

LAW OF THE KYRGYZ REPUBLIC

On Legal Protection of Selective achievements
(in the redaction of the Laws of the KR of February 27, 2003 No.46
and of March 31, 2005 No.58)

This Law shall regulate economic and personal non-economic rights arising due to exposure or raising (hereinafter referred to as creation), exploitation and legal protection of a selective achievement for which the patents of the Kyrgyz Republic are granted.

The effect of the present Law shall cover all botanical and zoological species, plant varieties and animal breeds pursuant to the list approved by the Government of the Kyrgyz Republic.

Section I
General provisions

Article 1. Definitions

For the purposes of the present Law the following terms are used:

the author of a selective achievement (selectionist) - a person by whose creative labor a selective achievement is created (exposed, raised);

breed of animals -- a group of animals, which regardless of protectability possesses genetically conditioned biological and morphological qualities and features, which are specific for a given category of animals and differ it from other groups of animals. A breed may be represented by a female or male individual or pedigree material.

protected categories of the breed shall be: a type, factory line, cross line and family;

pedigree animal -- an animal, used for reproduction of a breed;

pedigree material - a pedigree animal, its gametes or zygotes (embryos);

selective achievement - a variety of plants, a breed of animals; selective achievement - a variety of plants or a breed of animals;

protected selective achievement - a variety of plants, a breed of animals, registered in the State Register of the protected selective achievements;

plant variety - a group of plants within the frame of the same botanical taxon the lowest from the known classes, which may be determined by the features characterizing a given genetic type or combination of genetic types and differs from other groups of plants of the same botanical taxon by at least one feature, irrespective of whether it meets the conditions of protectability, may be considered indivisible from the point of view of its usefulness in order to reproduce the plants of variety as a whole.

Protected categories of a plant variety shall be clone, line, hybrid of the first generation, population;

seeds - generative and vegetative parts of plants which are used for reproduction of a plant variety;

plant material -- a plant or its parts, used for a purpose, other than reproduction of a plant variety;

counterfeit selective achievement - a selective achievement, reproduction and (or) commercial use of which entails violation of exclusive rights of a patent owner.

Article 2. Legal protection of a selective achievement

The right for a selective achievement shall be protected by this Law and certified with a patent for a selective achievement.

The patent shall certify the authorship of selectionist, priority of selective achievement, exclusive right of the patent owner to use selective achievement.

The volume of legal protection for selective achievement provided by a patent shall be determined by the aggregate of essential features in its description.

Article 3. State regulation in the field of legal protection of selective achievements

The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall exercise the state policy in the field of legal protection of selective achievements pursuant to the present Law and execute the following functions accept for consideration applications for selective achievements; provide publication of

applications for granting of a patent, - provide their preliminary examination, accept the decision to grant a patent or refuse to grant a patent on the basis of the results of examination on novelty, distinctiveness, similarity and stability, carry out the state registration of selective achievements in the State Register of protected selective achievements of the Kyrgyz Republic (hereinafter referred to as The State Register of protected selective achievements); provide publication of official information regarding protection of selective achievements; grant patents, maintain their effectiveness and carry out other functions pursuant to the present Law and Regulation on The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property approved by the Government of the Kyrgyz Republic.

In order to review disputes concerning selective achievements, the Appellate Council is being established under The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property. Regulation on the Appellate Council shall be approved by The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property .

Ministry of Agriculture and Water Resources of the Kyrgyz Republic shall establish the list of botanical and Zoological varieties and species to which this Law is Applicable (hereinafter the List), which shall be approved by the Government of the Kyrgyz Republic.

Ministry of Agriculture and Water Resources of the Kyrgyz Republic shall put forward proposals to the Government of the Kyrgyz Republic:

to add new varieties and species to the List;

to change the names of varieties and species included into the List.

The State Commission on Examination of Plant Varieties Of Agricultural Crops under the Ministry of Agriculture and Water Resources of the Kyrgyz Republic (hereinafter referred To as State Commission) and the State Inspectorate on Pedigree Work in Cattle Breeding and monitoring of Pastures Under the Ministry of Agriculture and Water Resources of the Kyrgyz Republic (hereinafter referred to as State Pedigree Inspectorate) are the state bodies and pursuant to the Present Law shall carry out the following functions:

conduct the state test of selection achievements for novelty, distinctiveness, similarity and stability on Contractual basis with The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property ;

maintain the State Register of district plants varieties Of the Kyrgyz Republic and the State pedigree book of the Kyrgyz Republic, respectively;

issue conclusions on admission to use the selective achievement in production and carry out other functions pursuant to Regulations on them approved by the Ministry of Agriculture and Water Resources of the Kyrgyz Republic.

Section II

Conditions of Protectability of a Selective achievement and Application Filing Procedure for Granting a Patent

Article 4. Conditions of Protectability of a Selective achievement

The patent shall be issued to a selective achievement, which is related to botanical and zoological varieties and species and which meet criteria of protectability. Criteria for protectability of a selective achievement are:

1) novelty.

A selective achievement shall be considered new, if on the date of filing of application for issuance of a patent, the seeds or pedigree material of a given selective achievement had not been sold nor otherwise transferred to other persons by the selectionist, his/her successor or with their consent, for the use of the selective achievement:

on the territory of the Kyrgyz Republic - earlier than one year before this date;

on the territory of another country -- earlier than four years or, if it concerns grapes, arboreal decorative and fruit crops - earlier than six years before the established date.

The novelty of a selective achievement is not lost if sale of any material of a plants variety or a breed of animals is carried out by other persons before expiration of terms indicated in the present paragraph:

in order to cause deliberate damage to the applicant;

in the course of execution the agreement on transfer the right to obtain a patent;

in the course of execution the agreement, according to which the third party provides additional supplies of material for multiplication of a plants variety, breed of animal with the consent of an applicant under condition that such supplies are carried out under control of an applicant;

in the course of execution the agreement on which the third party conducts field tests or laboratory researches or minor control tests on assessment of a variety or a breed;

2) distinctiveness.

Selective achievement shall meet the condition of distinctiveness if it obviously differs from any other selective achievement which is well-known on the date of filing an application.

Publicity may be established in respect of a selective achievement:

- which became a part of generally known level of knowledge in the result of its production, reproduction, sowing for multiplication, storage for the purposes mentioned above;
- which was offered for sale, soled, exported or imported;
- which was included into official catalogues, reference funds or has exact description in one of the publications, or is included into the State Register of protected selective achievements.

3) similarity.

A selective achievement is considered as meeting the condition of similarity if, with consideration of the plant multiplication peculiarities, plants and animals with their features are sufficiently similar.

4) stability.

A selective achievement shall be considered stable, if its main features remain unchanged after repeated multiplication, or in the event of a specific cycle of multiplication, at the end of each cycle of multiplication.

Article 5. Persons Who Have the Right to Submit an Application for Granting a Patent

The selectionist, employer or their successor (hereinafter -- applicant) shall have right to file an application for granting a patent (hereinafter - the application).

If the selective achievement was created, grown or discovered jointly by several people, they shall have the right to file an application jointly.

The application may be filed via a trustee, who conducts business, dealing with receiving the patent, based on proxy.

Natural persons or legal entities of the other states who have no permanent residence in the Kyrgyz Republic shall conduct a business in order to receive a patent and keep in effective through the patent agents of the Kyrgyz Republic registered at The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property , unless otherwise is provided by the international agreement of the Kyrgyz Republic.

The employees of The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property , the State Commission and the State Pedigree Inspectorate shall not have the right to file applications for issuance of a patent for selective achievement during the whole term of employment in these agencies.

Article 6. Selective achievement Created in the Official Order

If a selective achievement is created (grown or Discovered) in the course of execution of official task or official duties the rights to file an application shall belong to the employer unless otherwise is provided by the agreement between the selectionist and employer.

A selective achievement shall be considered as created in the official order if in the course of its creation the selectionist executed the duties:

due to his official position;

with which he was specially entrusted in order to create selective achievement;

If an employer does not file an application to The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property or does not assign the right to file an application to another person, within four months as of the date of notification made by a selectionist on creation of selective achievement, the selectionist shall have the right to file an application or to receive a patent on his own name. In this case the employer shall have the right to use selective achievement with a payment of remuneration established on a contract basis to the patent owner - the author.

If an employee creates a selective achievement using experience, material, technical and other facilities of the employer, but not while performing the duties or a task of an employer, a right to receive a patent shall belong to the employee. In this case an employer shall have a right for priority use of a selective achievement paying to an owner of patent a compensation established on a contractual basis. Other relationships arising due to creation of selective achievement by a selectionist are regulated by the legislation of the Kyrgyz Republic

Article 7. File of an Application to Grant a Patent

The application to grant a patent shall be filed at The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property . The application must contain:

1) the application;

2) descriptive summary of a variety of plant (variety form), or a breed of animals (description thereof in accordance with current methods for approbation of agricultural animals);

3) a document, which certifies payment of the established fee for submission of the application, or which exempts from the payment of fee for file of the application, or which gives grounds for decrease of its amount.

The requirements to the indicated documents shall be stipulated in the Rules on compilation, submission and review of application for selective achievement (hereinafter referred to as Rules) elaborated and approved by The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property.

The application must be related to one selective achievement.

Responsibility for correctness of the information submitted to The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall be with the applicant.

The documents of the application shall be presented in the Kyrgyz or Russian languages. If the documents are presented in any other language, the application shall be attached with their translation into Kyrgyz or Russian language.

The date of receipt the documents by The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall be considered the date of file of the application, stipulated by paragraph 1 of this Article. The applicant shall have the right to revoke an application any time prior to the date of receipt the decision to grant a patent.

Article 8. Denomination of the Selective achievement

A selective achievement must have a denomination with indication of its gender affiliation.

The denomination of the selective achievement must allow to identify it, be concise, differ from the denominations of the existing selective achievements of the identical or close to it botanical and zoological gender. It must not consist of figures only, bring to confusion in respect of characteristics, origin, significance of the selective achievement, selectionist's personality, and must not contradict the principles of the public morality.

Any person using the selective achievement must apply such denomination under which it was registered in the State register of protected selective achievements.

If denomination of the selective achievement does not meet the requirements of this Article, the applicant shall be obliged to change it within the terms, established by the Rules. The appropriate fee shall be paid if the applicant changes denomination of selective achievements at his own initiative

A variety of plants, a breed of animals shall be presented in other countries under the same denomination. A competent body of the country concerned shall register the presented denomination of the selective achievement, unless it decides that such denomination is not acceptable in its territory. In this case it may require the selectionist to provide another denomination.

Any person offering for sale or distributing a selective achievement on the territory of another country, which is protected on the indicated territory must use the denominations of this selective achievement even after the end the patent term or the right of selectionist to this selective achievement, unless the previously acquired rights do not prohibit such a use in accordance with paragraph 7 of this Article.

Previously acquired rights of the third persons shall not be covered, provided that by virtue of the previously acquired right, the exploitation of any denomination of a variety of plants or a breed of animals is prohibited to the person, who pursuant to paragraph 6 of this Article must use it, the selectionist is obligated to submit another denomination for this plant variety or animal breed at the requirement of The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property .

Article 9. Priority Right of a selective achievement

Priority of a selective achievement shall be established on the date of file of an application to grant a patent at The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property .

In the event The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property receives two (or more) applications to grant a patent for the same selective achievement the priority shall be established on the earliest sending of an application. If in the course of examination it is established that these applications have the same date of sending, the patent may be granted to the application that has the earliest registration number of The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property .

The priority of a selective achievement may be established on the date of submission of the first application in the foreign country with which the Kyrgyz Republic has bilateral or multilateral international agreement on protection of plants varieties, breeds of animals, if the application was receipt at The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property within 12 months as of the indicated date.

An applicant willing to use the right of priority on the basis of the first application must indicate it during submission of an application to The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property . The copies of the initial application materials certified by the body who has received them as well as samples or another proof that this selective achievement is the subject of both applications, is one and the same one, shall be submitted within three months.

In the cases when the first application is suspended or revoked the selectionist is provided with the sufficient time period and the opportunity to present any necessary information, documents or materials to The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property required for examination purposes, within two years after expiration of the priority and after such suspension or revocation.

Section III Examination of a Selective achievement

Article 10. Examination of the Application for Selective achievement

Examination of the application for a selective achievement shall include preliminary examination and examination of the claimed selective achievement for the compliance with conditions of distinctiveness, similarity and stability.

Article 11. Preliminary Examination of the Application for a Selective achievement

Preliminary examination of the application shall be carried out within the term of 2 months after the date of filing at The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property . In the course of the preliminary examination The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall check the availability of necessary documents provided by Article 7 of this Law, the compliance of a selective achievement with the requirements of Article 8 and shall establish the priority of a selective achievement.

Appropriate fee shall be paid for execution of preliminary examination

Since the date of filing the application and till notification of the applicant of accept of his application for consideration by The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property the applicant may add, clarify and update the materials of the application at his own initiative without change of the nature of the claimed selective achievement provided that appropriate fee is paid.

If the application is submitted in violation of the established requirements to the form and composition, or if additional materials are required for the purposes of examination, the request shall be sent to the applicant with the suggestion to present corrected or missing materials within two months from the date of its receipt.

If in the course of preliminary examination The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property determined that denomination of a selective achievement does not meet the established requirements, the request shall be sent to the applicant with the suggestion to submit another denomination within two months since the date of receipt thereof.

At the request of an applicant, under the presence of valid reasons and payment of an appropriate fee, The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property may permit the extension of the term of an answer to the request or to the notification, specified in paragraphs 4 or 5 of this Article up to six months.

In the event the applicant does not provide the requested documents, does not change the denomination of a selective achievement or does not provide the request to prolong the established term within the indicated term, the application is considered revoked.

In the event of positive result of the preliminary examination, the applicant shall be notified of the acceptance of his/her application to consideration.

Article 12. Publication of an Application for a selective achievement

The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall publish information on the application in the official bulletin no later than four months after completion of preliminary examination for a selective achievement. The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall determine the content of information for publication. After publication of the information on application any person shall have the right to familiarize himself with its materials. The appropriate fee is paid in order to familiarize with the materials of application.

The information on application is not published in the cases if prior to termination of the publication term the decision to grant a patent for this application is made or it is revoked or the decision on refusal to grant a patent is made which can not be appealed.

The author of a selective achievement may refuse to be named as such in the publicized information on application, if he is not a patent owner.

During six months since the date of publication of the application the claim for novelty of any person shall be considered, which is submitted to The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property .

Such claim shall be submitted by the interested person in the form of objection to the Appellate Council.

The Appellate Council shall notify the applicant about this objection specifying the nature thereof. If applicant does not agree with objection he has the right to forward to the Appellate Council motivated arguments within one month since the date of receipt of notification.

The objection shall be considered by the Appellate Council within four months since the date of receipt thereof. Appropriate fee shall be paid for filing and consideration of the objection to the Appellate Council.

A person filed the objection and an applicant may participate in the consideration thereof.

If a selective achievement does not meet the novelty requirement, the decision to refuse granting patent shall be made.

If any of parties does not agree with decision of the Appellate Council it may bring a suit within six-month-period since the date of decision is made.

Article 13. Provisional Legal Protection of a Selective achievement

For the period from the date of publication of the application and to the date of issuance of the patent, the applicant shall be given a provisional legal protection of the selective achievement.

After receipt of the patent, the patent owner shall have the right for indemnification from a person, who committed actions without the permission of the applicant during the period of provisional protection of selective achievements, indicated in paragraph 1 of Article 24 of this law.

Article 14. Examination of Compliance of a Selective achievement for distinctiveness, similarity and stability.

Examination of Compliance of a Selective achievement for distinctiveness, similarity and stability shall be carried out by the State Commission, State Pedigree Inspectorate or other competent agencies with which the Kyrgyz Republic is connected by virtue of bilateral or multilateral agreements on protection of plants varieties and animals breeds.

Appropriate fee shall be paid for the examination of a variety.

In the course of assessment of the selection achievement on distinctiveness, similarity and stability, the State Commission and the State Pedigree Inspectorate may base on:

- the results of tests conducted on the agreements with legal entities and natural persons of the Kyrgyz Republic or competent organizations of foreign countries on testing of a selective achievement with which the Kyrgyz Republic is connected by virtue of bilateral or multilateral agreements of protection of varieties of plants or breeds of animals;
- tests conducted by the applicant or on his assignment in the Kyrgyz Republic or outside of its borders.

The State Commission and the State Pedigree Inspectorate may request the applicant to provide all necessary information, documents or pedigree materials as well as offer the applicant to provide special tests of a variety of plant or a breed of animal. On the basis of the tests of a selective achievement the

State Commission and the State Pedigree Inspectorate shall make a conclusion on compliance of the selective achievement with the conditions of protectability and compile an official description of a selective achievement.

In the course of technological development the State Commission and the State Pedigree Inspectorate shall have the right to add the description of a selective achievement any time during the period of patent effectiveness.

On the basis of the results of examination on novelty, distinctiveness, similarity and stability, the materials of the report and conclusion of the State Commission and the State Pedigree Inspectorate, The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall take a decision to grant a patent and to establish the priority, if not established during the preliminary examination or to refuse to grant a patent.

The applicant may get acquainted with the materials used in the course of examination and observe the examination procedure.

The applicant may demand the copies of the claims against the materials of the application as well as complete information on the results of conducted tests within two months as of the date of the receipt the decision on application.

Article 15. Appeal Against the Decision of Examination and Restitution of the Missed Time Limits

When disagreed with the expert decision, the applicant shall be entitled to file a grounded complaint with the Appellate Council of The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property within three months from the date the applicant is notified of such decision on his/her application, or copies of the materials opposed to the application and requested by him and complete information on the upshots of the tests.

The complaint shall be reviewed within four months from the date it is received. This review term may be prolonged in respect of complex applications upon the consent of the applicant. The applicant shall be entitled to participate personally or through a representative in the review of his/her complaint.

The appropriate fee shall be paid for file of an appeal to the Appellate Council against the decision of examination.

The decision of the Appellate Council of The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property may be contested by the applicant in court within six months from its adoption.

The time limits stipulated in paragraph 4 and 5 of Article 11, paragraph 1 of this Article, that have been missed by the applicant may be reinstated by The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property provided that there are solid reasons therefor, and the dues are paid.

A solicitation on the restitution of the missed time limits may be filed by the applicant no later than 6 months after the missed time limits.

Section IV.

Registration of a Selective achievement and Issuance of a Patent

Article 16. Registration of a Selective achievement and Issuance of a Patent

When the decision to grant a patent is made and the corresponding fee is paid, The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall register the selective achievement in the State Register of protected selective achievements within two months.

The fee shall be paid within two months from the date the applicant receives the decision of examination to register selective achievement or within three months from the date of expiration of the indicated two months term, under condition of payment of additional fee.

The order of introduction and the list of information introduced to the State Register of protected selective achievements shall be determined by The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property .

The patent to a selective achievement shall be granted to the applicant. If there are several applicants seeking the patent, the patent shall be issued to the applicant indicated first in the application and shall be used jointly according to appropriate agreement between them.

The patent to a selective achievement shall be issued on behalf of the Kyrgyz Republic and signed by the Director of The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property .

The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall determine the format and the composition of data to be indicated in the patent.

Pursuant to Article 21 of this Law, The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall issue the author's certificate to the author of a selective achievement who is not the patent owner.

Correction of obvious and technical mistakes in the issued patent shall be effectuated upon the patent owner's request.

In the event of loss of a patent, a duplicate shall be issued provided the corresponding fee is paid.

Article 17. Validity Term of a Patent

The validity term of a patent to a plant variety shall be 20 years since the date of registration of declared a selective achievement in the State Register of protected selective achievements, to a variety of grapes, arboreal decorative, fruit crops and forest trees, including their stocks as well as animal breeds shall be 25 years.

Article 18. Patent Maintenance Fee

The patent owner shall be obligated to pay annually a patent maintenance fee. The first year for the payment of the patent maintenance fee shall be the first calendar year following the year of issue.

Article 19. Publication of Information on a Patent

The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall publish information on a patent in its official bulletin within two months from the registration date in the State Register of protected selective achievements. The composition of data to be published shall be determined by The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property .

Article 20. Patent Fees

Patent fees shall be levied for file of an application for selective achievement, conduct of examination, grant of a patent, validity of a patent, extension of the term of its validity as well as the performance of legally significant actions.

The Government of the Kyrgyz Republic shall establish the list of actions for which these fees are levied, their amount and terms of payment, as well as grounds for exempting from such payments, decreasing their amount or their refund.

The fees shall be paid by the applicant, owner of the patent or any legal entities or natural persons to The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property, upon the agreement with him.

All means entered the account of The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property in the form of fees including currency, payment for the services and materials shall be used by The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property to cover costs related to the provision of actions stipulated in paragraph 1 of this Article as well as technical provision, creation and development of automated system, completion of the patent information fund, training and motivation of personnel.

Section V

Rights of the Author of a Selective achievement

Article 21. Author of a Selective achievement

A natural person who has engineered (discovered or grown) a selective achievement through his/her creative work shall be deemed to be the author of a selective achievement. If several natural persons participate in the creation of a selective achievement, all of them shall be deemed to be co-authors. The procedure to exploit rights of co-authors shall be guided by an agreement between them.

Persons who have not made personal contributions to the creation (exposure or raise) of a breed, but who have provided the author (authors) only with technical, organizational or financial assistance or who have only contributed to the legalization of the rights to a selective achievement are not deemed to be co-authors.

Misappropriation of the authorship of a breeder, coercion into co-authorship shall entail liability in accordance with the Legislation of the Kyrgyz Republic.

The author of a selective achievement shall hold the right of authorship that is inalienable personal right and is protected by the state infinitely. Disputes on authorship shall be resolved in court.

Disputes between the patent owner, who is not the author of a selective achievement and the author, who is not the patent owner shall be resolved in judicial order.

The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall issue the author's certificate to each author. The author certificate shall testify the authorship, as well as the right thereof to receive remuneration from a patent owner for his/her use of the selective achievement in question.

In the event of loss or damage of an author certificate, a duplicate shall be issued provided that the required fee is paid.

The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall determine the format and the contents of the author certificate.

Article 22. Remuneration to the Author of a Selective achievement Who is not the Patent Owner

The author of a selective achievement shall be entitled to receive remuneration from the patent owner for his/her exploitation of a selective achievement grown (engineered or discovered) by the author within the validity term of his/her patent. The amount and terms of payments shall be determined by the agreement between the patent owner and the author.

If an animal breed or a plant variety is grown, created or discovered by several authors, the remuneration shall be distributed among them based on the agreement concluded between them.

If the agreement regarding the amount and the order of remuneration payment is not achieved by the parties, the dispute shall be settled in a judicial order.

Section VI.
Rights and Obligations of a Patent Owner

Article 23. Patent owner

The right to obtain a patent shall belong to:
the author (authors) of a selective achievement;
employer, in the cases stipulated by Article 6 of the present Law;
their legal successor, including a person who received the appropriate right in the assignment order.

Article 24. Rights of a Patent Owner

A patent owner shall have an exclusive right to use a selective achievement.

The exclusive right of a patent owner shall mean the right to conduct the following operations with seeds and pedigree material:

- production and re-production;
- brining to sowing condition with the subsequent multiplication;
- offer to sale;
- sale and other types of distribution;
- export from the territory of the Kyrgyz Republic;
- import to the territory of the Kyrgyz Republic;
- storage for the purposes mentioned above.

The right to a patent and the right to use selective achievement, coming from the patent may be transferred to any natural person or legal entity on the patent assignment agreement or licensing agreement.

The exclusive right of a patent owner shall also cover the seeds materials, which were entered into economic turnover without consent of a patent owner and in respect of a commodity output made of plant materials of the protected animal breed or plant variety.

The permission from the patent owner is necessary in order to effectuate the operations provided in paragraph 2 of this article with the seeds or pedigree material, which:

- inherit substantially the features of a protected (original) animal breed or plant variety, if these protected breeds or varieties, in their turn, are not selective achievements that significantly inherit the features of other selective achievements;

- do not obviously differ from a protected animal breed or plant variety;
- require repeated use of a protected breed for the production of seeds.

A selective achievement that substantially inherit features of another (original) protected selective achievement shall be deemed a selective achievement, which under obvious difference from the original:

- inherits the most generally significant features of an original selective achievement or of a selective achievement that itself inherits significant features of an original selective achievement retaining basic features reflecting genetic code or a combination of genetic codes of a selective achievement;

- coincides with the genetic code or a combination of genetic codes of the original selective achievement with the exception of deviations caused by the application of methods, like individualized selection from the original animal breed or plant variety, selection of an induced mutant or genetic engineering.

Article 25. Actions That are not Deemed Violations of the Patent Owner's Right

The following actions are not deemed to be infringement of the right of the patent owner:

- actions carried out for personal and non-commercial purposes;
- actions carried out for experimental purposes;

- exploitation of a protected animal breed or plant variety as the original material to engineer a new selective achievement and with the exception of cases provided by paragraph 5 of Article 24 of this Law, as well as the actions provided in paragraph 2 of Article 24 of this Law in respect of such selective achievements;

- use of the plant material engineered at agricultural enterprise within two years as seeds to grow the variety within the territory of this enterprise.

The list of varieties of plants and animal breeds, which are covered by the privilege specified in paragraph 5 of part 1 of this Article shall be determined by the Government of the Kyrgyz Republic;

Article 26. Maintenance of a Selective achievement

The patent owner shall be obligated to maintain a plant variety or an animal breed within the entire term of validity of a patent in such a way that retains features indicated in the description of the variety or a breed as of the registration date in the State Register of protected selective achievements.

Upon request of the State Commission, the patent owner shall be obligated to send seeds for test examinations and provide the conditions for inspections at place. Also, the patent owner shall be obligated to provide pedigree material for in-field testing when requested by the State Pedigree Inspectorate.

Section VII.

Protection of the Patent Owner's Rights

Article 27. Liability for Violation of the Patent Owner's Rights

The liability shall commence upon violation of the rights of the patent owner stipulated by the legislation of the Kyrgyz Republic.

A licensee may put forward claims against a violator, if appropriately provided in the licensing agreement.

A natural person or legal entity, who does not comply with the requirements of this Law related to the exclusive rights of a patent owner, and, inclusively, imports seeds or pedigree material in the Kyrgyz Republic or any other selective achievement without the patent owner's permission, shall be deemed a patent violator, and the selective achievement shall be found counterfeit.

Selective achievements, imported in the Kyrgyz Republic from countries where these selective achievements have never been protected or their protection has ceased, however are protected by this Law shall be also deemed counterfeit.

Article 28. Protection of the Patent Owner's Rights

The patent owner shall be entitled to demand from a violator:

- a) recognition of the patent owner's rights;
- b) restoration of the status quo and eradication of actions violating the rights or threatening to violate them;
- c) indemnification of losses, including lost profit;
- d) recovery of revenue gained by a violator in violation of the patent owner's rights instead of the indemnification of losses;
- e) apply any other remedies provided by the normative legal acts related to the protection of the patent owner's rights.

Remedies provided in items (c) and (d) of this article shall be used at the patent owner's discretion.

The patent owner shall be entitled to appeal to court to protect his/her right, as well as investigation bodies, due to their competence.

Counterfeit seeds and pedigree material shall be subject to obligatory confiscation upon the decision of the court. Confiscated counterfeit seeds and pedigree material shall be destroyed except for the cases of their transfer to the patent owner upon his request.

In case of obvious evidence on a violation of the patent owner's rights, an investigation body or a court shall be obligated to undertake measures for a rescue and arrest of the selective achievement, which is suspected to be counterfeit.

Section VIII.

Invalidation of a patent, its annulment and restoration of validity thereof

Article 29. Invalidation of a Patent

Any person may apply to the Appellate Council with a grounded request to find a patent invalid within three months from the date of its data publication. The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall send a copy of the request to the patent owner, who is required to present a grounded reply within three months from the date of notification thereof. A fee shall be levied for submission and consideration of the application to find a patent invalid.

The Appellate Council shall make a decision on the issue within six months, unless additional testing is required.

A patent shall be deemed invalid, if:

a selective achievement did not meet the condition of novelty, similarity, stability and distinctiveness on the date of the patent was issued;

the person identified in the patent as its owner did not have any legal rights to receive the patent.

Article 30. Annulment of a Patent

The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall annul a patent, if:

the patent owner has failed to pay the patent maintenance fee in the established term;

the patent owner has failed to provide seeds, pedigree material, documents and other information to check patentability of a selective achievement requested by the State Commission and State Pedigree Inspectorate within the established deadlines and failed to provide conditions for inspection of a selective achievement at place;

a selective achievement does not comply with the conditions of similarity and stability.

The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall publish in its official bulletin the information about annulment of a patent.

Article 30-1 Restoration of a patent's validity. Right for after-use

The patent's validity for a breeding, which was stopped due to the fact that patent fee for patent's maintenance has not been paid in the prescribed term, may be restored at the request of the person which was the patent owner. Such request shall be filed to The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property within three years for varieties of plants and within five years for varieties of grapes, arboreal decorative, fruit crops and forest trees, including their stocks as well as for animal breeds from the date of expiry of the term for payment of the said fee, but before expiry of the term of the patent's validity established in accordance with present Law. The request shall be attached by the document confirming payment of appropriate patent fee for restoration of the patent's validity.

The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall publish in its official bulletin the information about restoration of a patent's validity.

Any person, who during the period between the dates of annulment of a patent and of publication in the official bulletin of The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property of the information about restoration of a patent's validity, commenced to use the patented selective achievement in the territory of the Kyrgyz Republic or made appropriate necessary preparations to do so within the said period, shall reserve the right for free use thereof without extension of the scope of such use (right for after-use).

The right for after-use may be transferred to another natural person or legal entity only along with production where the use of such selective achievement had place or where necessary preparations were made to do so.

Rights specified in the in the paragraphs 3 and 4 of this Article shall not include the right to issue a license to any person for making the said action.

Article 31 Appealing Against the Decisions of the Appellate Council of The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property

The decision of the Appellate Council to grant a patent or to refuse to grant a patent, to consider the patent invalid and the decision of The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property to annul the patent may be appealed in court within six months since the date of receipt thereof by the applicant.

Section IX Licenses

Article 32. Licensing Agreement

Under a licensing agreement (exclusive and non-exclusive license), the patent owner (licenser) may transfer the right to use a selective achievement to another party (licensee) within the contractual framework of the rights transferred, time limits, territory and order of payments.

When a non-exclusive license is transferred to a licensee, the later shall have the right to use a selective achievement within the term and framework of the transferred rights provided in the licensing agreement. The issuance of non-exclusive license shall not hamper the licenser from issuing licenses to third parties or from his/her own using the selective achievement in question. The license must not be transferred by the licensee to the third parties. The licensee shall not be entitled to issue sub-licenses.

When the exclusive license is transferred to a licensee, the later shall enjoy the exclusive right to use a selective achievement on the negotiated terms and within the stipulated territory and within the contractual time limit. Under an exclusive license, the licenser shall not have the right to use the selective achievement in question and to issue licenses to third parties within a given territory. The licensee shall have the right, upon the terms agreed with the licenser, to issue sub-licenses to the third parties.

Terms of a licensing agreement imposing limits on a licensee that do not arise from the rights granted to him/her by the patent or which are not mandatory for retaining the patent shall be deemed void.

A licensing agreement as well as an agreement of patent concession shall be registered in The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property, without such registration it shall be deemed invalid. Data about registration shall be published in the official bulletin. A corresponding fee shall be paid for the registration of a licensing agreement as well as for the registration of an agreement of patent concession.

Article 33. Open License

The patent owner may publish in the official bulletin of The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property that his/her selective achievement may be used by any entity from the date the patent owner is notified thereof, provided that he/she receives the announced fees.

The amount of the patent maintenance fee shall be decreased by 50% from January 1 of the year following the year an open license announcement appears.

The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall enter in the State Register of protected selective achievements a record on the open license announcement and indicates the amount of payments required.

The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property shall enter a record in the State Register of protected selective achievements on the termination of the open license announcement upon a petition filed by the patent owner with the consent of other open license-holders.

A corresponding fee shall be paid for filing of an application on termination of the effectiveness of the open license and publication of the information on termination of the effectiveness of the open license in the official bulletin.

Article 34. Compulsory License

In the event of non-use or insufficient use of a selective achievement by a patent owner or the person to whom the rights are transferred within three years from the date of patent issuance, a person willing and prepared to use this selective achievement, in the event of refusal of the patent owner to enter into a licensing agreement on the conditions that are in compliance with the established practice, shall have the right to apply to court soliciting a compulsory license to use the indicated selective achievement.

In case of force-major events (natural disasters, accidents etc.) the Government of the Kyrgyz Republic shall be entitled to give permission to use selective achievement without consent of the patent owner provided that the patent owner is notified in due course, reasonable indemnity is paid to him and scope and duration of use of the patented selective achievement is limited by the purposes for which it was permitted. Any disputes arising from such use shall be considered by court.

In the event the patent owner fails to prove that non-use of a selective achievement is conditioned by valid reasons, the court shall grant the indicated license determining the limits of its use, amount and order of payment. The amount of payment must be established not less than the price for the license determined in accordance with the established practice.

Under a compulsory license, the licensee shall receive the right to use a selective achievement within the framework of non-exclusive license.

The court may obligate the patent owner to provide the licensee with multipliable material in the amount necessary to effectively use the compulsory license in exchange for a commensurate remuneration to the patent owner on reasonable conditions.

A compulsory license shall be issued in the presence of the following conditions:

the compulsory license applicant is in a financial, technical and scientific position to effectively use the rights of the patent owner;

the patent owner refuses to authorize the compulsory license to the applicant to re-produce or trade in multipliable material of a selective achievement to suffice the public needs or is not prepared to give such an authorization on acceptable terms;

there is no grounds for the patent owner not to authorize such use of a selective achievement as necessary;

The term of a compulsory license shall be established by the court.

Compulsory license may be revoked upon the decision of the court in the event if the owner of compulsory license violates the conditions under which it was granted.

The information on compulsory license shall be published in the official bulletin and entered to the State Register of protected selective achievements.

The licensee shall pay an appropriate fee for registration and publication of the information on the issuance of compulsory license in the official bulletin.

Section X
International Cooperation

Article 35. The Right to File an Application in Other States

An applicant shall have the right to file an application soliciting protection of a selective achievement with competent bodies of another state. An application filed in other country must be registered at The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property .

All expenses related to the protection of the rights to a selective achievement outside the Kyrgyz Republic shall be covered by the applicant.

Article 36. Rights of Foreign Nationals and Legal Entities

Foreign natural persons and legal entities shall enjoy the rights provided in this Law equally with natural persons and legal entities of the Kyrgyz Republic by virtue of international agreements of the Kyrgyz Republic or on the basis of reciprocal principal.

Article 37. Effectiveness of International Agreements

If international agreements of the Kyrgyz Republic provide other rules than those set forth in this Law, than the rules of international agreements shall prevail.

Section XI.
Final Provisions

Article 38. Control Over Import and Export of Selective achievements

The control over import and export of selective achievements registered in the State Register of protected selective achievements shall be effectuated by the State Customs bodies in accordance with the Customs legislation of the Kyrgyz Republic.

Article 39. Legal Treatment of certificates, author's certificates to selective achievements registered by the State Committee of the USSR on invention and discovery affairs

The effectiveness of certificates and author's certificates to a selective achievement registered by the State Committee of the USSR on invention and discovery affairs shall be recognized in the territory of the Kyrgyz Republic.

The owners of certificates and authors' certificates to varieties of plants on which the term of 20 years is not expired and to a variety of grapes, arboreal decorative, and forest trees, as well as animal breeds 25 years term of protection from the date of file of an application shall be granted the right to request for their exchange to patents of the Kyrgyz Republic. The request shall be submitted to The Authorized State Body of the Kyrgyz Republic in the field of Intellectual Property . The order of submission and review of the request shall be determined by the Rules.

The applications to grant the authors' certificates to a new plant variety or a breed of animal filed before implementation of the present Law, on which the testing has been conducted by the State Commission and State Pedigree Inspectorate and the decision to allow their use has been made, the applicant is entitled to request to grant a patent to the selective achievement of the Kyrgyz Republic, under condition that this selective achievement complies with the requirements of protectability pursuant to the present Law.

The applications on which requests submitted in the established term, as provided in paragraph 3 of this Article, shall be considered pursuant to the order established by this Law and the Rules, without claiming the requirement of novelty to this selective achievement in accordance with Article 4 of this Law.

The patents of the Kyrgyz Republic to a selective achievement granted on the requests to exchange certificates, authors' certificates shall be effective from the date of registration of the declared selective achievement in the State Register of protected selective achievements and before expiration of 20 years term for plant varieties and 25 years term for a variety of grapes, arboreal decorative, and forest trees, as well as animal breeds from the date of file the application.

Article 40. Transitional Provisions

The patents of the Kyrgyz Republic to selective achievements issued before enforce of the present Law shall reserve the term of validity indicated therein.

If applications for grant the patents to a selective achievement were filed before enforce of the present Law and received a positive decision the following patents of the Kyrgyz Republic shall be issued: for plant varieties - 30 years term from the date of registration of the claimed achievement in the State Register of protected selective achievements; for a variety of grapes, arboreal decorative, and forest trees, including their stocks as well as animal breeds - 35 years term.

The further procedure pursuant to the present Law shall be applied to applications for grant the patents to a selective achievement, which were filed before enforce of the present Law but which were not received any decision.

Article 41. Enforcement of the present Law

1. Enforce the present Law from the date of its publication ("Erkin Too" of June 26, 1998 № 81-82).

2. Within the three months period after enforce of the present Law, the Government of the Kyrgyz Republic shall:

- approve the list of botanical and zoological species, plant varieties and animal breeds which will be protected in accordance with the present Law;

- bring the prior decisions adopted by the Government of the Kyrgyz Republic to the compliance with the present Law.

The President of the Kyrgyz Republic A. Akaev.

Adopted by the Legislative Assembly
of Jogorku Kenesh of the Kyrgyz Republic on May 26, 1998.
