

HUNGARY

Law No. XXXIII on the Protection of Inventions by Patents^{1,2}

April 25, 1995

Part IV

Patent Protection for Plant Varieties and Animal Breeds

Article 105

- (1) A plant variety shall be patentable if it is distinct, uniform, stable and new and has been given a denomination suitable for registration.
- (2) The variety shall be deemed to be distinct if it clearly differs by one or more morphological or other measurable characteristics from any other variety whose existence is a matter of common knowledge at the date of priority.
- (3) The variety shall be deemed to be uniform if the relevant characteristics of its individuals are identical.
- (4) The variety shall be deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or at the end of each cycle of propagation.
- (5) The variety shall be deemed to be new if it has not been offered for sale or marketed with the consent of the breeder or his successor in title:
- (a) in the country earlier than one year before the date of priority;
- (b) abroad earlier than four years or, in the case of trees and vines, earlier than six years before the date of priority.
- (6) The denomination must, at the date of priority, be such that the variety may be identified. In particular, it may not consist solely of figures except where this is an

established practice for designating varieties, it must not be liable to mislead, it must be different from the denomination of an existing variety of the same or closely related plant species and its use must not be contrary to public policy or morality.

Article 106Rights and ObligationsDeriving from Patent Protection for Plant Varieties

- (1) A patent granted for a plant variety shall confer on the patentee the exclusive right in respect of:
- (a) the production for the purposes of commercial marketing, the offering for sale or the marketing of the propagating material, as such, of the plant variety;
- (b) the repeated use of the plant variety for the commercial production of another variety;
- (c) the commercial use as propagating material of ornamental plants marketed for purposes other than propagation.
- (2) Entire plants, seeds or other parts thereof suitable for propagation shall be considered propagating material.
- (3) The propagating material of the patented plant variety may be exported only by the authorization of the patentee to a country in which the plant variety does not enjoy protection similar to that provided by this Law.

¹ Published in *Magyar Közlöny*, 1995, p.1670

² Translation provided by the Hungarian authorities

(4) Patent protection shall have a duration of 15 years from the date of the grant of a patent or, in the case of trees and vines, of 18 years from such date.

(5) The patentee shall be required to maintain the plant variety during the period of patent protection.

(6) Where a plant variety has been qualified by the State, the inventor shall be entitled, at the patentee's discretion, to remuneration or to other compensation under the provisions on State qualification of plant varieties.

Article 107

Substantive Examination of Applications Concerning Plant Varieties

(1) A patent application may only seek patent protection for a single plant variety.

(2) The substantive examination of the application carried out by the Hungarian Patent Office shall ascertain:

(a) whether the plant variety meets the requirements laid down in Article 105 and is not excluded from patent protection under Article 6(2);

(b) whether the application complies with the requirements prescribed by this Law.

(3) The distinctness, uniformity and stability of the plant variety shall be assessed in the course of qualification by the State or on the basis of the results of experimental testing carried out for the purposes of patent procedure. The experimental testing shall be carried out in the territory of the country by an organization designated in special legislation.

(4) The results of experimental testing carried out by a competent foreign organization may be taken into consideration in the patent procedure with the consent of such organization subject to reciprocity. In the matter of reciprocity, the standpoint of the President of the Hungarian Patent Office shall be decisive. The Hungarian Patent Office shall notify the organization mentioned under paragraph (3) of the acceptance of the results of foreign testing.

(5) The cost of experimental testing shall be borne by the applicant.

(6) The results of experimental testing may be filed by the applicant within four years following the date of priority.

Article 108

Revocation of Patent Granted for a Plant Variety, Cancellation of Variety Denomination

(1) A patent granted for a plant variety shall be revoked

(a) *ex tunc*, if the plant variety was not distinct or new or was excluded from patent protection under Article 6(2),

(b) with effect from the date at which the relevant decision has become final, if the patentee does not comply with the obligations provided for in Article 106(5).

(2) The variety denomination shall be cancelled if it was not suitable for registration and another variety denomination shall be given.

Article 109

Application of General Provisions

(1) The patented plant variety may be put into public production only after having been qualified by the State.

(2) In any other matters, the provisions of Chapters I to XII shall apply *mutatis mutandis* to plant varieties and their patent protection.

CHAPTER XIV

PROVISIONS CONCERNING ANIMAL BREEDS

Article 110

Conditions of Patent Protection for Animal Breeds; Right to Grant of Patent

(1) An animal breed shall be patentable if it is distinct and new and has been given a denomination suitable for registration. Where an animal breed does not fall within the scope of the Law on Livestock Breeding, patentability shall also be subject to reproducibility of the animal breed.

(2) The animal breed shall be deemed distinct if it clearly differs in one or more assessment characteristics from any other breed whose existence is a matter of common knowledge at the date of priority.

(3) The animal breed shall be deemed reproducible if its assessment characteristics remain unchanged through several generations.

(4) The animal breed shall be deemed new if it has not been offered for sale or marketed with the consent of the breeder or his successor in title earlier than one year before the date of priority.

(5) The denomination must, at the date of priority, enable the animal breed to be identified. In particular, it may not consist solely of figures except where this is an established practice for designating breeds, it must not be liable to mislead, it must be different from the denomination of an existing breed of the same or a closely related animal species and its use must not be contrary to public policy or morality.

(6) In the case of State approved breeds, the right to a patent shall belong to the person applying for approval or to his successor in title.

Article 111

Rights and Obligations Deriving from Patent Protection of Animal Breeds

(1) A patent granted for an animal breed shall confer on the patentee an exclusive right in respect of

(a) the production for the purposes of commercial marketing, the offering for sale or the marketing of the propagating material, as such, of the animal breed,

(b) the repeated use of the animal breed for the commercial production of another breed.

(2) The animal itself (individual), sperms, ova, eggs suitable for hatching, embryos, or any other biological units or parts influencing or controlling propagation (e.g. parts of genes, cells) shall be considered propagating material.

(3) The propagating material of the patented animal breed may be exported only with the authorization of the patentee to a country in which the animal breed does not enjoy protection similar to that provided by this Law.

(4) Patent protection shall have a duration of 20 years from the date of filing of the application.

Article 112

Substantive Examination of Applications concerning Animal Breeds

(1) A patent application may only seek patent protection for a single animal breed.

(2) The substantive examination of the application carried out by the Hungarian Patent Office shall ascertain:

(a) whether the animal breed meets the requirements laid down in Article 110(1) to (5) and is not excluded from patent protection under Article 6(2),

(b) whether the application complies with the requirements prescribed by this Law.

(3) The distinctness and reproducibility of the animal breed shall be assessed in the course of State approval or

on the basis of the results of experimental productivity testing carried out for the purposes of patent procedure. The experimental testing shall be carried out in the territory of the country by an organization designated in special legislation.

(4) The result of experimental productivity testing carried out by a competent foreign organization may be taken into consideration in the patent procedure with the consent of such organization and subject to reciprocity. In the matter of reciprocity, the standpoint of the President of the Hungarian Patent Office shall be decisive. The Hungarian Patent Office shall notify the organization mentioned under paragraph (3) of the acceptance of the results of foreign testing.

(5) The results of experimental productivity testing may be filed by the applicant within four years following the date of priority.

(6) The cost of experimental productivity testing shall be borne by the applicant.

Article 113

Revocation of Patent Granted for an Animal Breed,

Cancellation of Denomination

(1) A patent granted for an animal breed shall be revoked *ex tunc* if the animal breed was not distinct or new or was excluded from patent protection under Article 6(2).

(2) The denomination shall be canceled if it was not suitable for registration and another denomination shall be given.

Article 114

Application of General Provisions

(1) A patented animal breed falling within the scope of the Law on Livestock Breeding may be put into public production only after State approval.

(2) In any other matters, the provisions of Chapters I to XII shall apply *mutatis mutandis* to animal breeds and their patent protection.