



**Law on Patents for Plant Varieties of April 13, 1995
(Latest Edition from June 14, 2004)**

TABLE OF CONTENTS

	<i>Article</i>
Chapter I:	Legal Protection of Plant Varieties
	Basic Definitions..... 1
	Conditions of Patentability of Plant Varieties 2
	Legal Protection of the Variety 3
Chapter II:	Creators and Plant Patent Owners
	Creator (Breeder) of a Variety..... 4
	Plant Patent Owners 5
	Rights of the Plant Patent Owner 6
	Essentially Derived and Certain Other Varieties..... 7
	Acts Not Constituting Infringement of the Exclusive Rights of Plant Patent Owners 8
	Exhaustion of the Rights of Plant Patent Owners..... 9
Chapter III:	Grant of the Plant Patent
	Applications for Plant Patents 10
	Assignment of the Plant Patent and of the Right to Use a Variety..... 11
	Priority of Varieties..... 12
	Variety Denomination..... 13
	Examination of Applications..... 14
	Preliminary Examination of Applications 15
	Publication of Applications..... 16
	Provisional Legal Protection 17
	Substantive Examination of Applications 18
	Appeal Against Decisions on Applications and Reinstatement of Rights Contingent on Time Limits 19
	Publication of Particulars of Plant Patents 20
	Registration of Varieties and Grant of Plant Patents 21
Chapter IV:	Revocation and Lapse of Plant Patents
	Opposition to the Plant Patent Grant..... 22
	Premature Termination of Plant Patents..... 23
Chapter V:	Use of Protected Varieties
	Use of Protected Varieties..... 24
	Licensing Agreements..... 25
	Open Licensing 26
	Compulsory Licensing 27
	Infringement of the Plant Patent..... 28
	Maintenance of Characteristics of the Protected Variety 29
Chapter VI:	Institutional Basis for the Legal Protection of Varieties and Defense of the Rights of Creators and of Plant Patent Owners
	The Patent Office 30
	The State Testing Committee..... 31
	Bodies Responsible for Hearing Disputes Arising from Infringement of Plant Patent Legislation..... 32
	Competence of the Supreme Court of the Republic of Belarus Responsible for Hearing Disputes Arising from Infringement of Plant Patent Legislation 33



	Liability for Infringement of Creator's (Breeder's) Rights	34
	Liability for Infringement of Plant Patent Legislation ..	35
	Inheritance of Rights	36
Chapter VII:	Final Provisions	
	Fees	37
	Right to Protect Varieties Abroad	38
	Rights of Foreign Natural and Legal Persons and of Stateless Persons	39
	Rights of Enterprises Established in the Republic of Belarus with Foreign Capital	40
	International Treaties	41
	Effects in Belarus of Author's Certificates, Certificates or Applications under the Regulations for the Legal Protection of New Varieties of Plants in the Soviet Union	42
	Entry into Force of this Law	43
	Institutional and Legal Procedures for Enacting this Law	44

This Law governs the economic and moral relations arising from the breeding (discovering, developing), legal protection and use of patented plant varieties.

This Law shall apply to varieties of plants included in a list to be established by the Government of the Republic of Belarus.

Chapter I Legal Protection of Plant Varieties

Basic Definitions

1. The terms used in this Law shall mean the following:

1. "harvested material"—entire plants or parts of plants disposed of for the purposes other than reproduction of a variety;

2. "propagating material"—plants, seeds, seedlings, bulbs or any other parts of plants intended for the purposes of multiplication;

3. "creator (breeder) of a variety"—the person who, by his creative activity, bred the variety;

4. "variety"—a plant grouping which, irrespective of whether the conditions of patentability are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, and can be distinguished from any other plant grouping of the same botanical taxon by the expression of at least one of the said characteristics. The variety may be represented by a plant or by two or more plants, or by a part or by two or more parts of a plant, provided that the part or the parts in question may be used for reproduction of entire plants of the variety.



5. “protected variety”—a variety registered in the State Register of Protected Varieties of the Republic of Belarus (hereinafter referred to as “the Register of Protected Varieties”).

Conditions of Patentability of Plant Varieties

2. A variety shall be granted legal protection if it is new, distinct, uniform and stable.

A variety shall be considered to be new if, at the date of filing of the application for the grant of a patent for variety (hereinafter referred to as “the application”), propagating or harvested material of the variety itself has not yet been sold or otherwise disposed of to others, by or with the consent of the breeder or that of his successor in title, for purposes of exploitation of the variety in the territory of the Republic of Belarus earlier than one year before that date, and in the territory of any other State earlier than four years. In the case of trees and of vines the variety itself may have been sold or otherwise disposed of by foreign natural and legal persons for up to six years before the date of filing of the application.

A variety shall be considered to be distinct if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of filing of the application.

Common knowledge of another variety may be established by reference to the fact that it is public knowledge that another variety is produced, reproduced, conditioned for the purpose of propagating, stocked for any of the above-mentioned purposes, offered for sale, sold, exported or imported.

If an application for the protection of a variety has been filed in any other State, that variety shall be deemed to have been a matter of common knowledge, provided that a plant patent, a breeder’s right or any similar title of protection has been granted as a result of that application or that the said variety has been entered in an official register of varieties.

A variety shall be considered to be uniform if, having regard to the particular features of its propagation, its plants are sufficiently uniform in their characteristics.

A variety shall be considered to be stable if its essential characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

The essential characteristics which permit a variety to be defined and distinguished (morphological and/or physiological or any other) shall, in any case, be capable of precise description.

Legal Protection of the Variety

3. Rights in varieties shall be protected by the State and attested to by a patent for variety (hereinafter referred to as “the plant patent”).

A plant patent shall be granted by the authorized organization for protection of rights on intellectual property objects and attest the authorship of the variety, the priority date of the



variety and the exclusive right of the owner of the plant patent to use the variety, except for limitations specified in this Law.

A plant patent shall have a term of 25 years as from the date of registration of the variety in the Register of Protected Varieties.

The scope of the legal protection of a variety shall be determined by the official description of the variety entered in the Register of Protected Varieties.

The official description of a variety shall contain the morphological, physiological and other characteristics of the variety on which the grant of the plant patent is based; and which are determined by the authorized organization for testing and protection of plant varieties.

Chapter II Creators and Plant Patent Owners

Creator (Breeder) of a Variety

4. The natural person whose creative work has resulted in a variety shall be recognized as the creator (breeder) thereof.

Where a variety is the result of the joint creative work of two or more natural persons, all those persons shall be recognized as the joint creators thereof. The conditions for exercising the rights in the variety shall be determined by agreement between them.

Natural persons who have not made any personal creative contribution to the breeding of the variety, but have merely provided the creator (or joint creators) with technical, organizational or material assistance, or have helped in the securing of rights in the variety, shall not be recognized as joint creators.

The authorship of a variety shall be an inalienable personal right. That right shall enjoy protection by the State of unlimited duration.

The creator of a variety who is not the owner of the plant patent shall receive remuneration from the owner of the plant patent on the basis of agreement between them.

Plant Patent Owners

5. A plant patent shall be granted:

- to the creator (or joint creators) of the variety;
- to the natural and/or legal person (or persons) who, subject to the existence of a contract, is or are mentioned by the creator (or joint creators) in the application or in the request filed with the Patent Authority prior to the registration of the variety in the Register of Protected Varieties;
- to the successor in title of the creator of the variety.



Where a salaried employee (hereinafter referred to as “the employee”) creates a service variety in the course of an assignment entrusted to him by his employer, the plant patent shall be granted to the employer, on condition that the employee and the employer have entered into a contract that so provides.

A variety shall be deemed a service variety (a variety bred in the line of duty) if the variety relates to the employer’s area of activity, and if the employee has created it in connection with the work forming part of his duties, or if the employee has created it using knowledge or means that were put at his disposal by the employer.

In such a case the employee shall be bound to inform his employer in writing of the service variety that he has created. The employer, in turn, shall inform the employee in writing, within three months following the date on which he received the said information from him, whether he intends to apply for a plant patent. If the employee and the employer have not concluded a contract concerning the right to the plant patent or if the employer has chosen not to apply for a plant patent or has missed to respond within the three-month period, the plant patent shall be granted to the employee who created the variety. In such case, the employer shall be entitled to use the variety under the conditions specified in a licensing agreement.

Other relations arising from the creating of a variety by an employee shall be regulated by the legislation of the Republic of Belarus.

Rights of the Plant Patent Owner

6. The following acts in respect of propagating material of the protected variety shall require the authorization of the owner of the plant patent:

- production or reproduction (multiplication);
- conditioning for the purpose of propagation;
- offering for sale;
- selling or other marketing;
- exporting;
- importing;
- stocking for any of the purposes mentioned in the above subparagraphs.

The owner of the plant patent may, at his discretion, make any such authorization subject to conditions and limitations.

The performance of acts referred to in the first paragraph of this Article in respect of harvested material obtained through the unauthorized use of propagating material of the protected variety shall also require the authorization of the owner of the plant patent, unless the owner of the plant patent has had reasonable opportunity to exercise his right in relation to the said propagating material.



Essentially Derived and Certain Other Varieties

7. The provisions of Article 6 of this Law shall also apply in relation to:

- varieties which are essentially derived from the protected variety, where the protected variety is not itself an essentially derived variety;
- varieties which are not clearly distinguishable in accordance with Article 2 from the protected variety; and
- varieties whose production requires the repeated use of the protected variety.

A variety shall be deemed to be essentially derived from another variety (“the initial variety”) when:

- it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;
- it is clearly distinguishable from the initial variety and, except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

Essentially derived varieties may be obtained in particular by the selection of a natural or induced mutant, or of a somaclonal mutant, the selection of a mutant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

Acts Not Constituting Infringement of the Exclusive Rights of Plant Patent Owners

8. The following acts shall not be considered infringements of the exclusive right of the plant patent owner to use a protected variety:

- acts done privately and for non-commercial purposes;
- acts done for experimental purposes;
- acts done for the purpose of breeding other varieties, and, except where the provisions of Article 7 of this Law apply, acts referred to in Article 6 of this Law in respect of such other varieties.

Exhaustion of the Rights of Plant Patent Owners

9. The plant patent owner’s rights shall not extend to acts concerning any material of a protected variety which has been sold or otherwise marketed by the owner of the plant patent or with his consent in the territory of the Republic of Belarus or which has been exported by him into a country which does not protect varieties of the botanical species to which the protected variety belongs for processing or final consumption purposes.



The provisions of the first paragraph of this Article shall not apply where the sale or any other forms of marketing involve further propagation of the variety in question or an export of plant material of the variety to enable the propagation of the variety in a country which does not protect varieties of the plant genus or species to which the variety belongs.

Chapter III **Grant of the Plant Patent**

Applications for Plant Patents

- 10.** The application for the grant of a plant patent shall be filed with the Patent Office:
- by the creator (breeder) of the variety;
 - by the employer, if the conditions set out in the second paragraph of Article 5 of this Law are satisfied;
 - by the natural or legal person to whom the creator or the employer has contractually assigned the right to file an application or to whom such right has been transferred by succession.

An application may be filed through a patent attorney registered with the Patent Office or through an authorized agent resident in the Republic of Belarus.

Natural persons and stateless persons residing outside the Republic of Belarus or legal persons having their headquarters in a foreign country shall be required, for the grant and maintenance of plant patents in the Republic of Belarus, to act through patent attorneys or authorized agents.

The application shall relate to one variety only and shall contain:

- a request for the grant of a plant patent in the form to be prescribed by the Patent Office;
- a completed technical questionnaire to be prescribed by the Patent Office;
- powers of attorney, where the application is filed through a patent attorney or an authorized agent;
- proof of payment of the prescribed fee or of circumstances affording entitlement to exemption from payment or to a partial reduction in the amount of the fee.

The conditions to be satisfied by the elements of the application and the contents thereof shall be determined by the Patent Office.

For the purposes of the examination of the variety for which the application was filed, the Patent Office may require the creator to furnish other necessary documents or plant material.



Assignment of the Plant Patent and of the Right to Use a Variety

11. The plant patent and the right to use a variety afforded by the plant patent may be assigned by contract to any natural or legal person.

The plant patent assignment contract and the contract assigning the right to use the variety (licensing contract) shall be registered with the Patent Office, failing which it shall be deemed null and void.

Priority of Varieties

12. The priority of a variety shall be determined by the date of receipt at the Patent Office of an application containing the elements referred to in the fourth paragraph of Article 10 of this Law.

The priority of a variety may be determined by the filing date of the first application in a State with which the Republic of Belarus is party to a bilateral or international multilateral agreement for the protection of plant varieties if the application claiming priority is filed with the Patent Office within 12 months of that date.

An applicant who wishes to benefit from the right of priority based on the first application shall be required to state the fact when filing the application with the Patent Office and submit a copy of the documents which constitute the first application, certified to be a true copy by the authority with which the first application was filed, and also samples or other evidence that the variety which is the subject matter of the two applications is the same, within a period of three months.

Where the first application is rejected or withdrawn, the applicant shall be allowed a period of two years after the filing date of that application, in which to furnish any necessary document or material required for the purposes of the examination.

Variety Denomination

13. The variety shall be designated by a denomination which will be its genetic designation.

The denomination of a variety must be short. It must enable the variety to be identified. It must be different from every denomination which designates an existing variety of the same botanical species or of a closely related species. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety, or the identity of the creator or of the owner of the plant patent.

The denomination of a new variety shall be submitted by the applicant to the Patent Office. If it is found that such denomination does not satisfy the requirements of the first and second paragraphs of this Article, the Patent Office shall refuse to register it and shall require the applicant to propose another denomination within a period of two months.



The denomination shall be registered in the Register of Protected Varieties at the same time as the protected variety is registered therein.

When a protected variety is offered for sale or otherwise marketed, it shall be permitted to associate a trade mark, trade name or other similar indication with a registered variety denomination, provided that, if such an indication is so associated, the denomination must nevertheless be easily recognizable.

Any person who offers for sale or markets propagating material of a protected variety shall be obliged to use the denomination of that variety within the territory of the Republic of Belarus or within the territory of any State with which the Republic of Belarus is party to a bilateral or international multilateral agreement for the protection of plant varieties, even after the expiration of the term of the plant patent in that variety, except where prior rights of third persons prevent such use.

Prior rights of third persons in a trade mark, trade name or other similar indication, when in possession of third persons who are not applicants, shall not be affected.

If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who is obliged to use it, the Patent Office shall require the owner of the plant patent to submit another denomination for the variety.

A variety submitted to the Patent Office must be submitted to any State with which the Republic of Belarus is party to a bilateral or international multilateral agreement for the protection of plant varieties under the same denomination. The denomination so submitted shall be registered by the Patent Office, unless it considers the denomination unsuitable by virtue of the first and second paragraphs of this Article.

Examination of Applications

14. The examination of an application, which shall consist in a preliminary examination and a substantive examination, shall be carried out by the Patent Office in accordance with this Law and with the implementing regulations established by the Patent Office.

The applicant shall have the right, at his own initiative or when invited to do so by the official patent examiner, to intervene in person or through his patent attorney or authorized agent in order to settle questions raised in the course of the preliminary examination and the substantive examination.

During the examination of the application, the applicant shall have the right, at his own initiative or when invited to do so, to supplement, detail or correct elements of the application, on condition that the identity of the variety in respect of which the application was filed is not modified.

Additional elements submitted at the invitation of the Patent Office or of the State Testing Committee shall be filed within two months of receipt of the invitation to do so. The time limit for reply may be extended at the applicant's request, on condition that such request



reaches the Patent Office before the expiry of the time limit. In such case, the examination period shall be extended accordingly.

If the applicant has not complied with the prescribed time limit or has not replied to the examiner's invitation, the application shall be deemed withdrawn.

An application may be withdrawn at the applicant's request.

Applications taken into consideration by the Patent Office shall not be returned to the applicant.

Preliminary Examination of Applications

15. An application shall be subject to preliminary examination within one month of the date of its receipt at the Patent Office.

The preliminary examination of the application shall serve to ensure that the required documents are all present and to determine whether the claimed variety relates to subject matter eligible for protection under this Law.

Where necessary, the applicant may be invited to provide more information with regard to his application within two months following the date of receipt of the invitation. In such case, the preliminary examination period shall be extended accordingly.

Where it is found during the preliminary examination that the claimed variety does not relate to subject matter eligible for protection under this Law or where the applicant fails to provide the necessary additional information within the period laid down or does not submit the documents that were missing on the date of receipt of the application, the application shall not be taken into consideration and the applicant shall be notified accordingly.

If the application is taken into consideration, the applicant shall be notified of the priority date of the variety.

In the event of disagreement with the decision taken on the preliminary examination, the applicant shall have the right to appeal to the Examination Appeal Board of the Patent Office (hereinafter referred to as "the Appeal Board") against the decision within two months following the date on which he received notification thereof. A decision on the appeal shall be taken within one month following its receipt.

Publication of Applications

16. The Patent Office shall publish the particulars of every application that has successfully undergone preliminary examination on expiry of a period of six months after the date of its completion. The list of published particulars shall be determined by the Patent Office. Once the particulars of the application have been published, any person shall be entitled to inspect the application documents.



The particulars of the application shall not be published if, prior to expiry of the time limit for publication, the application has been withdrawn or the grant a plant patent has been decided or a final decision has been taken to refuse the application.

The creator of the variety shall be entitled to waive his right to be named as such in the publication of the particulars of the application if he is not the owner of the plant patent.

Provisional Legal Protection

17. A variety in respect of which an application has been filed shall, as from the date of publication of the application and up to the date of entry of the variety in the Register of Protected Varieties, enjoy provisional legal protection.

Any natural or legal person who uses the claimed variety during the period specified in the first paragraph of this Article shall be required to pay compensation to the owner of the plant patent, after the grant thereof, in an amount to be determined by agreement between the parties.

If the grant of a plant patent is finally refused, the provisional legal protection shall be deemed never to have existed.

During the period of the provisional legal protection of the claimed variety, the applicant shall enjoy the rights of the owner of the plant patent as referred to in Articles 6 and 7 of this Law.

Substantive Examination of Applications

18. The substantive examination of applications shall be carried out in order to verify the patentability of the variety and to determine its priority date if such has not been determined during the preliminary examination.

The substantive examination shall include the ascertaining of the novelty of the claimed variety, and also the assessment of the distinctness, uniformity and stability of the variety, and shall be performed within the time limits and on the basis of testing techniques to be established by the State Testing Committee.

In the course of the assessment of the distinctness, uniformity and stability of the variety the State Testing Committee may base its assessment on:

- growing or other tests with material of the variety carried out by the State Testing Committee;
- test results obtained under agreements concluded with organizations, institutions or individual persons of the Republic of Belarus, or with competent authorities for testing varieties in States with which the Republic of Belarus is party to bilateral or multilateral agreements for the protection of plant varieties;
- tests conducted by or on behalf of the applicant whether inside or outside the Republic of Belarus.



The State Testing Committee may require the applicant to furnish all the necessary information, documents or propagating material, or to invite the applicant to conduct certain tests by himself.

The Patent Office shall base the results of the substantive examination as to distinctness, uniformity and stability on the report and the opinion of the State Testing Committee and shall take the decision to grant a plant patent or to refuse the application.

The applicant shall have the right to take cognizance of the documents used in the examination and to inspect the testing procedure.

The applicant may request, within two months of the date of receipt of the decision on his application, a copy of the documents cited against it, and also full information on test results.

*Appeal Against Decisions on Applications and
Reinstatement of Rights Contingent on Time Limits*

19. In the event of disagreement with the decision taken as a result of the substantive examination, the applicant shall have the right, within three months of the date on which he received the decision or, if he has so requested, copies of the documents cited against his application or full information on test results, to appeal against that decision, setting out his arguments, to the Appeal Board. The appeal shall be considered within four months of the date on which it was received. In the case of a complex application, that period may be extended with the agreement of the applicant. The applicant shall have the right, either in person or through his agent, to take part in the consideration of his appeal.

The applicant may appeal to a court of justice against the ruling of the Appeal Board within a period of one year from the date on which the ruling was made.

An applicant who fails to comply with the time limits laid down in the fourth paragraph of Article 14, the third and sixth paragraphs of Article 15, the seventh paragraph of Article 18 and the first and second paragraphs of Article 19 of this Law may be reinstated in his rights by the Patent Office if he presents legitimate reasons and pays the prescribed fee.

The request for reinstatement of rights contingent on a time limit may be filed by the applicant no later than 12 months after expiry of the time limit concerned.

Publication of Particulars of Plant Patents

20. The Patent Office shall publish the particulars of the plant patent in the Official Bulletin of the Patent Office within six months as from the date on which the decision to grant a plant patent has been taken, and on condition that the applicant pays the prescribed fee for the grant of a plant patent. The particulars shall include the name of the plant patent owner, the name of the creator (or joint creators), where he has not declined to be mentioned as such, the effective date of the variety patent, the denomination of the protected variety and the description thereof.



The full list of the published particulars shall be determined by the Patent Office.

The plant patent owner may request the Patent Office to rectify unintentional errors in the plant patent if they do not extend the scope of legal protection.

Registration of Varieties and Grant of Plant Patents

21. At the same time as it publishes the particulars of the plant patent grant, the Patent Office shall register the variety in the Register of Protected Varieties and shall issue a plant patent to the person in whose name the plant patent has been sought. If a plant patent has been sought in the name of more than one person, one single plant patent shall be issued to them.

The layout of the Register of Protected Varieties and the list of particulars registered therein, and also the layout of the plant patent and the list of particulars contained therein shall be determined by the Patent Office.

Where the creator is not the plant patent owner, the Patent Office shall issue him a breeder's certificate attesting his status as creator.

Chapter IV Revocation and Lapse of Plant Patents

Opposition to the Plant Patent Grant

22. Throughout the term of its validity, a plant patent may be contested by any natural or legal person and invalidated under the following circumstances:

- where it is established that the criteria of patentability as to novelty and distinctness of the protected variety were not complied with at the time of the grant of the plant patent;
- where it is established that the criteria of patentability as to uniformity and stability of the protected variety were not complied with at the time of the grant of the plant patent, and the examination decision has been essentially based upon information and documents furnished by the applicant;
- the plant patent wrongly names the creator of the plant patent owner, unless the plant patent is transferred to the person so entitled.

No plant patent shall be invalidated for reasons other than those specified in the second, third and fourth subparagraphs of the first paragraph of this Article.

Opposition to the grant of a plant patent filed on the grounds specified in the second and third subparagraphs of the first paragraph of this Article shall be considered by the Appeal Board within six months of the date on which it was received. The opposition and the decision of the Appeal Board that lies therefrom shall be brought to the attention of the plant patent owner.



In the event of disagreement with the decision of the Appeal Board on the opposition to the grant of a plant patent taken on the grounds specified in the second and third subparagraphs of the first paragraph of this Article, any of the parties concerned may, within six months from the date of the decision, appeal to the Supreme Court of the Republic of Belarus.

Opposition to the grant of a plant patent filed on the grounds specified in the fourth subparagraph of the first paragraph of this Article shall be considered by the Appeal Board on the basis of the court's ruling on the authorship of the variety or the identification of the plant patent owner.

Premature Termination of Plant Patents

23. The validity of a plant patent shall terminate prematurely

- in the event of total invalidation of the plant patent under Article 22 of this Law;
- in the event of failure to pay the annual maintenance fee within the prescribed time limit;
- at the written request of the plant patent owner, filed with the Patent Office;
- if the conditions of patentability as to uniformity and stability of the protected variety are no longer fulfilled;
- if, after being invited to do so, the owner of the plant patent does not provide the Patent Office, within a prescribed period, with the information, documents or material deemed necessary for verifying the maintenance of the variety or, where the denomination of the protected variety is cancelled, propose another suitable denomination.

No plant patent shall be prematurely terminated for reasons other than those referred to above.

The Patent Office shall publish information on prematurely terminated plant patents in its Official Bulletin.

Chapter V Use of Protected Varieties

Use of Protected Varieties

24. Where two or more persons are owners of the same plant patent, their relations with regard to the use of the variety under the plant patent shall be determined by agreement between them. In the absence of agreement, each of the owners may use the variety at his discretion, except with respect to the licensing or assignment of the plant patent.



Any natural or legal person wishing to use the protected variety in the territory of the Republic of Belarus shall be required to conclude a licensing agreement with the plant patent owner.

Licensing Agreements

25. By means of a licensing agreement, the plant patent owner (licensor) grants, within the limits specified in the agreement, the right to use a protected variety to another person (licensee) and the latter undertakes to pay the licensor the agreed amounts and perform such acts as are provided for in the exclusive or non-exclusive licensing agreement.

An exclusive licensing agreement grants to the licensee the exclusive right to use a protected variety within the territory and the time limits laid down in the agreement. By means of an exclusive licensing agreement, the licensee may be authorized to grant sublicenses and to bring an action against any infringer of the plant patent. The right of the licensor to use the plant patent by himself shall be specifically laid down in the exclusive licensing agreement.

A non-exclusive license confers on the licensee the right to use the protected variety and to grant licenses to third parties. A non-exclusive license allows the licensor to maintain all the rights deriving from the plant patent or to perform all the acts specified in Articles 6 and 7 of this Law, and to grant as many non-exclusive licenses as may be possible in respect of all or any of the acts referred to in the said Articles.

Open Licensing

26. The owner of a plant patent may communicate to the Patent Office, for official publication, a declaration in which he undertakes to grant to any person the right to use the protected variety on the basis of a non-exclusive license. In such cases, the plant patent maintenance fee shall be reduced by 50% as from the year following the year of publication of the declaration.

Any person who announces his intention to use the protected variety shall be required to conclude with the plant patent owner a licensing agreement.

Compulsory Licensing

27. Where the owner of a plant patent has failed to use or insufficiently used a variety in the territory of the Republic of Belarus within three years following the date of registration of the variety in the Register of Protected Varieties, any person who wishes to use the protected variety and is in a position to do so, but with whom the owner of the plant patent has refused to conclude a licensing agreement, may apply to the courts for the grant of a non-exclusive compulsory license, in which the limits on the use of the variety, the amount, dates and procedure for payment of royalties, as also the amount of propagating material of the protected variety shall be laid down.



The compulsory license shall not be granted if the owner of the plant patent is able to prove that the failure to use or the insufficient use of the variety is justified by legitimate reasons.

The compulsory license may be terminated by the court within the whole period of its duration where the licensee fails to fulfil the conditions under which that license has been granted to him.

Infringement of the Plant Patent

28. Any natural or legal person using a protected variety in a manner contrary to Articles 6 and 7 of this Law shall be deemed to be infringing the plant patent.

At the request of the owner of a plant patent, it shall be ordered that infringement of the plant patent cease and that the owner of the plant patent be compensated by the infringer for damages incurred, in accordance with the legislation of the Republic of Belarus.

The exclusive licensee may also bring an action against the infringer of the plant patent, except where the licensing agreement provides otherwise.

Maintenance of Characteristics of the Protected Variety

29. The owner of a plant patent shall, throughout the period of the validity of the plant patent, maintain the protected variety in a condition which ensures that the variety continues to show the characteristics defined for the protected variety when the plant patent was granted.

The owner of a plant patent shall provide the State Testing Committee with propagating material of the protected variety requested by it in order to conduct check tests as to distinctness, uniformity and stability, including facilities for the inspection of the measures taken for the maintenance of the variety.

Chapter VI Institutional Basis for the Legal Protection of Varieties and Defense of the Rights of Creators and of Plant Patent Owners

The Patent Office

30. The Patent Office shall, in accordance with this Law, carry out an integrated policy in the field of legal protection of varieties. It shall receive applications for the grant of plant patents, undertake their examination, grant plant patents or refuse applications, register varieties, issue plant patents, publish official information, publish methodological recommendations on how to apply this Law.



The State Testing Committee

31. The State Testing Committee shall examine whether the claimed variety is new. It shall assess the distinctness, uniformity and stability of varieties in respect of which applications have been filed, prepare reports and give opinions to the Patent Office on the distinctness, uniformity and stability of varieties, and perform such other functions as specified in the Regulations for Testing Varieties as to Patentability to be enacted by the Council of Ministers of the Republic of Belarus.

*Bodies Responsible for Hearing Disputes Arising from
Infringement of Plant Patent Legislation*

32. Disputes arising from infringement of the legislation on plant patents shall be heard by the district (or municipal) courts, the Municipal Tribunal of Minsk, the regional courts, the Supreme Court of the Republic of Belarus and by the commercial courts.

*Competence of the Supreme Court of the Republic of Belarus Responsible for Hearing
Disputes Arising from Infringement of Plant Patent Legislation*

33. The Supreme Court of the Republic of shall, in particular, hear disputes concerning:

- the authorship of a variety;
- the identification of the plant patent owner;
- infringement of the exclusive right to use a protected variety and of the other economic rights of the plant patent owner;
- the conclusion and execution of licensing agreements for the use of a protected variety;
- the payment of compensations under this Law.

Liability for Infringement of Creator's (Breeder's) Rights

34. Any person who usurps authorship, acquires the status of joint creator by coercion or without authorization of the creator discloses the subject matter of an application shall be liable under the applicable legislation.

Liability for Infringement of Plant Patent Legislation

35. Any person who, in the pursuance of his duties, shows negligence or bad faith in the drawing up of an application, in the use of a variety or in the payment of remuneration to creators shall be liable under the applicable legislation.

An official plant patent examiner shall be liable to disciplinary sanctions if he discloses the subject matter of an application prior to its publication, unless the nature of the disclosure makes him liable to criminal sanctions under the applicable legislation.



Officials or other employees of the Patent Office and of the State Testing Committee may not, for the duration of their employment and for three years following the termination of their employment, either file applications or directly or indirectly acquire rights in a plant patent or draw up applications on behalf of any other person.

Inheritance of Rights

36. The right to file an application and to obtain a plant patent, the exclusive right of the plant patent owner to use the variety, and also the right to remuneration and the income deriving from the use of the variety shall be transferable by succession.

Chapter VII Final Provisions

Fees

37. Fees and charges shall be payable for the performance of any legal act relating to plant patents. The list of acts for which fees are payable, the amounts of the fees and the time limits for paying them, the conditions governing exemption from fees, reduction or reimbursement of fees shall be determined by the Council of Ministers of the Republic of Belarus.

Fees may be paid by the applicant, the owner of the plant patent, or any other interested natural or legal person.

Right to Protect Varieties Abroad

38. The creator (breeder) or his successor in title shall be entitled to file applications and seek plant patents abroad.

The creator (breeder) or his successor in title may choose any State, with which the Republic of Belarus is bound by bilateral or international multilateral agreements for the protection of plant varieties, at whose competent authority to file his first application for the protection of his variety.

The creator or his successor in title may file subsequent applications to the competent authorities of other States parties to international multilateral agreements for the protection of plant varieties without waiting for the grant to him of the plant patent by the competent authority of the State with which the first application was filed.

The Patent Office shall not refuse to grant a plant patent to the applicant who is a national of any State with which the Republic of Belarus is bound by bilateral or international multilateral agreements for the protection of plant varieties and shall not limit the term of that plant patent on the grounds that protection for the same variety has not been applied for, has been refused or has expired in any other such State.



Rights of Foreign Natural and Legal Persons and of Stateless Persons

39. Foreign natural and legal persons and stateless persons shall enjoy the rights provided by this Law and other legislative texts on the protection of plant varieties of the Republic of Belarus on the same footing as natural and legal persons of the Republic of Belarus, except as otherwise provided in this Law or in other laws of the Republic of Belarus.

Rights of Enterprises Established in the Republic of Belarus with Foreign Capital

40. The provisions of this Law shall apply to enterprises established in the Republic of Belarus with foreign capital.

International Treaties

41. Where an international treaty to which the Republic of Belarus is party contains provisions that differ from those laid down in this Law, the provisions of the international treaty shall prevail.

Effects in Belarus of Author's Certificates, Certificates or Applications under the Regulations for the Legal Protection of New Varieties of Plants in the Soviet Union

42. The effects of author's certificates or certificates for new plant varieties granted under the Regulations for the Legal Protection of New Varieties of Plants in the Soviet Union shall be valid in the territory of the Republic of Belarus in accordance with the provisions of the applicable legislation of the Soviet Union before this Law has entered into force.

Authors and applicants shall have the right to file joint requests for the grant of plant patents of the Republic of Belarus with respect to varieties in relation to which a 25-year term from the filing date of the application has not yet expired. The requests shall be filed with the Patent Office.

Applicants wishing to maintain the effects of their applications for the grant of author's certificates for new varieties filed before this Law has entered into force, for which tests have been conducted by the State Committee for the Testing of Agricultural Crops to the Ministry of Agriculture and Food Economy of the Republic of Belarus and decisions have been taken with a view to their conditioning, shall have the right, jointly with authors, to request that they be granted plant patents of the Republic of Belarus if the said varieties fulfil the criteria of patentability under this Law.

The request shall be filed with the Patent Office within a period of 12 months following the date of entry into force of this Law.

The applications in respect of which the above-mentioned requests have been filed within the specified time limits shall be processed according to the provisions of this Law, except for the requirements of novelty under Article 2 thereof.



The plant patents of the Republic of Belarus granted on the requests for revalidation of the authors' certificates of the Soviet Union under decisions on conditioning or on the basis of the applications the processing of which has not been completed shall produce their effects from the date of their grant up to the expiry of a 25-year term from the filing date of the application.

Entry into Force of this Law

43. This Law shall enter into force on July 1, 1995.

Until the legislation of the Republic of Belarus has been adapted to this Law, the hitherto applicable legislation shall continue to apply where it is not contrary to this Law.

This Law shall govern the legal relations that arise after the entry into force of this Law.

Institutional and Legal Procedures for Enacting this Law

44. Prior to the entry into force of the Law of the Republic of Belarus "On Patents for Plant Varieties", the Cabinet of Ministers of the Republic of Belarus shall:

- establish the List of the Varieties to Which the Law of the Republic of Belarus "On Patents for Plant Varieties" is Applied;
- secure the adoption of normative texts within its competence as is specified in the Law of the Republic of Belarus "On Patents for Plant Varieties" and bring its earlier decisions into compliance with the said Law;
- draw up and submit proposals for the approval by the Supreme Soviet of the Republic of Belarus concerning administrative and criminal sanctions against violations of the Law of the Republic of Belarus "On Patents for Plant Varieties".