

**Interpretation of the Supreme People's Court on Several Matters Concerning the Application of Law in the
Trial of Cases Involving the Disputes over Infringement upon the Rights of New Plant Varieties**

(Adopted at the 1411th meeting of the Judicial Committee of the Supreme People's Court on December 25, 2006)

For the purpose of correctly hearing the cases involving the disputes over infringement upon the rights of new plant varieties, and in accordance with the General Principles of the Civil Law of the People's Republic of China and the Civil Procedure Law of the People's Republic of China, several issues concerning the specific application of law are prescribed as follows in combination with the trial experiences and actual circumstances on the cases involving the disputes over infringement upon the rights of new plant varieties:

Article 1

In case of any infringement upon the rights to new plant varieties as regarded by the owner of rights to new plant varieties (hereinafter referred to as the owner of varieties) or interested person, he may raise an action to the people's court.

Interested person as referred to in the preceding Paragraph comprises the licensee of the license contract on implementing new plant varieties and the lawful heir of property rights to varieties, etc..

The licensee of an exclusive licensing contract may raise an action to the people's court independently. The licensee of a sole licensing contract may, jointly with the owner of the variety, raise an action, or may raise an action independently if the said owner may not do so. And the licensee of a common licensing contract may raise an action upon explicit authorization of the owner of the variety.

Article 2

Where the propagation materials of an authorized variety are produced or sold for commercial purpose, or are repeatedly used for producing the propagation materials of another variety for commercial purpose without the permission of the owner of the variety, the people's court shall ascertain the infringement upon the rights to new plant varieties.

Where the feature or characteristic of the infringing variety as charged is identical with that of an authorized variety, or the difference of feature or characteristic between the said two varieties are generated not by genetic variation, the people's court shall ascertain in general that the infringing variety as charged falls into the propagation materials of the authorized variety produced or sold for commercial purpose.

If the infringer repeatedly uses the propagation materials of an authorized variety as the parents for separate propagation with other parents, the people's court shall generally ascertain that the propagation materials of the authorized variety are repeatedly used for producing the propagation materials of another variety for commercial purpose.

Article 3

As for a specific issue that is involved in a case of dispute over the rights to new plant varieties requiring for appraisal, it shall be appraised by a qualified appraisal institution and appraisers as affirmed upon negotiations by both parties concerned. If the negotiations fail, the people's court shall appoint a qualified appraisal institution and appraisers for performing the appraisal.

In case of no appraisal institution or appraisers as prescribed in the preceding Paragraph, it shall be appraised by a professional institution and professionals with a variety detection technical level accordingly.

Article 4

As for the specific issues that are involved in the cases of disputes over the rights to new plant varieties, the appraisals shall be performed by way of field observation and measurement and genetic fingerprint detection, or other related methods.

As for the appraisal conclusions made by the methods as prescribed in the preceding Paragraph, the people's court shall cross-examine for affirming the weight of proof thereof.

Article 5

When the owner of a variety or interested person raises an action to the people's court for the infringement upon the rights to new plant varieties, if he require for stopping the infringement upon the rights to new plant varieties in advance or the evidence preservation at the same time, the people's court may make a decision previously upon examination.

The people's court may, in accordance with the specific circumstances on the case, invite related professional technicians to assist in the evidence collection under technical procedures accordingly when taking the measures for evidence preservation,.

Article 6

When the people's court hears the cases of disputes over the infringement upon the rights to new plant varieties, it shall order the infringer to stop the infringement, make compensation for the losses or bear other civil liabilities in accordance with Article 134 of the General Principles of the Civil Law and in combination with the specific conditions of the cases.

The people's court may determine the damages in light of the losses of the infringe due to the infringement or the interests of the infringer from the infringement upon request of the infringe. In case the infringe requires to decide the damages according to the licensing fee for implementing the new plant variety, the damages may be determined reasonably by the people's court subject to the type, time and scope, etc. for the licensing use of the new plant variety and with reference to the fee for licensing use of the new plant variety.

In case it is difficult to determine the damages in accordance with the preceding paragraph, the damages may be determined by the people's court under RMB 500,000 yuan with comprehensive consideration in terms of the nature, duration, and influences of the infringement, the amount for licensing use of the new plant variety, the type, time, and scope for licensing use of the new plant variety, and the proper expenses paid by the infringe for investigating and stopping the infringement.

Article 7

Where both the infringe and the infringer agree to make the infringing objects into the money and use it for compensating for the losses suffered by the infringe, the people's court shall permit it. Where either the infringe or the infringer does not agree with the said deduction, the people's court shall order the infringer to eliminate the activity of the infringing goods and make them unable to be the propagation materials upon request of the related person.

In case the infringing goods are in the stage of growth or the destruction of the infringing goods will lead to major unfavorable influences, the method of ordering the destruction of the infringing goods may not be adopted by the people's court, unless it is otherwise prescribed by the laws or administrative regulations.

Article 8

Where any individual or rural household for contracted management that engages in agriculture, or forestry, crop farming accepts the entrustment of someone else for reproducing the propagation materials that infringe upon the rights to varieties, and does not know that the goods entrusted for propagation are the propagation materials infringing upon the rights to varieties, and has made out the trustor, the liability of compensation may not be born.