

L.N. 260 of 2002

**PATENTS ACT
(CAP. 417)**

Patents (plant Protection Products) Regulations, 2002

IN exercise of the powers conferred by article 59 of the Patents Act, the Minister for Economic Services has made the following regulations: -

1. (1) The title of these regulations is the Patents (Plant Protection Products) Regulations, 2002. *Citation and commencement*

(2) These regulations shall come into force on the 1st day of January 2003.

2. In these regulations, unless the context otherwise requires:- *Interpretation*

"Act" means the Patents Act;

"active substances" means substances or micro-organisms including viruses, having general or specific action:

(a) Against harmful organisms; or

(b) On plants, parts of plants or plant products;

"certificate" means a supplementary protection certificate issued by the Comptroller for the purposes of these regulations;

"Comptroller" means the Comptroller of Industrial Property;

"harmful organisms" means pests of plants or plant products belonging to the animal or plant kingdom, and also virii, bacteria and micro plasmas and other pathogens;

"patent" means a patent as defined in the Act, in relation to a product;

"plants" means live plants and live parts of plants, including fresh fruit and seeds;

"plants products" means products in the unprocessed state or having undergone only simple preparation such as milling, drying or pressing, derived from plants, but excluding plants themselves;

"plant protection products" means active substances and preparations

containing one or more active substances, put up in the form in which they are supplied to the user, intended to:

(a) protect plants or plant products against all harmful organisms or prevent the action of such organisms, in so far as substances or preparations are not otherwise defined;

(b) influence the life processes of plants, other than as a nutrient;

(c) preserve plant products;

(d) destroy undesirable plants; or

(e) destroy parts of plants, check or prevent undesirable growth of plants;

"preparation" means the active substance or combination of active substances of a plant protection product;

"product" means the active substance or combination of active substances of a plant protection product and includes the process to obtain such product or an application of such product;

"substances" means chemical elements and their compounds, as they occur naturally or by manufacture, including any impurity inevitably resulting from the manufacturing process.

3. These regulations shall apply to any product protected by a patent and which is subject, prior to being placed on the market as a plant protection product, to an authorisation procedure. *Scope and applicability*
4. (1) Any person who has obtained a market authorisation in relation to a product may apply for a certificate to the Comptroller. *Application for a certificate*

(2) The application for such certificate shall be lodged within six months from the date on which the market authorisation has been granted.

(3) Notwithstanding the provisions of subregulation (2) of this regulation, where the authorisation to place the product on the market is granted before the patent is granted, the application for a certificate shall be lodged within six months from the date on which the patent is granted.
5. A certificate shall be granted if on the date of the application: *Conditions for granting a certificate*
 - (a) the product is protected by a patent;
 - (b) an authorisation to place the product on the market as a plant protection product has been granted and is in force;
 - (c) the said authorisation is the first authorisation to place the product on the market as a plant protection product; and

(d) the product has not already been granted a certificate.

6. An application for a certificate shall contain the following information:-

Contents of application

- (a) the name and address of the applicant;
- (b) if the applicant is being represented by an agent the name and address of such agent;
- (c) the registration number of the patent and the title *of* the invention;
- (d) the date and the number if any, of the first authorisation to place the product on the market:

Provided that if such authorisation has been previously granted by an authority outside Malta with which the Government of Malta has reciprocal or international agreement on supplementary protection certificates, the date, the number if any, and the country where the authorisation has been first granted;

- (e) a copy of the market authorisation together with a summary of the product characteristics and in the case that the first market authorisation has been granted by an authority outside Malta as aforesaid also a copy of that authorisation together with a summary of the product characteristics.

7. The Comptroller shall, on receipt of an application for a certificate, issue a notice in the Gazette containing the following information:-

Publication of application

- (a) the name and address of the applicant; ,
- (b) the registration number of the patent;
- (c) the title of the patented invention;
- (d) the date and the number, if any, of the market authorisation and the product identified in that authorisation;
- (e) if applicable, the date and the number if any, of the first authorisation to place the product on the market if the first authorisation has been granted by an authority outside Malta.

8. (1) Where the application for a certificate meets the requirements established under these regulations the Comptroller shall grant a certificate.

Grant of certificate

(2) A certificate shall only be granted to the proprietor of the patent.

(3) Where in the opinion of the Comptroller the application does not fully comply with the requirements established under these regulations he shall notify the applicant accordingly which notification shall contain the reasons why the application is non-compliant.

(4) The applicant may, within 60 days from receipt of the notification mentioned in sub-regulation (3) above, rectify his position to the satisfaction of the Comptroller, failing which the Comptroller shall reject the application.

(5) The Comptroller shall, on the granting of a certificate issue a notice in the Gazette containing the information listed under paragraphs (a) to (e) of regulation 7 of these regulations together with the date of granting and the date of expiry of the certificate.

(6) If an application has been rejected, the Comptroller shall issue a notice to this effect in the Gazette. Such notice shall contain the information listed under paragraphs (a) to (e) of regulation 7 of these regulations.

(7) Any fee paid for an application which has been rejected under this regulation shall be forfeited.

- 9.** Where a certificate has been granted under these regulations, the protection conferred by the patent in relation to the product shall continue to apply for the duration established under regulation 10 of these regulations, subject to the same limitations and obligations.

Effects of certificate

- 10.** The duration referred in regulation 9 above shall commence at the expiry of the term of the patent and shall continue to have effect for that period equal to the period elapsed between the first day of the sixth year following the date of the application for a patent and the date of the first authorisation to place the product on the market in Malta or in any other country with which the Government of Malta has reciprocal or international agreements on supplementary protection certificates:

Duration of licence

Provided that the period lapsed as aforesaid shall in no case exceed five years.

Provided further that for the purposes of calculating the duration of the certificate, account shall be taken of a provisional first marketing authorisation only if it is directly followed by a definitive authorisation concerning the same product.

- 11.** (1) The certificate shall lapse:
- (a) at the end of the period provided for in regulation 10 above; or
 - (b) if the certificate-holder surrenders it; or
 - (c) if any fee due is not duly paid; or
 - (d) if the market authorisation in relation to the product has been withdrawn.

Expiry of the certificate

- 12.** (1) The certificate shall be invalid if:
- (a) the provisions of regulation 5 of these regulations have not been complied with; or

Invalidity of the certificate

(b) the patent has lapsed before the expiry of its term; or

(c) the patent is revoked or limited to the extent that product for which the certificate was granted would no longer be protected by the claims of the patent or, after the patent has expired, grounds for revocation exist which would have justified such revocation or limitation.

(2) Any person may submit an application to the Comptroller for a declaration of invalidity of a certificate.

- 13.** If the certificate lapses as is referred to in paragraphs (b), (c) and (d) of regulation 11 of these regulations or is invalid as is referred to in regulation 12 of these regulations the Comptroller shall notify such event in the Gazette. *Notification of lapse or invalidity*
- 14.** In the absence of procedural provisions in these regulations, the procedural provisions applicable under the principal Act in relation to a patent shall, to the extent that they may be applicable, apply to a certificate. *Procedure*
- 15.** Any product which, on the date of coming into force of these regulations, is protected by a patent and for which the first authorization to place it on the market in Malta as a plant protection product was obtained may be granted a certificate. In such a case the six month period referred to in subregulation 4(2) of these regulations shall commence on the coming into force of these regulations. *Transitory*