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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL**Thirty-Seventh Ordinary Session****Geneva, October 23, 2003****EXAMINATION OF THE CONFORMITY OF THE
LAW OF THE REPUBLIC OF UZBEKISTAN ON SELECTION ACHIEVEMENTS
WITH THE 1991 ACT OF THE UPOV CONVENTION***Document prepared by the Office of the Union*Introduction

1. By letter dated September 12, 2003, addressed to the Vice Secretary-General of UPOV, Mr. Akil A. Azimov, Director, State Patent Office of the Republic of Uzbekistan (hereinafter referred to as "Uzbekistan"), requested the examination of the Law of the Republic of Uzbekistan on Selection Achievements (hereinafter referred to as the "Law"), adopted on August 30, 2002, for conformity with the 1991 Act of the UPOV Convention (hereinafter referred to as the "1991 Act"). The letter is reproduced in Annex I to this document. Annex II contains an English translation of the Law.

2. Uzbekistan did not sign the 1991 Act. In conformity with Article 34(2) of the 1991 Act, it therefore has to deposit an instrument of accession in order to become a Contracting Party on the basis of the 1991 Act. Under Article 34(3) of the 1991 Act, an instrument of accession can only be deposited if the State in question has requested the advice of the Council on the conformity of its laws with the provisions of the 1991 Act and if the decision of the Council embodying the advice is positive.

Basis for the Protection of New Plant Varieties in Uzbekistan

3. The protection of new plant varieties will be governed in Uzbekistan by the Law. Article 3 of the Law entitled “Legislation on selection achievements” provides that “the legislation on selection achievements shall consist of this Law and other legislative acts. If an international agreement, to which the Republic of Uzbekistan is a party, provides for rules other than those which are laid down by the legislation of the Republic of Uzbekistan on selection achievements, the rules of the international agreement shall apply.”

4. Article 3 of the Law reflects the general principle in the Constitution of Uzbekistan which provides that in case of conflict between a Treaty and the Law, the Treaty prevails (the Constitutional Provision). The Constitutional Provision reflected in Article 3 of the Law will remedy any lacunae or minor departures from the substance of the 1991 Act identified in this document.

Article 1 of the 1991 Act: Definitions

5. Article 2 of the Law contains definitions of relevant terms used in the Law. In order to reflect treaty language, it is recommended to introduce the definition of variety as provided in Article 1(vi) of the 1991 Act. In particular, the definition of variety should include the following clarification: “irrespective of whether the conditions for the grant of legal protection of a selection achievement are fully met.”

6. The Law provides, in Article 5, for the definition of creator of a selection achievement. It is recommended to complete this definition by the inclusion of the definition provided for “breeder” in Article 1(iv) of the 1991 Act. More precisely, Article 5 of the Law refers to the creator as the person who has bred or discovered the selection achievement. The 1991 Act provides that the breeder means “the person who bred, or discovered and developed, a variety.” Discovery only is not enough, the development of the variety is required.

Article 2 of the 1991 Act: Basic Obligation of the Contracting Parties

7. Article 1 of the Law provides that: “The aim of this Law is to regulate relations in the sphere of creation, legal protection and use of selection achievements.” The Law thus complies with Article 2 of the 1991 Act.

Article 3 of the 1991 Act: Genera and Species to be Protected

8. According to paragraph 1 of Article 14 of the Law: “A patent shall be granted for a selection achievement meeting the criteria of patentability and relating to botanical and zoological genera and species protectable in the Republic of Uzbekistan.” The State Patent Office of the Republic of Uzbekistan has communicated to the Office of the Union that, as of the date of this document, Uzbekistan applies the Law to 21 plant genera or species. The Law thus complies with the requirements of Article 3(2)(i) of the 1991 Act. When depositing its instrument of accession, Uzbekistan must notify this list of 21 plant genera or species or an updated one to which Uzbekistan has to apply the 1991 Act at the date on which it becomes bound by the Convention.

Article 4 of the 1991 Act: National Treatment

9. The principle of national treatment is contained in Article 43 of the Law, entitled “Rights of foreign natural and legal persons,” in terms which satisfy the requirements of Article 4 of the 1991 Act.

Articles 5 to 9 of the 1991 Act: Conditions of Protection; Novelty; Distinctness; Uniformity; Stability

10. Articles 8 to 12 of the Law provide for the conditions for the granting of legal protection of selection achievements incorporating the essential elements of Articles 5 to 9 of the 1991 Act.

11. The Law provides in Article 9 for the novelty condition. It refers to seeds and planting material (understood as propagating material), but it does not make reference to harvested material as required by Article 6 of the 1991 Act. It is recommended to insert the words “harvested material” in Article 9 of the Law. In the meantime, this omission can be remedied by the Constitutional Provision.

12. In relation to the six-year grace period, Article 9 of the Russian version of the Law refers to “grapes, tree, ornamental, fruit crops and forest species.” Article 6 of the 1991 Act provides that the six-year grace period applies only to “trees or vines.” It is recommended to verify if this is a translation problem or if the Law needs to be brought in line with the terminology used in Article 6 of the 1991 Act.

13. In relation to Article 10 “Distinctness,” it is recommended to include in the second paragraph of Article 10 of the Law that “a selection achievement shall be considered a matter of common knowledge also at the application filing date for an official register of selection achievements of any country if the application leads to the entering in the official register.” The present text refers to the inclusion in the official register of selection achievements, but does not refer to the application. In line with Article 7 of the 1991 Act, it is recommended to add the words “In particular,” before the second paragraph of Article 10 of the Law.

14. Article 11 of the Law concerning “Uniformity” refers to the term “selected characteristics.” It is recommended to clarify in the Implementing Regulations that the term “selected characteristics” refers to “relevant characteristics” as provided in Article 8 of the 1991 Act.

Article 10 of the 1991 Act: Filing of Applications

15. Articles 16, 17 and 24 of the Law provide for the procedure for filing of applications in terms which conform with Article 10 of the 1991 Act.

Article 11 of the 1991 Act: Right of Priority

16. Article 18 of the Law provides for “priority of a selection achievement” in line with the requirements of Article 11 of the 1991 Act. In particular, Article 18 of the Law refers to a

period of 12 months from the filing date of the first application which corresponds to the period of priority provided by the 1991 Act. It is recommended to clarify in the Implementing Regulations that the day of filing shall not be included in computing the period of priority of 12 months.

17. Paragraph 4 of Article 18 of the Law provides for three years from the date of filing of the first application to submit documents and material concerning the examination of the selection achievement as required by Article 11 of the 1991 Act. It is suggested to clarify in the Implementing Regulations that, in the case of the first application being rejected or withdrawn, the applicant will be given an appropriate time after such rejection or withdrawal to furnish the authority with the necessary information documents or material for the purposes of examination.

Article 12 of the 1991 Act: Examination of the Application

18. Articles 19, 20, 22 and 23 of the Law contain the provisions concerning the examination of the selection achievement in line with the requirements of Article 12 of the 1991 Act.

Article 13 of the 1991 Act: Provisional Protection

19. Article 21 of the Law provides for temporary legal protection of a selection achievement in line with the requirements of Article 13 of the 1991 Act. Reference is made to the fact that an infringement during the temporary legal protection would allow the patent owner to request monetary compensation. The Law further provides that this monetary compensation should be determined by agreement with the patent owner. It is recommended to clarify in the Implementing Regulations that in case of difficulty of reaching an agreement on that matter, appropriate remedies or legal actions will be available for the patent owner, in order to obtain, at least, equitable remuneration.

Article 14 of the 1991 Act: Scope of the Breeder's Right

20. Article 30 of the Law incorporates the essential provisions of Article 14 of the 1991 Act. Paragraph 4 of Article 30 provides that "The right of a patent owner shall also be extended to plant material which was produced from seeds, planting material of a variety, or animals for sale, which were produced from bred animals, introduced into civilian circulation without the patent owner's permission." In order to incorporate the full scope of the provision for harvested material under Article 14(2) of the 1991 Act, it is recommended to add at the end of paragraph 4 of Article 30 of the Law: ", unless the patent owner has had reasonable opportunity to exercise his right in relation to the seeds or planting material."

21. In relation to paragraph 5 of Article 30 of the Law concerning essentially derived varieties, it is recommended to insert before the term "selection of a natural or induced mutant" the words "for example."

Article 15 of the 1991 Act: Exceptions to the Breeder's Right

22. Article 31 of the Law incorporates the essential provisions of Article 15 of the 1991 Act. In order to incorporate the full scope of the breeder's exemption as provided in Article 15(1)(iii), it is proposed to include after the word "breeds" the following: ", and, except where the provisions of Article 30, paragraph 5 apply, uses referred to in Article 30 paragraphs 1 to 4 in respect of such other varieties or breeds."

23. Article 31 of the Law also provides for the optional exception under Article 15(2) of the 1991 Act. Although this provision already provides for a time limitation of a two-year period, it is recommended that this exception should be implemented "within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder" as provided in Article 15(2) of the 1991 Act. Implementing Regulations may give effect to these requirements.

Article 16 of the 1991 Act: Exhaustion of the Breeder's Right

24. Provisions for the exhaustion of the breeder's right, as provided in Article 16 of the 1991 Act, are incorporated in Article 32 of the Law.

Article 17 of the 1991 Act: Restrictions on the Exercise of the Breeder's Right

25. Article 40 of the Law contains provisions on compulsory licensing. This provision provides that compulsory licenses would be given in situations affecting public interest, in line with the requirement under Article 17(1) of the 1991 Act. It is recommended to clarify in the Implementing Regulations concerning compulsory licensing that the patent owner should be entitled to equitable remuneration as required by Article 17(2) of the 1991 Act. The Law conforms with Article 17 of the 1991 Act.

Article 18 of the 1991 Act: Measures Regulating Commerce

26. The Law does not seem to contain provisions which conflict with Article 18 of the 1991 Act.

Article 19 of the 1991 Act: Duration of the Breeder's Right

27. Article 14 of the Law provides for a period of validity of the patent of 20 years from the date of the registration and for 25 years in the case of "grapes, tree, ornamental and fruit crops, and forest species, including their tree stocks." The Law also indicates that the "period of validity of the patent may be extended at the request of the patent owner, but by no more than 10 years." These periods of protection comply with the provisions under Article 19 of the 1991 Act.

28. The same terminology clarification, as required for the novelty condition (see paragraph 12 of this document), also applies for the period of 25 years for "grapes, tree, ornamental, fruit crops, and forest species, including their tree stocks."

Article 20 of the 1991 Act: Variety Denominations

29. Article 13 of the Law “Name of a selection achievement” contains the majority of the provisions of Article 20 of the 1991 Act. It is recommended to provide for the following clarifications and complementary provisions in the Law or Implementing Regulations. It is suggested to add at the end of paragraph 4 of Article 13 of the Law the following: “unless the Patent Office considers the name unsuitable in the Republic of Uzbekistan. In the latter case, the Patent Office shall require the applicant to submit another name.” It is also recommended to include provisions of Article 20(1)(b), (3) concerning procedural aspects, (4) concerning prior rights of third persons, (6) concerning information among the authorities of Contracting Parties, and (8) in relation to indications used in association with denominations. In the meantime, these omissions can be remedied by the Constitutional Provision.

Article 21 of the 1991 Act: Nullity of the Breeder’s Right

30. Article 34 of the Law “Recognition of a patent as invalid” incorporates the majority of the provisions concerning nullity of the breeder’s right. The reason for nullity provided in Article 21(1)(iii) of the 1991 Act “that the breeder’s right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled” is not incorporated in Article 34 of the Law. It is recommended to include in the Law the missing grounds for nullity. In the meantime, the full text of Article 21 of the 1991 Act will be incorporated into the Law as a consequence of the Constitutional Provision.

Article 22 of the 1991 Act: Cancellation of the Breeder’s Right

31. Paragraph 1 of Article 35 of the Law provides for the provision concerning fees of Article 22(1)(b)(ii) of the 1991 Act. Article 36 of the Law provides for all the other grounds for cancellation in conformity with Article 22 of the 1991 Act.

Article 30 of the 1991 Act: Implementation of the Convention

32. Article 30(1)(i) of the 1991 Act requires that Contracting Parties should “provide for appropriate legal remedies for the effective enforcement of breeders’ rights.” Article 33 of the Law provides for the grounds for infringement of the right of a patent owner and Article 45 of the Law refers to “Liability for infringement of the legislation on selection achievements.” The Law thus conforms with Article 30(1)(i) of the 1991 Act. Article 45 further refers to an established procedure. It is recommended to develop in the Implementing Regulations what is meant by “established procedure.”

33. Article 30(1)(ii) of the 1991 Act requires that Contracting Parties should “maintain an authority entrusted with the task of granting breeders’ rights ...” Article 4 of the Law provides that the State Patent Office “shall implement a State policy in the sphere of legal protection of selection achievements.” It further provides that the State Patent Office shall examine applications and grant patents concerning selection achievements. This Article also clarifies that the Patent Office should refer to the State Commission for Variety Testing of Agriculture for the examination of patentability of claimed selection achievements. The Law conforms with Article 30(1)(ii) of the 1991 Act.

34. Article 30(1)(iii) of the 1991 Act requires that Contracting Parties should publish information concerning applications and grants of breeders' rights and proposed and approved denominations. Article 26 of the Law concerning "Official publication of information on a selection achievement" provides that applications for the grant of a patent, registered selection achievements and other significant acts, including full descriptions of selection achievements and related agreements will be published in the Patent Office Official Gazette. It is recommended to clarify in the Implementing Regulations that information concerning the applications will also contain information concerning proposed denominations and that information concerning registered selection achievements will also provide for the information concerning approved denominations in line with paragraph 3 of Article 13 of the Law. These provisions satisfy the requirements of Article 30(1)(iii) of the 1991 Act.

General Conclusion

35. The Law, in its main provisions, incorporates the substance of the 1991 Act. The deviations from strict conformity referred to above will be remedied by the Constitutional Provision (see paragraphs 3 and 4 of this document). However, it is recommended that the texts of the legislation of Uzbekistan be supplemented when the opportunity presents so as to avoid recourse to the Constitutional Provision.

36. The Office of the Union therefore suggests that the Council may wish

(a) to advise the Government of Uzbekistan that the Law in its main provisions incorporates the substance of the 1991 Act, and that it may deposit an instrument of accession to the 1991 Act;

(b) to further advise the Government of Uzbekistan that it may wish to supplement the texts of its legislation, where necessary, so as to avoid recourse to the Constitutional Provision.

37. The Council is invited to take note of the information given above and to adopt the decision set out in the preceding paragraph.

[Annex I follows]

O'zbekiston Respublikasi

Republic of Uzbekistan

DAVLAT
PATENT IDORASISTATE
PATENT OFFICE

12 SEP 2003

№ 113-06/831

Mr. Rolf Jördens
Vice Secretary-General
International Union for the
Protection of New Varieties
of Plants (UPOV)
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1211 Geneva 20, Switzerland
Fax: (4122) 733 03 36

Dear Mr. Jördens,

According to the inquiry of the Ministry of Foreign Affairs of the Republic of Uzbekistan we kindly ask you to accelerate the examination the conformity of the Law of the Republic of Uzbekistan "On Selection Achievements" with provisions of the 1991 Act and its translation into English. The Law was sent to UPOV Office at the end of 2002.

In accordance with item 7 of Annex № 3 to the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan «On organization of activity of The State Patent Office of the Republic of Uzbekistan», № 209 of 14th June 2002, all financial obligations on accession and further participation in international organizations have be entrusted on The State Patent Office.

Therefore, on the basis of Article 29(3)(b) 1991 Act of UPOV, we would like to determine the share of the Republic of Uzbekistan in the amount of 1/5 units of contribution in the total sum of annual contributions towards to the budget of the UPOV Union.

Sincerely yours,

Akil A. Azimov
Director

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[Annex II follows]

ANNEXE II / ANNEX II / ANLAGE II / ANEXO II

LAW
OF THE REPUBLIC OF UZBEKISTAN
ON SELECTION ACHIEVEMENTS

I. GENERAL PROVISIONS

Article 1

Aim of this Law

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

Article 2

Basic concepts

In this Law, the following basic concepts are used:

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

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

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

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

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

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

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

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

Article 3

Legislation on selection achievements

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

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

Article 4

Organizational principles of the legal protection of selection achievements

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

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

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

Article 5

The creator of a selection achievement

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

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

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

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

Article 6

Patent owner

A patent for a selection achievement shall be granted to:

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

Article 7

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

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

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

If, within four months of the date on which he is informed by a creator (joint creators) of a created selection achievement, an employer does not file an application for the grant of a patent with the Patent Office, does not transfer the right to file an application for the grant of a patent to another person, and does not inform the creator (joint creators) of the preservation of a selection achievement in secret, the creator (joint creators) shall be entitled to file an application and to obtain a patent in his (their) own name(s). In such a case, the employer shall be entitled to use a selection achievement in his own production activities and shall pay to the patent owner compensation, as defined by agreement.

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

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

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

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

II. PATENTABILITY OF A SELECTION ACHIEVEMENT

Article 8

Conditions for the granting of legal protection of selection achievements

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

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

Article 9

Novelty

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

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

Article 10

Distinctness

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

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

Common knowledge shall be established:

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

Article 11

Uniformity

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

Article 12

Stability

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

Article 13

Name of a selection achievement

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

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

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

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

Any person offering for sale or selling in the Republic of Uzbekistan, or on the territory of a country with which the Republic of Uzbekistan has concluded an agreement on legal

protection of selection achievements, seeds, plant material of a variety or breeding material of a breed, shall use the name of the selection achievement even after the period of validity of a patent for a selection achievement has ended, only if the rights of third parties shall not hinder such use.

III. OBTAINING A PATENT FOR A SELECTION ACHIEVEMENT

Article 14

A patent for a selection achievement

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

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

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

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

The period of validity of a patent may be extended at the request of the patent owner, but by no more than ten years.

Article 15

Right to a patent

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

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

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

If several persons have created a selection achievement independently of each other, the right to a patent shall belong to the person whose application for the grant of a patent has been filed

with the Patent Office earlier, provided that the application has not been withdrawn or rejected.

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

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

Article 16

Filing an application for the grant of a patent

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

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

Article 17

Content of an application for the grant of a patent

An application for the grant of a patent shall contain:

- a request for the grant of a patent with an indication of the creator (joint creators) and person(s) in whose name the patent is requested, together with information on their place of residence or business;
- a proposed name for the selection achievement;
- a description of the selection achievement (technical questionnaire);
- photographs of samples of the selection achievement;
- documents concerning tests on the selection achievement carried out by the applicant;
- a declaration by the applicant confirming that the selection achievement has not been exploited, sold or transferred, and meets the requirements of novelty;

- a document confirming the priority of the selection achievement (where necessary);
- an obligation on the part of the applicant to submit to a specialized organization, within the prescribed period, material for testing the selection achievement;
- a power of attorney where an application is filed through a patent agent or an attorney;
- a document confirming payment of the patent fee at the prescribed level or the grounds for exemption from payment of the patent fee, and also for reducing its level.

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

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

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

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

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

Article 18

Priority of a selection achievement

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

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

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

In an application for the grant of a patent sent to the Patent Office, the applicant shall indicate the priority date of the first application. Within three months of the filing date of the

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

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

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

Article 19

State examination of a selection achievement

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

Article 20

Formal examination of an application

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

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

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

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

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

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

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

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

Article 21

Temporary legal protection of a selection achievement

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

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

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

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

Article 22

Examination of a selection achievement for the purposes of novelty

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

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

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

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

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

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

Article 23

Testing of a claimed selection achievement

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

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

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

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

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

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

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

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

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

Article 24

Withdrawal of an application for the grant of a patent

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

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

Article 25

Registration of a selection achievement

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

Article 26

Official publication of information on a selection achievement

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

Article 27

Grant of a patent

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

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

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

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

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

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

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

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

Article 28

Preservation of a selection achievement

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

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

Article 29

Patent fees

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

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

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

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

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

IV. RIGHT OF THE PATENT OWNER

Article 30

Exclusive right of a patent owner

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

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

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

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

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

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

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

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

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

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

Article 31

Exceptions to the right of a patent owner

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

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

Article 32

Exhaustion of the right of a patent owner

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

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

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

Article 33

Infringement of the right of a patent owner

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

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

V. TERMINATION OF VALIDITY OF A PATENT

Article 34

Recognition of a patent as invalid

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

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

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

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

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

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

Article 35

Premature termination of the validity of a patent

The validity of a patent shall be terminated prematurely where:

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

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

Article 36

Cancellation of a patent

A patent shall be cancelled if:

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

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

Article 37

Refusal of a patent

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

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

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

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

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

VI. FINAL PROVISIONS

Article 38

Transfer of rights to a selection achievement

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

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

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

Article 39

Provision of the right to use a selection achievement

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

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

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

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

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

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

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

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

Article 40

Compulsory license

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

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

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

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

Article 41

Use of a selection achievement

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

Article 42

Patenting of selection achievements in other States

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

Article 43

Rights of foreign natural and legal persons

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

Article 44

Settlement of disputes

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

Article 45

Liability for infringement of the legislation on selection achievements

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

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End of Annex II and of document/
Ende der Anlage II und des Dokuments/
Fin del Anexo II y del documento]