

LEGISLATION

BELARUS

Law of the Republic of Belarus No. 3725-XII of April 13, 1995, on Patents for Plant Varieties, as amended in 2014

Amendments and supplements:

Law of the Republic of Belarus No. 48-Z of July 16, 2001

Law of the Republic of Belarus No. 291-Z of June 14, 2004

Law of the Republic of Belarus No. 211-Z of May 7, 2007

Law of the Republic of Belarus No. 109-Z of January 4, 2010

Law of the Republic of Belarus No. 266-Z of May 17, 2011

Law of the Republic of Belarus No. 108-Z of January 4, 2014

CHAPTER I

GENERAL PROVISIONS

Article 1. Basic terms used in this Law, and definitions thereof

For the purposes of this Law, the following basic terms and definitions shall be used:

“breeder (co-breeders) of a plant variety” means a legal person (legal persons) whose creative work resulted in the breeding or identification and improvement of the plant variety;

“botanical taxon” means a specific group of plants related to each other by common characteristics and properties;

“applicant” means a person who has the right to obtain a patent pursuant to this Law;

“official description of the variety” means a document containing a description of the essential features of a plant variety, as defined by the public institution, “State Inspectorate for Testing and Protecting Plant Varieties” (hereinafter referred to as the “State Inspectorate”), and in accordance with which a patent for a plant variety has been granted;

“Official Gazette” means the official publication of the public institution, “The *National* Center of Intellectual Property” (hereinafter referred to as the “patent authority”), published on paper and electronic carriers, as well as posted on the patent authority’s official website on the Internet;

“patent owner” means a person who has been issued with a patent for a plant variety;

“plant material” means whole plants or generative and vegetative parts thereof, not used for plant propagation;

“seed” means actual plant seeds, seedlings, fruits, parts of complex fruits, seedheads, bulbs, tubers, meristem material, and other generative and vegetative parts of the plant intended for plant propagation;

“service plant variety” means a plant variety bred or identified and improved as a result of activity related to the field of activity of an employer, provided that the activity that led to the breeding or identification and improvement of the plant variety related to the duties of the employee (employees), or the plant variety was bred or identified and improved by the employee (employees) in the performance of tasks assigned by the employer;

“plant variety” means a plant grouping belonging to the lowest of the known botanical taxa, which may be defined by the extent of characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the degree of expression of at least one of the said characteristics, and may be considered as a unified whole in terms of its suitability for reproduction without alteration of whole plants of this grouping;

“essential characteristics” means the plant characteristics which enable the characteristic and distinctive features of a plant variety to be determined (morphological, physiological, etc.), and which in all cases may be described precisely.

Article 2. Scope of this Law

This Law shall govern relations arising out of the breeding, or identification and improvement, legal protection and use of plant varieties.

Article 3. Plant variety patent legislation

1. Plant variety patent legislation shall be based on the Constitution of the Republic of Belarus, and shall consist of the Civil Code of the Republic of Belarus, this Law, and other legislative acts, as well as international treaties to which the Republic of Belarus is party.

2. If an international treaty to which the Republic of Belarus is party has established norms other than those contained in this Law, then the norms of the international treaty shall be applied.

CHAPTER II

OBTAINING A PATENT FOR A PLANT VARIETY

Article 4. Conditions of patentability of a plant variety

1. A plant variety shall be granted legal protection where it is new, distinct, uniform, and stable.

2. A plant variety shall be deemed to be new if at the time of filing of the application for the plant variety patent (hereinafter referred to as “the application”), plant seeds or plant material of the plant variety in question has not been sold or otherwise disposed of by the breeder (breeders) of the plant variety, the employer thereof, the successor in title of the said persons, or with their consent by other persons for the purposes of commercial exploitation:

on the territory of the Republic of Belarus, earlier than one year before the filing date of the patent application;

on the territory of any other State, earlier than four years before the filing date of the application, and in the case of trees and vines, earlier than six years before the filing date of the application.

3. The plant variety shall be deemed to be distinct if it is clearly distinguishable by the presence of at least one of the essential features from any other plant variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the grant of legal protection to another plant variety, or for the entry of another variety into the official register of plant varieties in any country shall render said plant variety a matter of common knowledge as of the filing date of the application provided that, as a result of the application, protection had been granted or the variety had been entered in the register.

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

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

Article 5. Plant variety patents

1. The right in a plant variety shall be protected by the State and shall be certified by a plant variety patent (hereinafter referred to as “the patent”).

2. The patent shall certify the authorship and priority of the plant variety, and the patent owner's exclusive right in the plant variety.

3. The patent shall be valid for 25 years from the registration date of the plant variety in the State Register of Protected Plant Varieties of the Republic of Belarus (hereinafter referred to as "the State Register").

4. The scope of the legal protection conferred by the patent shall be determined by the sum of essential characteristics of the plant variety, as specified in the official description of the plant variety.

5. The right to obtain a patent shall belong to:

the breeder (co-breeders) of the plant variety;

the natural person and (or) legal entity employing the breeder (co-breeders) of a service plant variety in cases provided for under paragraph 6 of this Article;

the natural person or legal entity to whom the right to obtain a patent has been transferred under an agreement by the persons specified in sub-paragraphs 2-3 of this paragraph, up until the plant variety's registration date;

the successor in title of the persons specified in sub-paragraphs 2-4 of this paragraph.

6. The right to obtain a patent for a service plant variety shall belong to the employer unless otherwise provided for by the contract between said employer and the employee who bred the service plant variety.

The employee who bred the service plant variety shall notify the employer of such in writing. Where the employer, within three months of having been notified by the employee of the breeding of the service plant variety, has not filed an application with the patent authority, or has failed to notify the employee that the right to obtain a patent has been contractually transferred to another person, the right to obtain a patent shall be transferred to the employee who bred the service plant variety. The employer shall in that case be entitled to use the service plant variety under the conditions specified in the license agreement.

Where the employer has obtained a patent for a service plant variety, or has decided to transfer contractually the right to obtain a patent to another person, or has failed to obtain a patent relating to the application filed for reasons beyond his control, the employee who bred the service plant variety shall be entitled to remuneration. The amount of remuneration paid shall be determined by agreement between the employee and employer. The amount of remuneration may be no less than the amount prescribed by the Council of Ministers of the Republic of Belarus.

In the absence of an agreement between the employee who bred the service plant variety, and the employer regarding the amount of remuneration, the employer shall pay an amount of remuneration not less than the amount prescribed by the Council of Ministers of the Republic of Belarus.

In the case of disagreement between the employee who bred the service plant variety, and the employer regarding remuneration, the dispute shall be settled in court.

The procedure and conditions of payment of remuneration shall be determined by the Council of Ministers of the Republic of Belarus.

The employer shall be liable for late payment of remuneration in accordance with legislation.

Termination of an employment contract shall not affect the rights and obligations of the employee and employer arising in connection with the breeding of a service plant variety.

The provisions of this paragraph shall apply both to an employee who bred the service plant variety independently, and to several employees who bred the plant variety.

Other relations arising in connection with the breeding of a service plant variety shall be governed by legislation.

Article 6. Filing an application

1. An application shall be filed with the patent authority by the applicant independently, or via a patent attorney registered with the patent authority.

2. The requirements for registering the application, as well as the form of documents specified in Article 7(1), and the second part of Article 7(2) of this Law, shall be prescribed by the State Committee for Science and Technology of the Republic of Belarus.

Article 7. Application

1. An application must relate to one plant variety and include the following documents:

an application for the grant of the patent, detailing surname, given name, patronymic (where applicable), breeder (co-breeders) of the plant variety, and person (persons) in whose name the patent is sought, as well as their place of residence (location), denomination of the plant variety and botanical taxon thereof; profile of the plant variety with a description of the essential characteristics thereof.

2. The application must be accompanied by proof of payment of patent fees, and (or) proof of beneficial payment terms.

Where the application is filed through a patent attorney, the original power of attorney shall accompany the application, or a copy thereof.

3. The date of filing the application with the patent authority shall be the date of receipt of the documents specified in paragraph 1 of this Article, and where the documents are not submitted simultaneously, the date of receipt of the last of these.

Article 8. Plant variety denominations

1. The plant variety shall be designated by a denomination indicating the botanical taxon thereof.

2. Denomination of the plant variety must be brief, enable the plant variety to be identified, differ from denominations of existing plant varieties of the same or closely related botanical taxon, should not be misleading in relation to the characteristics, origin or significance of the plant variety, or in relation to the identity of the breeder (co-breeders) of the plant variety, or of the patent owner, and must also comply with other requirements prescribed by the Council of Ministers of the Republic of Belarus.

3. A plant variety denomination submitted to the patent authority must be the same as that submitted to a foreign State with which the Republic of Belarus has concluded a treaty on the protection of plant varieties.

4. A plant variety denomination proposed in the application by the breeder (co-breeders) of the plant variety, or, with his (their) consent, by another person entitled to obtain a patent, shall be verified by the patent authority during the preliminary examination of the application for compliance with the requirements prescribed in paragraphs 1-3 of this Article and other legislative acts.

Where the plant variety denomination fails to meet the requirements prescribed in paragraphs 1-3 of this Article and other legislative acts, the patent authority shall request the applicant to submit another denomination within two months of receiving the request.

Where the applicant fails to submit another denomination within the specified timeframe, the patent authority shall decide not to grant the patent, and shall notify the applicant of such within five days.

5. Where the plant variety is offered for sale or otherwise introduced into civil circulation, the registered denomination of the plant variety may be combined with a trademark, service mark, trade name, other means of individualization of participants in civil circulation, goods, works or services, provided that, in so combining, the plant variety denomination is easily recognizable, and rights in the trademarks, service marks, trade names, and other means of individualization of participants in civil circulation, goods, works or services are not infringed.

6. A person who offers for sale, or otherwise introduces into civil circulation, plant seeds, shall use the registered plant variety denomination on the territory of the Republic of Belarus and foreign States with which the Republic of Belarus has concluded international treaties on plant variety protection.

7. Where, due to previously acquired rights in trademarks, service marks, trade names, or other means of individualization of participants in civil circulation, goods, works or services, a person is prohibited from using a certain plant variety denomination, but is obliged to use said denomination under paragraph 6 of this Article, the patent authority shall request the patent owner to submit another denomination for the plant variety in question within two months of receipt of the request. The other plant variety denomination must be agreed with the breeder (co-breeders) of the plant variety.

Where the patent owner fails to submit another denomination within the specified time limit, the patent authority shall decide to terminate the patent.

8. The plant variety denomination shall be registered in the State Register at the same time as the plant variety is registered therein.

9. The procedure for confirming the consent of the breeder (co-breeders) of the plant variety to the plant variety denomination in accordance with paragraphs 4 and 7 of this Article shall be prescribed by the State Committee for Science and Technology of the Republic of Belarus.

Article 9. Priority of a plant variety

1. Priority of a plant variety shall be established by the date of filing of the application with the patent authority.

2. Priority of a plant variety may be established by the date of filing of the first application in a State party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961 (first application), if the application was filed with the patent authority (subsequent application) within 12 months of the date of filing of the first application (Convention priority of the plant variety).

An applicant wishing to exercise the right of Convention priority of the plant variety must indicate as such when submitting a subsequent application with the patent authority. A copy of the first application, certified as received by the authority, and a translation thereof into Belarusian or Russian, as well as samples or other evidence that the plant variety in both applications is one and the same, shall be submitted within three months of the filing date of the subsequent application.

Convention priority of the plant variety shall be established during the preliminary or patent examination of the subsequent application, depending upon the date of receipt by the patent authority of the documents specified in the second part of this paragraph.

3. Where Convention priority of the plant variety is requested, the applicant shall be granted the opportunity within three years of the filing of the first application, to provide the patent authority with which the subsequent application was filed, with the necessary documents and other materials required for the purposes of a patent examination. Other application materials refer in particular to materials containing the results of testing the plant variety, as specified in the fourth sub-paragraph of Article 13(3) of this Law, and a translation thereof into Belarusian or Russian.

If the first application is rejected or withdrawn, the applicant shall be granted the opportunity, within two years of the filing of the subsequent application with the patent authority, to provide the necessary documents and other materials required for the purposes of a patent examination.

Article 10. Examination of an application

1. Examination of an application shall be carried out by the patent authority in accordance with this Law, as well as other legislative acts relevant to a State inspection thereof. The procedure for examining an application and taking decisions based on the results thereof shall be determined by the Council of Ministers of the Republic of Belarus.

Examination of an application shall include a preliminary and patent examination.

2. During examination of the application, the applicant shall be entitled at his own initiative to make amendments to documents or other application materials, or, at the request of the patent authority or the State Inspectorate, submit correctly completed documents provided that the essential characteristics of the plant variety for which the application was filed, are retained.

The applicant shall inform the patent authority of any amendments made to the information in the application.

3. An applicant may withdraw an application prior to the date of registration of the plant variety in the State Register.

Article 11. Preliminary examination of an application

1. Preliminary examination of an application shall be carried out within three months of receipt by the patent authority.

2. During preliminary examination of an application, the documents included in the application and compliance with prescribed requirements shall be verified, priority of the plant variety shall be established, and the plant variety denomination's compliance with the requirements of Article 8(1)-(3) of this Law and other legislative acts shall likewise be verified.

3. Where the submitted documents, or information contained therein, fail to meet the prescribed requirements, the patent authority shall request the applicant to submit correctly completed documents within two months of the applicant receiving the request. Where, prior to the expiry of the two-month time limit, the patent authority receives a request from the applicant to extend the time limit for the submission of correctly completed documents, said time limit may be extended, but by no longer than three months. In this case, the time limit for conducting the preliminary examination of the application shall likewise be extended.

Where the applicant fails within the prescribed time limit to submit correctly completed documents, or a request to extend the prescribed time limit, the patent authority shall refuse to grant a patent, and shall notify the applicant to that effect within five days.

4. Where an application includes the documents specified in Article 7(1) of this Law, and is accompanied by the documents specified in Article 7(2) of this Law, which meet the prescribed requirements, the patent authority shall accept the application for examination.

5. The patent authority shall notify the applicant in writing within five days of its decision based on the results of the preliminary examination of the application, as well as the priority of the plant variety.

Article 12. Publication of application details

1. Details of an application which has undergone a preliminary examination, based on the results of which a decision has been taken to accept the application for examination, shall be published by the patent authority within three months of the decision being taken in the Official Gazette. The details to be published shall be determined by the patent authority.

2. Application details shall not be published where, prior to the expiry of the time limit for publication, the application in question is withdrawn, or a patent has been granted and the plant variety has been registered in the State Register, or patent grant has been refused, and all avenues of appeal have been exhausted.

3. The breeder (co-breeders) of the plant variety shall be entitled to decline in writing to be cited as such in the published application details if he (they) is (are) not the applicant(s).

4. Following publication of the application details, any person shall be entitled to familiarize themselves with the materials of said application at the patent authority.

Article 13. Patent examination of an application

1. Patent examination of an application shall be carried out following completion of the preliminary examination, based on the results of which it was decided to accept the application for examination.

2. During the patent examination, novelty of the plant variety shall be verified, the plant variety shall be assessed in terms of satisfying the conditions of distinctness, uniformity, and stability (hereinafter referred to as "the assessment"), it shall be determined whether the plant variety belongs to the botanical taxon specified by the applicant in the application, and Convention priority of the plant variety shall also be established, unless it was established while conducting the preliminary examination of the application. The assessment shall be carried out by the State Inspectorate in accordance with its own approved methods.

Following the assessment, the State Inspectorate shall compile a report. Where the plant variety satisfies the conditions of distinctness, uniformity, and stability, the report shall include an official description of the plant variety. The form of the report shall be approved by the Ministry of Agriculture and Food of the Republic of Belarus, in agreement with the State Committee for Science and Technology of the Republic of Belarus.

3. In conducting the assessment, the State inspection may be based on the results of:

field or other tests of the plant variety carried out by the State Inspectorate in relation to genera and species included in the list approved by the Ministry of Agriculture and Food of the Republic of Belarus. In order to carry out testing, the State Inspectorate shall request plant seeds from the applicant;

tests carried out under agreements with legal entities and (or) natural persons of the Republic of Belarus, or with competent organizations for the testing of plant varieties of foreign States with which the Republic of Belarus has concluded international treaties on protection of plant varieties;

tests carried out by the applicant, or at his behest, by another person in the Republic of Belarus or overseas.

4. Where the plant variety relates to a genus or species not included in the list approved by the Ministry of Agriculture and Food of the Republic of Belarus, the applicant shall submit to the State Inspectorate for assessment the results of the tests specified in sub-paragraph 4 of paragraph 3 of this Article, and a translation thereof into Belarusian or Russian.

5. During patent examination of the application, where the information included in the application documents and other materials fails to meet the prescribed requirements, the patent authority shall be entitled to request from the applicant correctly completed application documents and materials, which must be submitted within two months of the applicant receiving the request. Where, prior to the expiry of the two-month time limit, the patent authority receives a request from the applicant to extend the time

limit for the submission of correctly completed application documents and other materials, the time limit in question may be extended, but by no longer than three months.

Where the applicant fails within the prescribed time limit to submit correctly completed application documents and other materials, or a request to extend the prescribed time limit, the patent authority shall refuse to grant a patent, and shall notify the applicant of such within five days.

6. An applicant shall be entitled to familiarize himself with the materials used in conducting the patent examination of the application, as well as observe the tests.

7. The patent authority shall decide to grant or refuse to grant a patent based on the results of the patent examination of the application, including the report.

8. A decision taken based on the results of the patent examination of the application shall be sent by the patent authority to the applicant within five days.

9. Copies of the materials specified in the decision taken based on the results of the patent examination of the application may be requested by the applicant within two months of receiving the decision by lodging a request with the patent authority.

The patent authority shall submit copies of the materials specified in the decision taken based on the results of the patent examination of the application, within one month.

Article 14. Provisional legal protection of a plant variety

1. The plant variety which is the subject matter of the application shall be granted provisional legal protection from the publication date of application details until the registration date of the plant variety in the State Register.

2. The patent owner shall be entitled to compensation for losses incurred during the period of provisional legal protection as a result of any action specified in Article 22(5) of this Law, which is carried out without his permission, as if the plant variety had been granted legal protection.

3. Provisional legal protection shall be deemed not to have accrued where the application has been withdrawn, or a decision has been taken to refuse to grant a patent, and all avenues of appeal have been exhausted.

Article 15. Appealing the patent authority's decisions based on the results of examination of an application

1. Where the patent authority's decision based on the results of the preliminary or patent examination of an application is disputed, the applicant shall be entitled to lodge a reasonable appeal with the Appeals Board of the patent authority, and (or) a court.

2. An appeal may be lodged by the applicant within one year of receiving the patent authority's decision based on the results of examination of the application.

Where the applicant requests copies of materials pursuant to Article 13(9) of this Law, the time limit for lodging the appeal shall be calculated from the date of receipt of the copies in question.

3. The Appeals Board of the patent authority shall examine the appeal within one month of the date of receipt.

4. The decision of the Appeals Board of the patent authority may be challenged by the applicant in court within six months of the date of receipt.

Article 16. Reinstatement of a missed deadline

1. The time limits specified in Article 8(4), Article 11(3), Article 13(5) and (9), and Article 15(2) of this Law, which have been missed by the applicant, may, at his request, be reinstated by the patent authority where there are extenuating circumstances for missing the deadline.

2. An application to reinstate a missed deadline may be lodged by the applicant with the patent authority within one year of expiry of the missed deadline in question.

3. Upon reinstatement at the applicant's request of time limits stipulated in Article 8(4), Article 11(3), and Article 13(5) of this Law, the patent authority shall cancel a previous decision to refuse to grant a patent.

Article 17. Registering a plant variety. Entering information into the State Register and amending information

1. Based on the decision to grant a patent, and on condition of proof of payment of patent fees, and (or) proof of beneficial payment terms, the patent authority shall register the plant variety in the State Register within ten working days. Information relating to the registration of the plant variety (patent information) shall be entered into the State Register, as well as amendments to said information. The procedure for maintaining the State Register shall be prescribed by the Council of Ministers of the Republic of Belarus. The list of information on the plant variety to be entered into the State Register shall be determined by the patent authority.
2. Where no proof of payment of patent fees, and (or) proof of beneficial payment terms are provided, the plant variety shall not be registered in the State Register, a patent shall not be granted, the breeder shall not be certified, and patent grant in respect of the application, refused.
3. Where an amendment is entered into the State Register, along with an application to enter an amendment, the patent owner shall send the patent authority documents constituting the grounds for the amendment, proof of payment of patent fees, and (or) proof of beneficial payment terms.
4. After notifying the patent owner, the patent authority shall rectify errors permitted by the patent authority in registering the plant variety in the State Register, for which the patent owner shall not be liable to pay a patent fee.

Article 18. Publication of patent information

1. The patent authority shall publish information on the patent in the Official Gazette within three months of registering the plant variety in the State Register. The details to be published shall be determined by the patent authority.
2. Amendments to patent information entered into the State Register shall also be published in the Official Gazette.

Article 19. Patent grant

1. The patent authority shall grant a patent to the patent owner within five days of publication of patent information in the Official Gazette.
2. Where the application specifies more than one person as being entitled to obtain a patent, a single patent shall be granted, specifying all patent owners.

Article 20. Patent fees

1. In accordance with tax legislation, patent fees shall be levied for filing an application, conducting a patent examination of the application, registering a plant variety in the State Register, granting a patent, certifying a breeder, and maintaining the patent, as well as for performing other legally significant acts connected with plant variety patents.
2. Where benefits are enjoyed in relation to patent fees stipulated under tax legislation, the applicant (patent owner) shall submit proof of entitlement to said benefits to the patent authority.

CHAPTER III

RIGHTS IN A PLANT VARIETY. LIMITATION OF THE EXCLUSIVE RIGHT IN A PLANT VARIETY

Article 21. Rights of the breeder (co-breeders) of a plant variety

1. Moral and proprietary rights in relation to a plant variety belong to the breeder (co-breeders) thereof.
2. The right of authorship (the right to be recognized as the breeder (co-breeders) of a plant variety) shall be a moral right and shall be protected indefinitely. The right of authorship shall be inalienable and non-transferable.

The patent authority shall grant breeder certification to the breeder (co-breeders) of a plant variety in accordance with due legal process.

3. The breeder (co-breeders) of a plant variety shall be entitled to specify its denomination, which must meet the requirements prescribed in Article 8(1)-(3) of this Law and other legislative acts.
4. Where two or more natural persons participated in the breeding or identification and improvement of a plant variety, they shall be recognized as co-breeders of the plant variety. The procedure for exercising

the rights belonging to the co-breeders of the plant variety shall be established by agreement between the parties.

Natural persons who have made no personal, creative contribution to breeding, or identifying and improving the plant variety, but who merely assisted the breeder of the plant variety technically, organizationally or materially, or who merely facilitated the securing of rights in the plant variety, shall not be considered co-breeders of the plant variety.

Article 22. Patent owners' rights and obligations

1. The exclusive right in a plant variety shall belong to the patent owner.
2. The exclusive right in a plant variety shall include the right to use the plant variety at one's discretion, and to permit or prohibit use of the plant variety by other persons.
3. The exclusive right in a plant variety shall be exercised by the patent owner during the patent's term of validity, commencing as of the plant variety's registration date in the State Register.
4. The patent owner may transfer the exclusive right in a plant variety under a contract of assignment of the exclusive right in a plant variety, grant permission to use the plant variety under a license agreement, or dispose of the exclusive right in the plant variety by any other means.
5. For the purposes of this Law, the following acts in relation to plant seeds shall be considered use of a plant variety:

- cultivation or reproduction (propagation);
- conditioning for the purpose of propagation;
- offering for sale;
- selling or other introduction into civil circulation;
- exporting;
- importing;

storing for any of the purposes mentioned in sub-paragraphs 2-7 of this section.

Acts specified in the first part of this paragraph performed in relation to plant material obtained by using plant seeds without the patent owner's consent, with the exception of cases provided for under Article 23 of this Law, shall likewise be deemed to constitute use of a plant variety.

6. The patent owner's permission shall be required to use plant varieties which:
 - are essentially derived from another plant variety which has been granted legal protection, unless the protected variety itself is an essentially derived plant variety;
 - are not obviously distinguishable from another plant variety which has been granted legal protection pursuant to Article 4(3) of this Law;
 - require the use of another plant variety, which has been granted legal protection, more than once in order to cultivate plant seeds.

A plant variety shall be considered a variety essentially derived from another plant variety where it:

- inherits the basic characteristics of the initial plant variety, or a plant variety which has itself inherited the basic characteristics of the initial variety, preserving in so doing the basic characteristics resulting from the genotype or a combination of genotypes of the initial plant variety;
- is distinguishable from the initial plant variety in accordance with Article 4(3) of this Law, with the exception of differences caused in particular by the use of backcrossing and mutant-selection methods, or genetic engineering methods.

7. Where several persons are the patent owners, the procedure for disposal of the exclusive right in a plant variety shall be established by agreement between the parties.

Each of the patent owners shall be entitled to use the plant variety at his discretion.

8. A patent owner must exercise his exclusive right in a plant variety without prejudicing the rights of other persons.

9. The patent owner must maintain the plant variety for the patent term so as to safeguard the integrity of the essential characteristics as specified in the official description of the plant variety as at the date of the receipt of the patent.

At the request of the State Inspectorate, the patent owner shall submit information, documents or materials in order to conduct routine testing of the plant variety for compliance with the conditions of distinctness, uniformity, and stability, and provide the option to conduct the testing in question locally. The time limits and procedure for submitting the request shall be prescribed by the State Inspectorate.

Article 23. Acts not considered an infringement of the exclusive right in a plant variety

Acts performed without the patent owner's consent shall not be considered an infringement of the exclusive right in a plant variety where the acts in question are:

for personal purposes (for personal use, without directly or indirectly pursuing commercial purposes);

for experimental purposes;

for the purposes of breeding other plant varieties using as initial material a plant variety which has been granted legal protection, as well as acts relating to plant varieties so bred, as provided for under Article 22(5) of this Law, with the exception of cases where the provisions of Article 22(6) of this Law shall apply.

Article 24. Exhaustion of the exclusive right in a plant variety

1. A patent owner may not exercise his exclusive right in a plant variety in relation to plant varieties subject to the provisions of Article 22(6) of this Law which have been sold or otherwise introduced into civil circulation by the patent owner with his consent on the territory of Belarus.

2. The provisions of paragraph 1 of this Article shall not apply where sale of the plant variety or introduction into civil circulation thereof by other means is intended for subsequent propagation of the plant variety, or is connected with export of the plant variety, enabling propagation of the plant variety in a country where varieties of the botanical taxon in question lack protection, with the exception of importing into said country plant seeds or plant material, and any product obtained directly from the plant material for the purpose of consumption.

CHAPTER IV

PATENT INVALIDATION. PATENT LAPSE

Article 25. Patent invalidation

1. A patent may be deemed invalid at any time during its entire term where:

it is established that as of the plant variety's registration date in the State Register, the conditions of patentability with regard to the novelty and distinctness of the plant variety had not been fulfilled;

it is established that as of the plant variety's registration date in the State Register, the conditions of patentability with regard to the uniformity and stability of the plant variety had not been fulfilled, and the decision taken based on the results of examination of the application had been principally based on information, documents, and other materials submitted by the applicant;

the person(s) specified in the patent as breeder (co-breeders) of the plant variety or the patent owner is (are) not entitled to be considered as such.

In order to invalidate a patent, an objection to the grant thereof shall be filed.

2. Objections to a patent grant on grounds provided for under sub-paragraphs 2 and 3 of the first part of paragraph 1 of this Article, shall be lodged with the Appeals Board of the patent authority.

An objection to a patent grant must be examined by the Appeals Board of the patent authority within six months of receipt. The person lodging the objection in question, as well as the patent owner, shall be entitled to participate in the examination.

A decision of the Appeals Board of the patent authority on an objection to a patent grant may be appealed by the person who filed the objection, or by the patent owner in court within six months of receiving said decision.

3. An objection to a patent grant for a reason specified under sub-paragraph 4 of the first part of paragraph 1 of this Article, shall be examined in court.

4. An invalidated patent shall be deemed as such as of the plant variety's registration date in the State Register.
5. The patent authority shall enter details of a patent invalidation in the State Register, and publish said details in the Official Gazette.
6. License agreements concluded on the basis of a patent subsequently deemed invalid shall cease to have effect from the date of the decision on invalidity of the patent.

Article 26. Lapse of a patent

1. By decision of the patent authority, a patent shall lapse:
at the patent owner's request, submitted in writing to the patent office;
due to non-payment within the prescribed time limit of patent fees to maintain the patent;
where the conditions of patentability with regard to the uniformity and stability of the plant variety have not been fulfilled;
where upon a request submitted in accordance with the second part of Article 22(9) of this Law, within the time limit specified in the request, the patent owner fails to provide information, documents or materials considered necessary to conduct routine testing of the plant variety for compliance with the conditions of distinctness, uniformity, and stability;
where use of the plant variety denomination is prohibited, and the patent owner has failed to provide an alternative denomination for the plant variety.
2. The patent authority shall enter details of a lapsed patent into the State Register, and publish said details in the Official Gazette.
3. A decision of the patent authority regarding a lapsed patent may be appealed by the patent owner in court within six months of receiving the decision in question.

CHAPTER V

TRANSFER OF RIGHTS IN A PLANT VARIETY. USING A PLANT VARIETY

Article 27. Transfer of rights in a plant variety

1. The right to obtain a patent, and the exclusive right in a plant variety, shall be inherited in the customary order of succession.
2. Proprietary rights of the breeder (co-breeders) of the plant variety to remuneration shall be inherited.

Article 28. Contracts of assignment of the exclusive right in a plant variety

1. A contract of assignment of the exclusive right in a plant variety shall be concluded in writing, and shall be subject to registration by the patent authority in the State Register of license agreements, assignment contracts, and pledge contracts of rights in intellectual property subject matter of the Republic of Belarus. Failure to satisfy the registration requirements shall invalidate the contract of assignment of the exclusive right in a plant variety.
2. The exclusive right in a plant variety shall be transferred from the patent owner to another party as of the date of registration with the patent authority of a contract of assignment of the exclusive right in a plant variety.

Article 29. License agreements

1. Any natural person or legal entity wishing to use a plant variety, with the exception of cases specified in Articles 23 and 24(1) of this Law, shall conclude an agreement to transfer the right to use the plant variety with the patent owner (license agreement), in accordance with legislation.
2. A license agreement must include the conditions of its term of validity.
3. A license agreement shall be concluded in writing and must be registered by the patent authority in the State Register of license agreements, assignment contracts, and pledge contracts of rights in intellectual property subject matter of the Republic of Belarus. Failure to satisfy the registration requirements shall invalidate the license agreement.

Article 30. Open licenses

1. A patent owner may file an application with the patent authority for publication in the Official Gazette to grant any person permission to use a plant variety under the terms of a non-exclusive license (hereinafter referred to as an "open license").
2. Any person wishing to use a plant variety shall be entitled to require the patent owner to conclude a license agreement on terms corresponding to those specified in the open-license application.

Article 31. Compulsory licenses

1. If a patent owner fails to use, or makes insufficient use of, a plant variety within three years of the plant variety's entry into the State Register, any person ready and willing to use the plant variety may apply to the court for the grant of a compulsory, non-exclusive license, where the patent owner refuses to conclude a license agreement.
2. Where the patent owner fails to prove that non-use or insufficient use of the plant variety was due to valid reasons, the court shall grant a compulsory license, specifying limitations in use of the plant variety, payment amounts, time limits and procedures, and the quantity of plant seed to be transferred.

CHAPTER VI

PROTECTION OF RIGHTS IN PLANT VARIETIES

Article 32. Infringement of rights of breeders (co-breeders) of plant varieties

Conferral of authorship, enforced co-authorship, and refusal to remunerate the breeder (co-breeders) of a plant variety shall entail responsibility in accordance with legislation.

Article 33. Infringement of the exclusive right in a plant variety

1. Using a plant variety without the patent owner's consent shall be deemed an infringement of the exclusive right in a plant variety, except in cases provided for in Article 23 of this Law.
2. The provisions of paragraph 1 of this Article shall be applied in relation to plant varieties specified in Article 22(6) of this Law.
3. Infringement of the exclusive right in a plant variety shall entail responsibility in accordance with legislation.

Article 34. Protection of rights in plant varieties

1. In order to protect infringed rights, the breeder (co-breeders) of the plant variety and the patent owner shall apply in accordance with established procedure to the courts and other competent authorities.
2. Where the exclusive right in a plant variety has been infringed, the patent owner shall be entitled to demand cessation of the infringement, compensation from the person infringing the exclusive right in the plant variety for losses incurred, and also use of other means of protection in accordance with legislation.
3. Claims against the infringer of the exclusive right in a plant variety may likewise be instigated by the licensee under an exclusive license.

CHAPTER VII

THE RIGHT TO PROTECT PLANT VARIETIES IN FOREIGN COUNTRIES. RIGHTS OF FOREIGN NATIONALS, STATELESS PERSONS, AND FOREIGN LEGAL ENTITIES

Article 35. The right to protect plant varieties in foreign countries

1. An applicant shall be entitled to file an application for the grant of protection to a plant variety in foreign countries.
2. The applicant may choose a State party to the International Convention for the Protection of New Varieties of Plants of December 2, 1961 in order to file the application with the competent authority of the State in question.

The applicant may file an application with the competent authorities of other States party to multilateral international treaties on protection of plant varieties, without first having to wait for the grant of a patent in respect of the patent filed with the patent authority.

3. The patent authority may not refuse to grant a patent to an applicant who is a national of a State party to an international treaty on protection of plant varieties of the Republic of Belarus, or to limit the patent term on the basis that protection of the plant variety had not been requested, the granting of protection had been denied, or the term of protection in any State party had expired.

Article 36. Rights of foreign nationals, stateless persons, and foreign legal entities

Foreign nationals, stateless persons, and foreign legal entities shall enjoy the rights prescribed under this Law and other legislative acts in relation to plant-variety patents, and shall bear responsibility on an equal footing with nationals and legal entities of the Republic of Belarus, unless otherwise specified by laws and international treaties of the Republic of Belarus.

President of the Republic of Belarus

A. Lukashenko