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PLANT VARIETY PROTECTION

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

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GAZETTE

SIGNATURE OF THE 1991 ACT OF THE UPOV CONVENTION

By the date until which it was open for signature (that is, March 31, 1992), the following States [have] signed the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised on November 10, 1972, on October 23, 1978, and on March 19, 1991 (the 1991 Act):

- Belgium, Denmark, France, Germany, Italy, Netherlands, South Africa, Spain, Switzerland, United Kingdom, on March 19, 1991;
- Israel, on October 23, 1991; United States of America, on October 25, 1991; Sweden, on December 17, 1991; New Zealand, on December 19, 1991; Ireland, on February 21, 1992; Canada, on March 9, 1992.

(Total: 16)

According to Article 34(2) of the 1991 Act, any State that has signed it may become party to that Act, if that State deposits its instrument of ratification, acceptance or approval of the said Act. Any State which has not signed the 1991 Act, and any intergovernmental organization that meets the requirements set forth in Article 34(1)(b) of that Act, may, subject to Article 34(3) of the 1991 Act, become party to it if it deposits an instrument of accession to the said Act.

Instruments of ratification, acceptance, approval or accession must be deposited with the Secretary-General of UPOV.

[Extract from UPOV Notification No. 39, dated April 6, 1992]

AMENDMENT OF LEGAL PROVISIONS

Germany

1. On July 1, 1990, the Law to Reinforce the Protection of Intellectual Property and to Combat the Piracy of Products of March 7, 1990, entered into force. The Law was intended to generally strengthen the position of the holder of intellectual property rights granted under various laws on intellectual property (the Copyright Law, the Designs Law, the Patent Law, the Plant Variety Protection Law, the Semiconductor Protection Law and the Utility Model Law) by introducing basically identical amendments in each of them. According to Article 7 of the aforementioned Law, the following main amendments or new provisions were incorporated into the Plant Variety Protection Law of December 11, 1985:

(i) right of the injured party to seek destruction of infringing material (new Article 37a);

(ii) claim of the injured party to information on the origin of the infringing material and its distribution channels (new Article 37b);

(iii) penal provisions (Article 39):

(a) increase of the maximum term of imprisonment in the case of infringement from one year to three years and, in the case of an infringement on a commercial basis, to five years;

(b) possibility of punishing the attempt to infringe;

(c) possibility for the public prosecutor to act ex officio in specific cases;

(iv) possibility for the right holder to request the customs authorities to seize the infringing material on import or export (new Article 40a).

2. By virtue of the First Amendment Law of March 27, 1992, which entered into force on April 8, 1992, the following main changes were incorporated into the Plant Variety Protection Law:

(i) protection was extended to cover the whole plant kingdom (accordingly, the Order of December 18, 1985, Concerning the List of Species under the Plant Variety Protection Law and the reference in the Patent Law to inventions of plant varieties of species not appearing in the List of Species under the Plant Variety Protection Law were removed) (Article 1);

(ii) protection of varieties of woody plants or other fruit or ornamental plants was strengthened by granting the owner of variety protection an exclusive right over the production of propagating material of the variety and the marketing or the importing of plants or parts thereof resulting from propagating material produced without his consent (the so-called "farmer's privilege" was abolished for vegetatively propagated plant species) (Article 10, first sentence, item 2);

(iii) the scope of application in respect of persons was extended (Article 15):

(a) the reciprocity principle which applied in respect of applicants from member States of UPOV not belonging to the European Economic Community was replaced by the principle of national treatment (paragraph (1), item 3);

(b) it is now possible for an applicant from outside the European Economic Community to appoint a procedural representative whose place of business is outside Germany, but in another country member of the European Economic Community (paragraph (2));

Pursuant to Article 41(3) of the Law as amended, applications relating to recently created varieties of taxa to which plant variety protection was extended by the First Amendment Law and which are to benefit from the transitional limitation of the requirement of novelty must be filed within one year following the extension, i.e. before April 8, 1993.

A consolidated text of the Plant Variety Protection Law of December 11, 1985, as amended by the Law to Reinforce the Protection of Intellectual Property and to Combat the Piracy of Products of March 7, 1990, and by the First Amendment Law of March 27, 1992, is reproduced in the "Legislation" subsection of this issue, starting on page 27.

 NEWSLETTER

 Member States

Canada: Tariff of Fees

Pursuant to Schedule II of the Regulations, fees with respect to plant variety protection are as follows (in Canadian dollars):

Column I		Column II
Item	Service	Fees or charges
1.	Filing, pursuant to Subsection 9(1) of the Act, of an application for plant breeders' rights	\$250
2.	Filing, pursuant to Subsection 19(1) of the Act, of an application for a protective direction	50
3.	Claim, pursuant to Paragraph 11(1)(b) of the Act, respecting priority based on a preceding application made in a country of the Union or an agreement country	50
4.	Examination, pursuant to Subsection 23(1) and Paragraph 75(1)(a) of the Act, of an application for grant of plant breeders' rights*	750
5.	Registration of grant of plant breeders' rights pursuant to Subsection 27(3) of the Act	500
6.	Filing, pursuant to Subsection 22(1) of the Act, of an objection to an application for plant breeders' rights	200
7.	Processing of request for change of an approved denomination by the holder of the plant breeder's right pursuant to Subsection 14(5) and Paragraph 75(1)(a) of the Act	100
8.	Reinstatement of an abandoned application for plant breeders' rights pursuant to Paragraph 26(2)(a) of the Act	100
9.	Reinstatement of an abandoned application for plant breeders' rights on petition pursuant to Paragraph 26(2)(b) of the Act	200
10.	Annual fee, pursuant to Subsection 6(2) of the Act	300

* Note: Where official results of tests and trials are obtained from an appropriate authority, the fee set out in column II of item 4 shall be reduced by an amount proportionate to the amount by which the work provided by the Plant Breeders' Rights Office is reduced, to a maximum reduction of \$500.

11.	Processing of application for compulsory licence, pursuant to Subsection 32(1) and Paragraph 75(1)(a) of the Act	250
12.	Issuance, pursuant to Subsection 27(5) of the Act, of certified copy of lost or destroyed certificate of grant of plant breeder's right	50
13.	Public inspection of the register and the index referred to in Subsection 67(2) of the Act, including any documents that, in the opinion of the Commissioner, should be open for public inspection, at the Plant Breeders' Rights Office	5
14.	Copies of documents or certificates with regard to an entry in the register or index referred to in Subsection 67(2) of the Act, including any documents that, in the opinion of the Commissioner, should be open for public inspection and obtained from the Plant Breeders' Rights Office	0.50/page
15.	Providing copies of publications, pursuant to Paragraph 75(1)(a) of the Act	at cost

Denmark: Modification of Fees

As a result of the annulment of the Labor Market Contribution Law and the amendment of the Law on Value-Added Tax, etc., the fees relating to variety testing were modified with effect from January 1, 1992. The main fees are now as follows (in Danish Crowns):

- | | | |
|----|---|-----------|
| 1. | <u>Application fee</u> | 2,205 kr. |
| | Additional payment for applications for which DUS reports are purchased (applicable only to ornamental and fruit species) | 488 kr. |

2. DUS testing fee

- | | | |
|-----|---|--------------------|
| (a) | Agricultural species
(including amenity grasses) | 7,165 kr. per year |
|-----|---|--------------------|

Where the DUS report is purchased from a foreign authority, the applicant shall pay the above-mentioned fee or the actual expenses incurred in the purchase of the report, if the latter exceed the former.

- | | | |
|-----|-----------------------------------|--------------------|
| (b) | Ornamental and fruit species | |
| (i) | Ornamental species | |
| - | Glasshouse | |
| | First testing year | 9,520 kr. |
| | Second or subsequent testing year | 4,760 kr. per year |
| - | Outdoor | |
| | First testing year | 7,115 kr. |
| | Second or subsequent testing year | 3,560 kr. per year |

(ii)	Landscape plants	
	First testing year	7,115 kr.
	Second or subsequent testing year	3,560 kr. per year
(iii)	Fruit species	
	First testing year (year of planting)	7,115 kr.
	Second or subsequent testing year	3,560 kr. per year

Where the DUS testing is carried out by a foreign authority and its report is purchased, the applicant shall pay the actual costs incurred by the foreign authority. Where the DUS testing has already been carried out by a foreign authority and its report is purchased, the applicant shall pay 1,610 kr. (this rule applies only to applications filed after January 1, 1991).

(c)	Vegetable species	
-	Glasshouse	4,745 kr. per year
-	Outdoor	3,165 kr. per year

Where the DUS report is purchased from a foreign authority, the applicant shall pay 3,175 kr. per testing year or the actual expenses incurred in the purchase of the report, if the latter exceed the former. Where the DUS testing of the variety in question has already been carried out by a foreign authority and its report is purchased, the applicant shall pay 2,440 kr.

3. Annual fee during the period of protection 780 kr.

UPOV

Development of Plant Variety Protection Throughout the World in 1991

Following established practice, the representatives of the States and organizations participating in the twenty-fifth ordinary session of the Council (October 24 and 25, 1991) reported on the development of plant variety protection and related matters in their country or at international level.

A summary of the statements, as recorded in the report of the session, is given below.

South Africa - At present, the Government was working actively with a view to amending the Plant Breeders' Rights Act in order to bring it into conformity with the 1991 Act of the Convention. A species of Panicum pasture grass (*Panicum maximum* Jacq.) had been added to the list of taxa for which plant breeders' rights could be obtained, bringing the total number of such taxa to 156.

During the report period from October 1, 1990, to September 30, 1991, 97 plant breeders' rights had been granted (8% increase over preceding period) and 146 applications had been filed (27% increase over preceding period). Interest in obtaining plant breeders' rights was still very high in South Africa, even though fees had been substantially increased.

Electrophoretic investigations were being continued. The purpose of the research was to identify genetic groups within a species in order to reduce the number of reference varieties that had to be planted for comparison with new varieties. There were still problems, however, in the repeatability of tests over years.

A variety list for strawberry was being finalized and would come into operation before the end of 1991. The variety lists for Citrus and subtropical fruits had been circulated for final comments and would come into operation early in 1992.

Germany - A Bill to amend the Plant Variety Protection Law was before Parliament. It included three main provisions which would be introduced independently of the 1991 Act of the Convention:

(i) Plant variety protection would be extended to cover the whole plant kingdom (this had already been achieved de facto).

(ii) The so-called "farmer's privilege" would be abolished for vegetatively propagated plant species with the exception of potato and grape vine. This provision would be effective first and foremost with respect to ornamental plants and fruit species.

(iii) In the area of the former German Democratic Republic, where there had been de facto no "farmer's privilege" in the past, production of farm-saved seed currently required the payment of a licence fee to the owner of plant variety protection. This provision applied, however, only to the following species: field bean, garden bean, pea, cereal species, potato, lupin and rape. The amount of the licence fee, which was levied per hectare sown, was based upon the licence fee for the quantity of seed calculated to be necessary for one hectare. Parliament would have to decide whether this regulation should be retained or repealed. Any future regulation, which would be applicable on the whole territory of Germany, would depend on the solution adopted by the European Communities.

The number of breeders' rights granted in the last year exceeded 1,400. The increase from 1,000 to 1,400 was attributable above all to breeding activities in the five new Länder. It was also to be noted that, particularly in the area of ornamental plants, there were more and more applications filed in respect of "rare species," for example species originating in the southern hemisphere. This trend would certainly become a topic for discussion within UPOV since the current form of bilateral cooperation could not effectively handle the problems associated with the testing of the varieties concerned.

Cooperation with some East and South European countries would be a further item of discussion. Germany had started, together with Austria, Czechoslovakia, Hungary and Poland, to establish a collective DUS testing scheme for three plant species. Its target was the harmonization of the tests and of the interpretation of the data which were jointly established.

Australia - Cost recovery from fees at the end of the last financial year was some 60%. Now virtually all costs, including developmental costs, infrastructure in part, running costs and salaries, were covered by fees. The Office was expected to reach full cost recovery--and, in fact, it was required to do so--by the 1993/94 financial year.

In the first three years of operation of the Australian Plant Variety Rights Scheme, which was a self-financed scheme, it was found that the total of applications had risen exponentially, reaching 400 in 1991. During the past year the number of applications showed a levelling of demand which could be attributed to the following three interacting economic factors: resistance by potential applicants to the 1990 price rise, the prevailing economic recession, and the exhaustion of the initial accumulated demand for protection. This might be useful information for those member States which might in future attempt to achieve full cost recovery by increasing fees. Plant variety rights appeared to be price sensitive and therefore some caution was necessary when setting fees. Australia would therefore focus in future on increasing operational efficiency and reducing running costs rather than increasing fees.

There was a study under way by a researcher of the University of London on the legal protection of plants in Australia under patent and plant variety rights legislation. According to that study it was recommended that the unique double patent and plant breeders' rights protection system for plant varieties be retained. That matter was now under public discussion.

Whilst Australia was redrafting its Act to conform with the 1991 Act of the UPOV Convention, it would appropriately rename it the "Breeders' Rights Act" and would widen the scope of genera and species eligible for protection to those not recognized as phylogenetically related to plants, namely micro-fungi, bacteria and some animal species.

Currently a Cabinet directed review of the Plant Variety Rights Office was under way. The outcome would probably be that the current Office would become a de facto semi-privatized government business enterprise.

Belgium - As regards legislative developments, the Royal Decree of March 12, 1991, Fixing the Plant Species for Which a New Plant Variety Certificate may be Issued and Fixing the Duration of Protection for Those Species was published in the "Moniteur belge" on June 21, 1991. This Decree had extended protection to varieties of further 120 taxa. The total number of protected taxa was currently 290.

From the entry into force of the system for the protection of new plant varieties to August 31, 1991, 1,290 applications for protection had been filed and 740 certificates issued, of which 373 were still in force. Certificates had been issued for only 47 of the total of 290 protected taxa. Since the extension of the list of protected taxa, a certain enthusiasm for the protection of ornamental varieties had been noted. Ornamental varieties represented 55% of the total number of the varieties currently protected, and rose varieties 22%.

Draft agreements for cooperation in examination with Denmark, France, Germany and the United Kingdom had been elaborated. Discussions with the Netherlands and Sweden had been concluded and the agreements would be signed shortly. An agreement had been concluded with Israel at the beginning of 1991.

Canada - Since Canada's Plant Breeders' Rights Law was passed by Parliament in 1990, the Plant Breeders' Rights Office had been actively working with its legal counsel in drafting regulations. The regulations had now been finalized and they would be gazetted in the first week of November. Canada would thereafter be in a position to receive applications for protection of varieties of any of the first six taxa covered by its regulations, which were canola/rapeseed, chrysanthemum, potato, rose, soybean and wheat.

In the case of these taxa certain transitional arrangements concerning novelty had been made. For any variety bred or developed in Canada, the breeder would still be able to apply, if no sale had taken place in Canada prior to August 1, 1990, provided that he files the application within one year of the regulations coming into effect. In the case of potato varieties sold outside Canada after August 1, 1970, or of the other five taxa sold after August 1, 1986, breeders would still be able to apply within the same period.

It was intended to extend the list of protected taxa within approximately one year to include additional agricultural, horticultural and ornamental crops. At present, the Plant Breeders' Rights Office was still receiving input on this subject from members of the Plant Breeders' Rights Advisory Committee.

In keeping with its Government's fiscal policy, the Plant Breeders' Rights Office would be required to operate on a full cost-recovery basis within 10 years. All applicants would be charged the same fees. The filing, examination and grant of rights would cost approximately 1,500 Canadian dollars, with an annual fee of 300 dollars to retain the right. Fees would be reviewed every two or three years.

The Delegation of Canada summarized by saying that Canada was pleased to finally have its plant breeders' rights legislation in place and to be able to afford protection, albeit on a gradual basis, to breeders within as well as outside Canada. It also looked forward to working with colleagues in other member States and hoped that it could make a useful contribution to the overall operations of UPOV.

Replying to a question on the use of the term "canola" put by the Delegation of Germany, the Delegation of Canada explained that the regulations would apply to all rape varieties belonging to the species *Brassica napus* and *Brassica campestris*, without regard to their oil characteristics.

Denmark - As regards legislative developments it was expected to extend protection, before December this year, to the following seven genera or species of ornamental plants and to one agricultural crop: *Crassula schmidtii* Regel, *Camelina sativa* L., *Hebe Comm. ex Juss.*, *Hedera* L., *Hydrangea* L., *Osteospermum* L., *Radermachera sinica*, *Scaevola aemula*.

The following table summarizes the use of the plant variety protection system:

	1990	1991*
Number of applications for protection, including:	231	187
- agricultural crops	73	
- fruit crops	8	
- vegetables	4	
- ornamentals	146	
Number of certificates issued, including:	220	180
- agricultural crops	78	
- fruit crops	2	
- vegetables	4	
- ornamentals	136	

* up to October 3

At earlier Council sessions a pilot project concerning the testing of varieties at the breeders' premises had been reported. The purpose of the project had been to evaluate the possibility of the Plant Novelty Board taking decisions on the granting of plant breeders' rights on the basis of examination reports produced by breeders. The pilot project had been pursued over three years, and a conclusion had recently been reached. The result was in general positive, and the Board intended to accept examination reports from breeders for selected species.

Spain - Spain had abandoned the idea of acceding to the 1978 Act of the Convention, and would concentrate its efforts instead on the ratification of the 1991 Act. Since the last session of the Council there had been no significant developments. No meeting of the Plant Variety Protection Board had taken place during the past year. At its next meeting, on November 7, 1991, it was planned to consider the possibility of extending protection to grape vine, Prunus rootstocks and tomato.

The fees had been increased by some 5% with effect from January 1991.

Concerning statistics, about 300 applications had been filed, 150 of which were for agricultural species and the others for ornamental plants, fruits and vegetables.

As explained at the last session of the Council, Spain was interested in establishing bilateral cooperation in examination. It intended to conclude its first agreement with Germany as soon as possible. It was also studying cooperation with Portugal, which was not yet a UPOV member State. In that instance Spain would be the offering country.

United States of America - As regards fees, the US Congress had mandated that the Patent and Trademark Office should achieve substantially full cost recovery. The fees, including for plant patents for asexually reproduced varieties, had been increased by 69% as of November 5, 1990. There had not been, however, any loss in the number of applications filed. It was foreseeable that, given rising costs, there might be another increase sometime in the very near future. It was worth noting, however, that, unlike other patents, plant patents were not subject to the payment of maintenance fees.

In relation to plant variety protection certificates for sexually reproduced varieties there was also at this time a proposal for the increase of application and processing fees by 200 dollars from the present 2,400 dollars to 2,600 dollars. The proposal had been made in September 1991 but was subject to public comment. It was expected that the proposal might come into force by the beginning of next year.

France - France had frozen after the Diplomatic Conference all activities in the legislative field, with the exception of the list of protected plant species, which was to be extended to the whole plant kingdom in the next months. That decision was linked to the negotiations on the problem of the "farmers' privilege" currently taking place at regional and Community levels.

Hungary - There had been no legislative amendments in the course of the last year. The most important development was that, in the framework of the Compensation Law, the privatisation of land had commenced, affording the possibility of building a modern market-oriented agriculture on the basis of inde-

pendent enterprises and cooperative associations. It should also be mentioned that the privatization of breeding institutions was in preparation.

In the course of the last year 74 applications had been filed and 61 protection titles granted. The Institute for Agricultural Qualification had carried out DUS tests on 138 varieties belonging to seven species, namely barley, durum wheat, linseed, maize, sorghum, sunflower and wheat.

With regard to cooperation in examination, field trials were being organized with Austria, Czechoslovakia, Germany and Poland on barley, pea and wheat to promote the standardization of variety descriptions. The Technical Working Party for Vegetables had held its twenty-fourth session in Hungary in June 1991.

Ireland - The list of species eligible for protection had been extended by four taxa during the past year and there were two more under consideration. During the last year, there had been 26 applications filed and 24 titles granted. In relation to the question of fees, the costs of the office were borne by the Department of Agriculture budget, fees had not been increased in the past year, and there had been no suggestion that they should be increased.

Israel - Israel was preparing an extension of protection to the whole plant kingdom following the provisions of the 1991 Act of the Convention. During the past year, 210 new rights had been granted. The fees had been increased by 10% to cover all expenses. A new biotechnological system using RFLP's had been introduced as a pilot model for defining the minimum distances of problematic varieties of strawberry, rose and some other species. There currently existed bilateral agreements with Belgium and Denmark.

Replying to a question put by the Delegation of Germany concerning the usefulness of the application of RFLP's to strawberry and rose varieties, for which distinctness could be established relatively easily by traditional characteristics, the Delegation of Israel explained that the pilot system was still under study and had not yet been used for practical testing.

Italy - By virtue of Ministerial Decree No. 281 of April 21, 1990, published in the Official Gazette No. 233 of October 5, 1990, protection had been extended to 18 further genera and species. The complete list had been published in "Plant Variety Protection" No. 61 of February 1991. The total number of titles granted up to May 14, 1991, was 816. It might be of interest for the Union to know that the Official Gazette No. 209 of September 6, 1991, contained the Ministerial Decree No. 289 of July 2, 1991, which established a voluntary certification system for virus-free propagating material.

Japan - There were 430 protected genera and species. The annual application number had increased from 385 in 1985 to 623 in 1990. From January to the end of September 1991, 515 applications had been received. The aggregate number of applications was now 4,979. Among those applications 52% were for annual flowers, followed by ornamental arboreal plants (14%) and vegetables (11%). A large number of applications from abroad had been received, representing 20% of the aggregate number of applications.

A UPOV regional Seminar on plant variety protection would be held in Tsukuba Science City near Tokyo from November 12 to 15, 1991.

New Zealand - As a result of the recent increase in applications, it had been decided to replace the current system of official examination of fruit varieties on the applicant's property by a system of testing at a central site, a newly established national cultivar center for pip and stone fruit. In future all applications for apple, peach, pear and plum would be examined at that center, in accordance with directions and guidelines from the Plant Variety Rights Office.

Netherlands - The duration of the breeder's right had been extended last August by Royal Decree to 25 years for most crops and to 30 years for some crops, e.g. potato. This represents a small step towards fulfilling the requirements of the 1991 Act of the Convention. The fees would be increased in order to make the system self-supporting.

Last month the 10,000th variety, a gerbera variety named 'Ajax', had been entered into the Plant Breeders' Rights Register. The annual number of plant breeders' rights had increased. In 1990, 1,454 applications had been filed, which represented an increase of 16% over the number in 1989.

The reorganization of the national testing institute had been completed. The new name of the institute was: the Center for Plant Breeding and Reproduction Research (CBRO). The sections of this Institute which were responsible for the examination of applications for plant breeders' rights, had special, independent status to ensure impartiality.

The Delegation of the Netherlands, currently holding the Presidency of the European Community, informed, on the latter's behalf, the Council of developments in respect of the proposed Regulation on Community Plant Variety Rights. Since the end of the Diplomatic Conference work had started at the level of the Council of Ministers on the draft Regulation, one of the main goals being to ensure that it would be compatible with the 1991 Act of the Convention. The first reading would hopefully be completed in November 1991. By that time the "advice" of the European Parliament could be available as well. The second reading would start before the end of the year. The adoption of the Regulation was scheduled for 1992.

Poland - As regards legislative developments, work on the revision of the Seed Industry Law had been started to adapt the Law to the provisions of the 1991 Act of the Convention.

In the course of 1990, 188 applications for protection had been filed and 18 titles of protection were issued. In 1991, up to October 10, 209 applications had been filed and 62 certificates were issued.

Last year the authorities for variety testing had published the first issue of a gazette containing all information on the protection of new plant varieties as well as information on the national register of varieties. From 1991 onwards the gazette would be published twice a year.

Poland was interested in international cooperation in examination. Its authorities could undertake the examination of linseed, lupin and triticale.

United Kingdom - The United Kingdom had moved to 100% coverage of costs by fees in April 1990. The effect on the figures for the following 12 months had been a very small reduction in the number of applications received (505 applications received = decrease of 1.5%; 298 grants issued = decrease

of 5%) and a very large reduction in the surrender of rights (232 grants terminated = decrease of 18%). The other consequence was that the testing authority was forced to look very closely at its costs. As response to this very reasonable demand from the industry it had reduced its costs by 18% as from April 12, 1991.

Work had been started on the changes in the law necessary to accede to the 1991 Act of the Convention. In the meantime, under the existing law, protection had been extended on January 17, 1991, to *Osteospermum* L. Consideration was now being given to extending protection in spring 1992 to the following eight taxa: *Agapanthus*, *Astrantia*, *Hibiscus*, *Lavatera*, quince rootstocks, quinoa, *Ruscus aculeatus* and tomato. Additional taxa under consideration were *Cheiranthus*, *Erysimum* and *Galtonia*.

Discussions were going on with four member States of UPOV with a view to establishing bilateral agreements on cooperation in examination. In two of the cases the discussions had just started, in two others they were very near to completion.

Sweden - Since the last session of the Council, Parliament had approved a small extension of the list of protected taxa which entered into force on July 1, 1991. During 1991 the extension of agreements on cooperation in examination had been completed with a number of European UPOV member States. The policy of the national Plant Variety Board was to reduce the number of examinations taking place in Sweden by reaching agreements with other UPOV member States. The total number of valid plant breeders' rights registrations on October 1, 1991, was 313.

Switzerland - There had been no change in legislation since the last session of the Council. A first draft to make the national law compatible with the 1991 Act of the Convention had been prepared and was still being examined at governmental level. It was foreseen that the draft would be sent for comments to interested circles in the coming spring.

Statements by Representatives of Non-member States

Argentina - A Decree which would create a National Seed Institute by reorganizing the existing National Seed Service was to be signed soon by the President of the Republic. This Institute would be self-financing and have its own budget. It would have a Board of Directors with four members from the Government and four members from the private sector representing farmers, traders, breeders and seed multipliers.

A new Patent Law was at present before Parliament. The new Law also included utility models and allowed patenting of products that had not been included in Law No. 111 of 1964, such as pharmaceutical products. Its Article 7 would exclude from patenting living matter such as plant varieties and animal breeds, but include biotechnological innovations.

Experts from the national seed laboratories had been trained a few months earlier in the German and Spanish Offices in the context of electrophoresis tests under a cooperation program with the EEC.

A UPOV Seminar, which would be the first in Latin America, would be held in Buenos Aires on November 26 and 27. It was financed by UPOV, but the Government of Spain had made a special financial contribution to enable all

Latin American countries to attend. The representative of Argentina thanked the UPOV Office and the Government of Spain for their collaboration in organizing the Seminar.

Colombia - The Government of Colombia had been supporting seed production and seed certification programs for 20 years. Private enterprises had developed strong quality production capacity, and good cultivars had been bred through research by private companies and the Government. The public and private sectors were now both interested in drawing up a law for the protection of new plant varieties. The Ministry of Agriculture had established a multi-disciplinary working group with the main purpose of elaborating the technical and legal provisions of the law. At this stage it was hoped that Colombia would receive technical assistance in order to adjust the law to the requirements of the Convention. Then, as a further step, the Government of Colombia would decide if the country should accede to the Convention.

Côte d'Ivoire - The country possessed a series of agronomical research institutes: the Institute for the Savannah (IDESSA), located in the center of the country, and the Institute for Forestry (IDEFOR), currently under restructuring and comprising five institutes: the Research Institute for Oil and Oil Crops, the Research Institute for Fruit and Citrus, the Research Institute for Coffee and Cacao, the Research Institute for Rubber and the Research Institute on Forestry. These Institutes had developed several varieties but Côte d'Ivoire had as yet no legislation for their protection. The representative of Côte d'Ivoire mentioned that the aim of his presence was to collect all useful information with a view to drafting a law in conformity with the Convention.

Egypt - The Delegation of Egypt thanked UPOV for inviting its Government to attend this session and reported that at the moment there was an active dialogue between Egyptian authorities and the Office of the Union with a view to paving the way for Egypt to accede to the Convention.

Finland - A draft Bill on Plant Breeders' Rights based on the 1978 Act of the Convention had been worked out last winter. Discussions on the draft were still going on between the Ministry of Agriculture and the Ministry of Industry, and it would take a few more months to finalize the Bill.

Morocco - A draft national law on the protection of plant varieties had been prepared and sent to the Office of the Union for preliminary examination. The Government of Morocco had requested the Office of the Union to send an expert mission and looked forward to welcoming it shortly.

Norway - The committee in charge of drafting a law on plant breeders' rights was expected to finish its work by the end of the year. It was further expected that the Government of Norway would submit the Bill to Parliament in spring next year. The Bill would be based on the 1978 Act of the Convention.

Romania - A new Patent Law (No. 64/1991) would come into force on January 24, 1992. It contained specific provisions on the protection by means of patents of plant varieties and animal breeds, which were in compliance with the 1991 Act of the Convention. Regulations concerning the protection of new

plant varieties and animal breeds would be drawn up jointly by the Ministry of Agriculture and the State Office of Inventions and Trademarks before the entry into force of the Law. Romania would thereafter take the necessary steps for accession to the Convention.

In relation to the declaration that plant variety protection conforming to the Convention would be introduced in Romania in the form of patents, the Delegation of Germany mentioned that, if more countries were to do the same, it would be necessary to discuss how to better organize international cooperation in exchanging examination results with those countries.

Czechoslovakia - The Permanent Representative of Czechoslovakia in Geneva visited the Secretary-General on October 8, 1991, and deposited an instrument of accession to the Convention. Two additional pieces of information which were formally necessary for the acceptance of that deposit (the statement of the financial contribution and a list of protected species) would be sent to the Secretary-General shortly*. Czechoslovakia would pay a half unit as its financial contribution.

The Law on the Legal Protection of New Varieties of Plants and Breeds of Animals was now in force. The extension of the list of protected genera and species by further 17 taxa was envisaged. A tariff of fees had been established, under which the application fee was fixed at 500 Crowns (about 25 Swiss francs). Other fees were also set below the level of the fees paid in most UPOV member States. Applications should be sent to the Federal Ministry of Economy. Application forms were also available in English.

In the field of plant varieties, there was another relevant law in Czechoslovakia. According to Law No. 61 of 1964 on the Development of Plant Production, only seed of those plant varieties that were admitted under the said Law could be commercialized. The conditions for admittance included the agronomic value of the variety, namely yield, quality, resistance to diseases, etc. The Law also regulated all agricultural production inputs. Currently it was planned to revise it and to establish a new, separate law on seeds and other planting material. Its preparation had just started, but the present legislation would certainly remain in force for one or two further years. The Federal Government required that the new standards currently under preparation should be in conformity with EC norms.

As of October 21, 1991, 274 applications for Czechoslovak varieties and one application for a foreign variety had been filed. Further applications for foreign varieties would be accepted, once the payment of the fee had been confirmed by the Ministry of Finance. Examinations were carried out in 1991 for the varieties for which applications had been filed in good time prior to the planting season by the Central Control and Examination Institute for Agriculture in Prague and the corresponding Institute with the same name in Bratislava. The representative of Czechoslovakia thanked all UPOV member States for their cooperation with his country.

Ukraine - For three years Ukraine had been preparing a law on plant variety protection. It would be in conformity with the 1991 Act of the Convention. The law would probably be adopted by Parliament in the coming year. The representative of Ukraine mentioned that his country expected some help

* Received by the Secretary-General on November 4, 1991.

from the member States of UPOV and relied very much on the help from the Office of the Union.

Uruguay - The representative of Uruguay restricted himself to supplementing document C/25/9, which already gave comprehensive information on the situation in his country. On October 2, 1991, the Grain Directorate had extended protection to *Lotus corniculatus* L. and *Trifolium repens* L. Protection had been provided for a period of 15 years. Preparations were under way to protect two additional species, namely *Medicago sativa* L. and *Oryza sativa* L.

Statements by Representatives of Intergovernmental Organizations

International Board for Plant Genetic Resources (IBPGR) - A policy statement on intellectual property rights was now under discussion within the Consultative Group on International Agricultural Research in Washington.

Organisation for Economic Co-operation and Development (OECD) - Currently the OECD Schemes were applied by 24 OECD member countries and 14 non-member countries. Zimbabwe and Costa Rica were seeking admission to the Schemes. A joint mission had been sent to Zimbabwe by OECD and the EC Commission last January with a view to admitting that country to the Schemes and to maintaining equivalence in the European Communities. These countries were not yet in a position to apply for the Schemes, and the Secretariat of OECD had asked them to draw up a programme for establishing the infrastructure necessary to implement the Schemes.

New Zealand, which was a member country of OECD, had decided one month earlier to apply the OECD Scheme for maize.

It would be of interest to UPOV to know that Ukraine intended to join the OECD Schemes as soon as possible. It seemed that behind this candidature stood an increasing interest from the private sector. Moldavia had also shown an interest, but the OECD regulations provided that only countries which were members of the United Nations were able to participate in the OECD Schemes. Thus it would be possible for Ukraine to participate, but this would be difficult for other Republics under present circumstances. Contacts had been established with China and Albania with a view to their joining the OECD Schemes.

This year the annual contribution payable by non-member countries had increased to 4,000 US dollars.

Discussions were under way on the varietal characteristics to be used for post-control examination. OECD had taken advantage of the experience acquired by UPOV in this field. For the comparative examination, OECD benefited from the assistance of the EC. It was currently planned, in consultation with ISTA and FIS, to increase the lot size for grasses and legumes. In another section of OECD discussions were under way concerning the release of genetically modified organisms into the environment.

Commission of the European Communities (CEC) - One of the major developments under way in the European Community was the proposal which the EC Commission had made to the Council of the European Communities on September 6, 1990, for a Regulation on Community Plant Variety Rights. This proposal would form an integral part of the Community program for completing its internal

market by the end of 1992. It sought to create a system of Community plant variety rights in parallel with the national systems of member States, under which breeders would be able to benefit on the basis of a single application from uniform protection throughout the Community.

The proposal had been examined actively throughout most of the last year by the Council of Ministers and in the light of the results of the UPOV Diplomatic Conference held in March of this year. Parallel to these deliberations, there had also been an examination of the proposal by the European Parliament, without whose opinion the Council of Ministers could not adopt the Regulation. The Legal and Citizens' Rights Committee of the European Parliament, which was the leading committee on this matter, was expected to complete its report next week, and the Parliament's opinion should be voted formally in plenary session, probably in November, clearing the way for a rapid adoption of the Regulation by the Council. It was worth noting that the Parliament had been considering this proposal jointly, and virtually simultaneously, with the Commission's proposal on the legal protection of biotechnological inventions, which sought to establish a common action by the member States on certain aspects of the European Patent Convention in order to promote the development of biotechnology in the Community.

Alongside these legislative activities of the Council and the Parliament, the Commission, in cooperation with the member States, had been organizing a dialogue with the relevant Community professional bodies on possible conditions for the exercise of the "farmer's privilege" within the framework of the proposed Regulation, in order to seek an equitable balance between the economic interests involved. These conditions were expected to be the subject of a subsequent proposal by the Commission.

Statements by Representatives of International Non-Governmental Organizations

Association of Plant Breeders of the European Economic Community (COMASSO) - As the representative of plant breeders of the European Economic Community, COMASSO had followed very carefully the work of the Committees of the European Parliament concerning the EC Commission's proposals on the legal protection of biotechnological inventions and on Community plant variety rights.

Some Committees of the European Parliament had demanded the inclusion of a "farmer's privilege" into the proposal on the legal protection of biotechnological inventions. COMASSO had already in the past pointed out the possible negative effects of the provisions of the UPOV Convention. The EC Commission's dialogue with the seed trade associations had reached a stage where one could state that the breeders' position and interests were surely among those which were least respected. The representative of COMASSO emphasized that in the negotiations taking place at the EC level the fundamental idea of the legal protection of new plant varieties should not be left as an empty shell.

International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA) - CIOPORA was studying the possible practical consequences of the 1991 Act of the Convention, and was taking a close interest in developments in the countries which might become members of UPOV.

CIOPORA organized once every five years an international colloquium on the protection of new plant varieties. The next one would be held on September 17 and 18, 1992, in Munich.

International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL) - ASSINSEL had started work on the examination of the consequences of the new provisions introduced in the 1991 Act of the Convention. Its Intellectual Property Working Group had established a working paper on essentially derived varieties which had been distributed at the twenty-ninth session of the Administrative and Legal Committee. ASSINSEL was aware that it would not be possible to find a solution to questions on dependency on a purely theoretical basis and understood that much work should be done at the level of the species concerned. For this purpose, ASSINSEL had established, in each section, working groups which would study separately the consequences of the introduction of dependency for the particular species. At the time of the 1992 Congress in Toronto, ASSINSEL would deal almost exclusively with the question of dependency and its application. Furthermore, a motion concerning forage crop species and their examination was under preparation and would be presented to UPOV shortly.

ASSINSEL thought that the new Convention would necessitate a much closer cooperation between UPOV, national authorities and industry. This would be a fundamental necessity, for it was very difficult nowadays to join the two ends and arrive at a mutual understanding without such cooperation.

International Federation of the Seed Trade (FIS) - The introduction of the notion of farm-saved seed was a preoccupation to FIS, and some sections, meeting in one month's time, would examine the situation and the possible consequences resulting from the inclusion in the Convention of this notion.

PUBLICATIONS

The following publications can be ordered from the Office of the Union:

- The official texts or translations of the 1991 Act of the UPOV Convention (in Arabic, English, French, German, Portuguese, Russian and Spanish; UPOV publications No. 221 (A, E, F, G, P, R or S; Price: 10 Swiss Francs each)
- Records of the Diplomatic Conference for the Revision of the International Convention for the Protection of New Varieties of Plants, Geneva, 1991 (Available in English, French and German; UPOV publication No. 346 (E, F or G); Price: 40 Swiss Francs each)
- Records of the Seminar on the Nature of and Rationale for the Protection of Plant Varieties under the UPOV Convention, held in Budapest, Hungary, from September 19 to 21, 1990 (Available only in English; UPOV publication No. 697(E); free of charge)
- Records of the Seminar on the Nature of and Rationale for the Protection of Plant Varieties under the UPOV Convention, held in Tsukuba, Japan, from November 12 to 15, 1991). (Available only in English; UPOV publication No. 717(E); free of charge)

CANADA

REGULATIONS RESPECTING PLANT BREEDERS' RIGHTS*

SHORT TITLE

Section 1

These Regulations may be cited as the Plant Breeders' Rights Regulations.

INTERPRETATION

Section 2

(1) For the purposes of the Act and these Regulations,

"description" means a narrative that defines the characteristics of a plant variety for the purpose of demonstrating that the variety in question is a new variety; (description)

"identifiable characteristics" means characteristics of a plant variety that may be included in a description and that, when so included, permit a clear distinction to be made between that variety and all other varieties in its category; (caractère identifiable)

"recently prescribed category" means a category set out in Schedule I that has been prescribed for a period of not more than 12 months. (catégorie établie depuis peu par règlement)

"representations" means representations in writing. (observations)

(2) In these Regulations, "Act" means the Plant Breeders' Rights Act. (Loi)

APPLICATION

Section 3

These Regulations apply to any plant variety belonging to a category set out in Schedule I.

* French full title: Règlement concernant la protection des obtentions végétales

French short title: Règlement sur la protection des obtentions végétales

Entry into force: November 6, 1991

COUNTRY OF THE UNION

Section 4

Any country of the Union that has ratified the International Convention for the Protection of New Varieties of Plants of December 2, 1961, and any revisions thereto, is prescribed to be a country of the Union.

CRITERIA RELATING TO COMMON KNOWLEDGE

Section 5

For the purposes of Paragraph 4(2)(a) of the Act, the following criteria shall be considered when determining that the existence of a plant variety is a matter of common knowledge, namely,

- (a) whether the variety is already being cultivated or exploited for commercial purposes; or
- (b) whether the variety is described in a publication that is accessible to the public.

PRESCRIBED PERIODS

Section 6

In the case of a new variety of a recently prescribed category, with respect to the requirements concerning the sale or the concurrence in a sale in Canada, the period referred to in Paragraph 7(1)(a) of the Act shall commence on August 1, 1990.

Section 7

(1) In the case of a new variety of a recently prescribed category, with respect to the requirements concerning a sale or the concurrence in a sale outside Canada, the period referred to in Paragraph 7(1)(c) of the Act shall commence

- (a) on August 1, 1970, for the category of potato set out in item 5 of Schedule I; and
- (b) on August 1, 1986, for any other category set out in Schedule I.

(2) In the case of a new variety of a category set out in Schedule I, other than a recently prescribed category, with respect to the requirements concerning a sale or the concurrence in a sale outside Canada, the period referred to in Paragraph 7(1)(c) of the Act shall commence not more than four years before the date of receipt by the Commissioner of the application for the grant of plant breeders' rights respecting the new variety.

Section 8

An objection made under Subsection 22(1) of the Act in respect of an application for the grant of plant breeders' rights shall be filed by submitting a written statement within a period of six months after the date of publication of the application.

Section 9

The applicant is deemed to have abandoned an application for the grant of plant breeders' rights, pursuant to Subsection 26(1) of the Act, six months after the date of notice of any action by the Commissioner.

Section 10

Pursuant to Paragraph 26(2)(a) of the Act, the applicant who is deemed to have abandoned his application pursuant to Subsection 26(1) of the Act may have the application reinstated within 30 days after the date on which the application was deemed abandoned.

Section 11

The petition referred to in Paragraph 26(2)(b) of the Act shall be presented within 90 days after the end of the period set out in Section 9.

Section 12

An assignee shall comply with the requirements of Subsection 31(1) of the Act within 30 days after the date of the assignment of the plant breeders' rights.

Section 13

A holder of plant breeders' rights shall comply with the Commissioner's request, for the purposes of Paragraph 35(1)(b) of the Act, within 60 days after the date of receipt of the request.

Section 14

An objection made pursuant to Paragraph 36(2)(a) of the Act shall be filed by submitting a written statement to the Commissioner, within 60 days after the date on which notice is given by the Commissioner.

Section 15

An applicant or a holder of plant breeders' rights shall correct any failure described in Subsection 39(2) of the Act within 30 days after the date of the notice from the Commissioner relating to the failure.

Section 16

For the purposes of Paragraph 45(1)(b) of the Act, the holder of plant breeders' rights shall take proceedings after being called on to do so within 15 days after the date on which the holder is so called.

Section 17

For the purposes of Subsection 67(1) of the Act, the period for which documents shall be preserved is a period equal to the term of the grant of plant breeders' rights or a period of six months after the date on which an application for plant breeders' rights has been deemed to have been abandoned pursuant to Subsection 26(1) of the Act, as the case may be.

Section 18

For the purposes of Subsection 67(3) of the Act, all papers and other material submitted in connection with the application for the grant of plant breeders' rights shall be returned to the applicant within 30 days after the date of withdrawal of the application.

APPLICATION FOR PLANT BREEDERS' RIGHTS

Section 19

(1) An application for the grant of plant breeders' rights shall be made to the Commissioner and contain the following information:

- (a) the name and address of the applicant;
- (b) the name and address of the breeder, if different from the applicant;
- (c) the name and address of any agent or legal representative, where applicable;
- (d) the botanical and common names of the plant variety;
- (e) the proposed denomination;
- (f) whether an application for a protective direction is included;
- (g) a description of the plant variety;
- (h) a statement that the plant variety is a sufficiently homogeneous variety within the meaning of Subsection 4(3) of the Act and is stable;
- (i) the manner in which the plant variety was originated;
- (j) where an application for plant breeders' rights respecting the plant variety has been made or granted in any country other than Canada, the name of the country;

- (k) whether priority is being claimed as a result of a preceding application made by the applicant in a country of the Union or an agreement country;
 - (l) where the breeder or a legal representative of the breeder sold or concurred in the sale of the plant variety within or outside Canada, the date of the sale;
 - (m) where applicable, any request for exemption from compulsory licencing; and
 - (n) the manner in which the propagating material will be maintained.
- (2) In an application referred to in Subsection (1), the applicant shall include a representative reference sample of viable propagating material of the plant variety that is the subject of the application.

Section 20

An application referred to in Subsection 19(1) shall be supported by

- (a) the results of comparative tests and trials to demonstrate that the plant variety is a new variety; and
- (b) photographs and a detailed description of the plant variety that illustrate that the plant variety is clearly distinguishable pursuant to Paragraph 4(2)(a) of the Act.

Section 21

Where an application referred to in Subsection 19(1) is made by a person other than a breeder, the application shall be accompanied by evidence that establishes that the person is the agent or legal representative.

DENOMINATIONS OF NEW VARIETIES

Section 22

Where the Commissioner rejects a proposed denomination pursuant to Subsection 14(2) of the Act, an applicant shall submit another proposed denomination in writing to the Commissioner.

Section 23

- (1) A request for a change of denomination shall be submitted to the Commissioner in writing.
- (2) The Commissioner may approve a change of denomination pursuant to Subsection 14(5) of the Act in the following circumstances, namely,

- (a) where the denomination approved by the Commissioner is not, owing to error, the denomination proposed by the holder;
- (b) where, in the opinion of the Commissioner, additional information that becomes available after the grant of plant breeders' rights justifies a change of denomination; or
- (c) where an objection has been filed pursuant to Subsection 25(2).

Section 24

A change of denomination comes into effect on the date on which it is approved by the Commissioner.

Section 25

(1) The Commissioner shall publish the approval of any change of denomination in the Canada Gazette.

(2) Any interested person may file an objection to a change of denomination with the Commissioner by submitting a written statement indicating the grounds for the objection within six months after the date that the notice of the change of denomination is published in the Canada Gazette.

ASSIGNMENT OF PLANT BREEDERS' RIGHTS

Section 26

Where a holder of plant breeders' rights assigns the rights pursuant to Subsection 31(1) of the Act, an assignee shall provide the Commissioner in writing with the following particulars:

- (a) the name and address of the previous holder;
- (b) the category and denomination of the plant variety to which the assignment applies;
- (c) the plant breeders' rights certificate number;
- (d) a letter of assignment signed by both the holder and the assignee, each in the presence of a witness; and
- (e) the effective date of the assignment.

COMPULSORY LICENCES

Section 27

- (1) An application for a compulsory licence shall
- (a) be in writing;

- (b) identify the plant variety and category for which the application is made; and
 - (c) state the reasons for the application.
- (2) Any interested person who will be adversely affected by the Commissioner's decision to grant a compulsory licence may make representations to the Commissioner within 60 days after the date on which notice is given pursuant to Subsection 32(5) of the Act.

Section 28

Where the applicant makes the request referred to in Paragraph 19(1)(m), the Commissioner may grant an exemption from compulsory licensing to allow the applicant sufficient time to multiply and distribute propagating material of the plant variety.

FEES AND CHARGES

Section 29

The fees and charges payable for the purposes of the Act and these Regulations are as set out in Schedule II and are payable, in Canadian dollars, to the Commissioner.

Section 30

- (1) The annual fee set out in item 10 of Schedule II is payable on or before the date of the anniversary of the granting of plant breeders' rights every year for the term of the grant of the rights.
- (2) Failure to pay the fee referred to in Subsection (1) within 60 days after the anniversary date may result in a revocation of the plant breeders' rights.

SCHEDULE I

(Sections 3, 6 and 7)

Not reproduced here.

SCHEDULE II

(Section 29 and Subsection 30(1))

Not reproduced here.

GERMANY

The Plant Variety Protection Law*

Consolidated Text of the Plant Variety Protection Law
of December 11, 1985,
as Amended by the Law to Reinforce the Protection of Intellectual Property
and to Combat the Piracy of Products of March 7, 1990,**
and by the First Amendment Law of March 27, 1992***

CHAPTER ONE

CONDITIONS AND CONTENT OF PLANT VARIETY PROTECTIONArticle 1

Conditions for Plant Variety Protection

Protection shall be granted for a plant variety (hereinafter referred to as a "variety"), provided such variety is

1. distinct,
2. homogeneous,
3. stable,
4. new and
5. designated by means of a registrable variety denomination.

Article 2

Definitions

For the purposes of this Law:

1. "Species" shall mean species of plants, and also groupings and subdivisions of species of plants,
2. "Propagating material" shall mean plants and parts of plants, including seeds, intended for the production of plants or for any other growing,
3. "Marketing" shall mean offering, keeping available for sale, placing on sale or any kind of disposing of to other parties,

* German title: Sortenschutzgesetz; Source: Bundesgesetzblatt I, page 2170

** German title: Gesetz zur Stärkung des Schutzes des geistigen Eigentums und zur Bekämpfung der Produktpiraterie vom 7. März 1990; Source: BGBl. I, page 422

*** Source: BGBl. No. 17, page 727;
Entry into force (of latest amendments): April 8, 1992

4. "Filing date" shall mean the day on which the application for plant variety protection is received by the Federal Office of Plant Varieties,
5. "Member State" shall mean a member State of the European Economic Community,
6. "Union State" shall mean a State that belongs to the Union for the Protection of New Varieties of Plants set up in accordance with the International Convention for the Protection of New Varieties of Plants of December 2, 1961 (BGBl. 1968 II p. 428) in its version applicable in each case.

Article 3

Distinctness

(1) A variety shall be distinct when its plants are clearly distinguishable by the expression of at least one important characteristic from the plants of all other varieties that are a matter of common knowledge on the filing date. The Federal Office of Plant Varieties shall communicate on request for every species those characteristics it deems important for the distinctness of varieties of that species; the characteristics must be capable of precise recognition and description.

(2) A variety is a matter of common knowledge, in particular, when it has already been entered in an official list of varieties, precisely described in a publication, notoriously cultivated or notoriously included in a reference collection or when propagating material or harvested material of the variety has already been marketed for commercial purposes. Where the grant of variety protection has been applied for in respect of that variety, it shall be deemed to be a matter of common knowledge as from the filing date, subject to acceptance of the application; the same shall apply where approval has been applied for in respect of the variety under the Seed Trade Law.

Article 4

Homogeneity

A variety shall be homogeneous when its plants, apart from a small number of deviations, and taking into account the particularities of their sexual reproduction or vegetative propagation, are sufficiently identical in the expression of those characteristics that are important for distinctness.

Article 5

Stability

A variety shall be stable when the characteristics of its plants that are important for distinctness correspond after each propagation, or, in the case of a propagation cycle, after each such cycle, to the expressions determined for the variety.

Article 6

Novelty

A variety shall be new when propagating material or harvested material of the variety has not been marketed for commercial purposes with the consent of the entitled person or of his predecessor in title prior to the filing date, or has only been marketed for commercial purposes within the following periods of time:

1. inside the country one year,
2. outside the country four years, or, for grapevine (*Vitis* L.) and tree species, six years.

Article 7

Variety Denomination

(1) A variety denomination shall be registrable if no grounds for exclusion under paragraphs (2) or (3) exist.

(2) Grounds for exclusion shall exist when the variety denomination

1. is not suitable to identify the variety, particularly for linguistic reasons,
2. possesses no distinctive nature,
3. consists exclusively of figures,
4. is identical to or may be confused with a variety denomination under which a variety of the same or of a related species is entered in an official list of varieties in a member State or a Union State, or was so entered, or where propagating material of such variety has been marketed, unless the variety is no longer entered and no longer cultivated and its denomination has acquired no special significance,
5. may mislead, particularly when it is likely to cause erroneous conceptions as to the origin, the properties or the value of the variety, or as to the original breeder, discoverer or other entitled person,
6. may cause offence.

The Federal Office of Plant Varieties shall communicate those species it deems to be related within the meaning of item 4.

(3) Where the variety has already been entered in an official list of varieties or entry in such list has been applied for

1. in another member State or Union State or
2. in another State which, according to a declaration in legal acts of organs of the European Communities, to be notified by the Federal Office of Plant Varieties, evaluates varieties in accordance with rules that correspond to the Guidelines for the Common Catalogues of Varieties,

only the variety denomination so entered or declared shall be registrable. This shall not apply where grounds for exclusion under paragraph (2) are opposed thereto or the applicant reasonably establishes that an opposing third party right exists.

Article 8

Entitlement to Variety Protection

(1) The original breeder or discoverer of the variety or his successor in title shall be entitled to variety protection. If more than one person has bred or discovered the variety jointly, the entitlement shall belong to such persons jointly. If more than one person has bred or discovered the variety independently, the entitlement shall belong to the person who files the first application for variety protection.

(2) The applicant shall be considered the entitled person in proceedings before the Federal Office of Plant Varieties unless it comes to the knowledge of the Federal Office of Plant Varieties that he is not entitled to variety protection.

Article 9

Persons not Entitled to Apply

(1) If a person not entitled to protection has filed an application, the entitled person may require that the applicant transfer to him the claim to the grant of variety protection.

(2) If variety protection has been granted to a person not entitled thereto, the entitled person may require that the owner of variety protection transfer variety protection to him. Such claim shall expire five years after notification of the entry in the Plant Variety Protection Register, except where the owner of variety protection was not acting in good faith in obtaining variety protection.

Article 10

Effect of Variety Protection

Variety protection shall have the effect that the owner of variety protection alone shall be entitled

1. to market propagating material of the variety or produce it for such purpose,
2. in the case of varieties of species usually used as woody plants or other fruit or ornamental plants,
 - (a) to produce propagating material of the variety for purposes other than marketing,
 - (b) to market or import therefor plants or parts of plants obtained from propagating material which has been produced without the consent of the owner of variety protection,
3. to use propagating material of the variety to produce propagating material of another variety where propagating material of the protected variety must be used repeatedly to produce the propagating material of the other variety, and

4. to introduce propagating material of the variety originating within the country into an area outside the member States in which German nationals or persons having their place of residence or place of business within the country are not granted corresponding protection for varieties of that species.

The effect of variety protection does not extend to the acts mentioned in items 1 to 3 of the first sentence, which are done privately and for non-commercial purposes. The use of propagating material of a protected variety for the breeding of a new variety shall not require the consent of the owner of variety protection.

Article 11

Legal Succession, Exploitation Rights

- (1) The right to variety protection, the claim to granting of variety protection and the variety protection itself shall be transferable. The obligation to have the Plant Variety Protection Register corrected shall be incumbent, in the event of doubt, on the person hitherto entitled.
- (2) Variety protection may be the subject of exclusive or non-exclusive exploitation rights.

Article 12

Compulsory Exploitation Rights

- (1) The Federal Office of Plant Varieties may on request, insofar as it appears justified in the public interest, taking into account the economic acceptability for the owner of variety protection, grant a compulsory exploitation right in respect of variety protection as regards the rights under Article 10, first sentence, items 1 to 3, under reasonable conditions where the owner of variety protection has granted no exploitation rights or insufficient exploitation rights. When granting the compulsory exploitation right, the Federal Office of Plant Varieties shall determine the conditions thereof, particularly the amount of the remuneration to be paid to the owner of variety protection.
- (2) On expiry of one year after the grant of the compulsory exploitation right, any of the parties may request renewed determination of the conditions. The request may be repeated each time on expiry of one year; the sole grounds for such request may be that the circumstances that were decisive for the determination have in the meantime undergone considerable change.
- (3) Before taking its decision on the grant of a compulsory exploitation right or on a new determination, the Federal Office of Plant Varieties shall hear the professional associations concerned.
- (4) If a compulsory exploitation right has been granted for a variety belonging to a species subject to the Seed Trade Law, the owner of variety protection may require information from the responsible authorities
 1. on the identity of the person who has applied for seed recognition in respect of propagating material of the protected variety,

2. on the size of the propagating surfaces stated in the request for recognition,
3. on the weight or quantity that has been stated in respect of the lots.

Article 13

Duration of Variety Protection

Variety protection shall extend to the end of the twenty-fifth calendar year or, in the case of grapevine, hop, potato and tree species, the end of the thirtieth calendar year following the year of grant.

Article 14

Use of the Variety Denomination

- (1) Propagating material of a protected variety may only be marketed--except privately and for non-commercial purposes--if the variety denomination is stated in relation thereto; where it is stated in writing, it shall be readily distinguishable and clearly legible. This shall also apply after expiry of variety protection.
- (2) Rights in a designation that is identical with the variety denomination may not be used to prohibit the use of the variety denomination for the variety. Prior rights of third parties shall not be affected.
- (3) The variety denomination of a protected variety or of a variety for which breeders' rights have been granted in another Union State or a designation which may be confused with it may not be used for another variety of the same or of a related species.

Article 15

Scope of Application in Respect of Persons

- (1) The rights afforded by this Law may only be acquired by
 1. German nationals within the meaning of Article 116(1) of the Basic Law as well as natural and legal persons and unincorporated trading companies having their place of residence or registered offices within the country,
 2. nationals of another member State as well as natural and legal persons and unincorporated trading companies having their place of residence or registered offices in another member State,
 3. nationals of another Union State as well as natural and legal persons and unincorporated trading companies having their place of residence or registered offices in another Union State, and
 4. other natural and legal persons and unincorporated trading companies where the State to which they belong or in which they have their place of residence or registered offices affords corresponding protection to German nationals or persons having their place of residence or registered offices

within the country according to a notification of the Federal Minister for Food, Agriculture and Forestry in the Bundesgesetzblatt.

(2) Any person who has neither his place of residence nor an establishment in a member State may only participate in procedures governed by this Law or claim rights under this Law if he appoints a representative (procedural representative) having his place of residence or business premises within a member State. The latter shall be entitled to act as representative in procedures before the Federal Office of Plant Varieties and in legal disputes concerning variety protection; he may also institute criminal proceedings.

CHAPTER TWO

THE FEDERAL OFFICE OF PLANT VARIETIES

Article 16

Nature and Tasks

(1) The Federal Office of Plant Varieties shall be an autonomous senior federal authority within the purview of the Federal Minister for Food, Agriculture and Forestry.

(2) The Federal Office of Plant Varieties shall be responsible for the granting of variety protection and for related affairs. It shall keep the Plant Variety Protection Register and shall verify the continuing existence of the protected varieties.

Article 17

Members

(1) The Federal Office of Plant Varieties shall consist of a President and other members. They must have special competence in the field of plant varieties (technical members) or be qualified for judicial office under the German Law Relating to Judges (legal members). They shall be appointed by the Federal Minister for Food, Agriculture and Forestry for the duration of their activity with the Federal Office of Plant Varieties.

(2) As a rule, only such person shall be appointed as a technical member who has successfully undergone a State or academic examination following a scientific course in a subject relevant to his activity at the Federal Office of Plant Varieties at a university within the country or a final examination following equivalent studies abroad and has also worked for at least three years in the corresponding technical area and who possesses the necessary legal knowledge.

(3) Where there exists a need that is expected to be limited in time, the President may appoint persons as assistant members to carry out the duties of members of the Federal Office of Plant Varieties. Such appointments may be for a specified period or for as long as needed and may not be terminated during

such period. In other respects, the provisions regarding members shall also apply to assistant members.

Article 18

Examining Sections and Opposition Boards

- (1) There shall be set up within the Federal Office of Plant Varieties
1. examining sections,
 2. opposition boards for variety protection matters.

The President shall determine their number and shall decide on the allocation of duties.

- (2) The examining sections shall be responsible for decisions on
1. applications for variety protection,
 2. objections under Article 25,
 3. cancellation of the grant of variety protection in respect of the variety denomination,
 4. entry of a different variety denomination and the establishment of a variety denomination under Article 30(3),
 5. the grant of a compulsory exploitation right and the determination of the conditions,
 6. withdrawal and annulment of the grant of variety protection.

- (3) The opposition boards shall be responsible for decisions on opposition against decisions taken by the examining sections.

Article 19

Composition of the Examining Sections

- (1) The examining sections shall in each case comprise one technical member of the Federal Office of Plant Varieties designated by the President.
- (2) Decisions in the cases under Article 18(2), items 2, 5 and 6, shall be taken by the examining sections composed of three members of the Federal Office of Plant Varieties designated by the President, one of whom shall be a legal member.

Article 20

Composition of the Opposition Boards

- (1) The opposition boards shall in each case comprise the President or one member of the Federal Office of Plant Varieties designated by the President as chairman, one legal member and one technical member of the Federal Office of Plant Varieties designated by the President as assessors, and two honorary assessors. The opposition boards shall be empowered to deliberate and make

decisions provided that the chairman, the legal assessor and one honorary assessor are present.

(2) The honorary assessors shall be appointed by the Federal Minister for Food, Agriculture and Forestry for a term of six years; they may be reappointed. Where an honorary assessor retires prematurely, his replacement shall be appointed for the remaining term of office. The honorary assessors should possess special technical knowledge in the field of plant varieties. Owners or employees of breeding establishments and employees of breeders' associations shall not be appointed.

(3) An alternate shall be appointed for each honorary assessor. Paragraph (2) shall apply mutatis mutandis.

CHAPTER THREE

PROCEEDINGS BEFORE THE FEDERAL OFFICE OF PLANT VARIETIES

Article 21

Formal Administrative Procedure

The provisions of Articles 63 to 69 and 71 of the Law on Administrative Procedure concerning formal administrative procedures shall apply to proceedings before the examining sections and the opposition boards.

Article 22

The Application for Variety Protection

(1) The applicant shall state the name of the original breeder or breeders or discoverer or discoverers of the variety in the application for variety protection and shall certify that, to the best of his knowledge, no further persons have been involved in the breeding or discovery of the variety. If the applicant is not the original breeder or discoverer or is not the only original breeder or discoverer, he shall be required to state how the variety came into his possession. The Federal Office of Plant Varieties shall not be obliged to verify such statements.

(2) The applicant shall state the variety denomination. For the purposes of the procedure for granting variety protection, he may state, with the consent of the Federal Office of Plant Varieties, a provisional designation.

Article 23

Chronological Order of the Application for Variety Protection

(1) The chronological order of the application for variety protection shall be determined, in cases of doubt, by the order of the entries in the register of incoming mail at the Federal Office of Plant Varieties.

(2) If the applicant has already applied for breeders' rights for the variety in another Union State, he shall be entitled within one year of the correct filing of the initial application to claim the date of that application as priority for the application for variety protection. Priority may only be claimed in the application for variety protection. It shall lapse if the applicant does not submit to the Federal Office of Plant Varieties within three months of the date of the application copies of the documents of the initial application that have been certified by the authorities responsible for such application.

(3) If the variety denomination has been entered on behalf of the applicant in the Trademark Register at the Patent Office as a trademark, or if entry has been applied for, for goods that comprise the propagating material of the variety, he may claim the date of the trademark application as priority for the variety denomination. Priority shall lapse if the applicant does not submit to the Federal Office of Plant Varieties within three months of notifying the variety denomination a certificate issued by the Patent Office concerning the entry or application in respect of the trademark. The first and second sentences shall apply mutatis mutandis to marks registered under the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, in its currently applicable version and which enjoy protection within the country.

Article 24

Publication of the Application for Variety Protection

(1) The Federal Office of Plant Varieties shall publish the application for variety protection together with a statement of the species, the proposed variety denomination or provisional designation, the application date and the name and address of the applicant, of the original breeder or discoverer and of a procedural representative.

(2) If the application is withdrawn following publication, it shall be deemed under Article 27(2) not to have been filed on grounds of failure to comply or if the grant of variety protection has been refused, these circumstances shall likewise be published by the Federal Office of Plant Varieties.

Article 25

Objections

(1) Any person may lodge an objection to the grant of variety protection with the Federal Office of Plant Varieties.

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

1. the variety is not distinct, not homogeneous, not stable or not new,
2. the applicant is not entitled or
3. the variety denomination is not registrable.

(3) The time limit for objections shall be

1. the granting of variety protection, in the case of objections under paragraph (2), item 1,
 2. three months after publication of the application for variety protection, in the case of objections under paragraph (2), item 2,
 3. three months after publication of the proposed variety denomination in the case of objections under paragraph (2), item 3.
- (4) The grounds for the objection shall be stated. The facts and elements of proof supporting the allegation under paragraph (2) shall be furnished in detail. Except where already set forth in the declaration of objection, they shall be furnished before the expiry of the time limit for objections.
- (5) Where an objection under paragraph (2), item 2, leads to withdrawal of the application for variety protection or to refusal of grant of variety protection and if the objecting party files an application for variety protection within one month following withdrawal or within one month of the date on which the refusal becomes final in respect of the same variety, he may require that the date of the prior application shall apply to his application as the filing date.

Article 26

Examination

- (1) For the purposes of examining whether a variety fulfills the requirements for the grant of variety protection, the Federal Office of Plant Varieties shall grow the variety or shall undertake any other necessary investigations. It may waive examination if it already has earlier examination findings of its own in its possession.
- (2) The Federal Office of Plant Varieties may entrust growing or the other necessary investigations to other technically qualified services, even abroad, and take into account the results of growing trials and other investigations carried out by such services.
- (3) The Federal Office of Plant Varieties shall require the applicant to submit to the Office or to the service it designates, within a specified time limit, the necessary propagating and other material and the necessary further documents, to provide the necessary information and to permit its verification.
- (4) Where the applicant claims priority under Article 23(2), he must submit the necessary propagating and other material and the necessary further documents within four years of the expiry of the priority period. He may not submit further propagating or further other material after such submission. If the first application is withdrawn or if the grant of breeders' rights is refused before the expiry of four years, the Federal Office of Plant Varieties may require the applicant to submit the propagating and other material in time for the following growing period and the other documents within a specified time limit.
- (5) The Federal Office of Plant Varieties may supply authorities and services abroad with information on examination results where necessary for mutual information.

(6) The Federal Office of Plant Varieties shall require the applicant to submit in writing within a specified time limit

1. a variety denomination, if he has stated a provisional designation,
2. another variety denomination, if the proposed denomination is not registrable.

Articles 24 and 25 shall apply mutatis mutandis.

Article 27

Failure to Comply

(1) If the applicant fails to comply, within the time limit notified to him, with a request of the Federal Office of Plant Varieties,

1. to submit the necessary propagating or other material or the necessary further documents,
2. to propose a variety denomination or
3. to pay the due examination fees,

the Federal Office of Plant Varieties may reject the application for variety protection if it has pointed out the consequences of failure to comply when notifying the time limit.

(2) If the applicant or the appellant does not pay the due fee for a decision on an application for variety protection or on an appeal, the application shall be deemed not to have been filed or the appeal not to have been lodged if the fee is not paid within one month of the Federal Office of Plant Varieties having notified the fee decision and thereby having pointed out the consequences of failure to comply.

Article 28

The Plant Variety Protection Register

(1) There shall be entered in the Plant Variety Protection Register, once the grant of variety protection has become final,

1. the species and the variety denomination,
2. the specified expressions of the characteristics important for distinctness; in the case of varieties whose plants are produced by crossing specific hereditary components, also reference thereto,
3. the name and address
 - (a) of the original breeder or discoverer,
 - (b) of the owner of variety protection,
 - (c) of the procedural representative,
4. the time at which variety protection begins and ends, together with the reasons for the end of protection,
5. any exclusive exploitation right, including the name and address of its owner,

6. any compulsory exploitation right and the conditions laid down.

(2) The entry of the specified expressions of characteristics important for distinctness and the entry of the conditions attaching to a compulsory exploitation right may be replaced by a reference to documents of the Federal Office of Plant Varieties. The entry may be amended ex officio in respect of the number and type of characteristics or of the specified expressions of those characteristics, where necessary, in order to render the description of the variety comparable with the descriptions of other varieties.

(3) Amendments to the identity of the owner of variety protection or of a procedural representative shall only be entered if supporting evidence is provided. The registered owner of variety protection or procedural representative remains entitled and committed under this Law until any amendment is entered.

(4) The Federal Office of Plant Varieties shall publish the entries.

Article 29

Access

(1) All persons shall have access to

1. the Plant Variety Protection Register,
2. the documents
 - (a) under Article 28(2), first sentence,
 - (b) of a published application for variety protection and granted variety protection,
3. the growing
 - (a) of a variety for the purpose of its examination,
 - (b) of a variety for the purpose of verifying its continued existence.

(2) In the case of varieties whose plants are produced by crossing certain hereditary components, details of the hereditary components shall be excluded from access at the request of the person who has filed the application for variety protection. Such request may not be filed once the decision on the application for variety protection has been taken.

Article 30

Cancellation of Grant of Variety Protection in Respect of the Variety Denomination

(1) The grant of variety protection shall be withdrawn, insofar as it concerns the variety denomination, if grounds for exclusion under Article 7(2) or (3) existed at the time of entry and continue to exist. There shall be no claim to compensation for economic disadvantage under Article 48(3) of the Law on Administrative Procedure. Withdrawal on other grounds shall not be permitted.

(2) The grant of variety protection, insofar as it concerns the variety denomination, shall be cancelled if

1. grounds for exclusion under Article 7(2), items 5 or 6, subsequently occur,
2. a conflicting right can be proved and the owner of variety protection agrees to entry of another variety denomination,
3. the owner of variety protection has been prohibited by a final legal decision from using the variety denomination or
4. any other person required to use the variety denomination under Article 14(1) has been prohibited from using the variety denomination by a final legal decision and the owner of variety protection is a subsidiary party to the litigation or was informed of the proceedings, insofar as he was not prevented from asserting his rights by circumstances named in Article 68, second half-sentence, of the Code of Civil Procedure.

Cancellation on other grounds shall not be permissible.

(3) The Federal Office of Plant Varieties shall require the owner of variety protection to propose another variety denomination within a specified period of time. If that period of time expires without result, the Office may lay down a variety denomination ex officio. At the request of the owner of variety protection or of a third party, the Federal Office of Plant Varieties shall lay down a variety denomination if the petitioner can prove a justified interest. Articles 24 and 25 shall apply mutatis mutandis.

Article 31

Ending of Variety Protection

- (1) Variety protection shall expire if the owner of variety protection makes a written denunciation to the Federal Office of Plant Varieties.
- (2) The grant of variety protection shall be withdrawn if it transpires that on grant of variety protection the variety was not distinct or was not new. There shall be no claim to compensation for economic disadvantage under Article 48(3) of the Law on Administrative Procedure. Withdrawal on other grounds shall not be permissible.
- (3) The grant of variety protection shall be cancelled if it transpires that the variety is not homogeneous or is not stable.
- (4) In other cases, the grant of variety protection may only be cancelled if the owner of variety protection
 1. has not complied with a request under Article 30(3) to propose another variety denomination,
 2. has not fulfilled, despite a reminder, an obligation in respect of verification of the continued existence of the variety in accordance with a statutory order under Article 32(1) or
 3. has not paid due annual fees within the additional time limits.

Article 32

Powers to Issue Procedural Regulations

The Federal Minister for Food, Agriculture and Forestry shall be empowered

1. to regulate details of the procedure before the Federal Office of Plant Varieties, including the selection of the characteristics important for distinctness, the determination of the scope of examination and the subsequent verification of the continued existence of the protected variety,
2. to determine the gazette for notification of the Federal Office of Plant Varieties,

by way of statutory order.

Article 33

Costs

(1) The Federal Office of Plant Varieties shall charge costs for its official acts under this Law (fees and expenses) and an annual fee for each commenced year of the duration of variety protection (protection year).

(2) The Federal Minister for Food, Agriculture and Forestry shall be empowered, in agreement with the Federal Minister for Finance, to determine by statutory order the acts for which fees are due and the rates of such fees, whereby he may provide for fixed rates or basic rates and may determine the time for payment of fees. The importance, the economic value and any other utility of the official act, including for breeding and for the general public, shall be taken into appropriate account. The individual fees may not exceed the following maximum rates:

- | | |
|--|-----------|
| 1. for the decision on an application for variety protection | 600 DM |
| 2. for the examination of the variety each year or for each growing period | 700 DM |
| 3. for the decision on an appeal (appeals fee) | 1,200 DM |
| 4. for other official acts | 800 DM |
| 5. for the annual fee | 1,500 DM. |

Where it is necessary in individual cases to carry out an examination outside the usual framework of examinations of varieties of the same species, the fee for examination may be increased up to the amount of the administrative expenditure that it occasions, with a maximum, however, of ten times that fee. The person liable to pay the fee shall be heard if it is expected that the fee is to be increased.

(3) Only those expenses designated in Article 10(1), items 1 to 3 and 5, of the Law on Administrative Costs shall be charged.

(4) In the case of fees for the examination of a variety and for a negative decision on an application for variety protection, no reduction under Article 15(2) of the Law on Administrative Costs shall be granted.

(5) In the case of a successful appeal, the appeals fee shall be refunded. In the case of a successful appeal to the Patent Court or a successful legal appeal, the appeals fee shall be refunded on request. In the case of a partial success, the corresponding part of the appeals fee shall be refunded. However, the refund can be fully or partly refused if the decision is based on facts that could have been asserted or proved at an earlier date. Sentences 1 to 4 shall apply mutatis mutandis for expenditure in appeals procedures. There shall be no claim to refund of costs under Article 80 of the Law on Administrative Procedure.

CHAPTER FOUR

COURT PROCEEDINGS

Article 34

Appeals

(1) Appeals shall lie to the Patent Court from the decisions of the opposition boards.

(2) Within the time limit prescribed for filing appeals, a fee shall be payable in accordance with the Law on the Fees of the Patent Office and the Patent Court; if the fee is not paid, the appeal shall be deemed not to have been lodged.

(3) An appeal against the laying-down of a variety denomination under Article 30(3) or against a decision for which immediate enforcement has been ordered shall have no staying effect.

(4) The President of the Federal Office of Plant Varieties may be a party in appeal proceedings.

(5) A Chamber of Appeal shall rule on appeals. In the cases referred to in Article 18(2), items 3 and 4, it shall take its decisions with three legal members and in other cases with one legal member as chairman, a further legal member and two technical members.

Article 35

Appeals on Points of Law

(1) Appeals on points of law from decisions of the Chamber of Appeal shall lie to the Federal Court if the Chamber of Appeal so allows in its decision.

(2) Article 34(3) shall apply mutatis mutandis.

Article 36

Application of the Patent Law

Unless otherwise stipulated by Articles 34 and 35, the provisions of the Patent Law concerning appeals proceedings before the Patent Court and proceedings for appeals on points of law before the Federal Court and concerning assistance with the costs of proceedings shall apply mutatis mutandis to such proceedings.

CHAPTER FIVE

INFRINGEMENTSArticle 37

Right to Seek Injunctions, Damages and Compensation

- (1) Whosoever without the consent of the owner of variety protection
 1. commits any of the acts referred to in Article 10, first sentence, or
 2. uses the variety denomination of a protected variety or a designation that may be confused with it for a different variety of the same or a related species

may be sued by the injured party to enjoin such infringement.

(2) Whosoever acts intentionally or negligently shall be liable for compensation to the injured party for the damage resulting from the act in question. In the event of slight negligence, the court may fix, in lieu of compensation, an indemnity within the limits of the damage to the injured party and the profit which has accrued to the infringer.

(3) The owner of variety protection may require equitable remuneration from any person who has performed one of the acts referred to in Article 10, first sentence, in the time between publication of the application and grant of variety protection.

- (4) Claims deriving from other statutory provisions shall remain unaffected.

Article 37a

Right to Seek Destruction

(1) In the cases referred to in Article 37(1), the injured party may request that material which is the subject of the infringing act and which is in the possession or ownership of the infringer be destroyed, unless the situation resulting from the infringement can be removed in some other manner and destruction would be out of proportion for the infringer or owner in the individual case.

(2) The provisions of paragraph (1) shall be applied, mutatis mutandis, to any equipment belonging to the infringer and which has been used or is intended exclusively or almost exclusively for the unlawful production of the material.

Article 37b

Right to Seek Information with Regard to Third Parties

(1) Whosoever without the consent of the owner of variety protection commits any of the acts referred to in Article 10 and which are reserved to the owner of variety protection or uses the variety denomination of a protected variety or a denomination that may be confused with such denomination for a different variety of the same or a related species, may be required by the injured party to give information, without delay, on the origin and distribution channels of the material that is the subject of such act, except where disproportionate in the individual case.

(2) The person required to give information under paragraph (1) shall give particulars of the name and address of the producer, the supplier and any other prior owners of the material, of the trade customer or client as also in respect of the quantity of material that has been produced, delivered, received or ordered.

(3) In those cases where infringement is obvious, the obligation to provide information may be imposed by an interim injunction in compliance with the Code of Civil Procedure.

(4) Such information may only be used in criminal proceedings or in proceedings under the Law on Offences against the person required to give information, or against a dependent person under Article 52(1) of the Code of Criminal Procedure, in respect of an act committed before the information was given, with the consent of the person required to give information.

(5) Further claims to information shall remain unaffected.

Article 37c

Prescription

Claims arising from infringement of a right protected by this Law shall become invalid by prescription three years after the time at which the entitled person gains knowledge of the infringement and of the identity of the infringer or 30 years after the infringement irrespective of such knowledge. Article 852(2) of the Civil Code shall apply mutatis mutandis. Where the infringer has made gains at the cost of the entitled person by reason of the infringement, he shall be obliged, even after the claim has expired by prescription, to surrender such gain in accordance with the provisions on the surrender of unjustified gain.

Article 38

Litigation with Respect to Plant Variety Protection

- (1) All actions whereby a claim is asserted under a legal relationship governed by this Law (plant variety protection litigation) shall be heard by the Landgerichte (provincial courts) irrespective of the value in dispute.
- (2) The provincial governments shall have power to allot by statutory order variety protection litigation for the areas of a number of provincial courts to one such court where this serves the technical furtherance or more expeditious settlement of the proceedings. The provincial governments may transfer such powers to the provincial administrations of justice.
- (3) The parties may also be represented by attorneys at law admitted to practice in the courts before which the action or the appeal would have been heard in the absence of an arrangement under paragraph (2). Any additional costs incurred by a party by reason of the fact that it is represented by an attorney at law not admitted to practice in the court hearing the case shall not be refunded.
- (4) Of the costs arising from the collaboration of a patent attorney, fees up to the amount of a full fee according to Article 11 of the Federal Regulations on Lawyers' Fees, together with the necessary expenses of the patent attorney, shall be allowed.
- (5) If a representative is briefed, the place in which he has his business premises or, if he has no business premises, his place of residence, shall be deemed to be the place at which property is located within the meaning of Article 23 of the Code of Civil Procedure.

Article 39

Penal Provisions

- (1) Whosoever without being entitled thereto performs any of the following acts shall be punished by imprisonment not exceeding three years or by a fine:
 1. in contravention of Article 10, first sentence, item 1, markets propagating material or produces it for marketing,
 2. in contravention of Article 10, first sentence, item 2, produces propagating material or markets plants or parts of plants or imports them therefor,
 3. in contravention of Article 10, first sentence, item 3, uses propagating material for the production of propagating material of another variety or
 4. in contravention of Article 10, first sentence, item 4, introduces propagating material into an area referred to therein.
- (2) Where the person committing the acts does so on a commercial basis the penalty shall be imprisonment not exceeding five years or a fine.
- (3) The attempt to commit such an offense shall be punishable.

(4) In the cases referred to in paragraph (1), such acts shall only be prosecuted on request, except where the criminal prosecuting authorities hold ex officio intervention to be required due to the special public interest in criminal prosecution.

(5) Objects implicated in an offense may be confiscated. Article 74a of the Penal Code shall apply. Where the claims referred to in Article 37a are upheld in proceedings under the provisions of the Code of Criminal Procedure with regard to the compensation of the injured party (Articles 403 to 406c), the provisions on confiscation shall not be applied.

(6) In the event of a conviction, the sentence shall be published if the injured party so requests and has a justified interest therein. The nature of the publication shall be laid down in the judgment.

Article 40

Fines

(1) Whosoever intentionally or negligently

1. in contravention of Article 14(1) markets propagating material without thereby stating the variety denomination or without stating it in the prescribed manner or
2. in contravention of Article 14(3) uses a variety denomination or a designation that may be confused with it for another variety of the same or of a related species,

shall be deemed to have committed an offence.

(2) Such offence may be liable to a fine not exceeding 10,000 Deutschmarks.

(3) Objects implicated in offenses may be confiscated. Article 23 of the Law on Offences shall be applied.

(4) The Federal Office of Plant Varieties shall constitute the administrative authority within the meaning of Article 36(1), item 1, of the Law on Offences.

Article 40a

Measures by the Customs Authorities

(1) Material that is the subject of the infringement of variety protection granted within the country shall be subject, at the petition of the owner of variety protection and against his security, to seizure by the customs authorities, on import or export, in those cases where the infringement is obvious. This provision shall apply in trade with other member States only insofar as controls are carried out by the customs authorities.

(2) Where the customs authorities order a seizure, they shall advise the person entitled to dispose and also the petitioner without delay. The origin, quantity and place of storage of the material, together with the name and address of the person entitled to dispose, shall be communicated to the petitioner; the secrecy of correspondence and mail (Article 10 of the Basic Law)

shall be restricted to that extent. The petitioner shall be given the opportunity to inspect the material where such inspection does not constitute a breach of commercial or trade secrecy.

(3) Where no opposition to seizure is made, at the latest, within two weeks of service of the notification under the first sentence of paragraph (2), the customs authorities shall order confiscation of the seized material.

(4) If the person entitled to dispose opposes seizure, the customs authorities shall inform the petitioner thereof without delay. The petitioner shall be required to declare to the customs authorities without delay whether he maintains his request under paragraph (1) in respect of the seized material.

1. If the petitioner withdraws his request, the customs authorities shall lift the seizure without delay.
2. If the petitioner maintains his request and submits an executable court decision ordering the impounding of the seized material or limitation of the right to dispose, the customs authorities shall take the necessary measures.

Where neither of the cases referred to in items 1 and 2 are applicable, the customs authorities shall lift the seizure on the expiry of two weeks after service of the notification to the petitioner under the first sentence; where the petitioner can show that a court decision according to item 2 has been requested, but has not yet been received, the seizure shall be maintained for a further two weeks at the most.

(5) Where the seizure proves to have been unjustified from the beginning and if the petitioner has maintained his request under paragraph (1) in respect of the seized material or has not made a declaration without delay (second sentence of paragraph (4)), he shall be required to compensate the damages that seizure has occasioned to the person entitled to dispose.

(6) The petition under paragraph (1) is to be submitted to the Regional Finance Office and shall be effective for two years unless a shorter period of validity has been requested; it may be repeated. The cost of official acts related to the petition shall be charged to the petitioner in accordance with Article 178 of the Fiscal Code.

(7) Seizure and confiscation may be challenged by the legal remedies allowed for the fixed penalty procedure under the Law on Offenses in respect of seizure and confiscation. The petitioner shall be heard in the review proceedings. An immediate appeal shall lie from the decision of the local court; it shall be heard by the Oberlandesgericht (higher provincial court).

CHAPTER SIX

FINAL PROVISIONSArticle 41**Transitional Provisions**

(1) The provisions of this Law shall apply in respect of varieties for which, on entry into force of this Law, variety protection

1. still exists under the Seed Law as published in a consolidated version in the Bundesgesetzblatt, Part III, Section No. 7822-1, and last amended by the Law of December 23, 1966 (BGBl. I, page 686), in conjunction with Article 52(1) of the Plant Variety Protection Law of May 20, 1968 (BGBl. I, page 429), in the version notified on January 4, 1977 (BGBl. I, pages 105, 286), or

2. has been granted or applied for under the Plant Variety Protection Law of May 20, 1968, in the applicable version,

with the provision that, in the case under item 1, a grant of variety protection can only be withdrawn under Article 31(2) if it transpires that the requirements of Article 2(2) of the Seed Law were not fulfilled at the time variety protection was granted.

(2) Where a patent has been granted or applied for in respect of a variety or a process for its breeding prior to the date on which this Law has become applicable to the species concerned, the applicant, or his successor in title, may maintain his application or may apply for grant of variety protection for the variety and the owner of the patent may maintain his patent or may apply for grant of variety protection for the variety. If he applies for the grant of variety protection, he shall be entitled to claim the date of the patent application as priority for the application for variety protection; the third sentence of Article 23(2) shall apply *mutatis mutandis*. The duration of the variety protection granted shall be reduced by the number of full calendar years that have elapsed between the filing of the patent application and the date of the application for variety protection. Once the grant of variety protection has become final, rights deriving from the patent or the patent application may no longer be asserted in respect of the variety; pending patent grant procedures shall not be pursued.

(3) Varieties for which the application for protection has been filed up to one year after the date on which this Law has become applicable to the species concerned shall be deemed to be new if propagating material or harvested material of the variety has not been marketed for commercial purposes with the consent of the entitled person or of his predecessor in title more than four years or, in the case of vine and tree species, more than six years prior to the said date. Where variety protection is granted under the first sentence, the duration of protection shall be reduced by the number of full calendar years that have elapsed between the beginning of marketing and the date of filing.

Article 42

Entry into Force

This Law shall enter into force on the day following its promulgation.

CASE LAW

United States of America: Decision No. C91-4013
of the District Court for the Northern District of Iowa
on the "Farmer's Exception"

(Decided September 30, 1991, and November 14, 1991)

HEADNOTE**Infringement - Plant Variety Protection Act (section 120.20)**

"Farmer's exception" provision of Plant Variety Protection Act, 7 U.S.C. 2543, was intended to protect historical and traditional right of small farmers to make seed sales to fellow farmers, but was not intended to give farmers unrestricted right to sell seed; rather, provision allows farmer to save, at maximum, amount of protected seed necessary to plant acreage for subsequent crop year, and thus maximum amount of seed that could be classified as "saved seed" by farmer who raised 500 acres of protected variety of soybeans, who farmed total of 1,000 tillable acres in that crop year, and who could reasonably expect to plant total of 1,500 acres in subsequent crop year, would be 1,500 bushels.

FACTS

This is an action under the Plant Varieties Protection Act ("PVPA" or the "Act"). See 7 U.S.C. sections 2321-2582. In order to avail oneself of the protection of the Act, the developer of a novel plant variety¹ must apply to the Plant Variety Protection Office for a Certificate of Plant Variety Protection. 7 U.S.C. section 2482. A certificate grants the breeder the right to exclude others from "selling the variety, or offering it for sale, or reproducing it, or importing it, or exporting it, or using it in producing ... a hybrid or different variety therefrom ..." 7 U.S.C. section 2483(a). The protection lasts for 18 years. 7 U.S.C. section 2483(b).

This action was brought by Asgrow Seed Company against Dennis and Becky Winterboer. The Winterboers are family farmers in Clay County, near Milford, Iowa. The Winterboers have incorporated under the name D-Double-U Corporation, and do business under the name DeeBee's Feed and Seed. Asgrow is a subsidiary of Upjohn, and is in the business of developing agricultural seed and selling it to farmers.

Plaintiff alleges that the defendants engage in "brown-bagging." This refers to a process in which a farmer purchases seed from a company engaged in the development of plant seed. They then plant the seed, harvest it, clean it, and place it in non-descriptive brown bags for sale. Hence the term "brown-bagging."

¹ A novel variety is defined in 7 U.S.C. section 2401(a) as a variety whose essential and distinctive characteristics will remain unchanged when sexually reproduced.

In December of 1990, Asgrow through an agent, Mr. Ness, went to the Winterboer farm to purchase soybeans. Mr. Winterboer informed Mr. Ness that he had soybean seed for sale that was just like Asgrow varieties A1937 and A2234. Mr. Winterboer called his "just-like" varieties 1938 and 2235. Mr. Ness purchased 20 bags of 1938 and 20 bags of 2235. Asgrow took the seeds purchased from the Winterboers to Dr. Matson, Ph.D., a plant biologist employed by Asgrow, who performed tests on the seed. Dr. Matson determined that the seed tested was Asgrow A1937 and A2234.

Asgrow sought an injunction based on the PVPA to prohibit the Winterboers from selling this seed. After two hearings before this court the parties agreed to enter into an injunction. The injunction provided that the defendant would not sell any seed for the 1991 planting season. No representations were made to this court concerning the actions defendants would take with regard to seed for the 1992 crop year.

Asgrow alleges that the defendants' activities which infringe Asgrow's PVPA certificates are:

1. Unauthorized selling. See 7 U.S.C. section 2541(1).
2. Sexually multiplying the varieties as a step in marketing the varieties. See 7 U.S.C. section 2541(3).
3. Dispensing in a form which can be propagated without notice as to being a protected variety under which it was received. See 7 U.S.C. section 2541(6)².

DISCUSSION

It is an infringement of the rights of the owner of a novel variety to perform any of the following acts without the owner's authorization:

- (1) sell the novel variety, or offer it or expose it for sale, deliver it, ship it, consign it, exchange it, or solicit an offer to buy it, or any other transfer of title or possession of it;

...

- (3) sexually multiply the novel variety as a step in marketing (for growing purposes) the variety; or

...

- (6) dispense the novel variety to another, in a form which can be propagated, without notice as to being a protected variety under which it was received.

...

(7 U.S.C. section 2541)

Defendants do not dispute that Asgrow was the owner of a novel variety protected by the Act, nor do they dispute, for purposes of this motion, that they had sold the progeny of the novel variety. However, they argue that they are exempt from the operation of section 2541 by the "farmer exception" provided in 7 U.S.C. section 2543. This section provides that no infringement occurs if:

² This court interprets this language to require that if a farmer does sell saved seed to another farmer he must label it as a protected variety.

"... a person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes ... [sells] such saved seed to other persons so engaged, for reproductive purposes, provided such sale is in compliance with such State laws governing the sale of seed as may be applicable."

(7 U.S.C. section 2543)

Defendants allege that virtually all of their crops (almost 80%) are sold for other than reproductive purposes, thus they fall within the exception. They also claim, in direct conflict with the plaintiff's allegation, that they have complied with State law.

Plaintiff alleges that the defendants' actions do not fall within the farmers' exemption contained in the PVPA. The farmers' exemption provides:

"Except to the extent that such action may constitute an infringement under subsection (3) and (4) of section 2541 of this title, it shall not infringe any right hereunder for a person to save seed produced by him from seed obtained, or descended from seed obtained, by authority of the owner of the variety for seeding purposes and use such saved seed in the production of a crop for use on his farm, or for sale as provided in this section: Provided, That without regard to the provisions of section 2541(3) of this title it shall not infringe any right hereunder for a person, whose primary farming occupation is the growing of crops for sale for other than reproductive purposes, to sell such saved seed to other persons so engaged, for reproductive purposes, provided such sale is in compliance with such State laws governing the sale of seed as may be applicable. A bona fide sale in channels usual for such other purposes, of seed obtained by authority of the owner for seeding purposes or from seed produced by descent on such farm from seed obtained by authority of the owner for seeding purposes shall not constitute an infringement. A purchaser who diverts seed from such channels to seeding purposes shall be deemed to have notice under section 2567 of this title that his actions constitute an infringement."

(7 U.S.C. section 2543 (emphasis in original))

Plaintiff alleges that the exception limits the amount of seed that can be saved as the amount necessary for seeding purposes. Plaintiff alleges this is the proper definition to give the phrase "saved seed."

The duty of this court is to determine and give effect to the intent of Congress. In Ozawa v. U.S., 260 U.S. 178 (1922), the U.S. Supreme Court held:

"It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result, plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail. [citations omitted]."

(Id. at 194)

It is therefore necessary for this court to interpret the statute in a manner which will dictate that the intent of Congress in enacting the PVPA will be accomplished.

Although the legislative history, and thus Congressional intent, on the PVPA is limited, at least one circuit court has determined that Congress intended to create a narrow exemption when creating the farmer exemption. In Delta and Pine Land Company v. People Gin Company, 694 F.2d 1012 (5th Cir. 1983), the Fifth Circuit held:

"In purpose and operation, the farmer exemption appears to be at odds with the primary purpose of the Act. While the main body of the Act assures developers of novel varieties the exclusive right to sell and reproduce that variety, the crop exemption dilutes that exclusivity by allowing individual farmers to sell the protected variety without liability. The broader the construction given the exemption, the smaller the incentive for breeders to invest the substantial time and effort necessary to develop new strains. The less time and effort that is invested, the smaller the chance of discovering superior agricultural products. If less time and effort is invested, long-term benefits to the farmer in the form of superior crops and higher yields will be lost. Although it may appear that the broadest reading of the exemption would benefit farmers today, it could be detrimental to their interest tomorrow.

"Thus, the narrower reading of the exemption is more in keeping with Congress' primary objective. Such a reading creates the greatest amount of internal harmony in the overall statutory scheme. [citations omitted]. We therefore conclude that Congress did not intend for the crop exemption to cover every sale from one farmer to another."

(Id. at 1016 (emphasis supplied))

In the above quoted Delta and Pine Land Company case, the court also held that the farmer exception required that sales be made directly from farmer to farmer, thereby prohibiting the use of a middleman to facilitate the sale, despite the fact that the Act contained no such limiting language (Id. at 1017). Delta and Pine Land Company did not limit the quantity of seed that could be sold in farmer to farmer sales as this court is now doing.

In 7 U.S.C. section 2543 Congress specifically protected the historical and traditional right of small farmers like the Winterboers to make seed sales to fellow farmers. However, the intent of Congress in enacting the PVPA was not to give a farmer an unrestricted right to sell seed (See Delta and Pine Land Company at 1016 ("the crop exception was not intended to provide farmers with unlimited insulation from the negative side effects of the Act"). If so, Congress would have not included the phrase "saved seed" in the code section. The inclusion of the modifier "saved" in describing the amount of "seed" a farmer is allowed to sell indicates a clear congressional intent to place limits on the amount of seed a farmer can sell to other farmers under the Act.

The language of the statute is that, "it shall not infringe any right hereunder for a person to save seed produced by him ... for seeding purposes and use such saved seed in the production of a crop for use on his farm, or for sale as provided in this section ..." Reading the statute as a whole, and giving effect to the intent of Congress, this court concludes that the intent of Congress in enacting this section was to allow a farmer to save seed for his planned seeding purposes. The exception allows a farmer to save, at a maximum, an amount of seed necessary to plant his soybean acreage for the subsequent crop year. For example, if a farmer raised 500 acres of soybeans, had farmed a total of 1,000 tillable acres in that crop year, but could reasonably expect to plant a total of 1,500 acres of the protected variety in the subsequent crop

year, the maximum amount of seed that could be classified as "saved seed" would be 1,500 bushels.³ A farmer would be limited to saving a combined total of 1,500 bushels of the current year's crop. This would allow a farmer to sell the seed not actually planted if market conditions necessitated a change in planting plans.

Although this interpretation of "saved seed" restricts the number of bushel farmers will be able to sell to one another, this court is convinced that the purpose of Congress in enacting the PVPA was to protect the developer of a new line of seed and to allow a farmer to sell the prodigy of the novel variety as limited in the example set out above. This court is aware that a Congressman who was instrumental in the passage of the Act expressed the opinion that a developer would be the only one who could sell the novel seed. As was stated by Rep. Poage:

"I do not think there is any doubt that it [enactment of the PVPA] will mean if somebody produces a seed that gives better results than anybody else's seed, and if he is the only one who can sell that seed, then he will get more for it. ... So in the long run we believe there will be beneficial results for the producers and farmers."

(116 Cong. Rec. 40,295-40,303, 40295 (daily ed. Dec. 8, 1970) (emphasis supplied)).

In a nutshell the defendants' position is that "we can sell all the novel variety that we have grown so long as we sell it to other farmers and follow State law." To allow such an expansive reading of the exception as the defendants espouse would dictate that the owner of the novel variety would not be the only one that could sell the seed. Clearly the intent in enacting the PVPA was to encourage companies to develop improved varieties of seed and to provide for these developers the right to protect this product from unauthorized sales by others. To allow the defendants to sell virtually unlimited amounts of the plaintiff's novel line of seed would lead to a result contrary to the intent of the statute.⁴

³ This assumes that soybeans will be planted at the rate of one bushel per acre. This court realizes that allowing a farmer to save an amount of seed reasonably necessary to plant the next year's crop may lead to situations where courts will be required to determine what amount of seed is reasonably necessary to plant the next year's crop. However, determining if a person's primary occupation is farming is also a factual question which needs to be determined on an ad hoc basis.

⁴ This court realizes that the language "whose primary farming occupation is the growing of crops for sale for other than reproductive purposes" contained in 7 U.S.C. section 2543 may be construed by some as the limiting language in the statute. However, this language would still allow a person qualifying for the exception to sell approximately 40 times the amount of soybean seed bought from the developer of the novel variety. This assumption is logically deduced from the fact that one planted bushel of soybeans yields approximately 40 bushels of soybeans (See, Plaintiff's Statement of Undisputed Facts, ex. B.). Such sales, if conducted by enough sellers, would dilute or completely eliminate any market for the developer of the novel variety. Such results would lead to decreased spending in the area of research and development. In the long run this would lead to detrimental results to producers and farmers.

This court is aware that placing limits on the amount of seed a farmer may sell to another farmer, rather than merely placing limits on the manner in which the sale may be made, as was done in Delta and Pine Land Company v. People Gin Company, *supra*, is a restrictive reading of the exception. However, this court is convinced that the intent of Congress in enacting the statute was to give farmers more choices, make American agricultural products more competitive in world markets, and thereby ultimately get superior products more resistant to disease and infestation and higher in overall yield and quality, and to assure the developers of novel varieties of sexually reproduced plants the exclusive right to sell, reproduce, import, or export such varieties (See, 1970 U.S. Code Cong. & Admin. News, 5082, 5082-83). Such an intent is thwarted when a developer's sales of such seed is diluted by the lower priced sales by those who have contributed nothing to the development of the novel variety.

CONCLUSION

Saved seed shall be limited to the amount of the protected seed reasonably needed by the farmer who grew it to plant the number of acres of the protected variety, or its progeny, he or she needs in the upcoming crop year. Accordingly, this is the limit that a person qualifying for the "farmer exception" can save for planting and/or sale. Since defendants admittedly have sold much more than this amount of seed, their actions are violations of 7 U.S.C. section 2541(1) and (3). The defendants will not be permitted to continue selling seed in the method commonly referred to as "brown-bagging."⁵

Accordingly, it is ordered,

1. Plaintiff's motion for summary judgment is sustained.
2. The plaintiff's request for a permanent injunction is sustained. The defendants are hereby enjoined from selling seed, except for saved seed, to other farmers and/or engaging in any form of "brown-bagging."
3. Defendants' motion for summary judgment is denied.
4. A separate proceeding shall be held at the court's earliest convenience to determine damages in this matter. Both parties shall file briefs addressing 7 U.S.C. section 2567 and its potential effect on the amount of damages that could be awarded in this action.

ORDER

November 14, 1991

Plaintiff's timely motion for clarification of this court's order of September 30, 1991, brings this matter before the court. After consideration of the written argument the court finds that a clarification is warranted.

In the motion to clarify, plaintiff points out that a reading of the courts order, as a whole, reveals that footnote 2 and footnote 5 could arguably be read as being in conflict. In footnote 2 the court stated that:

⁵ This court has ruled that the defendants violated the Plant Variety Protection Act because most of their extensive sales, 10,000 bushels, do not fall within the farmer exception. This court will not rule on the allegations that the defendants violated the Iowa labeling law, because such a determination is not necessary to a determination of liability.

"This court interprets this language [7 U.S.C. section 2541(6)] to require that if a farmer does sell saved seed to another farmer he must label it as a protected variety."

In footnote 5 the court stated:

"This court has ruled that the defendants violated the Plant Variety Protection Act because most of their extensive sales, 10,000 bushels, do not fall within the farmer exception. This court will not rule on the allegations that the defendants violated the Iowa labeling law, thereby resulting in a violation of 7 U.S.C. section 2541(6), because such a determination is not necessary to a determination of liability."

After careful review the court agrees with the plaintiff. Plaintiff argues that the court's use of the word "thereby" in footnote 5 could be construed as meaning that there is no violation of 7 U.S.C. section 2541(6) unless state labeling law is violated. As set out in the body of the order the court found a violation of the Federal Act and concluded that a determination of the alleged violation of the labeling requirement was not necessary.

The court now determines that through oversight, an error, as contemplated by Federal Rule of Civil Procedure 60(a), has been made which should be corrected. The said correction does not alter in any way the matter now on appeal. Therefore, footnote 5 on page 10 of this court's order of September 30, 1991, is stricken and the following shall be substituted in lieu thereof:

"This court has ruled that the defendants violated the Plant Variety Protection Act because most of their extensive sales, 10,000 bushels, do not fall within the farmer exception. This court will not rule on the allegations that the defendants violated the Iowa labeling law, because such a determination is not necessary to decide the issue of liability."

In short, what the court was deciding in the order was that the question of any violation of the labeling portion of the Plant Variety Protection Act need not be addressed, as a violation was found under other sections.

CALENDAR

UPOV Meetings in 1993

February 16 and 17 (Hanover, Germany)	TWA: Maize Subgroup
March 9 and 10 (Cambridge, United Kingdom)	TWA: Cereals Subgroup
April 19 and 20	Working Group on Biochemical and Molecular Techniques, and DNA-Profiling in Particular
April 21	Administrative and Legal Committee and Technical Committee (joint meeting)
April 22	Administrative and Legal Committee
April 23	Consultative Committee
April 27 and 28 (Menstrup Kro, Denmark)	TWA: Rape Subgroup
June 2 to 4 (Cambridge, United Kingdom)	Technical Working Party on Automation and Computer Programs
July 6 to 9 (Aarslev, Denmark)	Technical Working Party for Vegetables
September 20 to 24 (Wurzen, Germany)	Technical Working Party for Fruit Crops
September 30 and October 1 (Antibes, France)	TWO: Color Measurements Subgroup
October 4 to 8 (Antibes, France)	Technical Working Party for Ornamental Plants and Forest Trees
October 25 and 26	Technical Committee
October 27	Administrative and Legal Committee
October 28	Consultative Committee
October 29	Council
November 22 (Lincoln, New Zealand)	TWA: Soya Bean Subgroup
November 23 to 27 and November 29 to December 1 (New Zealand and Australia)	Technical Working Party for Agricultural Crops

The International Union for the Protection of New Varieties of Plants (UPOV)--an international organization established by the International Convention for the Protection of New Varieties of Plants--is the international forum for States interested in plant variety protection. Its main objective is to promote the protection of the interests of plant breeders--for their benefit and for the benefit of agriculture and thus also of the community at large--in accordance with uniform and clearly defined principles.

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