture in the Netherlands. Our Minister may make the granting of the right subject to certain conditions and he may limit the scope of the rights accruing to the breeder under this Act.

Section 31

(1) If a new variety is developed by a person who is employed by another person or who works for another person otherwise than for wages and the nature of the work involves plant breeder's activities with respect to the botanical species to which the variety belongs, the employer shall be entitled to plant breeder's right.

(2) In that event the person who has done the plant breeding shall be entitled to a fair remuneration, unless such remuneration must be deemed to be included in the wages received by him or in the benefits enjoyed by him.

(3) Any stipulation in derogation from the provisions of paragraph (2) shall be null and void.

Section 32

If two or more persons associated otherwise than in the manner described in Section 31 have together developed a new variety, they shall be jointly entitled to the plant breeder's right.

Section 33

If in pursuance of Section 30 two or more persons can lay claim to plant breeder's right for the same new variety, the title to plant breeder's right shall go to the person who applied for it first.

Section 34

(1) Any person who in another Member State of the Union has submitted an application for a plant breeder's right in accordance with the regulations in force in that State shall be granted priority if he applies for plant breeder's right in the Netherlands for the same variety, provided that:

- (a) within twelve months of the date of submission of the application in the Member State of the Union, excluding the day the application is made, he submits a provisional application in the Netherlands and thereby draws attention to his priority in writing, and
- (b) within three months of the date of submission of the provisional application he submits copies of the documents submitted by him in the State of the first application, certified by the competent authority of that State, and
- (c) within four years of the expiry of the period mentioned under (a) he submits a regular application as described in Section 35.

(2) Priority implies that, notwithstanding the provisions of Sections 29 and 33, the events that occurred in the period between the submission of the application in the other country and the submission of the provisional application in the Netherlands — notably the submission of an application by another person or the commercialization of propagating material of the variety — shall not affect the application made in this country by the person entitled to priority.

Part 2

The granting of plant breeder's right

Section 35

(1) An application for a plant breeder's right shall be addressed to the Board and the right shall be granted by the Board.

(2) In addition to the requirements of Section 21 with regard to the denomination, the application shall contain a clear description of the variety and an accurate account of the characteristics distinguishing the variety from other varieties of the same botanical species.

(3) When the application is made, enough propagating material of the variety to which the application relates shall be made available to the Board for examination.

(4) If the applicant does not reside in the Netherlands, he shall choose domicile in the Netherlands through a person authorized to that effect; the domicile shall for the purpose of this Act be deemed to remain valid until the Board is informed in writing of a change of domicile.

Section 36

The application, as also the withdrawal or refusal of the application, shall be recorded in the Netherlands Register of Varieties.

Section 37

(1) In accordance with Sections 19, 20, 21 and 22, paragraph (1), the description of the characteristics and the denomination of the variety shall be laid down in the decree granting the plant breeder's right.

(2) The fact that a plant breeder's right has been granted shall also be recorded when the variety is entered in the Netherlands Register of Varieties.

(3) The effective date of the plant breeder's right shall be the date following the day the entry and record referred to in the preceding paragraph were inscribed.

Section 38

It may be laid down by general administrative order that for varieties belonging to groups of botanical species for which plant breeders' rights have been granted the holder shall be required to pay an annual fee to be fixed by that general administrative order.

Section 39

By or in virtue of a general administrative order further regulations shall be made governing:

- (a) applications for plant breeder's right;

- (b) the fixing of the date on which applications for plant breeder's right shall be deemed to have been submitted to the Board;
- (c) the hearing of interested parties.

Part III

Rights and obligations of the holder of a plant breeder's right

Section 40

(1) The holder of a plant breeder's right shall have the sole right to produce propagating material of the variety for commercial purposes, to commercialize it, to offer it for sale, to export it, to stock it for any of these purposes and to have any or all of these activities performed. A plant breeder's right shall extend to ornamental plants or parts thereof normally commercialized for purposes other than propagation if they are used commercially as propagating material in the production of ornamental plants or cut flowers.

(2) Persons other than the holder of a plant breeder's right shall not engage in the activities described in paragraph (1). The ban shall not apply if and in so far as permission to engage in them has been granted by or in virtue of this Act or by the holder of the plant breeder's right.

(3) In so far as the production and the stocking for production of the propagating material of a variety for which the plant breeder's right has been granted is undertaken solely for research purposes or for developing new varieties in the breeder's own nursery this shall not be deemed to be at variance with the sole right of the holder of a plant breeder's right.

(4) If the propagating material of a variety for which the plant breeder's right has been granted has been commercialized in a manner that does not prejudice the right of the holder of the plant breeder's right, those acquiring the propagating material or the subsequent holders of it shall not be acting prejudicially to the plant breeder's right if they offer it for sale, export it or stock it for any of these purposes.

Section 41

(1) Engaging in any of the activities mentioned in paragraph (1) of Section 40 with regard to a certain variety shall not be deemed prejudicial to the sole right of the holder of the plant breeder's right for any other variety.

(2) If the production of the propagating material of a certain variety constantly calls for the utilization of another variety for which plant breeder's right has been granted, the permission of the holder of the plant breeder's right for the latter variety shall be required for the activities mentioned in paragraph (1) of Section 40 with regard to the former variety.

(3) Engaging in the activities described in paragraph (1) of Section 40 with regard to a variety in the category described in paragraph (2) shall be prohibited unless the permission referred to in that paragraph has been obtained.

Section 42

(1) The holder of a plant breeder's right shall grant such licences as are necessary to stock the market with propagating material on reasonable terms and conditions.

(2) The obligation referred to in the preceding paragraph shall include the obligation of the holder of a plant breeder's right at a reasonable price to furnish the licensee with the propagating material he needs if he is to make proper use of the licence.

Section 43

(1) If the holder of a plant breeder's right does not fulfil the obligation referred to in Section 42, the licence shall be granted by the Board if interested parties so request. Section 36 shall apply analogously with respect to the request.

(2) Before taking a decision the Board shall give the parties an opportunity to reach agreement within a period determined by the Board, giving such instructions as it deems will facilitate the supplying of propagating material.

(3) If agreement cannot be reached the Board shall decide after having heard the parties. The scope of the licence, the remuneration to be paid to the holder of the plant breeder's right and the quantity of propagating material to be furnished and the remuneration to be paid for it shall be fixed in the decision. When taking a decision the Board may require the person who has obtained the licence to furnish security within a certain period.

(4) When the Board has granted the licence and the obligation to provide security, if imposed, has been complied with, the licence shall be entered in the Netherlands Register of Varieties. The licence shall not operate before the date of its registration, also not with respect to persons who obtained title to plant breeder's right after the request referred to in paragraph (1) was registered.

Section 44

(1) The holder of a plant breeder's right may offer a licence in public. The offer shall be published in the Netherlands State Gazette through the intermediary of the Board and at the expense of the holder of the plant breeder's right if the Board agrees to the terms on which the licence is to be granted, having regard to the stocking of the market with propagating material on reasonable terms.

(2) Any person wishing to avail himself of the offer shall obtain a licence by informing the Board by registered letter that he accepts the offer.

(3) The licence shall be entered in the Netherlands Register of Varieties and shall not operate until the date of its entry. From that date it shall also operate as regards persons who acquired title to plant breeder's right after the date of the publication referred to in paragraph (1).

(4) An offer made in public shall be irrevocable, subject to the provisions of the following paragraphs.

(5) Subject to the Board's approval, the holder of a plant breeder's right may modify the terms on which the licence was granted, but not until one year has elapsed since its entry in the Netherlands Register of Varieties.

(6) If the Board is of the opinion that the terms should be modified it shall inform the holder of the plant breeder's right accordingly. In that event the holder of the plant breeder's right shall propose a modification within a period to be fixed

by the Board, which shall not be less than two months; if the former fails to do so the Board shall modify the terms *ex officio*.

(7) The modification shall be published in the Netherlands State Gazette through the intermediary of the Board.

Section 45

(1) If Our Minister is of the opinion that the stocking of the market with the propagating material of a certain variety on reasonable terms is not adequately ensured, he shall communicate this to the holder of the plant breeder's right, stating the reasons for his opinion, and shall enable him to make an offer in public under the provisions of Section 44 within a period of a month on such conditions as are approved by Our Minister.

(2) If an offer pursuant to paragraph (1) is not made, the Board shall make the offer with due observance of the instructions given by Our Minister and shall publish it in the Netherlands State Gazette at the expense of the holder of the plant breeder's right.

(3) Paragraphs (2) to (7) of Section 44 shall apply analogously, it being understood that the Board will follow the instructions of Our Minister in the exercise of the powers defined in those paragraphs.

Section 46

(1) A licence shall authorize the licensee to engage in the activities described therein, which under paragraph (1) of Section 40 shall not be engaged in by persons other than the holder of the plant breeder's right.

(2) In the absence of provisions to the contrary a licence shall apply for the entire period of validity of the plant breeder's right and shall extend to all the activities reserved to the holder of the plant breeder's right under paragraph (1) of Section 40.

(3) A licence granted otherwise than under Sections 43, 44 and 45 shall be entered in the Netherlands Register of Varieties at the request of the licensee. It shall be valid in respect of third parties after it has been registered.

(4) A licence shall not be transferable, unless otherwise provided for.

Section 47

Further regulations shall be given by or in virtue of a general administrative order governing:

- (a) the requests to the Board described in this Part;
- (b) the fixing of the date when the requests referred to in (a) shall be deemed to have been submitted to the Board;
- (c) the hearing of interested parties.

Part IV

Plant breeder's right as part of breeder's capital

Section 48

(1) A plant breeder's right and the title to a plant breeder's right are transferable and inheritable.

(2) Subject to the special provisions of this Act, they shall be regarded as movable property.

(3) Transfer of a plant breeder's right and of the right resulting from an application for plant breeder's right shall take place by deed.

(4) Any reservation regarding the transfer shall be stated in the deed; in the absence of any such statement the transfer shall be unrestricted.

(5) The transfer shall not operate in respect of third parties until the deed has been entered in the Netherlands Register of Varieties.

(6) Either party shall be entitled to request the Board to make the entry.

Section 49

(1) If a plant breeder's right accrues to more than one person collectively, the position of such persons with respect to each other and their position with respect to third parties shall be governed by what they have settled by agreement; their position with respect to third parties shall be so governed only in so far as it is evident from the Netherlands Register of Varieties.

(2) If there is no agreement or if the agreement does not provide otherwise, any person co-entitled to a plant breeder's right shall be competent to exercise the right and to take action against any contravention of that right.

(3) Every person co-entitled to a plant breeder's right shall offer his rights to his co-participants at a reasonable price before surrendering them to a third party.

Section 50

(1) If a plant breeder's right is seized, the report of the seizure shall be entered in the Netherlands Register of Varieties.

(2) Once the report has been entered in the Register referred to in paragraph (1) the holder of a plant breeder's right whose right has been seized shall not sell or encumber it and shall grant no licences.

(3) Any licence fees not paid before the entry was made shall be included in the seizure *ipso jure* after a writ to that effect has been served upon the licensees.

(4) If the purpose of the seizure is to conserve the right after it has been declared valid by a judicial decision that has become final, the licence fees shall be paid over to the seizer to serve as payment along with the proceeds from the plant breeder's right on the basis of the priorities of the various claims.

(5) On termination of the seizure the title serving as evidence of determination shall be entered in the Netherlands Register of Varieties.

(6) If the purpose of the seizure is to conserve the right, Sections 770e to 770g of the Code of Civil Procedure shall apply, it being understood that what is said of the recorder of mortgages in Section 770g shall apply to the Board.

(7) The sale of a plant breeder's right that has been seized shall be public and shall take place in the presence of a notary.

(8) The creditor who prosecutes the sale shall have the date of the sale served at least thirty days in advance on all

the other creditors recorded at the time, at the domiciles chosen by them.

(9) The title serving as evidence of the claim awarded shall be entered in the Netherlands Register of Varieties.

Part V

Validity and claiming of plant breeder's right

Section 51

The validity of a plant breeder's right shall be at least fifteen years and shall not exceed twenty-five years from the date of registry of the plant breeder's right. For vines, fruit trees and their rootstocks and for roadside trees and ornamental trees the minimum validity shall be eighteen years. The validity of plant breeder's right for a number of botanical species shall be established by general administrative order.

Section 52

(1) The holder of a plant breeder's right may renounce it.

(2) Renunciation of plant breeder's right shall be by deed only; the deed shall be entered in the Netherlands Register of Varieties.

(3) The deed shall not be entered if there are any persons who, according to documents entered in the Register, have obtained title to the plant breeder's right or licences, or have instituted legal proceedings disputing the right and if those persons have not acquiesced in the renunciation.

(4) A plant breeder's right shall lapse as from the date the deed is entered in the Netherlands Register of Varieties.

Section 53

(1) A plant breeder's right shall lapse *ipso jure* if the annual fee referred to in Section 38 remains unpaid six months after it became due. The fact that the right has lapsed shall be recorded in the Netherlands Register of Varieties.

(2) If the fee is not paid within a fortnight of the date on which the right lapsed, the Board shall by registered letter remind the person recorded in the Netherlands Register of Varieties as the holder of the plant breeder's right of his obligation to pay.

(3) If payment is not made within a month after the date on which the right lapsed, all the persons who according to the documents entered in the Netherlands Register of Varieties have obtained title to the plant breeder's right or hold licences or have instituted legal proceedings regarding the right shall be informed of this in writing within a fortnight.

(4) Any claim by interested parties that they never received the letters referred to in the preceding paragraphs is legally invalid.

Section 54

(1) A plant breeder's right shall be declared void if it transpires that the variety is not new or does not meet the requirements of subparagraph (a) of paragraph (1) of Section 29.

(2) Any interested party, Our Minister or any person or persons acting on his behalf may at any time submit to the

Board a substantiated petition that a plant breeder's right be declared void.

(3) When the plant breeder's right has been declared void, that right and any rights derived from it shall cease to have any further legal implications.

Section 55

(1) Plant breeder's right can be claimed in its entirety or partly if it was granted to a person who under Sections 30, 31 or 32 did not have any title or did not have sole title to it.

(2) The right to claim plant breeder's right shall accrue to the person who under the foregoing sections has a full or partial claim to plant breeder's right.

(3) The right shall lapse five years from the date on which the plant breeder's right was registered.

(4) Plant breeder's right can be claimed by submitting a substantiated petition to the Board.

(5) Licences obtained in good faith before the entry referred to in paragraph (1) of Section 56 was made shall remain valid in respect of the new holder of the plant breeder's right, who shall be entitled to the fees payable for the licences.

Section 56

(1) A request that a plant breeder's right be declared void and a request for the award of a claim and any refusal or withdrawal of such a request shall be entered in the Netherlands Register of Varieties.

(2) As regards the adjudging of the costs Sections 56 and 57 of the Code of Civil Procedure shall apply analogously as far as possible.

(3) The Board's decision to declare a plant breeder's right void and to award a claim shall be entered in the Netherlands Register of Varieties.

(4) The declaration voiding a plant breeder's right and the award of a claim shall have retroactive effect as from the date of the entry in the Netherlands Register of Varieties referred to in paragraph (1).

Section 57

Further regulations shall be given by or in virtue of a general administrative order governing:

- (a) the requests and petitions addressed to the Board referred to in this Part;
- (b) the fixing of the date on which the requests and petitions referred to under (a) shall be deemed to have been submitted to the Board;
- (c) the hearing of interested parties.

Part VI

Decisions of the Board, appeals to the Board and appeals to the Court of Justice at The Hague

Section 58

The decisions of the Board made in pursuance of the provisions of this Chapter shall contain the grounds on which they were taken and shall be communicated by registered

letter to the applicant or his successor in title and, if they were made at the request of a person other than the applicant or his successor in title, also to the petitioner. Attention shall be drawn in the letter to the right of appeal under Section 59 or 60.

Section 59

(1) Appeals against the decisions referred to in the preceding Section, with the exception of decisions made in pursuance of Sections 54 and 55, may be lodged with the Appeals Department.

(2) Appeals must be lodged with the Appeals Department by the person informed of the decision in pursuance of the preceding Section within two months of the date of dispatch of the letter referred to in that Section.

(3) The appeal shall be made in the form of a substantiated petition.

Section 60

(1) Appeals against the final decisions of the Board in pursuance of Sections 54 and 55 may be lodged with the Court of Justice at The Hague.

(2) The appeal to the Court of Justice shall be made by a writ of summons within three months of the date of dispatch of the decision of the Board for Plant Breeder's Right.

(3) The writ of summons shall be entered in the Netherlands Register of Varieties within eight days from the date it bears. In the event of the writ of summons not being entered within that period, the appellant shall make good the damage suffered by those who after that period and before the entry was made obtained in good faith rights affected by the declaration voiding the plant breeder's right or the award of a claim.

(4) When a decision on an action for a declaration voiding plant breeder's right or for the award of a claim becomes final or when an action has been discontinued, a note to that effect shall be inscribed in the Netherlands Register of Varieties at the request of the first party to make the request.

Section 61

(1) When holding its deliberations and passing judgment, the Court of Justice shall be composed of three judges and two specialists who are not members of the Judiciary. One of the judges shall preside. Judgments passed when the Court is composed of any other number of persons shall be invalid.

(2) We shall appoint the persons referred to in the preceding paragraph who are not members of the Judiciary. We shall also appoint as many deputies as We may think fit. They shall be referred to as "advisers" and "deputy advisers" in the Court of Justice at The Hague.

(3) Persons shall not be eligible for appointment as advisers in the Court of Justice at The Hague until they have reached the age of thirty.

(4) The advisers and deputy advisers shall be appointed for a period of five years. They shall be eligible for re-appointment when they retire. They may be discharged by Us at their own request.

(5) The advisers and deputy advisers shall be sworn in before they enter upon their duties.

(6) Advisers and deputy advisers shall be discharged by Us as from the first day of the month following the month in which they reach the age of seventy.

Section 62

(1) Spouses, blood relations or relations by marriage up to and including the third degree of relationship may not at the same time be members or deputy members of the Court of Justice at The Hague, members of the Public Prosecutor's Office or Clerks in the Court of Justice at The Hague.

(2) If the marriage is contracted after the appointment, the member last appointed shall resign his office.

(3) If the relationship by marriage has come into being after the appointment, the person who caused that relationship to be established shall not retain his office, unless We have given him permission to retain it.

(4) The relationship by marriage shall cease to exist upon the dissolution of the marriage that established it.

Section 63

(1) An adviser or deputy adviser in the Court of Justice at The Hague may be dismissed by the Supreme Court by a substantiated order:

- (a) if he has been sentenced to imprisonment or detention for a criminal offence;
- (b) if he has been declared bankrupt, has been granted suspension of payment or is in prison for debt;
- (c) on account of misconduct or immoral behaviour or persistent negligence in the discharge of his duties; or
- (d) on account of his contravening the provisions of Section 67.

(2) Dismissal on account of contravention of the provisions of subparagraph (d) of paragraph (1) can only be resorted to if the adviser or deputy adviser involved has been admonished by the President of the Court of Justice at The Hague for a similar contravention committed previously.

(3) The Supreme Court shall not give judgment for dismissal unless the Attorney-General demands it.

(4) An adviser or deputy adviser whose dismissal has been demanded shall be summoned by the Attorney-General to be heard, at least a fortnight in advance. He shall be summoned by sealed letter stating the reasons for the demand. The letter shall be served upon the adviser or deputy adviser by writ of execution.

(5) The Supreme Court may hear witnesses either at the request of the Public Prosecutor's Office or of the adviser or deputy adviser involved, or *ex officio*.

(6) The hearings shall take place *in chambers*. Judgment shall be given in public.

Section 64

An adviser or deputy adviser shall be dismissed in the manner described in the preceding Section:

- (a) if age, chronic physical disability or mental illness has rendered them unfit to perform their duties;
- (b) if they have been placed under guardianship;

(c) if they have contravened the regulation prohibiting them to take up the defence of the parties either orally, in writing or under the guise of "consulting".

Section 65

(1) An adviser or deputy adviser in the Court of Justice at The Hague against whom a warrant for arrest or imprisonment has been issued or whose committal to a prison for offenders awaiting trial or to a mental hospital has been authorized or who is under sentence of civil imprisonment shall be suspended by the Supreme Court if the Attorney-General so demands.

(2) An adviser in the categories described in paragraph (1) may be suspended in like manner by the Supreme Court at the demand of the Attorney-General if a preliminary inquiry has been instituted on account of a criminal offence which he is alleged to have committed.

(3) The suspension shall be terminated on the demand of the Attorney-General or at the request of the suspended adviser, the Attorney-General having been heard, after the action, after the adviser's discharge from the prison for offenders awaiting trial or from the mental hospital or after termination of his civil imprisonment.

Section 66

The President of the Court of Justice at The Hague shall have the power to admonish, either *ex officio* or on the demand of the Public Prosecutor's Office, advisers and deputy advisers of the Court of Justice who act in a manner detrimental to the dignity of their office or neglecting their official duties or committing the offences described in Section 67, after having given them an opportunity to be heard.

Section 67

(1) The advisers and the deputy advisers in the Court of Justice at The Hague shall not, either directly or indirectly in any special interview or conversation, establish contact with the parties, their counsel, attorneys or proxies on any matter dealt with by them or which they know or have reason to believe will be dealt with by them, nor receive any special instructions, memoranda or other writings regarding that matter.

(2) Advisers and deputy advisers shall not do any consulting on or take up the defence of cases they are dealing with or which they know or have reason to believe will be dealt with by them. Paragraph (2) of Section 29 of the Code of Civil Procedure shall apply analogously to those persons.

(3) The advisers and deputy advisers shall be pledged to secrecy as to opinions expressed *in chambers*.

(4) Sections 30, 31, 33-39 and 42 of the Code of Civil Procedure shall apply analogously to advisers and deputy advisers.

Section 68

(1) Regulations governing the implementation of the provisions of this Part shall be laid down by general administrative order.

(2) Hotel and travelling expenses incurred by advisers and deputy advisers in the Court of Justice at The Hague shall

be reimbursed and they shall be entitled to the reimbursement of any additional expenses incurred by them, in accordance with rules to be laid down by general administrative order.

Section 69

(1) Appeals against decisions of the Court of Justice may be lodged with the Supreme Court of the Netherlands.

(2) Paragraphs (2), (3) and (4) of Section 60 shall be applied analogously.

Section 70

Copies of every judicial ruling on plant breeder's right shall be sent within a month of the date of the ruling and free of charge to the Board by the Clerk of the tribunal which gave the ruling.

Part VII

Making and publishing entries and records in the Netherlands Register of Varieties

Section 71

The entries referred to in this Chapter and the records to be inscribed in virtue of decisions against which appeal is possible shall be made and inscribed when a decision on an appeal has been taken or when the period within which an appeal ought to have been lodged has expired without any appeal having been lodged or when an appeal has been withdrawn by notifying the Board to that effect in writing.

Section 72

The following entries and records shall be published in the Netherlands State Gazette:

- (a) the entries referred to in this Chapter, except the entries made in pursuance of paragraph (4) of Section 43, paragraph (3) of Section 44 and paragraph (3) of Section 46;
- (b) the records inscribed in pursuance of Sections 36 and 37, paragraph (1) of Section 53, paragraphs (1) and (3) of Section 56 and paragraph (4) of Section 60.

CHAPTER V

Lists of Varieties

Section 73

A list shall be kept of varieties of the botanical species or groups of botanical species to be designated by Us; the varieties belonging to the botanical species and other groups of plants the cultivation of which is deemed important in the Netherlands by a committee to be set up by Us or by an institution to be designated by Us shall be put on the list.

Section 74

The characteristics and other particulars which in the committee's or institution's view should be made generally available shall be stated when the varieties and the other groups of plants are put on the list.

Section 75

(1) Entry on the list of varieties, classification in the list, modification of the classification and removal from the list

shall be carried out by the committee or the institution *ex officio*, subject to the provisions of Section 76.

(2) Before making any entry, classifying, modifying any classification or removing any entry from the list, the committee or institution shall carry out an investigation by experts or have such an investigation carried out.

(3) The committee or institution shall not make any entry in the list of varieties, transfer any entry to the "for export only" column or remove any entry from the list before it has heard or at least duly summoned the holder of the plant breeder's right, the authorized conserver or the breeder of a variety entered in virtue of paragraph (2) of Section 18.

Section 76

(1) The holder of the plant breeder's right for a certain variety and the breeder of a variety entered in virtue of paragraph (2) of Section 18 may submit a substantiated request to the committee or institution that his variety be put on the list of varieties.

(2) If a variety of a botanical species has been put in the "for export only" column, the holder of the plant breeder's right, the authorized conserver or the breeder of a variety entered in virtue of paragraph (2) of Section 18 may, within three months of the date of publication of the edition of the list of varieties concerned, submit to the committee a substantiated request that the classification of the variety be modified.

(3) Before deciding whether or not to accede to a request as referred to in paragraphs (1) and (2), the committee or institution shall carry out an investigation by experts or have such an investigation carried out.

(4) The committee or institution shall not refuse a request before it has heard the petitioner or at least duly summoned him.

Section 77

(1) If requested to do so, the committee or institution shall inform the person who has submitted a request as referred to in Section 76 in writing of the reasons for having refused his request.

(2) At the request of any interested party the committee or institution shall make known in writing the reasons for the removal of a certain variety or some other group of plants from the list of varieties or for having put it in the "for export only" column.

(3) A request as referred to in paragraph (2) shall be submitted not later than three months after the date of publication of the edition of the list of varieties concerned.

Section 78

(1) Any person who has received a communication as referred to in the preceding Section may address a substantiated petition to Our Minister within a month of the date of that communication.

(2) Our Minister shall decide whether any modifications and, if so, what modifications shall be made to the list of varieties in the light of the petition addressed to him.

(3) Our Minister can have modifications made to the list of varieties *ex officio*.

Section 79

In an order to be published in the Netherlands State Gazette Our Minister may lay down further regulations governing the arrangement, composition, classification and publication of a list of varieties in respect of the particulars referred to in Section 74 and governing the submission of requests as referred to in Sections 76 and 77 and of petitions as referred to in Section 78, and governing investigations and the publication of the results of investigations.

CHAPTER VI

Commercialization of Propagating Material and Testing Institutions

Part I

Commercialization of propagating material

Section 80

(1) Without prejudice to the right to use a trade name or trade mark, propagating material of a variety entered in the Netherlands Register of Varieties shall not be commercialized, offered for sale and, subject to the provisions of paragraphs (2) and (3), exported, otherwise than under the denomination entered in the Register.

(2) If in any other country a name different from the one registered in this country should be prescribed for a certain variety, propagating material of that variety may only be exported to that country under the denomination adopted there.

(3) Unless paragraph (2) of this Section is applicable propagating material of a registered variety may be exported to States other than Member States of the Union under the denomination customarily used in the country of importation, provided the denomination used in this country is also stated.

(4) The denomination registered or a similar term shall not be used for other propagating material derived from the same or a related botanical species.

Section 81

(1) Of agricultural species only propagating material of registered varieties belonging to those species shall be commercialized, offered for sale and exported.

(2) It may be laid down by general administrative order that the preceding paragraph shall not apply to certain agricultural species.

(3) It may be laid down by general administrative order that only propagating material of registered varieties of horticultural species shall be commercialized, offered for sale and exported.

Section 82

Our Minister may, after having heard the committee or institution referred to in Section 73, decree that notwithstanding the provisions given by or in virtue of Section 81, propagating material of groups of plants to be designated by him that are not registered, may also be commercialized, offered for sale and exported.

Section 83

(1) It may be laid down by general administrative order that of an agricultural species to which paragraph (1) of Section 81 applies only propagating material of varieties appearing in the list of varieties or other groups of plants put on that list shall be commercialized, offered for sale and exported.

(2) Our Minister shall lay down regulations governing the commercialization and sale of the propagating material of varieties and other groups entered in the "for export only" column.

Section 84

(1) What categories of propagating material of varieties belonging to an agricultural species designated in virtue of Section 87 may be commercialized, offered for sale and exported shall be laid down by or in virtue of a general administrative order.

(2) For plant breeding reasons it may be laid down by general administrative order that categories of propagating material of varieties belonging to botanical species designated in that order, as referred to in paragraph (1), the categories also being designated in that order, shall be produced and commercialized solely by the holder of the plant breeder's right for the variety concerned or, if there is no plant breeder's right for that variety, by the conservers designated for the variety.

(3) The conservers shall be designated by the Board. The Board shall designate a single conserver if this is necessary for plant breeding reasons. The latter shall be obliged to make foundation stock suitable for the production of propagating material available to persons who have expressed a wish to receive it, on terms and conditions to be laid down by the Board.

Section 85

Propagating material of a variety registered in virtue of paragraph (2) of Section 18 shall be commercialized, offered for sale or exported only by the breeder of the variety and by the person who has obtained from the breeder foundation stock suitable for the production of propagating material.

Section 86

Propagating material of a group of plants the commercialization of which is prohibited under the provisions of the preceding Sections may nevertheless for purposes of testing be commercialized and exported by or on behalf of the person who by his own efforts has developed the group of plants to which the propagating material belongs, provided the testing institution designated in virtue of Section 87 has given permission.

Part II

Testing institutions

Section 87

(1) It may be laid down by general administrative order that only persons who are members of a testing institution designated for a certain botanical species in that order shall be permitted to engage in the production, storage and processing for business purposes other than for use in the plant

breeder's own nursery, and the commercialization, sale, importation, exportation and offering for export of propagating material of that species, or to have these activities performed for business purposes.

(2) It may be laid down by the general administrative order referred to in the preceding paragraph that for the purposes of that order seed not intended to be sown for the cultivation of crops shall also be regarded as propagating material.

(3) Our Minister shall have the power to grant dispensation or exemption from the provisions of paragraph (1) in such cases or groups of cases as he may determine.

Section 88

To be designated as a testing institution in pursuance of the preceding Section:

- 1) the institution shall, according to its regulations:
 - (a) have been set up to promote the commercialization sale and exportation of reliable propagating material by carrying out tests;
 - (b) be non-profit-making;
 - (c) have a board on which the interested parties or the groups of interested parties are adequately represented;
- 2) the regulations of the institution shall provide that:
 - (a) the regulations and the generally applicable rules, any amendments to them and the repeal thereof shall require Our Minister's approval before becoming operative;
 - (b) the Chairman of the Board shall be appointed by Our Minister, after having heard the views of the Board of the testing institution;
 - (c) any person shall be admitted as a member upon application;
 - (d) if a member does not comply with any of the obligations imposed by the regulations or the generally applicable rules referred to under (a), one or more of the following disciplinary measures may be imposed: a reprimand, a fine not exceeding ten thousand guilders, putting the member under more stringent supervision for a period not exceeding two years at his own expense, the disciplinary order being published; if a member during the five years immediately preceding the non-compliance with any of the obligations referred to above was either put under more stringent supervision at his own expense or was fined twice, he may be suspended from membership for a period not exceeding three years;
 - (e) members shall have the right to appeal to an Appeals Tribunal against any decisions other than those referred to in (g) taken by any of the organs of the testing institution; it shall be possible to lodge an appeal within a month of the announcement of a decision. The composition of and procedure followed by the Appeals Tribunal shall be laid down in regulations governing appeals. Generally applicable rules shall not be regarded as decisions;

- (f) Our Minister shall appoint the Chairman, the Members and the Secretary of the Appeals Tribunal;
- (g) the Members shall have the right to appeal to a Tests Appeals Tribunal;
- (h) the testing institution shall submit to Government supervision carried out on behalf of Our Minister in accordance with rules to be laid down by him and shall undertake to furnish all relevant information and co-operate in every possible manner to ensure that such supervision be effective;
- (i) the Government officers who have to carry out the supervision shall have the right to attend the meetings of the Board and of the Executive Committee and shall always receive invitations to those meetings together with all the relevant documents.

Section 89

(1) The testing institution shall be supervised on behalf of Our Minister in accordance with rules to be laid down by him. It shall be obliged to furnish all relevant information and to co-operate in every possible manner to ensure that such supervision be effective.

(2) If the holder of a plant breeder's right so requests, the testing institution shall supply him annually with a list of members who have produced propagating material of his variety of an agricultural species, stating the quantities concerned and shall, if so requested, assist the holder of the plant breeder's right in collecting the licence fees.

Section 90

(1) The Appeals Tribunal referred to in Section 88 shall have absolute discretion when judging the decisions referred to in sub-paragraph(e) of paragraph (2) of Section 88 taken by any of the organs of the testing institution.

(2) Judgments of the Appeals Tribunal shall have the force of binding recommendations.

Section 91

(1) Without prejudice to the powers of the production and industrial boards, the testing institution shall have the authority to lay down rules with respect to the botanical species for which it has been designated governing:

- (a) the health, purity and quality of the propagating material;
- (b) the grading, classification, tending, packing, shipping and description of the propagating material in so far as those factors affect any of the aspects in (a);
- (c) the use of the documents and distinguishing marks relating to the propagating material required for one or more of the activities described in paragraph (1) of Section 87;
- (d) the technical set-up and the management of the business and the technical aspects of conducting it;
- (e) checking the observance of the stipulations concerning the matters referred to in (a), (b), (c) and (d) and the testing of the propagating material.

(2) In so far as the stipulations concerning the matters referred to in (a), (b), (c) and (d) relate to exports Our Minister

may decree that checking their observance shall be entrusted to an authority to be designated by him.

(3) The stipulations concerning the matters referred to in (a), (b) and (c) may be suspended by Our Minister for a certain period which, if not extended, shall not exceed six months, or they may be quashed by him.

(4) If no testing institution has been designated or if an institution cannot provide stipulations of the nature described in paragraph (1) or cannot provide all of them, such stipulations may be provided by or in virtue of a general administrative order.

(5) A general administrative order issued in the contingency referred to in paragraph (4) shall be revoked in so far as the testing institution designated in Section 87 has made the necessary stipulations and these stipulations have been approved by Our Minister.

Section 92

(1) The testing institution shall forbid a member to commercialize propagating material and shall prohibit trade in that material if it finds that the material does not belong to the group of plants the member claimed it belonged to when he offered it or that it does not comply with the stipulations made in virtue of Section 91.

(2) In such special cases or groups of cases as he may determine, Our Minister may grant dispensation or exemption from the stipulations made in virtue of Section 91, either on conditions to be laid down by him, or not.

(3) If it is evident from a member's method and the results it produces that the production, storage and processing of the propagating material are not being carried out expertly enough, the testing institution may defer the testing of that member's propagating material for periods not exceeding three years, as often as is necessary.

Section 93

Our Minister shall determine the distinguishing marks, signs, pieces of evidence and seals to be prescribed under this Act.

CHAPTER VII

Consultations with Trade and Industry

Section 94

Before We are advised to issue any of the general administrative orders referred to in Sections 3, 18, 29, 51, 81, 83, 84, 87, 91, paragraph (4), and 99, paragraph (2), or to amend or withdraw any such general administrative order, the bodies to be designated by Our Minister referred to in Section 66 of the Industrial Organization Act, and other organizations which may be deemed to have substantial interest in the matter to be regulated shall be given an opportunity to give their opinions on the draft.

CHAPTER VIII

Penal Provisions

Section 95

(1) If the findings in a civil or criminal case depend on determining to what variety a group of plants must be deemed

to belong, the Board shall be heard. The Board's recommendation shall give the grounds on which it is made.

(2) The Board shall give absolute priority to the matter referred to in paragraph (1).

Section 96

(1) Any person intentionally acting in contravention of the regulations laid down by or in virtue of Sections 40, 41, 80, 81, 83-85, 87 and 91, paragraph (4), shall be guilty of a criminal offence.

(2) Any person acting in contravention of the regulations laid down by or in virtue of Sections 40, 41, 80, 81, 83-85, 87 and 91, paragraph (4), shall be guilty of an offence.

Section 97

What is stated in 2e in t, in Section 1 of the Economic Offences Act shall be deleted and in 3, 1 of that Act the words "Sections 40, 41, 80, 81, 83-85, 87 and 91, paragraph (4), of the Seeds and Planting Materials Act" shall be substituted for the words "the Plant Breeders' Decree, 1941, (Bulletin of Ordinance 1942, 8)".

Section 98

In the event of non-compliance with an obligation as referred to in sub-paragraph (d) of paragraph (2) of Section 88 resulting in an economic offence as well, the Public Prosecutor shall, after having consulted the testing institution, decide whether or not disciplinary action shall be taken by the testing institution in respect of the offence.

CHAPTER IX

Transitional and Final Provisions

Section 99

(1) The contents of the Central Register of Varieties referred to in Section 2 of the Plant Breeders' Decree, 1941, at the time of the entry into force of this Act, shall as from that date be absorbed *ex officio* by the Netherlands Register of Varieties. Plant breeders' rights obtained by entry in the Central Register of Varieties and any plant breeders' rights valid at the time of the entry into force of this Act shall remain effective, it being understood that those plant breeders' rights shall, notwithstanding, the provisions of paragraph (3) of Section 37, be dated as from the date of entry of the variety in the Central Register of Varieties and that notwithstanding the provisions of Section 51 the validity of these rights shall be twenty-five years, and for roses seventeen years.

(2) Section 7, paragraph (2), under 2e, 40-44 and 46 of the Plant Breeders' Decree, 1941, shall remain applicable to varieties to which at the time of the entry into force of this Act the provisions of Section 7, paragraph (2), under 2e, or Section 46 of that Decree were applicable, notwithstanding what has been laid down by or in virtue of this Act, until July 1st of the year following the year in which this Act enters into force or until such later date as shall be laid down by general administrative order. Our Minister shall see to it that at the time when the preceding Sections of the Plant Breeders' Decree, 1941, cease to be applicable to any variety of potato

which at the time of the entry into force of this Act had been recorded in the Central Register of Varieties for five years or more, licences shall become operative for that variety in virtue of a public offer made in the manner described in Section 45 for the remainder of the validity of the plant breeder's right.

(3) The lists of varieties drawn up in virtue of Section 31 of the Plant Breeders' Decree, 1941, at the time of the entry into force of this Act, shall as from that date be deemed to be lists of varieties within the meaning of Section 73.

(4) The applications and requests before the Board for Plant Breeder's Right referred to in Section 6 of the Plant Breeders' Decree, 1941, at the time of the entry into force of this Act shall as from that date be *ipso jure* before the Board in the state in which they are at the time, it being understood that:

- (a) an application for registration in the Central Register of Varieties shall be deemed to be an application for a plant breeder's right, and
- (b) an application relating to a variety as referred to in paragraph (2) of Section 18 shall be deemed to be an application for registration of the variety in the Netherlands Register of Varieties, and
- (c) submitting a request for the transfer of a registration in the Central Register of Varieties shall be deemed to be tantamount to claiming a plant breeder's right within the meaning of Section 55.

The Board shall see to it that the necessary entries are made in the Netherlands Register of Varieties.

(5) The cases before the Plant Breeder's Right Appeals Tribunal referred to in Section 23 of the Plant Breeders' Decree, 1941, at the time of the entry into force of this Act shall be *ipso jure* before the Appeals Department in the state in which they are at the time.

The Board shall see to it that the necessary entries are made in the Netherlands Register of Varieties.

(6) The cases before the Appeals Tribunal, the Court of Justice at The Hague or the Supreme Court in pursuance of Sections 23, 24 or 28 of the Plant Breeders' Decree, 1941, at the time of the entry into force of this Act shall be dealt with and decided on in accordance with the provision of the Plant Breeders' Decree, 1941.

(7) The provision of paragraph (1) of Section 81 shall not apply to varieties appearing on a list of varieties at the time of the entry into force of this Act:

- (a) if at the time a request as referred to in sub-paragraph (a) or sub-paragraph (b) of paragraph (4) is pending with respect to the variety, until the Board has decided on the application;
- (b) until a month after the entry into force of this Act, or if within that month an application is received for a plant breeder's right or for registration in the Netherlands Register of Varieties as referred to in paragraph (2) of Section 18, until such time as the Board has decided on the application.

Section 100

The Administrative Orders (Appeals) Act shall be amended as follows:

In sub-paragraph (g) of paragraph (1) of Section 1 the words "the Patent Office and the Board for Plant Breeder's Right" shall be substituted for "the Patent Office".

Section 101

(1) The following regulations made by the German occupation authorities shall be cancelled:

- (a) the Plant Breeders' Decree, 1941, Bulletin of Ordinance 1942, 8;
- (b) the order of the Secretary-General of the Agriculture and Fisheries Department of June 24, 1942, concerning the entry into force of the Plant Breeders' Decree, 1941, State Gazette 1942, 120;
- (c) the Regulations of the Board for Plant Breeder's Right, State Gazette 1942, 120.

(2) The following Acts shall be repealed:

- (a) the Horticultural Seeds and Planting Materials (Testing) Act;
- (b) the Act of December 31, 1920, Bulletin of Acts, Orders and Decrees 957.

Section 102

(1) This Act may be cited as the Seeds and Planting Materials Act.

(2) It shall enter into force on a date to be specified by Us¹).

¹ Ed. Note: Under a Decree of May 10, 1967 (*Staatsblad* 266/1967), the Act entered into force on June 1, 1967.

ITALY

Decrees

Concerning the Temporary Protection of Industrial Property Rights at Seven Exhibitions

(of May 2, 6, 7, 20, 23 and 29, and June 11, 1968)¹)

Single Article

Industrial inventions, utility models, designs and trademarks relating to objects appearing at the following exhibitions:

XIV^a Esposizione triennale internazionale delle arti decorative e industriali moderne e dell'architettura moderna (Milan, May 30 to July 28, 1968);

SAMIA — Salone mercato internazionale dell'abbigliamento (Turin, September 6 to 9, 1968);

VI^a Mostra del marmo e delle macchine per l'industria marmifera (S. Ambrogio di Valpolicella, September 7 to 16, 1968);

XXI^a Fiera di Bolzano campionaria internazionale (Bolzano, September 13 to 23, 1968);

VIII^o Salone del mobile italiano (Milan, September 22 to 29, 1968);

¹) Official communications from the Italian Administration.

II^o Salone internazionale del container (Genoa, October 19 to 27, 1968);

L^o Salone internazionale dell'automobile (Turin, October 30 to November 10, 1968)

shall enjoy the temporary protection provided by Laws No. 1127 of June 29, 1939²), No. 1411 of August 25, 1940³), No. 929 of June 21, 1942⁴), and No. 514 of July 1, 1959⁵).

²) See *La Propriété industrielle*, 1939, p. 124; 1940, p. 84.

³) *Ibid.*, 1940, p. 196.

⁴) *Ibid.*, 1942, p. 168.

⁵) *Ibid.*, 1960, p. 23.

GENERAL STUDIES

Industrial Property and the Innovation*)

By Dr. Georges PÁLOS, Budapest

LETTERS FROM CORRESPONDENTS

Letter from Belgium

By Antoine BRAUN, Lawyer, Brussels Court of Appeal

		Applications Filed	Applications Disposed of	Pending Applications (backlog)
Patents	1962:	60,127	38,336	128,542
	1966:	86,046	52,246	244,196
	1967:	85,364	56,288	273,272
Utility	1962:	81,858	64,877	148,240
Models	1966:	119,061	78,357	288,954
	1967:	111,060	67,566	332,448

The personnel of the Patent Office has been increased to the following extent:

	Examiners	Trial Examiners	Total Staff
1962:	479	88	1,164
1966:	742	115	1,558
1967:	813	124	1,625

Problems and Counter-measures

The function of industrial property protection (in particular, protection of patents and utility models) is to encourage industrial progress by the disclosure of inventions in return for the exclusive right to its exploitation by the inventor during the term of protection. Thus, the granting of patents and the registration of utility models should keep pace with technological progress if the national economy is to be benefited.

However, the remarkable increase in patent and utility model applications, as well as the complexity of the art to be examined, entrain delays in their examination.

Counter-measures already taken

The Japanese Patent Office has taken measures to improve the situation of which those mentioned below are the most important.

- (a) The Patent Office budget has been enlarged.
- (b) The Patent Office personnel has been increased.
- (c) The conditions of work of the examining corps have been improved, and further improvements are being explored.
- (d) The organization and arrangement of patent documentation have been improved. Since 1964, retired engineers have been engaged for documentation and classification work; they classify, translate and make abstracts of documents received by the Patent Office. In 1965, a special documentation section was created.
- (e) Working conditions in the Patent Office have been improved and plans to build a new building to house the Patent Office are under way, as the present building is too cramped.
- (f) The capacity of the electronic computer installed in 1964 to deal quickly and accurately with the increased volume of administrative work connected with the processing of applications was increased in 1967.
- (g) To assist the regular examining staff, since 1965 retired engineers have been hired on a part time basis to do preparatory search work, thereby increasing the examining capacity.

News Concerning National Patent Offices

The Existing State of the Japanese Patent Office

(Digest of the Report of the Japanese Patent Office
of November 15, 1967)

Patent Examining Operations

Over the past five years, the number of patent and utility model applications filed with the Japanese Patent Office has increased by approximately 80%. To meet this increased work-load, the Japanese Patent Office has endeavoured to augment its examining ability by increasing its examining staff by 50% during this period. Thus it was possible, in 1967, to dispose of nearly 18 thousand more applications than were disposed of in 1962. However, the gap between the number of applications filed and the number disposed of is still very large and amounts to more than 50 thousand every year. This represents a waiting period of about 4 years.

The following table shows the examining operations in 1962, 1966, and 1967:

(h) Since 1963, standards for examination have been established and made available to the public, so as to harmonize the criteria for determining patentability in the Patent Office. As a result of publication of these standards it has been made easier for applicants to determine the patentability of their inventions themselves, before filing an application.

(i) The Patent Office provides guidance to the general public, in particular to prospective applicants, and holds information meetings in various places; in this same context, the promotion of inventive activities by the Invention Association is supported by the Patent Office.

(j) Experiments in information retrieval systems are made by the Japanese Patent Office, in collaboration with the Committee for International Cooperation in Information Retrieval Among Examining Patent Offices (ICIREPAT)¹⁾, in the fields of steroid compounds, nuclear reactors, glass, cement, catalysts, microwaves, magnetic materials, condenser, and so on. Plans to cover other fields are being carried forward.

Further Measures Relating to the Revision of the System

Apart from the measures described above, in order to promote quick disposal of applications, drafts for the revision of the Patent Law and the Utility Model Law were presented to the Diet in 1966 but not adopted on the ground that they were premature. The drafts aimed to simplify the procedure for the examination of patent and utility model applications.

In accordance with a request made by the Diet to the Patent Office at that time, the latter has since consulted with the Council for Industrial Property concerning the reform. The Council for Industrial Property is continuing its study of the new legislation and is due to report to the Patent Office in 1968²⁾.

It is expected that among the innovations to be suggested will be the following:

- (i) early publication;
- (ii) deferred examination;
- (iii) simplification of Patent Office procedures;
- (iv) modification of appeal procedure so as to provide for review by examiners of any of their contested decisions before the appeal procedure proper begins.

¹⁾ Now a Committee of the Paris Union.

²⁾ This report was submitted to the Patent Office in Spring 1968.

Moscow Symposium 1969

The Committee for Inventions and Discoveries attached to the Council of Ministers of the Union of Soviet Socialist Republics has asked BIRPI to announce that the competent organs of the Soviet Union will organize a Symposium in Moscow, from July 1 to 5, 1969, to celebrate the 50th Anniversary of the first Soviet decree on inventive activity.

The official title of the Moscow Symposium is Moscow Jubilee Symposium 1969.

The two main topics will be: "Invention and scientific-technical progress in the USSR" and "Problems of patent search and information retrieval."

Participation by foreigners will be welcome.

It is contemplated that, on the first of the above topics, the principal speakers will be Soviet experts; foreign experts will be able to address the Symposium and to participate in the general discussion.

On the second topic, "Problems of patent search and information retrieval," foreign experts will be able to speak on selected subjects.

Details of the program and conditions of participation will be published in due course. The main purpose of the present notice is to allow persons interested in participating in the Moscow Symposium to reserve the days from July 1 to 5, 1969.

NEWS ITEMS

CANADA

Retirement of the Commissioner of Patents of the Canadian Patent and Copyright Office

We have recently been informed that Mr. J. W. T. Michel has retired as Commissioner of Patents of the Canadian Patent and Copyright Office.

Mr. F. W. Simons has been appointed Acting Commissioner of Patents for the period until a new Commissioner of Patents is named.

We take this opportunity to wish Mr. Michel a happy retirement.

VENEZUELA

Appointment of a new Registrar of Industrial Property

We have recently been informed that Dr. Egilda Crespo Vasquez has been appointed Registrar of Industrial Property in Venezuela.

We take this opportunity to congratulate Dr. Crespo Vasquez on her appointment.

BOOK REVIEWS

Selection of New Publications

BOGUSLAVSKI (M. M.). *Mezhdunarodna'ia okhrana promishlennoi sobstvennosti (Parizhskaia konventsia)*. Moscow, Tsentralnyi nauchno-issledovatel'skii Institut, 1967. - 80 p. Komitet po delam izobretanii i otkritii pri Sovete Ministrov SSSR.

— *Pravovye voprosy nauchno-tekhnicheskogo progressa v SSSR*. Moscow, Izdatel'stvo "Nauka," 1967. - 512 p.

CHERVIKOV (I. V.). *Mezhdunarodnie soglasheniia i organizatsii po okhrane promyshlennoi sobstvennosti. Izobretanii tovarnie znaki promyshlennii obratzi*. Moscow, Mezhdunarodnye otnosheniia, 1967. - 168 p.

DURHAM (Hobart N.). *World patent litigation. Treatise on systems and procedures of principal countries of the world regarding protection and infringement of patents.* Washington and Leyde, Bureau of national affairs and A. W. Sijthoff, 1967.

UNITED STATES. PATENT OFFICE. *Manual of patent examining procedure.* Washington, Department of Commerce, 1967. - Loose-leaf volume. 3rd ed.

HAYER (Friedrich) and MAILÄNDER (K. Peter). *Lizenzvergabe durch deutsche Unternehmen in das Ausland.* Heidelberg, Vg. Recht u. Wirtschaft, 1967. - 176 p.

STERNER (Gunnar). *Stockholmskonferensen 1967.* Stockholm, I. Marcus, 1968. - 64 p. Extr. NIR, 1968, pp. 1-64.

CALENDAR OF MEETINGS

BIRPI Meetings

Date and Place	Title	Object	Invitations to Participate	Observers Invited
1968				
September 24 to 27 Geneva	Interunion Coordination Committee (6 th Session)	Program and Budget of BIRPI for 1969	Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Denmark, France, Germany (Fed. Rep.), Hungary, India, Iran, Italy, Japan, Kenya, Morocco, Mexico, Netherlands, Poland, Portugal, Rumania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America	—
September 24 to 27 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (4 th Session)	Program and Budget (Paris Union) for 1969	Argentina, Australia, Austria, Cameroon, France, Germany (Fed. Rep.), Hungary, Iran, Japan, Kenya, Morocco, Mexico, Netherlands, Poland, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America	All the other member States of the Paris Union; United Nations
September 26 and 27, 1968 Geneva	Council of the Lisbon Union for the Protection of Appellations of Origin and their International Registration (3 rd Session)	Annual Meeting	All Member States of the Lisbon Union	All other Member States of the Paris Union
October 2 to 8 Locarno	Diplomatic Conference	Adoption of a Special Agreement Concerning the International Classification of Industrial Designs	All member States of the Paris Union	States not members of the Paris Union <i>Intergovernmental Organizations:</i> United Nations; Unesco; Council of Europe <i>Non-Governmental Organizations:</i> Committee of National Institutes of Patent Agents; Inter-American Association of Industrial Property; International Association for the Protection of Industrial Property; International Chamber of Commerce; International Federation of Patent Agents; International League Against Unfair Competition; International Literary and Artistic Association; Union of European Patent Agents
October 14 to 16 Geneva	Working Group on Copyright Problems of Satellite Communications	Exchange of views on the copyright and neighbouring rights problems which might arise from broadcast transmissions by communications satellites	Experts invited individually and the international and national Organizations concerned	—

Date and Place	Title	Object	Invitations to Participate	Observers Invited
October 21 to November 1 Tokyo	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Technical Meetings	Questions of technical co-operation in information retrieval	All member States of ICIREPAT	International Patent Institute; Council of Europe; European Atomic Energy Community; Fédération internationale de documentation
November 25 to 29 Geneva	BIRPI Symposium on Practical Aspects of Copyright [held with the cooperation of the International Confederation of Societies of Authors and Composers (CISAC)]	To offer to participants information on practical aspects of copyright protection (collection and distribution of royalties, organization and working of authors' societies or other bodies, etc.)	Personalities from developing countries. Members and officers of authors societies. Individual participants against payment of a registration fee	International Labour Office; Unesco; Council of Europe
December 2 to 10*) Geneva	Committee of Experts — Patent Cooperation Treaty (PCT)	New Draft Treaty	All member States of the Paris Union	State not member of the Paris Union: India <i>Intergovernmental Organizations:</i> United Nations; United Nations Industrial Development Organization; United Nations Conference on Trade and Development; International Patent Institute; Organization of American States; Permanent Secretariat of the General Treaty for Central American Economic Integration; Latin-American Free Trade Association; Council of Europe; European Atomic Energy Community; European Economic Community; European Free Trade Association; African and Malagasy Industrial Property Office <i>Non-Governmental Organizations:</i> Committee of National Institutes of Patent Agents; Council of European Industrial Federations; European Industrial Research Management Association; Inter-American Association of Industrial Property; International Association for the Protection of Industrial Property; International Chamber of Commerce; International Federation of Patent Agents; Japan Patent Association; National Association of Manufacturers (U. S. A.); Union of European Patent Agents; Union des industries de la Communauté européenne

*) This meeting replaces the meetings previously announced for July 1 to 9, and November 4 to 12, 1968.

Meetings of Other International Organizations Concerned with Intellectual Property

Place	Date	Organization	Title
1968			
Paris	October 31	International Chamber of Commerce	Committee for International Protection of Industrial Property
The Hague	November 6 and 7	International Patent Institute (IIB)	98th Session of the Administrative Council
Lima	December 2 to 6	Inter-American Association of Industrial Property (ASIPI)	Congress
1969			
London	January 16 to 18	International Writers Guild (IWG)	Executive Committee