

Ordinance on the Protection of Plant Varieties

(of May 11, 1977)*

TABLE OF CONTENTS**

Chapter I:	General Provisions
Section 1:	Organization and Principles of Procedure
Section 2:	Characteristics of the Varieties
Section 3:	Denomination of Varieties
Chapter II:	Application for Protection and Examination of the Variety
Section 1:	Registration Procedure
Section 2:	Examination of Varieties
Chapter III:	Protection and Surveillance of the Variety
Section 1:	Granting of Protection
Section 2:	Surveillance of the Protected Variety
Chapter IV:	Variety Protection Registers, Publications and Fees
Section 1:	Registers and Publications
Section 2:	Fees and Time Limits for Payment
Chapter V:	Final Provisions
Section 1:	Administrative Jurisdiction
Section 2:	Committee of Experts
Section 3:	Entry into Force

CHAPTER I: GENERAL PROVISIONS

Section 1: Organization and Principles of Procedure

Competence

1.—

(1) The implementation of the Law of March 20, 1975, on the Protection of New Plant Varieties (“the Law”)¹ and of this Ordinance shall be within the competence of the Office for the Protection of Varieties (“the Office”), attached to the Agricultural Division, and of the Federal Agricultural Research Stations (“examining authorities”).

(2) The Office shall be empowered to issue titles of protection and take decisions on questions concerning them, in accordance with the Law and with this Ordinance (Articles 23 and 31 of the Law). It shall in particular:

- (a) examine applications for protection, including variety denominations (Articles 14 and 18 to 27);
- (b) annul titles of protection (Article 37(2));
- (c) cancel denominations (Article 17(1));
- (d) establish provisional denominations (Article 17(2));
- (e) keep the Register of Titles of Protection (Article 39) and the Register of Applications for Protection (Article 38);

*French title: Ordonnance sur la protection des variétés (du 11 mai 1977).

Source: Communication from the Swiss authorities.

Entry into force: June 1, 1977.

**This Table of Contents is added by WIPO for the convenience of the reader (*Editor's Note*).

¹See *Industrial Property Laws and Treaties*, SWITZERLAND — Text 1–001 (*Industrial Property*, May 1976).

(f) grant the title of protection of the variety.

(3) It shall be the responsibility of the examining authorities to examine the varieties filed and to test the protected varieties (Articles 24(1) and 30 of the Law) as to their homogeneity and stability by carrying out, where necessary, growing tests (Articles 28 to 30). To this end, they shall deal directly with the applicant or his agent as regards technical matters. Competence in respect of the examination of the various varieties shall be in accordance with the attached list of species.²

(4) Decisions of a compulsory nature concerning the rights and obligations of the applicant for protection shall be taken by the Office. They shall be designated as such, grounds shall be given and the legal remedies indicated. In addition, Articles 34 to 39 of the Federal Law on Administrative Procedure shall be applicable.

Principle of Judicial Investigation

2. The Office and the examining authorities shall not be bound by the information given in the files submitted by the parties. They shall automatically take into consideration all facts justifying or opposing the grant of the title of protection of the variety.

Institution of Ex Officio Proceedings

3. When the Office institutes *ex officio* proceedings, it shall immediately inform the holder of the title of protection and any other successors in title recorded in the Register of Titles of Protection.

List of Species

4.—

(1) The list of species annexed hereto shall be an integral part of this Ordinance. It shall set out the genera and species of plants of which the varieties are protected under this Ordinance.

(2) The list of species shall set out any derogations from the statutory extent (Article 13(2) of the Law) and the statutory duration (Article 14 of the Law) of protection. The list shall furthermore indicate which examining authorities are competent for each of the varieties and shall lay down the examination fees.

Date of Filing

5. The effective date of filing shall be:

- (a) for communications posted in Switzerland: the date on which the communication was posted or, failing that, the date of entry in the Register of Applications for Protection kept by the Office (Article 21(3) and Article 38) or the date of submission to the Office or to the examining authorities;
- (b) for communications posted abroad, addressed directly to the Office or to the examining authority: the date of receipt at a Swiss post office; failing that, the date of entry in the Register of Applications for Protection kept by the Office (Article 21(3) and Article 38) or the date of submission to the Office or to an examining authority;
- (c) for payments by postal remittance: the date of debit of the applicant's account; failing that, the date of the postal stamp placed on the notification of credit;
- (d) for payments from abroad: by postal remittance, the date of receipt of the remittance notification by the first Swiss postal check office; failing that, the date of the postal stamp placed on the notification of credit.

²This list is not reproduced here.

Calculation of Time Limits

6.—

(1) The day on which the event occurs which starts off a time limit shall not be included in the calculation of the time limit.

(2) Where the time limit is laid down by a decision and failing any other prescription, the period of time shall begin to run on the day the decision is dispatched. Failing proof to the contrary, the date of the decision shall be considered the date of dispatch.

(3) Where the last day of the time limit falls on a Saturday, a Sunday, or other day on which the Office is closed, or on an official holiday at the place of residence or place of business in Switzerland of the applicant or of his agent, the time limit shall expire on the first working day that follows.

(4) February 29, the last day of the month in a leap year, shall be assimilated to February 28 of a normal year. Where a time limit calculated in months expires at the end of February, it shall expire on February 28 in a normal year and on February 29 in a leap year.

Language

7.—

(1) Applications and communications addressed to the Office or to the appeals body (Article 47) shall be drawn up in the German, French or Italian languages (“the official languages”). The initially adopted official language shall normally be maintained.

(2) Supporting documents which are not drawn up in an official language shall be accompanied by a translation in an official language. The Office may require the translation to be certified. Articles 22(1)(c), 24(3) and 47(2) shall remain unaffected.

Joint Application for Protection

8.—

(1) Where two or more persons jointly file an application for protection, they shall designate one of their number or a third party as their appointed representative to deal with the Office on behalf of all parties.

(2) For as long as no representative has been designated, the Office may address all communications, having effect in respect of all applicants, to the first person or undertaking named in the application for protection. If one of the other persons or undertakings concerned enters an objection, the Office shall give all parties a time limit for designating their representative. Where this time limit is not respected, the application for protection shall be rejected (Article 27(2) of the Law).

Relations with the Designated Representative

9.—

(1) For as long as a representative is appointed by one of the parties, the administrative authorities shall not, as a general rule, accept communications or applications other than from that representative. However, the principal may also, with direct effect, withdraw the application for protection of a variety or a denomination, withdraw an appeal or forego variety protection.

(2) Where the principal withdraws an application for variety protection or forgoes such protection, the representative shall remain empowered to receive the files and the fees which the administrative authorities are required to return in accordance with this Ordinance.

Section 2: Characteristics of the Varieties

Novelty

10.—

(1) A variety shall be considered to be new if it is clearly distinguished, by one or more important features which may be either morphological or physiological and which, in any event, shall be capable of precise description and identification, from any other variety whose existence is generally known at the time the application for a title of protection is filed (Article 5(2) of the Law).

(2) The existence of another variety shall be considered generally known when it is already entered in the public register or its precise description has been the subject of a publication, when it is cultivated regularly or in a reference collection, when its propagating material or any harvest is already offered for sale or marketed with the consent of its breeder, or when its existence has become a well-known fact in any other way.

Homogeneity

11.—

(1) A variety shall be considered sufficiently homogeneous for the granting of protection (Article 5(1) of the Law) when the differences between plants are characteristic of the species concerned and when the differences present in the varieties cultivated for comparative purposes are equivalent, both physiologically and morphologically.

(2) Account shall be taken of the particularities presented by allogamous, autogamous or vegetatively propagated species and by hybrid varieties.

Stability

12. A variety shall be considered sufficiently stable for the granting of protection (Article 5(1) of the Law) when, after each reproduction, or after each reproductive cycle if a special cycle is required, its essential characteristics correspond to the described type.

Section 3: Denomination of Varieties

Principles

13.—

(1) A variety denomination may consist of one or more words which should be easy to pronounce, distinctive and capable of acting as an objective denomination.

(2) A denomination shall not be acceptable:

- (a) when it does not permit the variety to be distinguished, particularly when it consists exclusively of figures (Article 6(2)(c) of the Law);
- (b) when it may be assimilated to another variety denomination for the same botanical species or a similar species already filed or registered in Switzerland or in a member State, or be confused with such variety (Article 6(2)(a) of the Law);
- (c) when it is likely to give offense or may mislead, particularly when it is constituted by the botanical or usual name for a different species, or when it is liable to give rise to false ideas as to the origin, the characteristics or the value of the variety or in respect of the breeder or holder of the variety (Article 6(2)(a) and (b) of the Law).

(3) If the same variety has already been filed or registered in another member State, the same denomination shall be used unless the grounds for exclusion given in paragraph (2) make this impossible, or the denomination is improper for linguistic reasons, or the holder of the variety proves that a third party right is opposed thereto (Article 6(3) of the Law).

(4) The Office shall publish in the *Feuille suisse des brevets, dessins et marques* (Article 40(3)) the list of species it considers related for the examination of the variety denomination within the meaning of paragraph (2)(b) of this Article and of Article 15(1) and (3) of this Ordinance and of Article 6(2)(a) of the Law.

Examination of the Variety Denomination

14. When a proposed variety denomination does not satisfy the requirements of Article 13, the Office shall invite the applicant to propose a new denomination within a stipulated period of time. The application shall be rejected if the applicant does not respond to this invitation.

Trademark Belonging to the Holder of the Variety

15.—

(1) If the holder of a variety possesses a right in a trademark for the proposed variety or for another variety of the same botanical species or of a related species, which corresponds to a variety denomination or may be confused with such denomination, he may no longer avail himself of rights deriving from the trademark as from the time he obtains the title of protection for his variety (Article 7(2) of the Law). This ruling shall apply *mutatis mutandis* when protection was granted in another member State for a variety which, by reason of the species to which it belongs, is included in the list of species.

(2) Trademarks which have been internationally registered under the appropriate version of the Madrid Agreement of April 14, 1891, Concerning the International Registration of Trademarks and which enjoy protection in Switzerland shall be assimilated to trademarks entered in the Trademark Register of the Federal Intellectual Property Office.

(3) When submitting the variety denomination, the applicant shall be required to state in writing that he forgoes, as from the issue of the title of protection, in respect of the variety for which the application has been made and for any other variety of the same botanical species or of a related botanical species, any rights deriving from trademarks which correspond to the denomination of the variety or may create confusion with that denomination and which are protected for his benefit in another State of the Union where a title of protection has been granted for varieties of that species.

Use of the Denomination

16.—

(1) The propagating material of a protected variety may only be marketed under the denomination of that variety. The same shall apply after protection has terminated (Article 8 of the Law).

(2) Any person who markets a protected variety shall ensure that the variety denomination is shown on the packaging. The denomination shall be easily recognizable and clearly legible; it may be accompanied by an additional sign.

Cancellation of the Denomination

17.—

(1) The Office shall cancel the denomination:

(a) at the request of the holder of the title of protection (“the holder of the title”) or of a third party, when a final decision has been pronounced against the holder concerning the cancellation of the denomination or when an opposing right has been substantiated and the holder of the title consents to the cancellation;

(b) at the request of a person required by Article 16 to use the denomination, when a final decision prohibits him from using that denomination and the holder of the title appeared in the proceedings as a third party.

(2) The Office shall invite the holder of the title to submit to it, within a stipulated period, a different denomination for the variety. At the request of the holder of the title or of a third party, the Office shall establish a provisional denomination if the person making the request can prove a legitimate interest. On expiry of the prescribed time limit, the Office may establish a provisional denomination *ex officio*.

CHAPTER II: APPLICATION FOR PROTECTION AND EXAMINATION OF THE VARIETY

Section 1: Registration Procedure

Filing

18.—

(1) Varieties or variety denominations shall be filed with the Office in three copies on an official form (Forms A and B). The filing procedure for a variety shall consist of:

- (a) submitting the application for protection of the variety (Form A, Article 19);
- (b) providing the description of the variety (Article 20);
- (c) paying the filing fee (Article 41).

(2) Where the applicant submitting an application for variety protection (Form A) does not at the same time submit its denomination (Form B), the Office shall summon him to do so within a stipulated time limit.

(3) A separate filing shall be made for each variety.

Application

19.—

(1) The application shall contain:

- (a) the name or business name of the applicant, his domicile or registered place of business and his full address;
- (b) the nationality of the applicant where the latter is a natural person;
- (c) the denomination of the variety or the designation stated on registration (breeder's reference);
- (d) the name and address of his agent, if appropriate. The powers of attorney shall be attached to the application;
- (e) the name and address of the original breeder or inventor of the variety, accompanied by confirmation that, to the knowledge of the applicant, no other person participated in breeding or inventing the variety;
- (f) information regarding acquisition of the variety by the applicant where the latter is not, or not the sole, original breeder or inventor of the variety;
- (g) a statement that the propagating material of the variety concerned has never been put on sale or marketed in Switzerland prior to filing, or abroad for more than four years prior to filing, with the approval of an owner of the variety or his predecessor in title;
- (h) when the variety has already been applied for or protected in one or more other member States of the Union:
 - (1) the name of the other member State or States,
 - (2) the denomination of the variety,
 - (3) the number under which the application or the title of protection is registered,

- (4) the date of the application or the date of issue of the title of protection;
- (i) where priority is claimed under Article 11 of the Law, the date of the first application and the name of the member State in which it was submitted;
- (k) the statement required by Article 15(3);
- (l) the signature of the applicant or his agent.
- (2) The application shall be accompanied by:
 - (a) the filing (Article 26(1) and Article 36(1)(a) of the Law, and Article 41(1) of this Ordinance);
 - (b) a list of the forms and documents submitted to the Office. Failing this, the Office shall itself draw up a list that shall be considered correct unless proved otherwise.

Description of the Variety

20.—

(1) The description of the variety shall state the denomination of the variety and its principal morphological and physiological characteristics. For those varieties of which the plants are produced by crossing certain genetic components, the principal morphological and physiological characteristics of the parents shall also be stated. The description shall further specify the varieties similar to the variety applied for and shall state in what way the latter differs from them.

(2) The description of the variety may be supplemented by illustrations.

(3) The heading of the description of the variety shall contain the name and given name or the business name of the applicant, his domicile or registered place of business, and the designation of the botanical species to which the variety belongs.

(4) All copies of the description shall be signed by the applicant for the variety or his agent.

Acceptance and Chronological Order of Applications

21.—

(1) Any application not complying with Articles 18, 19 and 20 shall be returned to the applicant for rectification (Article 27(1) of the Law).

(2) Applications from abroad shall only be accepted if filed through an agent established in Switzerland or if the powers of attorney of an agent established in Switzerland are attached (Article 3 of the Law).

(3) In case of doubt, the chronological order of applications (Article 5(a)) shall be that of the entries in the Register of Applications for Protection (Article 38).

(4) Amendments, additions or replacement documents shall only be accepted for filing if they are identified in such a way that leaves no doubt as to the application to which they belong.

Proof of Priority

22.—

(1) The priority deriving from a first filing (Article 11(1) of the Law) shall be proved by submitting:

- (a) copies of the documents contained in the file of the first application for protection, certified by the authority that dealt with the first application;
- (b) a certificate issued by the authority referred to in (a) attesting to the date of the first application for protection;
- (c) a translation in an official language or in English, where the description and certificate referred to in (a) and (b) are not drawn up in an official language or in English.

(2) The complete file proving the priority deriving from a first filing shall be submitted to the Office within three months, failing which the priority right shall lapse (Article 11(2) of the Law).

(3) Applications filed in nonmember States of the Union shall be assimilated to those filed in member States where the nonmember States concerned grant reciprocity (Article 2(2) of the Law).

Publication

23. The filing of the application shall be published in the *Feuille suisse des brevets, dessins et marques*.

Objections

24.—

(1) Anyone shall be entitled to present objections to the granting of the title of protection or the admissibility of the variety denomination (Article 29 of the Law), to be submitted to the Office in writing and in three copies. Objections shall:

- (a) state the name and domicile or registered place of business of the person making the objection and, as appropriate, the name and registered place of business of his agent;
- (b) precisely and fully identify the contested application;
- (c) set out the reasons for which the variety applied for may not be protected or for which the proposed denomination may not be accepted.

Objections which do not satisfy these requirements may be taken into consideration *ex officio*.

(2) Where publications are to be produced as evidence that the variety cannot be given protection or that the variety denomination cannot be accepted, the date of the publications, together with the exact identification of the textual passages or drawings cited, shall be stated. Where the summons to provide such information is not complied with, the person making the objections may not require them to be taken into consideration.

(3) Where a document produced as evidence is not drawn up in an official language or in English, the provision of a certified translation in an official language or in English may be required. If the translation is not submitted within the stipulated time, the person making the objection may not require the document produced as evidence to be taken into consideration.

Comments of the Applicant

25.—

(1) Objections presented in conformity with the requirements shall be communicated to the applicant to enable him to comment on them (Article 29(3) of the Law). His comments shall be submitted in writing, in three copies, within the stipulated time limit. Failing this, the applicant may not require his comments to be taken into consideration.

(2) As a rule, no further procedure shall take place.

Application for Protection in Respect of a New Denomination

26. Applications for protection in respect of a new denomination, submitted under Articles 14 and 17(2), shall be addressed to the Office in three copies using the official form (Form B). Articles 14 and 23 to 25 shall apply *mutatis mutandis* to the subsequent procedure.

Other Applications

27. Applications other than those under Articles 19 and 26 shall be submitted to the Office in writing, in three copies. They shall contain the information necessary for them to be examined and shall state the grounds on which they are based.

Section 2: Examination of Varieties

Place, Date and Cultivation

28.—

(1) The examining authorities shall determine the place and date of examination. They may issue directives concerning the supply of propagating material and the conduct of the variety examination.

(2) The applicant shall be required to provide the necessary information for the growing tests of the variety; inadequate documentation shall be returned for completion.

Propagating Material

29.—

(1) The examining authorities shall stipulate the amount and nature of the propagating material required for the examination, the time for supplying the material and the place to which it shall be supplied. For those varieties of which the plants are obtained by crossing certain genetic components, the examining authorities may also require the supply of propagating material of such components.

(2) Unless otherwise required by the examining authorities, the propagating material for each examination shall be taken from the growing period preceding the examination. The propagating material shall not have been subject to chemical treatment unless the examining authorities authorize or prescribe such treatment. Where the propagating material has been chemically or physically treated for reasons of plant protection, full details shall be supplied.

Provision of Information to the Applicant

30.—

(1) The examining authorities shall provide the applicant, at his request, with information on the test in progress.

(2) By indicating his wishes in advance, the applicant may inspect the tests in progress on the spot (Article 30(3) of the Law).

Examination Report

31.—

(1) Once the examining authorities consider that the results of the examination are sufficient for the variety to be assessed, they shall draw up an examination report addressed to the Office. They shall proceed in the same manner when the applicant, on the basis of test results over a number of years, requires that a decision be taken on the granting of the protection he has requested.

(2) The examination report shall state whether the requirements of novelty, homogeneity and stability of the variety have been met. Where such is the case, the morphological and physiological characteristics of the variety or the combinations of such characteristics which give the variety its novelty shall be recorded in a draft variety description. Where it is not possible to adequately distinguish the variety concerned from another existing variety, the reasons for the inadequacy shall be stated.

(3) The applicant shall be given the opportunity to comment on the examination report and on the draft variety description.

Assistance from Other Authorities

32.—

(1) The examining authorities, in agreement with the Office, may call upon the services of other qualified authorities to carry out the cultivation of the variety and conduct other tests (Article 24(2) of the Law).

(2) In cases where the examining authority is itself the applicant, the Office shall *ex officio* appoint a qualified third party to conduct the examination (Article 10 of the Federal Law on Administrative Procedure).

Consideration of Examination Results

33.—

(1) The examining authorities may take into consideration results of examinations and growing tests carried out by other qualified authorities.

(2) The results of growing tests and of examinations carried out abroad may only be taken into consideration if the examination methods used satisfy the requirements of the Law and of this Ordinance. Any agreements concluded between the Office and foreign authorities as regards the exchange of examination results shall remain unaffected.

**CHAPTER III: PROTECTION AND SURVEILLANCE
OF THE VARIETY**

Section 1: Granting of Protection

Decision

34.—

(1) On a proposal by the examining authorities, the Office shall decide to grant protection or to reject the application (Article 31 of the Law).

(2) The decision shall be notified to the applicant or to his successor in title, and to those persons who have presented objections to the application under Article 24.

Entry in the Register

35.—

(1) On entry into force of the decision establishing that the conditions for granting protection have been satisfied (Article 47(1)), protection shall be granted to the variety by entry in the Register of Titles of Protection (Article 31(2) of the Law).

(2) The official date of entry of protection in the Register shall be that of the last working day of each half month.

Title of Protection of the Variety

36. The applicant shall receive a title of protection attesting to the entry of the variety in the Register (Article 31(2) of the Law).

Section 2: Surveillance of the Protected Variety

Subsequent Examination

37.—

(1) Where there are reasons to believe that the requirements placed on the characteristics of the variety are no longer satisfied, the examining authorities may require the holder of protection to supply all information, documents and propagating material required for surveillance of the protected variety and may, where necessary, require a subsequent examination (Article 17(1)(b) of the Law). Articles 28 and 29 shall apply *mutatis mutandis* to the subsequent examination of the continuing stability of the variety.

(2) If the holder of the title hinders, by his behavior, the surveillance of the protected variety or if the protected variety does not prove to be sufficiently homogeneous, stable and identical with itself, the examining authorities shall refer the matter to the Office, accompanied by an examination report in the latter case, for the purpose of instituting proceedings for the annulment of protection under Article 17(1) of the Law.

CHAPTER IV: VARIETY PROTECTION REGISTERS, PUBLICATIONS AND FEES

Section 1: Registers and Publications

Register of Applications for Protection

38.—

(1) Applications for protection of a variety shall be entered without delay in the Register of Applications for Protection, in their chronological order of receipt, stating:

- (a) the provisional serial number;
- (b) the genus or species to which the variety belongs;
- (c) the name or business name of the applicant, his domicile or registered place of business and his full address;
- (d) the provisional denomination of the variety or, if the variety has already been applied for or protected in one or more other member States, the denomination given in those member States;
- (e) the relevant filing date and member State, if the applicant wishes to claim a priority right under Article 11 of the Law.

(2) The Register of Applications for Protection shall not be open to the public but, upon request, the Office shall give third parties information on pending applications subject to the indication by such third parties of the name of the applicant or the provisional serial number given to the application.

(3) Information supplied under paragraph (2) shall be subject to a fee (Article 44(2)).

Register of Titles of Protection

39.—

(1) The information listed in Article 22(1) of the Law shall be entered in the Register of Titles of Protection. The variety description shall contain the morphological and physiological characteristics of the variety on which the grant of protection was based; it may be replaced by a reference to other documents of the Office. In the case of varieties of which the plants are obtained by crossing specific genetic components, a corresponding note shall be included.

(2) The Register of Titles of Protection shall also contain:

- (a) the serial number of the title of protection;

- (b) the genus or species to which the protected variety belongs;
 - (c) changes affecting continued protection;
 - (d) changes affecting the right to protection, where evidence is given to the Office. Such changes shall also include the granting of restricted rights such as a pledge or a license, or the termination of such rights;
 - (e) withdrawal of the powers of attorney or changes as regards the identity of the agent, where the powers of attorney given to a new agent are produced.
- (3) As long as an exclusive license is entered in the Register, no other license incompatible with that license may be entered for the same variety.
- (4) The Office may enter any other information it considers useful.

Publications

40.—

- (1) Pursuant to Article 33(1) of the Law, the Office shall publish in the *Feuille suisse des brevets, dessins et marques*:
- (a) the entry of the variety in the Register of Titles of Protection, giving the serial number, the genus or species to which the variety belongs, the variety denomination, the holder of the title and, where appropriate, his agent, the breeder, where he is not the holder of the title, the date of the application and of its publication and, where appropriate, the country and date of priority;
 - (b) the cancellation of the variety in the Register of Titles of Protection;
 - (c) the cancellation of a former denomination and the entry of the new denomination for the variety in the Register of Titles of Protection;
 - (d) changes entered in the Register concerning continued protection and the right to protection (Article 39(2)(c) and (d));
 - (e) Withdrawal of the powers of attorney or changes as to the identity of the agent (Article 39(2)(e)) entered in the Register.
- (2) Publication shall normally be made every two months.
- (3) In the publication referred to in paragraph (1), the Office may communicate other information it considers useful or general information concerning the protection of varieties.

Section 2: Fees and Time Limits for Payment

Filing Fee

41.—

- (1) The filing fee (Article 36(1)(a) of the Law) shall be 150 francs when the application for protection (Form A) is filed together with the variety denomination (Form B). Where the application for protection is only accompanied by a breeder's reference, the filing fee shall be 200 francs.
- (2) The filing fee shall cover all costs incurred in examining the variety denomination, publishing the filing and the variety denomination, and granting protection.
- (3) Where the filing fee is not paid on submission of the application, the Office shall inform the applicant that unless payment is made within 30 days (Articles 20 to 24 of the Federal Law on Administrative Procedure) of notification, the application shall be held to be void.

*Examination Fees***42.—**

(1) The examination fees (Article 36(1)(b) of the Law) payable for each full or partial examination year shall be laid down in the Annex to this Ordinance.³ The examination year shall begin on expiry of the time limit for supplying propagating material (Article 29(1)).

(2) The examination fees shall become due on the first day of the examination year and, subsequently, on the first day of each following examination year; they shall be payable within three months. The Office shall set a new time limit of 30 days for debtors in arrears and shall inform them that the application for protection will be rejected should payment not be made within the prescribed time.

(3) Where the examining authorities call upon the services of other authorities under Article 32(1), the applicant shall pay only the amount he would have had to pay had the examining authorities conducted the examination themselves.

(4) Where the examining authorities take into consideration the results of examinations made abroad (Article 24(2) of the Law and Article 33(2) of this Ordinance), the costs incurred thereby shall only be charged to the applicant where they cannot be covered by the annual fees following the granting of protection.

*Annual Fees***43.—**

(1) For the duration of protection of the variety (protection years), the holder of protection shall pay an annual fee (Article 36(1)(c) of the Law) according to the following scale:

<i>Year of Protection</i>	<i>Francs</i>
1st	240
2nd	300
3rd	400
4th	500
5th	600
6th to 15th	700
16th to 20 th	500

(and, where appropriate, for each of the subsequent years according to Article 14 of the Law).

The first year of protection shall begin at the start of the calendar year following the grant of protection (Articles 34 to 36). Protection shall expire at the end of the twentieth full calendar year (Article 14 of the Law). During the period between the grant of protection (Article 35) and the start of the first year of protection, the annual fee shall be payable in proportion to the time elapsed. Pursuant to Article 35(2), the time elapsed shall be calculated in half months, each of which shall correspond to one twenty-fourth of the first annual fee.

(2) The annual fee shall be payable on the first day of each new year of protection; it shall be payable within three months. The Office shall grant a further period of 30 days to debtors in arrears and shall inform them that protection of the variety will lapse if payment is not made within the stipulated time.

(3) On a proposal by the Committee of Experts on the Protection of Varieties (Article 55 of the Law), the annual fees may be suitably reduced for species having no commercial importance and which are newly entered in the list of species.

³The Annex is not reproduced here.

Other Fees

44.—

- (1) The following other fees shall be charged (Article 36(3) of the Law):⁴
- (2) The Federal Department of Public Economy may require fees to be charged for other services provided by the Office, such as presentation of registers, information given as to the content of the registers, provision of extracts from the registers, certificates, etc.

Advance Payments

45. Any administrative act for which fees are payable may be subject to an appropriate advance payment or the provision of securities up to the amount of the total fees which will fall due.

Reduction of Fees

46.—

- (1) When an application for which fees are payable is withdrawn before a decision has been taken, the fees, except the examination fee (Article 42), shall be reduced by half.
- (2) If an applicant withdraws his application or if it is rejected for any reason whatsoever after the propagating material has already been despatched to the examining authorities, the examination fee which has fallen due shall be forfeited in whole to the federal exchequer.

CHAPTER V: FINAL PROVISIONS

Section 1: Administrative Jurisdiction

Administrative Appeal

47.—

- (1) Decisions of the Office concerning the granting, refusal or annulment of protection may be referred, within thirty days of their notification, to the Appeals Section of the Federal Intellectual Property Office (Article 25 of the Law).
- (2) Where a document produced as evidence is not drawn up in an official language or in English, the presentation of a certified translation in an official language or in English may be required. If such translation is not filed within the period of time stipulated therefor, the document produced as evidence shall not be taken into consideration. For the rest, the procedure shall be governed by the Federal Law on Administrative Procedure.

Appeal under Administrative Law

48. Pursuant to Article 97 *et seq.* of the Federal Law on Judiciary Organization, appeal may be made to the Federal Court against decisions of the Office other than those referred to in Article 47.

⁴The list of other fees is not reproduced here.



Section 2: Committee of Experts

49. The Committee of Experts on the Protection of Varieties (Article 55 of the Law) shall comprise a maximum of 15 members. The Federal Department of the Public Economy shall draw up the rules of procedure of the Committee and shall appoint its members.

Section 3: Entry into Force

50. This Ordinance shall enter into force on June 1, 1977.