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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Eleventh Extraordinary Session

Geneva, April 22, 1994

EXAMINATION OF THE CONFORMITY OF THE LEGISLATION OF UKRAINE
WITH THE UPOV CONVENTIONDocument prepared by the Office of the UnionIntroduction

1. By letter dated February 21, 1994, Mr. Olexander Sliptchenko, the Permanent Representative of Ukraine in Geneva, requested the advice of the Council of UPOV, pursuant to Article 32(3) of the 1978 Act of the UPOV Convention (hereinafter referred to as "the 1978 Act"), on the conformity of the Law of Ukraine on the Protection of Plant Variety Rights of April 21, 1993 (hereinafter referred to as "the Law"), with the 1978 Act. An English translation of the Law was attached to the letter. The letter is reproduced in Annex I to this document and an English translation of the Law is reproduced in Annex III.

2. The Office of UPOV initially received a draft law of Ukraine for the protection of plant varieties from the Government of Ukraine in October 1991 with a request for comments. After translation of the law into French, the Office of UPOV sent its comments on the draft to the Government of Ukraine in January 1992. The Law that was adopted by the Duna of Ukraine and signed by President Kravchuk on April 21, 1993, differs significantly from the aforementioned draft law and was not seen or commented upon by the Office of UPOV prior to its enactment.

3. Ukraine did not sign the 1978 Act. Under Article 32(1)(b) of that Act it must accordingly deposit an instrument of accession in order to become a member State of UPOV on the basis of that Act. Under Article 32(3), an instrument of that kind can only be deposited by Ukraine if it has requested the advice of the Council on the conformity of its laws with the provisions of the 1978 Act and if the decision of the Council embodying the advice is positive.

Legal Basis for the Protection of New Varieties in Ukraine

4. The protection of new plant varieties in Ukraine will be governed by the Law and by the Regulation on the State Patent Office of Ukraine which is referred to in Article 5 of the Law. The said Regulation contains the constitution and lists the responsibilities of the State Patent Office of Ukraine and contains no provision which conflicts with the provisions of the 1978 Act.

5. An analysis of the Law follows in the order of the substantive law provisions of the 1978 Act. This analysis has been submitted to the Ukrainian authorities. The observations, if any, will, if necessary, be incorporated in a supplementary document.

6. Article 31 of the Law (hereinafter referred to as "the International Treaty Provision") provides that, if any international treaty to which Ukraine is party provides regulations different from those stipulated by the Law, the regulations under the international treaty shall be applied. When Ukraine deposits an instrument of accession to the 1978 Act, this provision will enable the State Patent Office of Ukraine to remedy certain departures from conformity with the 1978 Act that are described in the analysis of the Law which follows.

Article 1(1) of the 1978 Act: Purpose of the Convention

7. Article 1(1) of the 1978 Act provides that "the purpose of this Convention is to recognize and to ensure to the breeder of a new plant variety or to his successor in title ... a right." Article 2 of the Law establishes "the proprietary and non-proprietary rights of a variety, a variety breeder or a licensee as the object of the protection provided by the Law. The purpose of the Law thus accords with the purpose of the Convention.

Article 2 of the 1978 Act: Forms of Protection

8. The Law provides for the granting of "a variety right which shall be protected by the State and certified by a patent" and thus conforms with Article 2(1) of the 1978 Act. There is no provision in the patent law of Ukraine concerning the granting of normal industrial (or utility) patents for varieties of plant species for which protection is provided under the Law.

Article 3 of the 1978 Act: National Treatment; Reciprocity

9. Article 3 of the Law provides that natural persons, legal entities and their successors in title who enjoy civil legal capacity and competence under the laws of Ukraine constitute the subjects of the variety right. There are no express provisions in the Law concerning the granting of protection to nationals and residents of UPOV member States. However, the provisions of Article 6(2) (last sentence of the first paragraph), of Article 11(2) (second paragraph) and Article 14 imply that protection is available to nationals and residents of UPOV member States on the same basis as Ukrainian nationals. The International Treaty Provision eliminates any doubt concerning the conformity of the Law with Article 3 of the 1978 Act.

Article 4 of the 1978 Act: Botanical Genera and Species Which Must or May be Protected

10. Article 2 of the Law provides that the plant genera and species for which patents may be granted shall be established by the Cabinet of Ministers of

Ukraine. Annex II contains a translation into English of Decree N 806 of the Cabinet of Ministers of Ukraine dated September 28, 1993, which lists the five plant genera and species for which patents will be granted initially. The laws of Ukraine accordingly conform with Article 4(3)(a) of the 1978 Act which specifies the minimum number of genera and species which a State must protect.

Article 5 of the 1978 Act: Rights Protected; Scope of Protection

11. Article 9 of the Law provides that no person may exploit a patented variety without the consent of the patent holder. Article 1 of the Law defines "exploitation of a variety" to mean "the production of seeds for their alienation, the conditioning of seeds for the purpose of propagation, the selling or bringing of seeds into circulation in other ways, the importing of seeds or the stocking of seeds for any of the above purposes, and the utilization of seed as parent forms for the reproduction of seeds." "Seeds" is defined in the same Article to mean "the generative and vegetative organs of plants utilized for the purposes of the reproduction of a variety."

12. The language used differs from that of the 1978 Act. However, "the production of seeds for their alienation" would seem to offer a scope of protection at least as broad as the words "production for purposes of commercial marketing" of Article 5(1) of the 1978 Act, while "the conditioning of seeds" [i.e. the generative and vegetative organs of plants utilized for the purposes of reproduction of a variety] for the purpose of propagation would seem at least to extend the right of the breeder to the extent envisaged by the last sentence of Article 5(1). The scope of the Law accordingly conforms with that required by the first and second sentences of Article 5(1) of the 1978 Act. The Law does not expressly state that vegetative organs of plants shall be deemed to include whole plants. Any deficiency in this respect is remedied by the International Treaty Provision.

13. Article 9.2. specifies that the right of the patent holder shall not cover the legal relations associated with the use of the patented variety as an initial source of variation for the purpose of breeding other varieties. The definition of "exploitation of a variety," however, does require that the breeder's consent is required if generative and vegetative organs of plants are used as parent forms for the reproduction of seeds, which repeats the substance of the last sentence of Article 5(3) of the 1978 Act. These provisions taken together ensure that the Law conforms with Article 5(3) of the 1978 Act.

14. The text of the Law accordingly conforms in all respects with Article 5 of the 1978 Act.

Article 6 of the 1978 Act: Conditions Required for Protection

15. Article 6 of the Law provides for the conditions of distinctness, homogeneity, stability and novelty in terms which, with one exception, conform with Article 6(1)(a) to (d) of the 1978 Act, while the provision of Article 6(1)(e) of the 1978 Act relating to denominations is satisfied by Article 13 of the Law. The exception is created by the second sentence of Article 13.2. which provides that the permitted grace periods for prior commercialization which are required by Article 6(1)(b) of the 1978 Act shall not apply to nationals of countries in which Ukrainian nationals do not enjoy the same treatment. This provision has little or no practical effect in relation to nationals of UPOV member States since all UPOV member States must, and do in practice, offer the said grace periods. To the extent that this provision conflicts

with Article 6(2) of the 1978 Act, it is remedied by the International Treaty Provision.

16. The second paragraph of Article 13(2) of the Law makes provision on a generous basis for a transitional limitation of the requirement of novelty as permitted by Article 38 of the 1978 Act. The principle employed is that used by at least one existing member State of UPOV.

Article 7 of the 1978 Act: Official Examination of Varieties; Provisional Protection

17. Articles 15, 16 and 17 of the Law provide for the examination of the variety to establish whether it meets the conditions of patentability provided for by the Law.

18. Article 18 makes provision for provisional protection during the period between the publication of the application for protection in the Official Gazette and the granting of the breeders' right.

19. Accordingly, the Law conforms in all respects with Article 7 of the 1978 Act.

Article 8 of the 1978 Act: Period of Protection

20. Article 4 of the Law provides for protection for 30 years from the date of filing in the case of vines, trees and fruit crops, and for 20 years in the case of all other species. These periods exceed the minimum periods set out in Article 8 of the 1978 Act but are calculated from the date of filing rather than the date of grant as specified in the 1978 Act. If, in any specific instance, the period of protection calculated pursuant to Article 4 of the Law falls short of the minimum period of protection specified in the 1978 Act, the International Treaty Provision can be applied by the State Patent Office of Ukraine to ensure conformity with the 1978 Act.

Article 9 of the 1978 Act: Restrictions in the Exercise of Rights Protected

21. Article 10 of the Law makes provision for the grant of compulsory licenses when the patent holder does not exploit the patent for five years from the date of grant and refuses to grant licenses to others. A failure to exploit the patented variety could be considered to be contrary to the public interest so as to satisfy Article 9 of the Convention. However, the Law makes no provision for the payment of equitable remuneration to be paid to the right's holder. This is contrary to Article 9(2) of the 1978 Act but this deficiency is remedied by the International Treaty Provision.

Article 10 of the 1978 Act: Nullity and Forfeiture of the Rights Protected

22. Article 24 empowers a Court of Law to declare a variety patent null and void if the variety does not comply with the conditions of patentability of the Law or if the patent wrongly identifies the breeder or patent holder. The Law does not specify the date at which the lack of compliance must exist. Article 10 of the 1978 Act requires the grant of protection to be declared null and void only if the conditions of novelty and distinctness were not fulfilled at the date of grant. This is the sole permitted ground for the making of a

declaration of nullity in the 1978 Act. A grant may not be declared null and void because of a lack of uniformity or stability at the date of grant. It will be necessary to apply the International Treaty Provision to remedy this lack of conformity with the Convention.

23. Article 25 requires the Patent Office to cancel the variety patent if the fee that is necessary to maintain the patent in force is not paid. This is permitted by Article 10(3)(b) of the 1978 Act. Article 23 of the Law does require the patent holder to maintain the protected variety but the Law contains no provision for the cancellation of the patent for failure to maintain the protected variety as required by Article 10(2) of the 1978 Act. This deficiency is potentially remedied by the International Treaty Provision.

Article 11 of the 1978 Act: Free Choice of the Member State in Which the First Application is Filed; Applications in Other Member States; Independence of Protection in Different Member States

24. Article 30.2. requires an applicant proposing to seek protection outside Ukraine for a variety bred in Ukraine to file an application for the variety in Ukraine before filing in other countries. This provision conflicts with Article 11 of the 1978 Act.

Article 12 of the 1978 Act: Right of Priority

25. Article 14 of the Law provides a period of priority from the date of the first filing for the same variety in a UPOV member State. Article 14 of the Law does provide two grace periods in relation to applications for priority which are not envisaged by the UPOV Convention but does not contain a provision equivalent to Article 12(3) giving the applicant four years to provide additional documents and material. These departures from the provision of Article 12 of the 1978 Act can be remedied by the State Patent Office of Ukraine under the International Treaty Provision.

Article 13 of the 1978 Act: Variety Denomination

26. Article 13 of the Law contains provisions relating to denominations which broadly correspond to those of Article 13 of the 1978 Act.

Article 14 of the 1978 Act: Protection Independent of Measures Regulating Production, Certification and Marketing

27. The Law contains no provision conflicting with the provisions of Article 14 of the 1978 Act.

Article 30 of the 1978 Act: Implementation of the Convention on the Domestic Level

28. Articles 26 and 27 make provision for proceedings concerning infringement and settlement of disputes by reference to the general law of Ukraine but contain no details.

29. Article 5 of the Law allocates responsibility for the administration of the Law to the State Patent Office of Ukraine and for the examination of plant

varieties to the State Committee of Ukraine for Plant Variety Testing and Protection of the Ministry of Agriculture and Food of Ukraine, thus conforming with the provisions of Article 30(1)(b) of the 1978 Act.

30. Articles 15(2) and 4, 16(7), 19 and 21 make provision for the publication of applications and grants so as to conform with Article 30(1)(c) of the 1978 Act.

General Conclusion

31. In the opinion of the Office of the Union, the Law conforms to the 1978 Act in its main features. Minor departures from the requirements of the 1978 Act are rectified by the International Treaty Provision. The Law enables Ukraine to "give effect to the provisions of this Convention" as provided by Article 30(3) of the said Act.

32. The Council is invited to

(i) take a positive decision on the conformity of the Law of Ukraine on the Protection of Plant Variety Rights with the provisions of the 1978 Act, in accordance with Article 32(3) of that Act;

(ii) authorize the Secretary-General to inform the Government of Ukraine of that decision.

[Annexes follow]

ANNEX I

ПОСТІЙНЕ ПРЕДСТАВНИЦТВО УКРАЇНИ
ПРИ ВІДДІЛЕННІ ООН ТА
ІНШИХ МІЖНАРОДНИХ ОРГАНІЗАЦІЯХ
У ЖЕНЕВІ



MISSION PERMANENTE DE L UKRAINE
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21. 02. 94 № 101

Geneva, February 21, 1994

Dear Mr. Secretary-General,

I have the honor to inform you that on April 21, 1993, in Kiev, the President of Ukraine signed the Law of Ukraine on Plant Variety Rights.

Ukraine now wishes to accede to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as Revised at Geneva on November 10, 1972, and on October 23, 1978 ("the UPOV Convention"). In this connection, I attach a copy in Ukrainian and a translation into English of the said Law and hereby ask the Council of the International Union for the Protection of New Varieties of Plants pursuant to Article 32 (3) of the UPOV Convention to advise Ukraine in respect of the conformity of the said Law with the provisions of the UPOV Convention.

Ukraine will apply the provisions of the UPOV Convention to 5 plant genera and species: durum wheat, soft wheat, barley, rye, sunflower.

Accept, Sir, the assurances of my highest consideration.

Olexander Sliptchenko
Permanent Representative
of Ukraine in Geneva

Dr. Arpad Bogsch
Secretary-General
International Union
for the Protection
of New Varieties of
Plants (UPOV)

[Annex II follows]

CABINET OF MINISTERS OF UKRAINE**DECREE**

N 806 of September 28, 1993

Kyiv

**On the List of Plant Genera and Species for
the Varieties of which Patents are Granted**

Pursuant to Article 2 of the Law of Ukraine "On the Protection of Plant Variety Rights" the Cabinet of Ministers of Ukraine decrees:

Approve the List of Plant Genera and Species for the Varieties of which Patents are Granted in accordance with Annex.

*Acting Prime Minister
of Ukraine*

U.Zviaguilsky

*Minister
of Cabinet of Ministers
of Ukraine*

V.Pustovoitenko

ANNEX

**to the Decree of Cabinet of Minister
of Ukraine N 806 of September 28, 1993**

LIST

**of Plant Genera and Species for
the Varieties of which Patents are Granted**

Durum wheat	(Triticum durum Desf.)
Soft wheat	(Triticum aestivum L.)
Barley	(Hordeum vulgare L.)
Rye	(Secale cereale L.)
Sunflower	(Helianthus annuus L.)

*Minister
of Cabinet of Ministers
of Ukraine*

V.Pustovoitenko

ANNEX III

**LAW OF UKRAINE
ON THE PROTECTION OF PLANT VARIETY RIGHTS**

This Law governs the relations which arise in connection with the acquisition, exploitation, protection, alienation and termination of plant variety rights in Ukraine.

SECTION I

GENERAL PROVISIONS

Article 1. Definition of Terms

For the purposes of this Law:

"variety" means a plant grouping selected artificially within a single botanical taxon whose heredity is characterized by its inherent biological features and properties, provided that it is distinguished from any other known plant grouping within the same botanical taxon by at least one feature and can be considered as a unit with regard to its suitability for being propagated. The category of variety covers clone, line, hybrid and population;

"seeds" mean the generative and vegetative organs of plants utilized for the purposes of the reproduction of a variety;

"exploitation of a variety" means the production of seeds for their alienation, the conditioning of seeds for the purpose of propagation, the selling or bringing of seeds into circulation in other ways, the importing of seeds, the stocking of seeds for any of the above purposes and the utilization of seeds as parent forms for the reproduction of seeds;

"Register of Plant Varieties of Ukraine" means the register in which the varieties permitted to be used in agriculture are entered;

"State Register of Plant Varieties of Ukraine" means the register in which the plant varieties protected under this Law are entered;

"a patented variety" means a variety for which a patent has been granted;

"an exclusive license" means a transfer of the right to exploit a variety, including the right to grant licenses for this variety to third parties, by the patent holder or his successor in title (licensor) to another person (licensee);

"a non-exclusive license" means a transfer of the right to exploit a variety, save the right to grant licenses for this variety to third parties, by the patent holder or his successor in title to another person.

Article 2. Object of the Legal Protection

The proprietary and non-proprietary rights of a variety breeder, a patent holder or a licensee constitute the object of the legal protection.

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The list of plant genera and species for the varieties of which patents may be granted shall be established by the Cabinet of Ministers of Ukraine.

Article 3. Subjects of the Variety Right

Natural persons, legal entities and their successors in title who enjoy the civil legal capacity and competence under the laws of Ukraine constitute the subjects of the variety right.

Article 4. The Variety Patent

The variety right shall be protected by the State and certified by a patent.

A variety patent certifies the authorship of a variety and the exclusive right to exploit the variety.

A variety patent shall have a term of 20 years from the date of filing of the application with the State Patent Office of Ukraine, the term being 30 years from the said date in the case of grapevine, trees and fruit crops. The term of the patent may be extended by the State Patent Office of Ukraine at the request of the patent holder, but not by longer than 10 years.

Article 5. The State Patent Office of Ukraine

In conformity with this Law the State Patent Office of Ukraine (hereinafter referred to as "the Office") shall pursue the State policy in the field of the variety right protection, receive applications for the grant of variety patents, conduct their examination and State registration and ensure the official publication of the relevant information, issue variety patents and perform other duties in accordance with the Regulation on the State Patent Office of Ukraine which is subject to approval by the Cabinet of Ministers of Ukraine.

After the publications effected under this Law, the Office is bound to make against payment the patent documents open to the public.

The financing of the Office shall be effected at the expense of the State budget.

The State Committee of Ukraine for Plant Variety Testing and Protection under the Ministry of Agriculture and Food of Ukraine shall act as the Examination Body of the Office and be subordinate to it in matters of variety right protection.

SECTION II

PATENTABILITY OF A VARIETY

Article 6. Conditions of Patentability of a Variety

1. A patent shall be granted for a variety which is new and satisfies the conditions of distinctness, uniformity and stability.

2. A variety shall be considered to be new provided that on the date of filing with the Office of an application for the grant of a variety patent

no seeds of the variety have been sold or otherwise disposed of to others by the variety breeder or his employer defined in Article 8 (3) of this Law for the purpose of the exploitation of the variety:

- in the territory of Ukraine for more than a year;
- in the territory of any other country for more than 6 years in the case of grapevine, ornamental, fruit and forest trees and for more than 4 years in the case of any other cultures.

This provision shall not be applied to nationals and legal entities of foreign countries where nationals and legal entities of Ukraine do not enjoy the same treatment.

Varieties of genera and species for which protection was not available in Ukraine by the variety right but which have been entered in the Register of Plant Varieties of Ukraine and have been exploited longer than the time limits stipulated in this Paragraph, shall be deemed at the time of the examination to satisfy the condition of novelty. The priority of such a variety shall be established as from the date of its entering the variety trial and the term of the patent shall be reduced by the period from this date until the date of filing of the application with the Office.

3. A variety shall be deemed to satisfy the condition of distinctness provided that it is clearly distinguishable from any other variety whose existence is a matter of common knowledge on the filing date of the application with the Office.

A variety shall be regarded as a matter of common knowledge by the fact of its exploitation, its entering into an official catalogue or into a reference collection or its precise description in a publication or an application with the Office.

The characteristics which enable the distinctive features of a variety to be determined must be capable of being reproduced and precisely described.

4. A variety shall be deemed to be uniform if, taking into account the particular features of its propagation, the plants of the variety are sufficiently uniform in their characteristics.

5. A variety shall be deemed to satisfy the condition of stability provided that its basic characteristics remain unchanged after each propagation, and in the case of a particular cycle of propagation, at the end of each such cycle.

SECTION III

THE VARIETY BREEDER AND THE VARIETY PATENT HOLDER

Article 7. The Variety Breeder

A person whose creative work has resulted in the breeding of a variety shall be recognized as the variety breeder. Where a variety has been bred as a result of the creative work of several persons, all of them shall be recognized as the joint breeders of the variety.

Persons who have made no personal contribution to the creative work of breeding the variety but have only supported the breeder (or joint breeders)

technically, organizationally or materially, or assisted in the drafting of the documents for the acquisition of the variety right shall not be regarded as variety breeders. Variety breeders enjoy the right of authorship which is an inalienable personal right. The authorship of a variety is protected permanently.

Article 8. The Variety Patent Holder

1. Any person satisfying the conditions described in Article 3 of this Law may be a variety patent holder.

A variety patent shall be granted to the variety breeder. If a variety has been bred in collaboration by joint breeders, all of them are entitled to obtain a patent.

Where a variety has been bred by several persons independently of each other, the person whose application was the first to reach the Office is entitled to obtain a patent.

2. The right to obtain a patent shall belong to any person designated by the variety breeder in the application or in a request for the grant of a patent to another person if the said request reaches the Office before a decision to grant a patent has been taken.

3. Where a variety has been bred by an employee when performing his duties or a concrete task assigned to him by his employer the latter shall be entitled to obtain a patent. A written agreement providing for the transfer of the right to obtain a patent to the employer shall be concluded between the said employee and employer. In this case the variety breeder shall be entitled to the remuneration stipulated in the agreement.

Where no written agreement on the transfer of the right to a patent has been concluded between the variety breeder and his employer, or in the case of a breach of the essential terms of the agreement on the part of the employer, the right to obtain a patent rests with the variety breeder.

4. The Ukrainian Inventions Foundation shall be entitled to obtain a patent if the Foundation has been designated by the variety breeder in the application or in a request filed before a decision to grant a patent is taken.

In this case the variety breeder is entitled to remuneration commensurate with the profit gained by the Ukrainian Inventions Foundation from the exploitation of the variety. A written agreement to this effect shall be concluded between the breeder of the variety and the Ukrainian Inventions Foundation.

Article 9. The Right of a Variety Patent Holder

1. The rights conferred by a patent shall be exercised within the limits defined by the legislation.

Person may exploit a patented variety without the consent of the patent holder.

2. The right of the patent holder shall not cover the legal relations associated with the use of the patented variety

for non-commercial purposes;
for experimental purposes;
as an initial source of variation for the purpose of breeding other varieties;
for commodity processing or transit transportation.

3. A patent holder who is the breeder of the variety may transfer the patent right to any natural person who or legal entity which becomes the successor in title of the patent holder.

Where a patent holder is not the variety breeder, he may transfer the patent right subject to the terms on which this right has been obtained from the breeder of the variety.

A patent holder or his successor in title is entitled to transfer the rights conferred by the patent, in full or in part, to any natural or legal person by means of a license agreement. Under such an agreement the patent holder (licensor) transfers exclusive or non-exclusive rights to the exploitation of the variety to another person (licensee) who undertakes to pay royalties to the licensor and to perform other actions provided for by the license agreement.

The agreement on the transfer of the patent right and the license agreement shall be registered with the Office. Unless registered, they are considered to be invalid.

4. A patent holder (or his successor in title) may file with the Office, for the purpose of its official publication, an announcement of his intention to grant an open license to any natural person or legal entity. In this case the amount of the maintenance fee shall be reduced by 50 per cent from the year following the year of publication of the announcement as to the grant of an open license. If nobody informs the patent holder of an intention to exploit the variety the patent holder may file with the Office a written notice of withdrawal of his announcement.

A person or persons wishing to obtain an open license shall conclude an agreement with the patent holder or his successor in title. Issues in dispute concerning the terms of the agreement shall be examined before a court of law.

Article 10. Alienation of the Rights under a Variety Patent

In a case of the non-exploitation in Ukraine of a variety by the variety patent holder within the first five years from the date on which the decision to grant the patent was taken and of the patent holder's refusal to conclude a license agreement, a person wishing to exploit the variety may appeal to the court with a request for the grant of a non-exclusive compulsory license.

SECTION IV

ACQUISITION OF THE VARIETY RIGHT

Article 11. Filing of an Application

1. Any natural person or legal entity entitled to obtain a variety patent under Article 3 of this law may file with the Office an application for the grant of a patent.

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2. An application for the grant of a patent may be filed either in person or through a representative or a patent attorney.

Natural persons who reside outside Ukraine and foreign legal entities having their permanent offices outside Ukraine shall carry on business in connection with the acquisition of a variety patent through patent attorneys registered with the Office.

3. Only persons who are both citizens and permanent residents of Ukraine may act as patent attorneys. The responsibilities and rights of patent attorneys as well as the procedure for their recognition and registration shall be established by the Regulation on the Patent Attorneys of Ukraine which is subject to approval by the Office.

Article 12. Application for the Grant of a Variety Patent

1. An application for the grant of a variety patent shall contain the following:

- a request for the grant of a variety patent;
- a description of the variety in which its features and properties are disclosed to the extent sufficient for the definition of the variety;
- a document attesting the payment of the prescribed fee or confirming the existence of grounds for an exemption from payment of the fee or a reduction in its amount shall be attached to the request.

2. Both the requirements in respect of the application documents and the procedure for its examination shall be established by the Office.

3. A separate application shall be filed for each variety.

Article 13. Variety Denomination

1. A variety denomination shall be designated in an application for the grant of a variety patent. The denomination must enable the variety to be identified. It may not coincide with, or must differ from, a denomination which designates an existing variety of the same or a closely related botanical species. A denomination may not consist solely of figures, be liable to mislead as to the characteristics, origin and value of the variety or the identity of the breeder of the variety, or be contrary to the principles of public morals.

2. If applications for the grant of variety patents for one and the same variety are filed both in Ukraine and in other countries the variety denomination must be identical.

3. If a variety denomination does not meet the requirements specified under Paragraphs 1. and 2. of this Article the applicant shall furnish at the request of the Office another denomination for the variety within two months.

4. After the grant of a patent all persons when exploiting the variety shall use the denomination under which it has been entered in the State Register of Plant Varieties of Ukraine.

5. A variety denomination may be altered at the applicant's request provided that the alteration is submitted before a decision to grant a patent is taken.

Article 14. Priority of a Variety

1. The priority of a variety shall be established as being the date of filing with the Office of an application which satisfies the requirements of Article 12 of this Law.

2. Priority may be the date of the first filing in a state party to the International Convention for the Protection of New Varieties of Plants (the Convention priority) provided that the application for a variety patent is filed with the Office within 12 months from the said date.

Where an application claiming the Convention priority has not been filed with the Office within the said time limit due to circumstances beyond the applicant's control the said time limit may be extended but not by more than 2 months.

An applicant wishing to benefit from the Convention priority must claim it when filing the application or within two months from the filing of the application with the Office and attach a copy of the first application certified to be a true copy by the Patent Office with which it was filed.

3. Where during examination it is established that identical varieties have the same priority date, the application on which a patent may be granted shall be the one proved to have been mailed to the Office on an earlier date or, should these dates coincide, the one allotted a prior serial number by the Office.

Article 15. Examination of an Application for the Grant of a Variety Patent

1. The examination of an application for the grant of a variety patent shall be performed stage by stage within three years from the filing date. The Office may extend the said time limit for examination.

The Examination comprises the formal examination and the examination of an application as to patentability.

2. During the examination the applicant is entitled:
to supplement the application documents with additional information, corrections or clarifications;
to participate in person or through a representative or a patent attorney in the examination of the issues that may arise;
to be informed of the results of the variety examination.

3. Any person, wishing to do so, may consult the application file after the relevant publication has been effected in the Official Gazette.

4. The procedures to open the examination files to the public shall be established by the Office.

Article 16. Formal Examination

1. Within two months from the filing of the application with the Office the Examination Body shall perform the formal examination in the course of which the availability of the necessary documents and the observance of the established requirements as to their drafting are checked.

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2. Supplementary materials filed in connection with a variety application under Paragraph 2. of Article 15 of this Law shall not alter the substance of the variety claimed.

Supplementary materials alter the substance of the variety claimed if they contain features not mentioned in the original application. Supplementary materials which alter the substance of the variety claimed shall not be taken into account during the examination but may be filed by the applicant as a separate application.

3. If the result of the formal examination of an application is favorable a decision on its further prosecution shall be taken and the priority of the variety shall be established under Article 14 of this Law. A written notice of the decision shall be forwarded to the applicant.

4. Where during the formal examination the application is found to have been filed for a variety belonging to a species or genus unprotected under the variety right, the application shall be rejected without any further processing.

5. In the case of disagreement with the result of the formal examination the applicant may appeal against it to the Appeals Council of the Office. The Regulation on the Appeals Council shall be established by the Office.

6. Application materials accepted for examination by the Office shall not be returned to the applicant.

7. Following the expiration of the period of eighteen months from the filing date and provided that the formal examination resulted in a favourable decision a publication concerning the application shall be effected in the Official Gazette. The contents of the publication shall be determined by the Office.

The Office may effect publication concerning the application prior to the said expiration of the said period at the request of the applicant.

The variety breeder may oppose the mention of his name in the publication concerning the application.

Article 17. Examination of an Application as to Patentability

1. Examination of an application as to the patentability of the variety shall be performed by the Examination Body of the Office.

2. Where during the examination of a variety it is found that the variety does not satisfy the conditions of patentability, the grant of a patent shall be refused and the applicant shall be notified accordingly in writing.

3. Where the applicant disagrees with the refusal to grant patent he may appeal against the refusal to the Appeals Council of the Office.

4. If a variety satisfies the conditions of patentability a decision to grant a patent shall be taken.

Article 18. Provisional Protection of the Variety Rights

1. Provisional protection of the variety right shall cover the period between the date of the publication concerning the application effected in the Official Gazette of the Office and the date on which a decision to grant a patent is taken and shall be provided within the scope of the description of the variety as published.

2. Provisional protection of a variety right shall be considered to have never been granted if a patent is eventually refused and the opportunities to appeal against the refusal have been exhausted.

3. Persons who are guilty of infringement of the patent holder's right specified in Article 9 of this Law, including infringement committed during the period of provisional protection, shall incur liability provided for by the law.

Article 19. Registration of a Variety

If the Examination Body reaches a favorable conclusion as to the patentability of a variety the Office shall take a decision to grant a patent for the variety and enter the appropriate data into the Register of Plant Varieties of Ukraine.

Article 20. Grant of a Variety Patent Document

1. A variety patent document shall be issued by the Office after the entry of the variety into the State Register of Plant Varieties of Ukraine and within a month from the date of the receipt of a document attesting the payment of the prescribed fee. Where a patent was applied for in the name of several persons a single patent document shall be issued to them.

2. The form of the patent document shall be determined by the Office.

3. The Office shall rectify errors in the issued patent document at the patent holder's request.

Article 21. Publication of Information on the Grant of a Patent

1. Following the decision to grant a patent, the Office shall effect a publication in the Official Gazette, the said publication comprising the name of the variety breeder (joint breeders), the denomination of the variety, its description and other information as determined by the Office.

2. A patent holder may apply to the Office with a request to rectify errors in the published information on the grant of a patent.

3. After the said publication any person may consult the application file in the manner established by the Office.

Article 22. Withdrawal of an Application

An applicant may withdraw his application but not later than the date of the decision to grant a patent.

Article 23. Preservation of a Variety

A patent holder must maintain the variety during the term of the patent in such a way that its specific characteristics and properties indicated in the description of the variety on the date of its priority are preserved.

SECTION V

NULLILTY AND CANCELLATION OF A PATENT

Article 24. Nullity of a Variety Patent

1. A variety patent may be declared null and void in full or in part in the following cases:

non-compliance of the variety with the conditions of patentability as stipulated by this Law;

incorrect indication of the variety breeder (joint breeders) or the patent holder in the patent document.

2. An opposition to the grant of a patent on the grounds referred to in Paragraph I of this Article may be considered by the Appeals Council of the Office in the presence of the person who has filed the opposition.

3. A variety patent shall be declared null and void by a court of law.

Article 25. Lapse of a Patent Before its Expiration

1. A variety patent shall lapse before its expiration:

on the grounds of a request filed by the patent holder with the Office;

in the case of failure to pay the maintenance fee within the prescribed time limit.

2. The Office shall publish details of the lapse of a patent in the Official Gazette.

SECTION VI

LIABILITY FOR INFRINGEMENT OF THE LAW

Article 26. Liability for Infringement of the Law

Persons who are guilty of infringement of this Law shall incur disciplinary, civil, administrative or criminal liability.

Article 27. Settlement of Disputes in Connection with the Enforcement of this Law

Disputes arising in connection with the enforcement of this Law shall be settled in the manner prescribed by the law.

SECTION VII

FINAL PROVISIONS

Article 28. Exploitation of Varieties in Production

1. Varieties [not] protected in Ukraine shall only be exploited after the carrying out of a state variety trial and their entry in the Register of Plant Varieties of Ukraine.

A decision to enter a variety in the Register of Plant Varieties of Ukraine shall be taken on the basis of the results of the state variety trial and shall be approved by the Cabinet of Ministers of Ukraine.

2. Exploitation of the varieties entered in the Register of Plant Varieties of Ukraine shall be performed in compliance with the provisions of this Law.

Article 29. Fees for Services

Fees are payable to the State for the filing of an application, the grant of a patent, its maintenance and renewal. The amounts of the fees, time limits for their payment and the grounds for an exemption from payment, a reduction in its amount or a refund of the fee already paid shall be determined by the legislation of Ukraine.

The list of other services rendered by the Office in connection with the protection of plant variety rights and the amounts of fees payable for them shall be established by the Cabinet of Ministers of Ukraine.

Article 30. Patenting of a Variety Abroad

1. Natural and legal persons have the right to file applications for the grant of a protective document for plant varieties bred in Ukraine with the corresponding authorities in other countries.

2. Prior to filing an application for the grant of a variety protection document with the corresponding authorities in other countries the applicant is bound to file an application for the variety with the Office and notify it about the applicant's intentions as to patenting abroad.

3. Non-compliance with the requirements of paragraph 2 of this Article shall deprive the applicant or his successor in title of the right to obtain a patent for the corresponding variety in Ukraine.

Article 31. International Treaties

If international treaties to which Ukraine is party provide for the regulations different from those stipulated by this Law the regulations under the international treaty shall be applied.

**DECREE OF THE SUPREME SOVIET OF UKRAINE
ON
THE IMPLEMENTATION OF THE LAW OF UKRAINE
ON THE PROTECTION OF PLANT VARIETY RIGHTS**

1. The Law of Ukraine "On the Protection of Plant Variety Rights" is to be put into force as from November 1, 1993.

2. Before bringing the legislation into line with the Law of Ukraine "On Protection of Plant Variety Rights, the Acts in force shall be applied insofar as they do not contradict this Law.

3. It is to be established that the citizens and legal persons who have the inventor's certificates and certificates of the former USSR for plant varieties may submit the applications to acquire the corresponding patents in Ukraine.

4. The Cabinet of Ministers of Ukraine before November 1, 1993 shall

submit to the Supreme Soviet of Ukraine for consideration proposals amending and supplementing legal acts of Ukraine, resulting from the Law "On the protection of Plant Variety Rights," and on liability for infringement of this Law;

bring the decisions of the Government of Ukraine to conformity with this Law;

ensure revision and abolition by the Ministries and Departments of Ukraine of their normative Acts which contradict this Law;

in accordance with its competence, issue the Legal Acts stipulated by this Law;

settle the matters relating to the joining of Ukraine in the International Union for the Protection of New Varieties of Plants.

Chairman
Supreme Soviet of Ukraine

I. Plyushch

Kiev, April 21, 1993

[End of document]