

Law of Ukraine

On the Protection of Rights to Plant Varieties

No. 3116-XII

As amended and supplemented according to the Laws of Ukraine
No. 2986-III of 17 January 2002
(the present Law was set out in the new wording
by the Law of Ukraine No. 2986-III of 17 January 2002)
and No. 311-V of 02 November 2006

This Law provides regulation of relationships arising in connection with obtaining, use, protection, alienation and termination of the right to plant varieties of Ukraine.

(preamble as set out in the wording
of the Law of Ukraine No. 311-V of 02.11.2006)

Section I.

GENERAL PROVISIONS

Article 1. Definition of Terms

The terms, used in this Law, shall have the following meaning:

author of a variety (breeder) – the person who directly bred, or discovered and developed, a variety;

(paragraph two of Article 1 as set out in the wording of
the Law of Ukraine No. 311-V of 02.11.2006)

botanical taxon means a separate group of plants, which are related to each other by a community of features and characteristics, thanks to which they can be assigned a taxonomic rank;

seed means generative and vegetative organs of plants which can be used for variety reproduction;

use of a variety means any action with respect to this variety, defined in the present Law in the list of actions that need authorization from a patent holder;

(paragraph four of Article 1 as amended according to
the Law of Ukraine No. 311-V of 02.11.2006)

patent holder means a person, who within the period, determined by the present Law, possesses proprietary right to a plant variety, which are certified by a relevant patent;

(paragraph five of Article 1 as amended according to
the Law of Ukraine No. 311-V of 02.11.2006)

owner of proprietary right of intellectual property to propagation of a variety means a person, who within the period, determined by the present Law, possesses proprietary rights to propagation of a plant variety, certified by a relevant certificate of state registration of the variety;

(Article 1 was supplemented with the new paragraph six according to the Law of Ukraine No. 311-V of 02.11.2006, in this connection, paragraphs six to twenty five shall be considered paragraphs seven to twenty six respectfully)

Member State means a state that acceded to the International Convention for the Protection of New Varieties of Plants, which was adopted on 2 December 1961 and had been revised on 10 November 1972, 23 October 1978 and 19 March 1991;

institution of expertise means a scientific institution that is authorized by the Institution to carry out expertise of applications, verify preservation of varieties and to fulfill other tasks arising from the present Law;

application for a plant variety (application) means a set of documents, necessary for registration of the variety and obtaining of protective documents that certify the rights to the variety;

(paragraph nine of Article 1 as amended according to the Law of Ukraine No. 311-V of 02.11.2006)

applicant means a person that submitted an application;

gathered material means harvest of plants or their parts, raised from respective planting stock;

competent body of a Member State means a body of a Member State that registers rights to varieties;

features means characteristics, by which varieties are distinguishable in the process of expertise of an application without taking into consideration of their economic importance;

person means physical person or legal entity;

patent means a protective document that certifies priority and proprietary right of intellectual property to a plant variety;

(paragraph fifteen of Article 1 as set out in the wording of the Law of Ukraine No. 311-V of 02.11.2006)

maintainer of a variety means a physical person or legal entity that, within the determined by the present Law period of validity of proprietary right to propagation of a plant variety, certified by a certificate of state registration of a plant variety, provides the stability (preservation) of the variety in the process of its economic turnover by means of maintaining of characteristics, engendered by a certain genotype in accordance with a display that was recorded during the state registration;

(Article 1 was supplemented with the new paragraph sixteen according to the Law of Ukraine No. 311-V of 02.11.2006, in connection with this paragraphs sixteen to twenty six shall be considered as paragraphs seventeen to twenty seven)

planting stock means a material carrier of a variety, plant and their part that is considered to be suitable for reproduction of integral plants;

(paragraph seventeen of Article 1 as set out in the wording of the Law of Ukraine No. 311-V of 02.11.2006)

propagation of a variety means the commercial propagation of a planting stock – material carrier of a variety, included into the Register of Varieties;

the Register of Applications means the State Register of Applications for Plant Varieties;

the Register of Patents means the State Register of Rights of Intellectual Property to Plant Varieties;

(paragraph twenty of Article 1 as amended according to the Law of Ukraine No. 311-V of 02.11.2006)

the Register of Plant Varieties means the State Register of Plant Varieties, suitable for propagation in Ukraine;

employer means a person, either a physical person or legal entity, where (or for which) a breeder works under a contract of employment;

(Article 1 was supplemented with the new paragraph twenty two according to the Law of Ukraine No. 311-V of 02.11.2006, in connection with this paragraphs twenty two to twenty seven shall be considered as paragraphs twenty three to twenty eight)

certificate of authorship of a variety means the protective document that certifies the personal non-proprietary right of authorship of the variety;

certificate of state registration of a plant variety means the protective document that certifies the proprietary right of intellectual property to propagation of plant variety;

(Article 1 was supplemented with the new paragraph twenty four according to the Law of Ukraine No. 311-V of 02.11.2006, in connection with this paragraphs twenty four to twenty eight shall be considered as paragraphs twenty five to twenty nine)

plant variety means a separate group of plants (clone, line, hybrid of first generation, population) within the framework of a lower out of known botanical taxons, which, irrespective of whether or not it completely satisfies the conditions of formation of the legal norm:

(paragraph twenty five of Article 1 as amended according to the Law of Ukraine No. 311-V of 02.11.2006)

- can be defined by the degree of the display of characteristics, that are caused by a certain genotype of a certain combination of genotypes;

- can be distinguishable from any other group of plants by the degree of the display of at least one of these characteristics;

- can be considered as a comprehensive whole from the point of view of its suitability for reproduction of integral plants in an unchanged form.

(paragraphs twenty six to twenty eight of Article 1 set out in the new wording of the Law of Ukraine No. 2986-III of 17 January 2002)

The Institution means the governmental body on issues of legal protection of intellectual property to plant varieties that operates as a part of the central body of executive power on issues of agrarian policy.

(paragraph twenty nine of Article 1 as amended according to the Law of Ukraine No. 311-V of 02.11.2006)

Article 2. Legislation of Ukraine regarding the rights to plant varieties

The legislation of Ukraine regarding the rights to plant varieties is based on the Constitution of Ukraine and consists of the Civil Code of Ukraine, the present Law, international agreements in the sphere of protection of the rights to plant varieties, the consent to the obligatoriness of which was given by the Verkhovna Rada of Ukraine, and other legislative and regulatory acts, adopted in pursuance of them.

(The Law was supplemented with Article 2 according to the Law of Ukraine No. 2986-III of 17.01.2002, therefore, the numbering of Articles changed in accordance with this and other additions set forth below; Article 2 as set out in the wording of the Law No. 311-V of 02.11.2006)

Article 3. The scope of application of the present Law

The present Law is applied to all varieties of all genera and species of plants.

(The Law was supplemented with Article 3 according to the Law of Ukraine No. 2986-III of 17.01.2002)

The norms of the present Law regarding the determination of the suitability of propagation in Ukraine shall not be applied to plant varieties that are used with decorative purposes.

(Article 3 was supplemented with part two according to the Law of Ukraine No. 311-V of 02.11.2006)

Article 3¹. Subjects of the rights to plant varieties

Subjects of the rights to plant varieties shall be:

- 1) author (authors) of a plant variety;
- 2) other persons that acquired proprietary rights of intellectual property to plant variety in accordance with an agreement or the laws of Ukraine.

(The Law was supplemented with Article 3¹ according to the Law of Ukraine No. 311-V of 02.11.2006)

Article 4. Application of norms of international agreements

If an international agreement, the consent to the obligatoriness of which was given by the Verkhovna Rada of Ukraine, contains the rules other than those specified in the present Law and legislative and regulatory acts, the rules of that international agreement shall be applied.

(The Law was supplemented with Article 4 according to the Law of Ukraine No. 2986-III of 17 January 2002; therefore, the numbering of Articles changed in accordance with this and other additions set forth below)

Article 5. Rights of foreign persons and stateless persons

Foreign persons and stateless persons acquire, exercise and use the protection of the rights to plant varieties according to the present Law equally with citizens and legal entities of Ukraine, except for cases, explicitly envisaged by the present Law, other legislative acts of Ukraine and international agreements.

(Article 5 as set out in the wording of the Law of Ukraine No. 311-V of 02.11.2006)

Article 6. Authorities of the Cabinet of Ministers of Ukraine in the sphere of protection of the rights to plant varieties

The Cabinet of Ministers of Ukraine shall:

direct and coordinate activities of central bodies of executive power in the implementation of the present Law;

issue legislative and regulatory acts in the matters of protection of the rights to plant varieties and oversee their implementation, appoint and resign the Chief of the Institution and his or her Deputies, nominated by the central body of executive power on issues of agrarian policy;

(paragraph three of Article 6 as amended according to the Law of Ukraine No. 311-V of 02.11.2006)

organize international cooperation in matters of the protection of the rights to plant varieties;

establishes consultative and advisory bodies to ensure the efficiency of implementation of its authorities in the sphere of protection of the rights to plant varieties in the provision of constitutional rights and freedoms of citizens of Ukraine as to regulation of their proprietary and non-proprietary relations, originating as a result of acquiring, exercising and protection of the intellectual property to plant varieties.

(Article 6 was supplemented with paragraph five according to the Law of Ukraine No. 311-V of 02.11.2006)

Article 7. Authorities of the central body of executive power in the sphere of intellectual property

The central body of executive power in the sphere of intellectual property takes part:

in the realization of the state policy in the sphere of protection of the rights to plant varieties as objects of intellectual property;

in control of the implementation of the present Law;

in setting out general requirements for regulatory provision of the protection of the rights to plant varieties;

in preparing expert conclusion as to names of varieties in the part of their relation to marks for goods and services and indication of origin of goods;

in generalization of the practice of application of the legislation of Ukraine regarding the rights to plant varieties, development of proposals to perfect it and submission of such proposals for consideration of the Cabinet of Ministers of Ukraine in accordance with the established procedure;

in international cooperation in matters of the protection of the rights to plant varieties.

(Article 7 as set out in the wording of the Law of Ukraine No. 2986-III of 17 January 2002)

Article 8. Authorities and responsibilities of the central body of executive power on issues of agrarian policy in the sphere of the protection of the rights to plant varieties

(Title of Article as amended according to the Law of Ukraine No. 311-V of 02.11.2006)

The central body of executive power on issues of agrarian policy shall:

(Paragraph one of Article 8 as amended according to the Law of Ukraine No. 311-V of 02.11.2006)

provide for the realization of the state policy in the sphere of protection of the rights to plant varieties;

organize and controls the implementation of the present Law;

approve legislative and regulatory acts regarding preparation and submission of applications, carrying out of their expert examination and control their observation;

issue patents for plant varieties and certificates of authorship for plant varieties;

provide the development of the scientific and technical potential in the sphere of the protection of the rights to plant varieties;

coordinate the formation of and implementation of international scientific and technical programs and projects related to the protection of the rights to plant varieties under joint coordinating agreements;

(Article 8 was supplemented with the above paragraph according to the Law of Ukraine No. 311-V of 02.11.2006)

promote the development of the innovative activities in the field of studying plant varieties and the protection of the rights to plant varieties;

(Article 8 was supplemented with the above paragraph according to the Law of Ukraine No. 311-V of 02.11.2006)

make the state order (order for government account) of qualifying expert examination (expert examination on the merits) of new plant varieties.

(Article 8 was supplemented with the above paragraph according to the Law of Ukraine No. 311-V of 02.11.2006)

Article 9. Authorities and responsibilities of the Institution in the sphere of the protection of the rights to plant varieties

The Institution shall provide the realization of the present Law and other legislative and regulatory acts regarding the protection of the rights to plant varieties and shall fulfill the following functions:

to generalize the practice of application of the legislation of Ukraine regarding the rights to plant varieties, develop proposals to perfect it and submit such proposals for consideration of the central body of executive power in the sphere of agrarian policy in accordance with the established procedure;

to designate authorized institutions of expert examination, register them and commission them with performing the expert examination of applications;

to develop drafts of legislative and regulatory acts regarding preparation and submission of applications and submit them for approval to the central body of executive power in the sphere of agrarian policy;

to organize the receiving of applications, performing of their expert examination and make decisions in relation to the applications;

to maintain the Register of Applications, the Register of Patents and the Register of Plant Varieties and provide the state registration of applications, patents and plant varieties;

to organize the checks of the stability (preservation) of plant varieties;

to provide the control over the observation of provisions of the present Law that relate to the use of names of plant varieties;

to provide the publication of official information regarding patents issued for plant varieties and certificates of authorship of plant varieties in international organizations in accordance with the legislation in force;

to pass legislative and regulatory acts in accordance with the established procedure within the scope of its authorities;

to organize the informational and publishing activities in the sphere of the protection of the rights to plant varieties;

to organize scientific research activities in the field of perfection of the legislation and activities in the sphere of the protection of the rights to plant varieties, perfection of expert examination of the suitability for propagation of plant varieties;

to organize the activities on training and retraining of personnel of the state system of the protection of the rights to plant varieties;

to commission the institutions of the state system of the protection of the rights to plant varieties, according to their respective specialization, as well as the institutions of expert examination, with certain tasks, as determined in the present Law, the Provision of the Institution, other legislative and regulatory acts in the sphere of the protection of intellectual property;

to fulfill other functions according to the Provision about the Institution, approved in accordance with the established procedure;

to perform post-registration studying of plant varieties, duplication of new and prospective plant varieties;

to create and disseminate scientific and technical production;

to approve sectoral and interdepartmental programs of research and development activities in the sphere of the protection of the rights to plant varieties;

to act as customer in the creation of scientific and technical production, take part in the manufacturing application of results of completed scientific and technical development works;

to take part in the development of regulatory documents for the sectoral use for production, processes, services in cases of the absence of national standards or necessity of setting forth of requirements that exceed or supplement the requirements of national standards;

to organize and / or take part in international events of scientific direction (forums, symposia, conferences and so forth), coordinate the participation of scientific institutions in activities of foreign and international scientific associations and unions in the capacity of members thereof in the sphere of the intellectual property to plant varieties;

to determine and approve, with coordination of respective bodies of executive power, financial and economic standards, rates of payments for performing of works, provision of paid services by the institutions of expert examination of the state system of the protection of the rights to plant varieties, and perform, within the scope of its authorities, the control over observance of these standards.

2. The Institution can be authorized by the central body of executive power on issues of agrarian policy to perform the management of property of the institutions of expert examination that belong to state property, establish the, reorganize and liquidate them, sign and terminate contracts with their chiefs.

3. Activities of the Institution shall be financed by the State Budget.

Section II

CONDITIONS OF ACQUIRING THE RIGHTS OF INTELLECTUAL PROPERTY TO PLANT VARIETIES

Article 10. Rights to plant varieties

The right to variety shall be protected by the state and certified by a patent. Patents for variety certifies the authorship to variety and an exclusive right of its use.

The patent for variety shall be valid during 20 years from the date of filing of an application to the State Patent Office of Ukraine. The validity period for grapes, wood and fruit cultures shall be 30 years. On petition of a patent owner the validity of a patent may be extended by the State Patent Office of Ukraine for a period not exceeding 10 years.

Article 12. Conditions of suitability of plant variety for the acquiring of the rights of intellectual property to it

1. Varieties of the sort that the right can cover may be clone, first generation hybrid, polutation.
2. Sort is deemed suitable for the acquisition of the right to it as an object of intellectual property if it is new and meets the criteria of difference, homogeneity and stability.
3. The variety shall be deemed as new if on the date of filing of an application for a patent for variety to Derzhpatent of Ukraine, the seed of this variety was not sold or alienated otherwise by an author of variety or his employer, determined pursuant to para. 3 Article 8 of this Law, to other persons for the use of variety:
 - on the territory of Ukraine for more than one year;
 - on the territory of any other country for grapes, wood decorative and fruit cultures and forest breeds for more than six years and for more than four years - for any other cultures. This norm shall not be applied to citizens and legal entities of foreign countries where such norm is not provided for citizens and legal entities of Ukraine.

Concerning varieties of those sorts and types of plants, the rights to which were not protected in Ukraine but were entered into the Register of Varieties of Ukraine and were used during the periods exceeding those indicated in this paragraph, then when conducting expertise they shall be considered as those which meet the novelty requirements. Priority for such variety shall be established from the date of its delivery for progeny test, while the validity of a patent is reduced for the period from the date of delivery of variety for progeny test till the date of submission of the application to Derzhpatent of Ukraine.

3. Variety shall meet the difference criteria if it has an obvious difference from any other variety which is generally known on the date of delivery of application to Derzhpatent of Ukraine.

The issue on whether variety is generally known can be established based on the fact of its use, indication of variety in official catalogues, information fund or its precise description in one of publications or an application.

Features allowing to determine the distinct features of variety shall be reproduced and clearly described.

4. Variety shall be deemed homogeneous if, taking into account specificity of reproduction, plants of this variety are rather homogeneous by their features.
5. Variety meets the criteria of stability if its basic features remain unchanged after its reproduction, and in case of a special reproduction cycle - at the end of each reproduction cycle.

Section III

AUTHOR OF VARIETY AND OWNER OF VARIETY PATENT

Article 7. Author of Variety

A citizen, by creative work of whom variety is created, shall be recognized as an author of this variety. If variety is created by joint creative work of several persons, they shall be recognized as co-authors of this variety.

Citizens which have not contributed personally into creation of variety but provided to an author (co-authors) only technical, organizational or material assistance, or facilitated preparation of materials for obtaining the right to variety cannot be deemed as the authors of this variety.

An author (co-authors) of variety shall have the authorship which is an unalienable personal right. Authorship to variety shall be protected during the unlimited term.

Article 8. Owner of variety patent

1. Any person pursuant to Article 3 of this Law can be an owner of variety patent.

Patent for variety shall be granted only to its author. If variety was created by co-authorship, then the right to obtain a patent belongs to all co-authors.

If several persons created variety independently from each other, then the right to obtain a variety patent belongs to the person whose application was submitted earlier to Derzhpatent of Ukraine.

2. Any person indicated as an author of variety in the application or an application of an author on the issue of patent to other person shall have the right to obtain a patent provided that the application was received by Derzhpatent of Ukraine prior to the decision making on the patent issue.

3. An employer shall have the right to obtain a patent if variety was created by an employee - an author of variety - when he was performing his work functions or specific tasks obtained by him from the employer. A written agreement providing for assignment of the patent right to the employer shall be concluded between such employee and employer. In this case an author of variety shall have the right for remuneration as specified by conditions of that agreement.

If there is no agreement on the assignment of the right for obtaining a patent between an author of variety and an employer, or the employer breached the terms of the agreement, then the author shall retain the right to obtain the patent.

4. The Fund of Inventions of Ukraine shall have the right to obtain a patent if the variety author indicated this Fund in his application prior to the decision making on a patent issue. In this case the author of variety shall have the right for remuneration, equal to the profit which was received by the Fund of Inventions of Ukraine from the use of such variety. A respective written agreement shall be concluded between the author of variety and the Fund of Inventions of Ukraine.

Article 9. The right of the patent owner for variety

1. Use of rights, granted by a patent, shall be made within the limits established by the laws.

No person may use a patented variety without the consent of a patent owner.

2. The right of a patent owner shall not be applied to the legal relationships related to the use of a patented variety:

- for non-commercial purposes;
- for purposes of carrying out the experiments;
- as an initial material for raising other varieties;
- for goods processing or transit transportation.

3. A patent owner who is an author of variety can assign his patent right to any citizen or legal entity which becomes a legal successor of the patent owner.

If a patent owner is not an author of variety, then he can assign the patent right taking into account the conditions based on which this right was obtained from the variety author.

A patent owner or his legal successor shall have the right to assign to any citizen or legal entity, in full or in part, the rights granted by the patent, on the basis of a license agreement. According to this agreement the patent owner (licensor) transfers the rights (exclusive or non-exclusive) for the use of variety to other person (licensee) who will be obliged to make license payments to the licensor and perform other actions as specified in the agreement.

An agreement for the assignment of the patent right and a licensing agreement shall be registered with the Derzhpatent of Ukraine. Without registration they shall be deemed invalid.

4. A patent owner (his legal successor) shall have the right to submit to Derzhpatent of Ukraine for official publication an application on granting an open license to any citizen or legal entity. In such case the fee for keeping the patent in force shall be reduced by 50% starting from the year following the year when the application on granting an open license was published. If no one has notified the patent owner on his intention regarding the use of variety, he can notify Derzhpatent of Ukraine in writing on the revocation of his application.

A person (persons) wishing to buy an open license shall conclude an agreement with the patent owner or his legal successor. Disputable issues regarding the terms of agreement shall be considered in court.

Article 10. Alienation of the right to the patented variety

If a patent owner has not used the variety during the first five years beginning from the date when a decision on the issue of a patent was made, and in case when the patent owner refused to conclude a licensing agreement, then the person wishing to use the variety may apply to the court for a forced non-exclusive license.

Section IV

OBTAINING OF A VARIETY PATENT

Article 11. Submission of an application

1. Any citizen or legal entity, which has the right to obtain a variety patent according to Article 3 of this Law, can submit an application for a patent to Derzhpatent of Ukraine.
2. An application for a patent can be submitted in person, through an authorized person or a patent agent.

Citizens residing outside Ukraine, or foreign legal entities who have permanent residence in other countries, shall conduct work related to obtaining of a patent for variety through patent agents registered with Derzhpatent of Ukraine.

3. Only citizens of Ukraine who have permanent residence in Ukraine can act as the patent agents. Obligations and rights of patent agents, procedure of their certification and registration shall be determined by the Provision on Patent Agents of Ukraine to be approved by Derzhpatent of Ukraine.

Article 12. Application for a variety patent

1. Application for a variety patent shall include:

- an application for the issue of a variety patent;
- description of variety to clarify its features and properties to such extent which will be sufficient for variety determination.

A document confirming that the established fee was paid or confirming the privileges on its payment shall be attached to the application.

2. The documentary requirements and the procedure of documents consideration shall be determined by Derzhpatent of Ukraine.
 - a) An application shall be submitted for each variety separately.

Article 13. Name of variety

1. An application for a patent for variety shall indicate its name. The name shall allow to identify the variety, shall not repeat the name or be different from the name of the already existing variety of the same or close botanical type. The name shall not consist of figures only, to mislead on the properties, origin and purpose of variety or on the author of variety, contradict the principles of public morality.
2. If an application for a patent for one and the same variety is submitted in Ukraine and in other states, then the name of variety should be the same.
3. If the variety name does not meet the norms established by para. 1 and 2 of this Article, then, on the request of Derzhpatent of Ukraine, the applicant shall, within two months, suggest a new name.
4. After obtaining a patent for variety, any person when using it shall use the name of variety which was entered into the State Register of Plant Varieties of Ukraine.
5. The name of variety can be changed on the applicant's request, but before the decision on the issue of a patent.

Article 14. Priority of variety

1. Priority of variety shall be determined by the date of submission of an application, drawn up in compliance with the requirements of Article 12 of this Law, to Derzhpatent of Ukraine.

2. Priority can be established by the date of submission of the first application in the Member-state of the International Convention on Protection of Selection Achievements (convention priority), if the application for variety reached Derzhpatent within 12 months from the specified date.

If due to the reasons independent from the applicant the application containing a request to establish convention priority has not reached Derzhpatent within the specified term, then this term can be extended for a period not exceeding two months.

An applicant wishing to use the right of convention priority should indicate it when filing an application or within two months from the date of delivery of the application to Derzhpatent of Ukraine and attach a copy of the first application certified by the patent office to which this application was submitted.

3. If it was established in the course of the expertise that identical varieties have the same date of priority, then the patent can be issued on the application which provides the grounds on the earlier date of its dispatch to Derzhpatent, and if these dates are the same, then on the application which has the earlier registration number of Derzhpatent of Ukraine.

Article 15. Expertise of an application for a variety patent

1. Expertise of an application for a variety patent shall be carried out in stages during three years for the date when the application has been filed. Derzhpatent of Ukraine shall have the right to extend the specified term of expertise.

Expertise includes formal expertise and expertise of an application aimed at verification of its patentability.

2. During expertise an applicant shall have the right:

to provide additional materials to his application, corrections or clarifications;
personally, through his authorized person or a patent agent take part in consideration of the issues which might arise;
familiarize himself(herself) with the results of the variety expertise.

3. Any person who wishes so can study the materials of application right after they have been published in the official bulletin.

4. Procedure of submitting materials of expertise for their studying shall be established by Derzhpatent of Ukraine.

Article 16. Formal expertise

1. After an application has been received by Derzhpatent of Ukraine an expert body shall carry out, within two months, a formal expertise, to verify availability of necessary documents, compliance with the established requirements as per their format.

2. Additional materials received in connection with the application for variety pursuant to para. 2 of Article 15 of this Law should not change the essence of the declared variety.

Additional materials change the essence of the declared variety if they contain features which were not mentioned in the initial materials of application. Additional materials which change the essence of the declared variety shall not be taken into account when considering an application and can be submitted by the applicant in the form of a separate application.

In case of a positive result of the formal expertise of an application, the decision is taken on its further consideration and variety priority is established according to Article 14 of this Law, which is notified to the applicant in writing.

4. If it is established in the course of the formal expertise that the application was executed for a variety which cannot be patented, then the decision is taken to refuse to further consider the application.

5. If an applicant disagrees with a decision made as a result of the formal expertise, he/she can apply to the Appellate Council of Derzhpatent of Ukraine. Provision on the Appellate Council is subject to approval by Derzhpatent of Ukraine.

6. Materials of the application accepted by Derzhpatent of Ukraine for consideration shall not be given back to the applicant.

7. Eighteen months after the date of delivery of an application and in case of a positive decision as a result of the formal expertise, materials regarding the application are published in the official bulletin. The contents of materials to be published shall be determined by Derzhpatent of Ukraine.

Upon petition of an applicant Derzhpatent of Ukraine can publish materials regarding the application before the established period.

An author of variety shall have the right to refuse from the publication of his/her name in the materials regarding application.

Article 17. Expertise of application for patentability

1. Expertise of application for patentability of variety shall be carried out by an expert body of Derzhpatent of Ukraine.

2. If it is established in the course of the application expertise that the variety does not meet the patentability requirement, then a decision is made to refuse the issue of a patent, which is notified to the applicant in writing.

3. If the applicant disagrees with the decision on refusal to issue a patent, he/she can apply to the Appellate Council of Derzhpatent of Ukraine.

4. If variety does not meet the patentability requirement, then a decision is made about the issue of a patent.

Article 18. Temporal protection of the rights to variety

1. Temporal protection of the right to variety shall cover the period from the date of publication of materials regarding the application in the official bulletin of Derzhpatent of Ukraine till the decision-making on the issue of a patent, and it is granted within the scope of the published variety description.

2. Temporal protection of the rights to variety shall be deemed as invalid if the decision was made to refuse to grant a patent, when all possibility to appeal such decision has been exhausted.

3. Persons guilty of violating the right of a patent owner, determined in Article 9 of this Law, including the period of temporal protection, shall be responsible according to the effective laws.

Article 19. Variety registration

Based on the positive opinion of the expert body with regard to patentability of variety Derzhpatent of Ukraine makes a decision on the issue of a patent for variety and makes relevant entries in the State Register of Plant Varieties.

Article 20. Issue of a patent for variety

1. A patent for variety shall be issued by Derzhpatent of Ukraine after entry of variety in the State Register of Plant Varieties of Ukraine within one month from the date of obtaining the document on payment of relevant fee. If there are several persons, in the name of whom the patent is declared for the issue, they shall be granted one patent.

2. Derzhpatent shall determine the form of a patent.

4. Upon request of the patent owner Derzhpatent of Ukraine shall correct mistakes in his/her patent.

Article 21. Publication of the information on the issue of a patent

1. After decision-making on the issue of a patent Derzhpatent shall publish information in the official bulletin which should contain the name of the author (co-authors) of variety, name of variety, its description and other data upon determination by Derzhpatent of Ukraine.

2. A patent owner may apply to Derzhpatent of Ukraine with petition about correction of mistakes in the published information on the issue of a patent.

3. After publication of the said information any person shall have the right to familiarize her(him)self with the materials of application in the order stipulated by Derzhpatent of Ukraine.

Article 22. Revocation of the application

An applicant shall have the right to revoke his/her application not later than the date of decision-making on the issue of a patent.

Article 23. Preservation of variety

A patent owner shall maintain variety during the validity term of a patent in such a way as to preserve its characteristic features and peculiarities, specified in its description on the date of the establishment of priority.

Section V

TERMINATION OF A PATENT

Article 24. Recognition of a patent as null and void

a) Patent for variety can be recognized as null and void in full or in part in case of :
non-compliance of variety with the criteria of patentability specified in this Law;
incorrect indication of the author (co-authors) or a patent owner of variety in the patent.

2. Objections against the issue of a patent on the grounds specified in para. 1 of this Article can be considered by the Appellate Council of Derzhpatent of Ukraine in the presence of the person who has submitted its objection.

b) Recognition of a patent for variety as null and void shall be decided by the court.

Article 25. Early termination of the patent

1. Validity of a patent for a plant variety shall be terminated earlier:
based on the application submitted by the patent owner to Derzhpatent of Ukraine;
in case of failure to pay the patent fee within the established term for keeping the patent in force.

2. Derzhpatent of Ukraine shall publish information in the official bulletin on the early termination of a patent for variety.

Section VI

LIABILITY FOR VIOLATION OF THE LAW

Article 26. Liability for violation of the law

Persons who violate this Law shall bear disciplinary, civil, administrative or criminal responsibility.

Article 27. Dispute settlement related to the application of this Law

Disputes related to the application of this Law shall be settled in the order prescribed by the laws.

Section VII

FINAL PROVISIONS

Article 28. Use of varieties in agriculture

1. Varieties, the rights to which are not protected in Ukraine, shall be used only after they have been subject to the state progeny test and have been included in the Register of Plant Varieties of Ukraine.

Decision on including a variety to the Register of Plant Varieties of Ukraine shall be taken based on the results of the state progeny test and shall be adopted by the Cabinet of Ministers of Ukraine.

2. Use of varieties included in the Register of Plant Varieties of Ukraine shall be carried out in compliance with the provisions of this Law.

Article 29. Fee and payment for services

The state fee shall be levied for submission of an application, the issue of a patent, maintenance and extension of validity of a patent. Amounts of fee, term of its payment as well as the grounds for relief from the fee payment, reduction of its amount or return of the fee shall be determined by the laws of Ukraine.

The list of other services of Derzhpatent of Ukraine related to ensuring the protection of the rights to varieties, and the amounts to be paid shall be determined by the Cabinet of Ministers of Ukraine.

Article 30. Patenting of plant varieties in foreign countries

1. Citizens or legal entities shall have the right to submit application to relevant agencies of foreign countries on the issue of protective documents for plant varieties created in Ukraine.
2. Prior to filing an application for a protective document for variety to the relevant agencies of foreign countries an applicant shall submit an application for this variety to Derzhpatent of Ukraine and notify on his/her intention.
3. In case of violation of the requirements of para. 2 of this Article, an applicant or his/her legal successor shall lose the right for a patent for certain variety in Ukraine.

Article 31. International agreements

If an international agreement to which Ukraine is a party establishes the rules other than those specified in this Law, the rule of that international agreement shall be applied.

President of Ukraine

L. Kuchma
