

GOVERNMENT

DECISION No HG295/2009 of 16.04.2009

**approving the Regulation on the procedure of filing and examination
of an application, grant and maintenance of a patent for a plant variety**

Published: 24.04.2009 in the OFFICIAL GAZETTE No 80-81 art. 346 Date of entry into force

AMENDED

GD668 of 25.09.24, OG419-422/04.10.24 art.796; in force 04.10.24

NOTE:

Throughout the text, the words “State Commission”, in any grammatical form, are replaced with the following “Public Institution”, in the corresponding grammatical form by *GD668 of 25.09.24, OG419-422/04.10.24 art.796; in force 04.10.24*

For the purpose of the implementation of the provisions of Law No 39-XVI of 29 February 2008 on the Protection of Plant Varieties (Official Gazette of the Republic of Moldova, 2008, No 99-101, art. 364), the Government DECIDES:

The Regulation on the procedure of filing and examination of an application, grant and maintenance of a patent for a plant variety is approved (attached).

This decision partially transposes Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, published in the Official Journal of the European Communities L 227 of 1 September 1994, and Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing articles on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community plant variety rights, published in the Official Journal of the European Communities L 173 of 25 July 1995.

PRIME MINISTER

Zinaida GRECEANII

Countersigned by:

First Deputy Prime Minister,

Minister of Economy and Trade

Igor DODON

No 295. Chişinău, 16 April 2009.

Approved
by Government Decision No 295
of 16 April 2009

REGULATION

**on the procedure of filing and examination of an application, grant and maintenance of a
patent for a plant variety**

Chapter I General Provisions

1. The Regulation on the procedure of filing and examination of an application, grant and maintenance of a patent for a plant variety (hereinafter referred to as *Regulation*) establishes procedural norms and conditions for filing a patent application, the manner of filling out the application form, requirements for the documents related to an application, procedures for formal, preliminary and substantive examination of an application, conditions for assigning the variety denomination, data required for publication in the Official Bulletin of Intellectual Property of the Republic of Moldova (hereinafter referred to as *BOP*), requirements for technical examination of a variety, grant, issuance and maintenance of a patent for a plant variety, other norms on complementary activities related to procedures for granting a patent and implementing the provisions of Law No 39-XVI of 29 February 2008 on the Protection of Plant Varieties (hereinafter referred to as *Law*).

Chapter II

Patent application

Section 1

Filing of the Application

2. A patent application (hereinafter referred to as *application*) shall be filed by natural and legal persons in person or via a representative/authorized attorney with the State Agency on Intellectual Property (hereinafter referred to as *AGEPI*).

3. The application shall contain a standard form completed in accordance with the provisions of point 13 of this Regulation and a technical questionnaire, containing the data indicated in point 23 of this Regulation.

4. The application shall be accompanied by:

1) proof of payment of the fee in the prescribed amount, indicating, where appropriate, the grounds for exemption from payment of the fee or for its reduction, in accordance with the provisions of Government Decision No 774 of 13 August 1997 “on the list of services of legal significance in the field of protection of intellectual property objects” (hereinafter referred to as *Government Decision No 774 of 13 August 1997*);

2) the power of attorney for the representation of the applicant, where the application is filed through a representative/authorized attorney ;

3) the priority document indicating the filing date of the previous application, in the case of claiming the priority of a previous application from another state;

4) a document confirming the acquisition of the right to grant a patent, where the applicant is not the same person as the breeder;

5) color photographs, necessary for the identification of the variety, if applicable;

6) authorization from the competent national authority in the field of biological safety confirming that the technical examination of the variety does not pose any risk to the environment, in accordance with the provisions of the legislation on biological safety, where the variety refers to genetically modified plants.

5. The application may be accompanied by any other documents, if they refer to a previous application for the variety in question, filed in another State.

6. The documents contained in the application and the correspondence related thereto shall be drafted and filed with the AGEPI in the state language.

7. If documents are filed in another language during the procedures with AGEPI, their translation into the state language shall be submitted within two months from the date of filing the documents, otherwise the documents shall be considered not to have been filed.

8. The application shall be filed with the AGEPI:

1) directly (the person filing the application shall present an identity document);

2) by registered mail;

3) by facsimile or other electronic means of communication, provided that the original of the application on paper is submitted within two months, in accordance with the provisions of subpoints 1) and 2) of this point. The original must be accompanied by a letter identifying the documents previously submitted by one of the means mentioned in this subarticle;

4) by online filing via the e-AGEPI service or using the UPOV electronic filing form.

9. AGEPI shall indicate on the application the year, month and day of receipt of the application and the entry number assigned in chronological order.

10. The applicant may file the patent application with the competent bodies of other member states of the International Union for the Protection of New Varieties of Plants (hereinafter referred to as *UPOV*), prior to the issuance of the patent by AGEPI. In this case, the applicant is obliged to provide information about the applications filed and the protection titles granted abroad for the candidate variety.

Section 2

Application Form

11. The application, according to paragraph (1) a) of Article 33 of the Law, shall be filed in 4 copies on a standard form approved by the AGEPI, which must be completed clearly and legibly, the text must be typewritten or printed.

12. Along with the application for the grant of a patent, the applicant may also request the registration of the variety in the Catalogue of Plant Varieties of the Republic of Moldova, kept by the National Agency for Food Safety (hereinafter referred to as *ANSA*), by submitting a single application form.

[Pt 12 amended by GD668 of 25.09.24, OG419-422/04.10.24 art.796; in force 04.10.24]

13. Upon completion of the application form, the following shall be indicated:

1) information identifying the applicant:

a) the natural person shall indicate in the application: surname, first name, telephone and facsimile number with the area code, full postal address, postal code of the country of which citizen he is; in the case of stateless persons – the code of the country of his domicile, and in the absence thereof – the postal code of the country of his registered office; national applicants shall indicate the unique state identification number (IDNP), specified in the State Register of Population;

b) the legal entity shall indicate in the application its official name, telephone, facsimile with the area code, headquarters, postal address and postal code of the country, in accordance with the legislation of which it was established. National applicants shall indicate the unique state identification number (IDNO), assigned by the state registration body;

c) in the case of several applicants, the data referred to in subpoints a) and b) of this point shall be indicated for each of them;

2) information identifying the representative/authorized attorney, if the applicant has appointed a representative/authorized attorney: surname, first name, full postal address, telephone and facsimile with the area code;

3) the common representative, in the case of more than one applicant, the representative or person designated for correspondence: surname, first name, full postal address, postal code of the country, telephone and facsimile with the area code;

- 4) the legal basis on which the right to the patent belongs to the applicant;
- 5) the genus and species (botanical taxon) to which the plant variety belongs (common name and Latin name); the denomination of the variety: provisional or definitive;
- 6) the origin of the variety;
- 7) the document of transfer of the right in the variety, if the applicant is not the breeder of the variety;
- 8) information on other applications filed for the grant of a patent for a plant variety or the admission of the variety into production;
- 9) the breeder's statement certifying that the variety has not been commercially exploited for the purposes of the provisions of Article 10 of the Law or if it has been exploited – in which countries and from what date;
- 10) the indication of whether or not the candidate variety is a genetically modified organism, indicating the supporting documents regarding the genetically modified organism, if applicable;
- 11) the priority claimed (indicate the country or office, date, number of the previous application and the denomination of the variety);
- 12) the designation of the breeders, indicating the surname, first name and country code; for national breeders, the data shall include the full address of residence, unique state identification number (IDNP), place of work, position at the date of creation of the variety;
- 13) the list of documents submitted to AGEPI, including the number of copies and the number of sheets in each copy;
- 14) additional information on the variety, indicating the maturity group, direction of use, cultivation area, special recommendations;
- 15) the signature of the applicant, clearly indicating the name and surname, as well as the date of signing.

14. If the application is not signed, a copy of the application form shall be returned by AGEPI to the applicant, who shall within two months submit it signed. Otherwise, the patent application shall be deemed to be withdrawn.

Section 3

Proposal for a Variety Denomination

15. The applicant shall indicate in the application the proposed variety denomination which will enable the variety to be identified. A variety must be designated by the same denomination in all documents contained in the application.

16. The variety denomination:

- 1) shall normally consist of one word or a combination of not more than three words, with or without meaning, to which letters or numbers may be added, so that the variety can be distinguished from any other known existing variety;
- 2) must not consist solely of figures, except in cases recognised as forming part of the international practice for designating certain species by "codes", for example, for cereals;
- 3) must not contain elements which, upon expiry of the term of protection of the variety, could prevent the free use of this denomination or could prevent the free marketing of the variety;
- 4) must not be identical with, affect or create a risk of confusion with another trade name of another variety or with a trademark, appellation of origin or geographical indication, or with

another protected industrial property right relating to products identical or similar to those to which the variety relates;

5) must not create difficulties in its recognition or reproduction;

6) must not falsely suggest that the candidate variety derives from/or relates to another variety;

7) must not include superlatives, words such as “variety”, “form”, “hybrid”, “diversity” and “crossing”, or translations of such words;

8) must not be identical with, affect or create a risk of confusion with another denomination of a protected variety throughout the term of validity of the variety patent and after the expiry of the term of validity of the variety patent, if the exploitation of the variety continues after the expiry of this term.

17. Grounds for non-acceptance of the proposal for the variety denomination:

1) a prior right of a third party conflicts with the use of the proposed denomination;

2) the proposed denomination may cause its users difficulties as regards recognition or reproduction;

3) the proposed denomination is identical with or may be confused with a denomination of another variety existing, known, protected or entered in a catalogue of production varieties, or marketed in a Member State of UPOV and which belongs to a species or subspecies, variety, subvariety of plants, closely related to the variety for which protection is sought;

4) the proposed denomination is identical with other designations which are commonly used for the marketing of goods or which cannot be used by virtue of other legal provisions;

5) the proposed denomination is contrary to good morals or is contrary to ordre public;

6) the proposed denomination is liable to mislead or to cause confusion concerning the characteristics, the value or the identity of the variety, or the identity of the applicant, breeder or maintainer;

7) the proposed denomination is different from the denomination under which the same variety has already been entered in an official catalogue of plant varieties and under which the variety material has been marketed for commercial purposes in a Member State of UPOV, except for the cases provided for in subpoints 1)-6) of this point.

18. The denominations of varieties that have not been marketed for more than 10 years and whose existence has not been and is not well-known may be reused.

19. Before filing a patent application and in order to propose an acceptable denomination for the candidate variety, any person may request AGEPI to conduct a search concerning the intended variety denomination.

20. If the proposal for the denomination of the variety is not accepted by AGEPI or if the applicant wishes to change the denomination of the variety initially proposed, he shall submit to AGEPI a new proposal for the denomination of the variety. The proposal for the variety denomination shall be submitted in triplicate on a standard form developed by AGEPI, the sections of which must be completed clearly and legibly, the text must be typed or printed. The proposal must be accompanied by proof of payment of the prescribed fee.

21. The proposal for the variety denomination shall contain:

1) the filing number and filing date of the patent application, as well as the variety denomination initially proposed in the patent application;

2) identification data of the applicant(s): surname, name/denomination, country code, full address, telephone and facsimile number with area code;

- 3) the species and genus (botanical taxon) to which the variety belongs (Latin name and common name);
- 4) the variety denomination (in capital letters) for which registration is requested;
- 5) data relating to the proposed or registered denomination in other UPOV member states, in chronological order (year – month – day), including the country or office where the application was filed, the stage of examination of the application and the name, if it differs from the proposed one;
- 6) signature of the applicant(s) or the representative/authorized attorney.

Section 4

Technical Questionnaire

22. The technical questionnaire shall be completed on a standard form developed by AGEPI and shall be submitted in 4 copies. All sections shall be completed clearly and legibly, the text shall be typewritten or printed. The answers to the questions shall be written clearly and precisely.

23. The technical questionnaire shall contain:

- 1) the botanical taxon with the indication of the genus and species in Latin and the common name of the plant;
- 2) information identifying the applicant(s);
- 3) proposed denomination of the candidate variety;
- 4) origin of the variety with indication of the parents;
- 5) crossing method, breeding method;
- 6) variety reproduction method, if applicable, and working scheme;
- 7) relevant characteristics of the candidate variety, according to the examination standards for determining whether the variety is distinct, uniform and stable (with indication of the numbers in brackets referring to the characteristics included in the technical questionnaire that correspond to the numbers of the characteristics in the Table of Characteristics of the requested crop, developed by UPOV; for each characteristic included in the technical questionnaire, the closest degree of expression of the given characteristic for the crop in question is indicated);
- 8) similar variety or 2-3 varieties known and used in production, which are closer in their characteristics to the candidate variety and, if applicable, the differences of the candidate variety from this varieties;
- 9) additional information contributing to the identification of the variety and establishing its distinctiveness, including resistance to pests, diseases, resistance to adverse weather conditions, special conditions for testing the variety in order to establish whether the variety is distinct, uniform and stable, other information necessary for testing the variety;
- 10) signature of the applicant(s), representative or authorized attorney.

Section 5

Photographs

24. Photographs shall be submitted in four copies. Photographs of the variety shall be presented on a standard sheet (dimensions 90x120 mm, maximum permissible dimensions are 180x240 mm) on a linear scale background, indicating the units of measurement (mm, cm, etc.), numbering the figures and indicating the denomination of the variety.

25. Photographs shall illustrate the plants in their entirety (general view) and relevant separate organs (stem, leaves, flowers, inflorescences, whole and/or sectioned fruits, seeds).

26. In the case of applications relating to varieties of flowers and ornamental plants, color photographs in several versions must be attached, illustrating the shades of colors, according to the color chart. This requirement also applies to varieties for which the color of a certain part of the plant is claimed as a relevant characteristic (for example, the color of the skin or pulp of the fruit, etc.).

Section 6

Proof of Payment of Fee

27. The patent application shall be accompanied by proof of payment of the prescribed fee or a document certifying the grounds for the exemption or reduction of the fee.

28. The document constituting proof of payment of the fee in Moldovan lei is a copy of the payment order authenticated by the authorized bank, a receipt of collection issued by the AGEPI accounting division or a postal order receipt.

29. The document constituting proof of payment of the fee in euro is a copy of the payment order authenticated by the authorized bank.

30. The proof of payment of the fee must contain the name of the procedure for which the fee was paid, and if it is filed later – the entry number or filing number of the patent application.

Section 7

Power of Attorney

31. The power of attorney confirming the powers of the representative/authorized attorney shall be issued under the personal signature of the applicant and does not require notarial authentication.

32. The power of attorney may be filed simultaneously with the application, or within two months from the date of filing the application. If the power of attorney is not filed within the prescribed time limit, the actions taken by the representative/authorized attorney shall be deemed not to have been carried out.

33. In the case of national applicants, the power of attorney may be filed simultaneously with any document of the application submitted to AGEPI or within two months from the date of submission of the document to AGEPI.

34. The power of attorney may relate to one or more applications or patents or to all existing or future applications or patents of the person who issued the power of attorney. In such case, a separate copy of the power of attorney must be submitted for each application or patent to which the power of attorney relates.

35. The power of attorney may limit the right of the representative/authorized attorney to perform certain actions. Any act requested by the representative/authorized attorney regarding the withdrawal of an application or the surrender of an application or a patent may be performed only on the basis of a special mention in the power of attorney, which expressly indicates the right to withdrawal or surrender.

36. The power of attorney for the representation of a natural or legal person with a permanent residence outside the Republic of Moldova may be issued to the authorized representative registered with AGEPI directly by this person or by his authorized representative, who has the corresponding power of attorney issued by the applicant. In the latter case, both powers of attorney shall be attached to the application.

37. The power of attorney must meet the following conditions:

- 1) be issued for the management of a single or several applications or patents;
- 2) contain the date of issuance;
- 3) establish the limits of the powers of the representative/authorized attorney;

4) be signed by the person who issued it.

38. The term of validity of the power of attorney may not exceed three years. If the term for which it is issued is not indicated in the power of attorney, it shall be deemed valid for one year from the date of issue.

39. If the power of attorney is issued in the name of several authorized representatives/attorneys registered with AGEPI, any of them may manage the affairs concerning the application or patent.

Section 8

Priority Document

40. The priority document must contain a priority certificate issued by the patent office with which the initial application was filed and a copy of the initial application. The priority certificate must indicate the date of filing of the initial application.

41. In the case of claiming priority based on a previous application filed in another state, AGEPI may require the applicant to file, within three months from the dispatch of the notification, a certified translation into the state language of this application.

42. If the applicant claims in the patent application a priority right belonging to another person, in order to recognize the priority, it is necessary to submit to AGEPI an agreement from the assignor, which shows that the applicant has the right to claim the priority according to the initial application. In this case, the person who assigned the priority right to another person forfeits the priority right relating to the first application. The time limit for submitting the agreement is three months from the date of the priority claim.

43. In case of failure to comply with the time limit indicated in point 42 of this Regulation, AGEPI does not recognize the priority claimed.

Section 9

Signing of Application Documents

44. The documents contained in the application, the documents accompanying the application and all additional or communication materials shall be submitted to AGEPI with the signature of the applicant or of the representative/authorized attorney.

45. The signatures on the documents accompanying the application, in accordance with the provisions of this Regulation, shall be followed by the family name and surname of the person signing.

46. Where there are several applicants, the application shall be signed by each of them or by the common representative of the applicants designated by them. Any communication relating to the application may be signed by the applicant designated for correspondence with AGEPI by a common agreement of the applicants, and if such a person is not designated – by the applicant first named in the application.

47. If the documents are signed by a responsible person, the position of the signatory and the full official name of the enterprise shall be indicated.

Section 10

Drafting of Application Materials

48. In the technical description of the variety, the technical questionnaire, in the explanatory materials and in other application materials, standard terms and abbreviations shall be used, and in their absence, terms and abbreviations well-known in scientific and agricultural literature.

49. In the case of using terms and markings that are not widely used in the literature, their meaning shall be explained in the text at the first use. All conventional markings shall be deciphered in the text.

50. The patent application shall not contain expressions, drawings, figures, photographs and other materials that are contrary to ordre public and morality.

51. The patent application shall not contain derogatory statements regarding other varieties or breeding processes, as well as applications or patents of other persons, expressions or data that obviously do not refer to the variety.

52. All documents contained in the patent application shall be drafted in such a way as to enable their immediate preservation and reproduction whenever necessary, in compliance with the following requirements:

- 1) each sheet shall be used only on one page, with the lines placed parallel to the short edge of the sheet;
- 2) each document of the patent application shall begin with a new sheet;
- 3) the documents related to the application shall be drawn up on a sheet of white, strong, smooth, non-transparent and matte paper of the format 210x297 mm;
- 4) in each document related to the application, the second and subsequent sheets shall be numbered with Arabic numerals, in ascending order, in the middle of the top of the sheet.

53. The documents shall be printed in black characters at 1.5 intervals, with the height of the capital letters not less than 2.1 mm, on a computer – with the Times New Roman CE font, size 14. Upon request, materials recorded on electronic media in the Windows program may be attached.

Chapter III

Procedure for Grant of a Patent

Section 1

Formal Examination

54. AGEPI, within two months from the date of submission of the application documents, shall undertake a formal examination of the application in order to establish the filing date.

55. AGEPI shall examine in accordance with the provisions of Article 33 of the Law whether the patent application for a variety contains:

- 1) the standard application form with the request for the grant of a patent;
- 2) name and surname/denomination and domicile/seat of the applicant;
- 3) name and surname, domicile/seat of the breeder or breeders who created or discovered and developed the new variety;
- 4) the proposal for a denomination of the variety;
- 5) the Latin name of the genus, family, species, subspecies to which the variety belongs and the common name in the state language;
- 6) the technical questionnaire in which the characteristics of the variety are presented in a standardized form, according to international norms for the description of a new variety depending on the species of affiliation; if it is not complete, the applicant shall be granted two months to complete it;
- 7) the declaration by which the applicant assumes responsibility for confirming that:
 - a) he has not commercialized the variety in accordance with the provisions of Article 10 of the Law; or
 - b) has marketed it, indicating in which countries and from what date.

56. Where the conditions provided for in point 55 of this Regulation have not been met, AGEPI shall notify the applicant of the missing elements that must be filed within two months of the date of filing the application. In this case, the filing date of the application shall be deemed to be the date of filing of the last element of those requested. If the requested elements have not been filed within the indicated period, the patent application shall be deemed not to have been filed.

57. Where it is found that the conditions provided for in point 55 of this Regulation are met, a filing date shall be assigned to the application. The application shall be registered in the National Register of Patent Applications and the applicant shall be notified thereof. As notification of the positive result of the formal examination, AGEPI shall send the applicant a copy of the application form, drawn up in accordance with the established requirements.

Section 2

Preliminary Examination

58. If the result of the formal examination is positive, AGEPI shall, within three months from the date of filing the application, conduct a preliminary examination of the application.

59. In the process of preliminary examination, in accordance with the requirements of Article 43 of the Law, the following shall be verified:

- 1) submission of proof of payment of the application fee in the amount and within the legal term;
- 2) correctness of the priority claim and submission of priority documents and proof of payment of the fee prescribed for the priority claim;
- 3) submission of a power of attorney in the case of filing the application through a representative/authorized attorney ;
- 4) submission of documentary evidence concerning the acquisition of the right to a patent or the priority claim;
- 5) correctness of completion of the application form;
- 6) correctness of completion of the technical questionnaire;
- 7) compliance with the requirements concerning the submission of documents contained in the application;
- 8) where the variety constitutes a genetically modified organism, the presentation of the authorization for introduction into the environment, issued by the competent national authority in accordance with the legislation on biosafety or of the authorization confirming that the technical examination of the variety does not present any risk to the environment;
- 9) the documents and information submitted concerning the origin and cultivation conditions for the candidate variety.

60. Failure to comply with the time limits indicated in paragraph (2) of Article 37 and paragraphs (2) and (3) of Article 38 of the Law, as well as failure to pay the fee for claiming priority, shall entail the non-recognition of the claimed priority.

61. If, during the preliminary examination, the application is found to lack or not comply with the documents required under this Regulation, the applicant shall be notified of the irregularities and shall be asked to eliminate them within two months from the date of dispatch of the notification.

62. If, within the prescribed time limit, the applicant does not eliminate the notified irregularities or does not submit a request for extension of the relevant time limit, the application shall be refused.

Section 3

Publication of an Application

63. On expiry of a period of three months as from the filing date of the patent application, AGEPI shall publish in BOPI the following data on the application:

- 1) filing number;
- 2) filing date;
- 3) name or denomination of the applicant(s), country code;
- 4) name of the breeder(s), country code;
- 5) name of the representative/authorized attorney;
- 6) proposed denomination of the variety.

64. Upon publication of the application in BOPI, the application materials, including the technical questionnaire, the variety denomination, photographs, and additional materials, if applicable, shall be made available to the public in the AGEPI library.

Section 4

Substantive examination

65. Where the application meets the requirements set out in paragraph (1) of Article 43 of the Law, AGEPI shall conduct a substantive examination of the application in order to establish whether:

- 1) the application refers to a variety within the meaning of Article 3 of the Law;
- 2) the variety *prima facie* falls within the declared botanical taxon;
- 3) the variety is new, according to the provisions of Article 10 of the Law;
- 4) the denomination proposed by the applicant meets the requirements of Article 36 of the Law and point 16 of this Regulation and there are no grounds for not accepting the proposal for the denomination of the variety in accordance with point 17 of this Regulation.

66. If, following the examination of the application in accordance with the provisions of point 65 of this Regulation, the existence of deficiencies is found, AGEPI shall notify the applicant, giving him the opportunity to remedy them within two months.

67. The examination of the proposed variety denomination shall include documentation based on granted variety patents and applications registered in official registers or on information collections of varieties, based on detailed descriptions in publications with a date prior to the filing or priority date of the patent application.

68. If during the examination it is found that the variety denomination does not comply with the requirements provided for in Article 36 of the Law and points 16 and 17 of this Regulation, the applicant shall be notified to submit to the AGEPI, within two months, a new proposal for the variety denomination, provided that the fee prescribed in accordance with Government Decision No 774 of 13 August 1997 is paid. In case of failure to comply with the specified time limit or in the absence of an attempt to extend the time limit or in case of non-payment of the fee, the patent application shall be refused.

69. If the applicant proposes a new denomination for the candidate variety, AGEPI shall publish the new denomination in BOPI and shall carry out its examination.

70. The applicant shall be notified whenever necessary of the examination of the application, indicating the time limit for reply. The applicant may request an extension of the time limit for reply, upon payment of the prescribed fee.

71. If, within the prescribed time limit, the applicant does not reply or request an extension of the time limit for reply, AGEPI shall suspend the examination procedure, granting the applicant a period of six months from the date of expiry of the unobserved time limit, to re-establish it and submit the reply.

72. If, prior to the expiry of a period of six months, the applicant does not file a request for re-establishment of the omitted time limit, with the simultaneous submission of the necessary documents and proof of payment of the corresponding fee, the application shall be refused and the decision of refusal shall be sent to the applicant.

73. Grounds for refusal of the patent application during the substantive examination:

1) the variety does not meet the requirements of Article 10 of the Law or patents or patent applications for the respective variety have been found with a filing or priority date prior to the filing or priority date of the application under examination, which fully cover the relevant characteristics of the candidate variety mentioned in the description or technical questionnaire;

2) the variety denomination does not meet the requirements of Article 36 of the Law and points 16 and 17 of this Regulation.

74. Until the decision to refuse the application is issued, the applicant shall be notified of the existing grounds for refusal of the application and shall be invited to submit, within three months, a reasoned response concerning the grounds expressed in the notification. If the applicant does not present, within the established time limit, substantiated arguments against the grounds for refusal of the application, AGEPI shall adopt a decision to refuse the application.

75. AGEPI shall publish in BOPI the mention of the decision to refuse the application, within 2 months from the date on which it was sent to the applicant.

75¹. AGEPI may request the presentation of evidence during the examination, if there are doubts regarding the veracity of any information contained in the applicant's/owner's application with reference to any procedure, as well as in the documents attached thereto or in subsequent communications.

Section 5

Examination of Patent Applications for the Same Variety with the Same Priority Date

76. If it has been found that the variety, according to the filed application, is patentable, but there is another application not withdrawn and published for the same variety, with the same filing date, such fact shall be notified to the applicant.

77. If, during the examination, it has been found that the varieties are identical and have the same filing or priority date, the patent may be granted on the basis of the application that has the previous registration number with AGEPI, unless the agreement between the applicants provides otherwise. At the same time, the applicant shall be notified whether his application has a previous or subsequent registration number with AGEPI.

78. Informing the applicant of the examined application about the bibliographic data from another patent application and disclosing its content until the publication of the data relating to this application shall be permitted only with the consent of the applicant of the other application.

79. The identity of the varieties shall be established on the basis of the latest version of the descriptions or technical questionnaires, submitted by the applicants in the established manner.

Section 6

Examination of a Patent Application Filed by a Non-Entitled Person

80. If a third party submits to the AGEPI evidence that he has initiated proceedings in court against the applicant in order to establish that he is the person entitled to the grant of the patent, AGEPI shall suspend the granting procedure, unless the third party agrees to continue the

procedure. This consent must be submitted to the AGEPI in writing and is irrevocable. The suspension of the procedure may not occur before the publication of the patent application.

81. If a court decision in a procedure for claiming the right to grant a patent is submitted to AGEPI, the applicant or other interested parties shall be notified that the procedure for grant of a patent shall resume from the date indicated in the notification, except in the case where a new patent application is filed in accordance with point b) paragraph (1) of Article 14 of the Law. If the court decision is pronounced in favor of the third party, the procedure may not be resumed until after the expiration of a period of three months from the entry into force of the decision, except in the case where the third party has requested the continuation of the procedure for grant of a patent.

82. On or after the adoption of the decision on the suspension of the procedure, AGEPI may set a date on which it intends to continue the procedure, without taking into account the conduct of the procedure against the applicant provided for in point 80 of this Regulation. This date is notified to the third party, the applicant and, where appropriate, other interested parties. If a court decision is not presented by this date, AGEPI may continue the procedure.

Section 7

Technical Examination of a Variety

83. AGEPI, within one month from the date on which it notified the applicant of the positive result of the substantive examination of the application, shall transmit to the Public Institution National Institute for Applied Research in Agriculture and Veterinary Medicine (hereinafter – *Public Institution*) copies of the following documents relating to the application:

1) the application form, the technical questionnaire and any other document submitted by the applicant containing useful information for carrying out the technical examination of the variety;

2) the applicant's request concerning the confidentiality of data relating to the components of the variety, according to paragraph (3) of Article 67 of the Law;

3) documents relating to the objections based on the failure to meet the conditions laid out in Articles 7 to 9 of the Law.

[Pt.83 amended by GD668 of 25.09.24, OG419-422/04.10.24 art.796; in force 04.10.24]

84. The technical examination of the variety shall be carried out in accordance with the methodologies established by the Public Institution, based on international norms and standardized recommendations developed by UPOV, supplemented by existing national norms for testing varieties considered specific to the pedoclimatic conditions of the country, for each species.

85. The duration of the testing shall be established by the Public Institution, based on international norms for testing varieties, in particular based on the UPOV Guidelines for the Conduct of Test for Distinctiveness, Uniformity and Stability of New Varieties of Plants. In exceptional cases, the duration of the testing may be extended by the Public Institution or at the request of the applicant, upon payment of an additional fee.

86. In order to correctly carry out the growing tests, the applicant shall provide information materials on how to cultivate the candidate variety.

87. If the applicant submits the results of testing carried out by a competent body of a Member State of UPOV, the Public Institution shall verify that they are submitted with the consent and in compliance with the payment conditions imposed by the respective competent body, according to which the fee for purchasing the technical report from a competent authority of a Member State of UPOV shall be paid by the applicant to the authority that tested the variety

and drew up the technical examination report, and shall subject the results submitted to a formal analysis with a view to their validation or invalidation.

88. If the Public Institution decides to invalidate the test results in accordance with article 87 of this Regulation, it shall notify the applicant thereof, granting him a period of three months for reply and offering its availability to carry out the testing of the candidate variety, subject to payment of the prescribed fee.

89. Based on the analysis of the results of the growing tests carried out in accordance with Article 46 of the Law or the results of the tests carried out by a competent body in a Member State of UPOV presented by the applicant, the Public Institution shall draw up a technical examination report in which the level of fulfillment of the conditions by the tested variety is assessed, in accordance with Articles 7-9 of the Law.

90. If the Public Institution finds, based on the results of the technical examination, that the variety does not comply with the requirements in accordance with Articles 7-9 of the Law, the technical examination report must state the reasons on which this finding is based.

91. The technical examination report must be signed by the person responsible for carrying out the technical examination and must contain the indication that it is intended exclusively for use by AGEPI, in accordance with paragraph (5) of Article 48 of the Law.

92. The Public Institution shall forward the technical examination report to AGEPI, which shall notify the applicant of the results of the technical examination, giving him a period of three months to file his observations.

93. If the applicant does not meet the requirements under paragraph (4) of Article 46 of the Law within the established period, the Public Institution shall notify AGEPI of such fact. In this case, the application shall be deemed withdrawn.

Section 8

Examination of Objections to a Patent Application

94. Objections filed in accordance with Article 49 of the Law must contain:

- 1) the name of the applicant and the filing number of the application to which the objection relates;
- 2) information identifying the objector;
- 3) if the objector has appointed an authorized attorney – his name and address;
- 4) a statement on the grounds on which the objection is based, and on facts, evidence and arguments presented in support of the objection.

95. If several objections in respect of a patent application are filed, AGEPI may examine them together.

96. If AGEPI finds that the objection filed does not meet the requirements established in accordance with Article 49 of the Law and point 94 of this Regulation, it shall notify the person who filed the objection of the deficiencies found, setting a period of one month for their remedy. If the deficiencies are not remedied within the specified period, the objection shall be rejected.

97. AGEPI shall notify the applicant of the accepted objections and shall set a period of two months from the date of receipt of the notification for the submission of the reply. If the objection concerns the variety denomination, the applicant may submit a new proposal for the variety denomination within the specified period.

98. If AGEPI finds that the objection is based on grounds which may constitute grounds for refusal of the application, it shall notify the applicant of such fact and a period of three months shall be set for the submission of a reasoned reply on the grounds expressed in the

notification. If the applicant does not provide substantiated arguments against the grounds for refusal of the application within the specified period, AGEPI shall refuse the application.

Section 9

AGEPI Decisions

99. If the technical examination report establishes that the variety does not meet at least one of the conditions set out in Articles 7-10 and 36 of the Law, AGEPI shall notify the applicant of the reasons that may constitute grounds for refusal of the application, setting a period of three months to submit his observations.

100. If the applicant does not present substantiated arguments against the grounds for refusal of the application within the established period, AGEPI shall adopt a decision to refuse the application.

101. AGEPI shall publish in BOPI the mention of the decision to refuse the application or to grant a patent within two months from the date on which it was sent to the applicant.

102. The mention of the decision to grant a patent shall be published in BOPI, containing the following data:

- 1) filing number;
- 2) filing date;
- 3) name or denomination of the owner(s), country code;
- 4) name of the breeder(s) of the variety, country code;
- 5) common name of the species and botanical taxon;
- 6) denomination of the variety;
- 7) patent number.

103. Simultaneously with the publication in BOPI of the mention of the grant of the patent, the official description of the variety shall be made available to the public in the AGEPI library.

Section 10

Withdrawal of the Application

104. The withdrawal of the application shall be made only upon the written request of the applicant or the representative/authorized attorney, subject to payment of the prescribed fee.

105. After the commencement of the technical examination procedure of the variety, the fees for the technical examination of the variety shall not be refunded to the applicant.

106. The withdrawn patent application shall have no legal effects, the subsequent actions of the applicant to the withdrawal cannot be based on such application (upon filing the subsequent application priority cannot be claimed from the filing date of the withdrawn application or of the additional material thereof).

107. The request for withdrawal of the patent application may not be revoked.

108. The date of receipt of the request for withdrawal with the AGEPI is the date from which the application is considered withdrawn.

109. Data on applications published in the established manner and withdrawn shall be published in BOPI.

CHAPTER IV

Issuance and Maintenance of Patent

Section 1

Issuance of Patent

110. Upon publication of the mention of the grant of the patent, AGEPI shall register the patent in the National Register of Plant Variety Patents.

111. Within three months from the date of publication of the mention of the grant of the patent, if no objections have been filed or the objections filed have been rejected, AGEPI shall issue a patent to the person in whose name it was requested and shall publish the particulars to that effect in BOPI.

The official description of the variety shall be annexed to the patent.

112. Where there is more than one patent owner, the patent shall be issued only to the owner designated in the contract concluded between the applicants or, failure to submit such a contract shall lead to the patent being issued to the applicant first named in the application. The co-owners of the patent and the breeders may request copies of the patent, provided that the prescribed fee is paid.

113. The patent owner must submit to AGEPI proof of payment of the fee for issuance of the patent no later than three months from the date of publication of the mention of the grant of the patent.

114. Simultaneously with the proof of payment of the fee for issuance of the patent, the owner must submit proof of payment of the fee for maintenance of the patent for the first year of validity. Organisations in the field of science and innovation are exempted from payment of maintenance fees for the first five years.

115. If the owner failed, within the prescribed time limit, to file the proof of payment of the fee for the issuance and maintenance of the patent for the first year of validity, the procedure for issuance of the patent shall be suspended, such fact being notified to the owner. If the owner fails, within six months from the omitted date, to file the request for re-establishment of the omitted time limit and the proof of payment of the corresponding fees, AGEPI shall adopt a decision to forfeit the owner's rights deriving from the patent. The relevant decision shall be communicated to the owner and shall be published in BOPI.

116. AGEPI shall monthly publish in BOPI the list of issued plant variety patents. The date of issuance of a patent shall be the date on which the mention of the issuance of the patent is published in BOPI.

117. Data on issued patents shall be published in BOPI, which shall include:

- 1) number of the patent;
- 2) date of filing;
- 3) name or denomination of the owner(s), country code;
- 4) name of the breeder(s), country code;
- 5) date of grant of the patent;
- 6) common name and botanical taxon;
- 7) variety denomination.

118. At the request of the patent owner, AGEPI may issue a duplicate of the patent, if the original has been lost or destroyed, or cannot be restored for other valid reasons, provided that the prescribed fee is paid.

Section 2

Maintenance of Patent

119. The annual fee for maintenance of the patent shall be paid by the first day of each year of validity, but not earlier than three months before the beginning of the next year of validity of the patent.

120. The omitted time limit for payment of the fee for maintenance of the patent may be restored within 6 months from the omitted date, provided that the prescribed fee is paid.

121. If the owner has not submitted proof of payment of the fee for maintenance of the patent within the prescribed period and, within six months from the date of omission – proof of payment of the prescribed fee and the additional fee, AGEPI shall publish in BOPI information on the forfeiture of owner's rights.

122. If during the patent maintenance period the variety denomination must be amended in accordance with Article 62 of the Law, AGEPI shall notify the owner of the reasons justifying the need for this amendment, set the deadline within which the owner must propose an amended denomination and specify that in case of failure to comply with this requirement, AGEPI may decide on the forfeiture of owner's rights in accordance with Article 24 of the Law.

The owner must submit to AGEPI his proposals for the amended denomination of the variety in two copies, subject to payment of the fee prescribed in accordance with Government Decision No 774 of 13 August 1997.

If AGEPI does not accept the proposal for an amended denomination, the owner must submit a new proposal for the denomination of the variety within the deadline set by AGEPI.

Section 3

Surrender of Patent or Transfer of Rights in a Patent

123. The declaration of surrender of patent shall be completed on a standard form approved by AGEPI and shall be deemed to have been filed after payment of the prescribed fee.

124. If the owner surrenders the patent, the breeder shall have a preferential right to file a request for acquisition of that patent in his name, provided that the prescribed fee for entry of the corresponding amendments in the National Register of Plant Variety Patents and in the patent is paid.

125. If the subject-matter of the patent is a license contract, surrender of patent shall only be possible with the consent of the licensee.

If a license has been registered with AGEPI, surrender of patent shall be entered in the National Register of Patents only after two months from the date on which the owner of the patent has presented to the AGEPI a document stating that the owner has informed the licensee of his intention to surrender the patent.

If, before the expiry of such time limit, the owner provides evidence to the AGEPI that the licensee has given his consent, surrender of patent shall be immediately registered.

126. In the event of the transfer of patent right, the request for grant of a non-exclusive license by the new patent owner pursuant to paragraph (2) of Article 61 of the Law shall be submitted within three months of the entry of the new patent owner in the National Register of Plant Variety Patents.

Chapter V

Public Inspection

127. Inspection of the registers or application documents pursuant to Article 67 of the Law shall be carried out on the basis of a written request submitted to AGEPI.

128. On request, AGEPI shall permit inspection of the registers or documents relating to the application by issuing excerpts from the registers or copies of the documents to the person requesting them, subject to payment of the prescribed fee.

On request, the documents may be inspected by way of a communication in writing of the information contained in the requested documents. At the same time, AGEPI may require the party concerned to consult the documents personally should it deem this to be appropriate in view of the quantity of information to be communicated.

129. Documents contained in applications which have not been published may only be made available for inspection with the consent of the applicant.

130. Prior to the publication of the application, AGEPI shall communicate to third parties, upon payment of the prescribed fee, the following information:

1) number of the application;
2) date of filing and, where priority has been claimed, date of priority, the country of the initial application and the file number of the initial application;

3) name or denomination of the applicant.

131. The documents excluded from public inspection shall be:

1) the documents relating to the AGEPI draft decisions which are not communicated to the parties concerned;

2) documents containing the indication of the breeder in the event that he has refused to be mentioned in this capacity;

3) the documents containing the information referred to in paragraph (3) of Article 67 of the Law;

4) the documents for internal use, including those relating to amendments in the composition of the Appeals Board or containing objections to its members.

132. Restrictions on inspection of application materials, under point 131 of this Regulation, shall not apply to inspection of the documents contained in the application by courts.

133. If the application is withdrawn, the application materials may be inspected only with the written consent of the applicant or at the request of the court.

134. Inspection of variety testing may be carried out upon request, submitted in writing to the Public Institution which may grant access to the test lots.

The President of the Public Institution shall lay down the details of the procedure for the inspection of the variety testing in order to ensure measures to protect the rights of the applicant or the owner.

135. Any interested person shall have the right to request from AGEPI copies of the materials indicated in the notification, decision or examination report.

AGEPI shall, within two months from the date of receipt of the request, send copies of the materials, upon payment of the prescribed fee.

Chapter VI Common Provisions

Section 1

Correspondence

136. Correspondence with the applicant shall be delivered to the address indicated in the patent application or to the address of the representative/authorized attorney. If such an address is not indicated, the correspondence shall be delivered to the address of the applicant first named in the application.

137. AGEPI shall maintain the correspondence for each application separately.

138. The materials sent to AGEPI after the filing of the application shall contain a reference to its number and the signature of the applicant or the representative/authorized attorney. Otherwise, they shall be not admissible for examination.

139. The materials supplementing or amending the documents contained in the application shall be submitted for each copy of the respective document of the application in the state language or of its translation into the state language.

140. If the amendments relate to typographical errors, stylistic errors, errors in bibliographic data, etc., and do not lead to a decrease in the quality of the image in the event of multiplication, the need to introduce corrections may be expressed by a letter from the applicant.

141. If AGEPI has sent a notification to the applicant, the time limits for examination of the application shall be extended to a period between the date of dispatch of the notification and the date of receipt of the response from the applicant.

Section 2

Extension of Time Limits and Re-establishment of the Omitted Time Limit

142. The request for extension of a time limit shall be drafted in a free form. The time limit necessary for extension may be indicated by the applicant directly in the request for extension or several consecutive applications may be filed, provided that each subsequent application is filed prior to the expiry of the time limit extended by the previous application.

143. Failure to observe the time limit for filing the request for extension, it shall not be accepted, such fact being notified to the applicant.

144. The request for extension shall be accompanied by proof of payment of the fee in the amount prescribed for the extension of the time limit. If this proof is not submitted, the request for extension shall be deemed not to have been filed, and the applicant shall be notified thereof.

145. The request for re-establishment of the omitted time limit shall be drafted in a free form. An applicant or owner shall file the request for re-establishment of the omitted time limit not later than six months from the date of expiry thereof. As a result of failure to comply with this condition, the patent application shall be deemed to be abandoned and refused, and a decision on loss of owner's rights shall be adopted in respect of the patent, such fact being notified to the applicant or owner.

146. The request for re-establishment of the omitted time limit shall be deemed to have been filed only after the payment of the corresponding fee in the prescribed amount and the attachment of the requested materials, otherwise, the request for re-establishment of the omitted time limit shall be rejected, which shall be notified to the applicant or owner.

Section 3

Re-establishment of Rights

147. AGEPI, at the request of the applicant/owner, shall grant re-establishment of rights, provided that it is found that the non-observance of the time limit occurred in spite of all due care required by the circumstances having been taken or that any delay was unintentional. Re-establishment of rights shall be made upon payment of the prescribed fee and filing of the documents stating the grounds for non-observance of the time limit.

148. At the same time as he files the request for re-establishment of rights, the applicant shall file the act confirming the observance of the omitted time limit.

149. For re-establishment of rights in respect of a patent, the act provided for in Article 148 of this Regulation shall be the proof of payment of the fee prescribed for the period of grace of six months and of the annual maintenance fee in the prescribed amount, whose time limit for payment was omitted.

150. If the request for re-establishment of rights does not state the grounds for non-observance of the time limit, the applicant for or owner of a patent shall submit these grounds, confirmed by acts, within the time limit indicated in the notification from AGEPI.

151. AGEPI shall, within one month, examine the request for re-establishment of rights, the acts certifying the grounds for non-observance of the time limit, the compliance with the

requirements provided for in points 148-150 of this Regulation, after which it shall decide on the admission or refusal of the request for re-establishment of rights.

152. If AGEPI intends to refuse the request for re-establishment of rights, it shall notify the applicant for or owner of the reasons which serve as ground for refusal, giving him a period of three months from the date of dispatch of the notification to submit any observations on the intent to refuse.

If the materials submitted by the applicant for or owner do not certify the grounds for non-observance of the time limit or if any response has not been submitted within the prescribed time limit, AGEPI shall decide to refuse the request for re-establishment of rights.

153. Information on the applications upon which the procedure for re-examination has been resumed and re-established patents shall be published in BOPI.

Section 4

Introduction of Amendments

154. Amendment in the composition of breeders/applicants/owners, their identification data and the correspondence address shall be carried out by introducing the amendments to the application, where appropriate, in the patent.

155. Amendments requested within two months from the filing date shall be introduced without payment of the amendment fee, and after the expiry of the said time limit - subject to payment of the fee. Change of the address for correspondence shall be done without payment of fee.

156. The request for introduction of amendments shall be made by filing an application for introduction of amendments on the standard form approved by AGEPI.

157. The application for introduction of amendments must refer to a single amendment and must contain the following data:

- 1) the number and filing date of the application (if the application does not yet have a filing number, the assigned entry number shall be indicated) or the patent number;
- 2) the identification data of the applicant/owner;
- 3) the name and address of the representative/authorized attorney, if the request for introduction of amendments is filed through the representative/authorized attorney;
- 4) the address for correspondence, where appropriate;
- 5) the indication of the element in the application/patent whose amendment is requested and the proposed amendment;
- 6) the request for issuance of the certificate confirming the amendments to the data, if the issuance of a new patent is not requested;
- 7) the signature of the applicant/owner, as applicable of the representative/authorized attorney, according to point 13, subpoint 15) of this Regulation.

158. Only one amendment shall be taken into account:

- 1) amendment in the identification data of the breeder, applicant or owner: in the case of natural persons - the name, surname and/or address, in the case of legal persons - the name and/or seat and/or legal form;
- 2) amendment in the composition of the breeders, if the applicants/owners are not the same persons as the breeders;
- 3) amendment in the composition of the applicants, except in the case where this amendment is based on the assignment of rights;
- 4) amendment in the composition of the owners, except in the case where this amendment is based on the surrender of the patent or the assignment of rights;

5) amendment of the address for correspondence.

159. The following documents shall be attached to the application for introduction of amendments:

1) the power of attorney signed by the applicant/owner, if the request for introduction of amendments is filed through a representative/authorized attorney ;

2) the document confirming the amendment, if the amendment in the name and/or seat and/or legal form of the applicant/owner is based on the reorganization of the legal entity;

3) the normative act by which the applicant/owner (legal entity) amended its name and/or address and/or legal form, if the amendment in the identification data of the applicant/owner is made pursuant to normative provisions;

4) the normative act by which the applicant/owner (natural person) amended his address, if the amendment of the applicant's/owner's address is made pursuant to normative provisions;

5) copy of the identity card, if the requested change refers to the name and/or address of the breeder/applicant/owner (natural person);

6) the document confirming the existence of the right in the application/patent, if this right is acquired by succession;

7) the decision of the court, if the amendment is made pursuant to a court decision;

8) the patent owner's declaration of surrender of the patent, with his signature, if the amendment is based on the exercise of the breeder's preferential right, according to Article 25 (6) of the Law;

9) the declaration of each individual breeder/applicant, with signature, accepting the inclusion or exclusion of a breeder/breeders or applicant/applicants in/from the application or, where appropriate, in/from the patent, if the amendment concerns the composition of the breeders/applicants and if, in the case of applicants, it does not occur as a result of an assignment or succession of rights;

10) the declaration of each individual owner, with signature, accepting the inclusion or exclusion of a owner/owners in/from the patent, if the amendment concerns the composition of the owners and if it does not occur as a result of an assignment or succession of rights;

11) a signed declaration by each individual breeder/applicant/owner that the requested amendment will not prejudice the rights of the person who cannot be contacted, in the case of an amendment in the composition of breeders/applicants/owners, without the consent of this person;

12) proof of payment of the fee for introduction of amendments, as appropriate.

160. Amendment in the composition of breeders/applicants/owners pursuant to point 158, subpoints 2)-4) of this Regulation shall be made without the consent of the breeder/applicant/owner who is a deceased/missing person, without successors in title or who cannot be contacted. In the case of a person who cannot be contacted, the provision of this point shall apply provided that all means of contact have been exhausted and the breeders/applicants/owners have declared in writing that the rights of this person will not be infringed as a result of the amendment.

161. It is sufficient to submit a single application for introduction of amendments indicating the number and date of the applications/patents to which it relates, if the same element is requested to be amended in several applications/patents of the same applicant/owner, provided that the fee for introduction of amendments for each application/patent separately has been paid. The application for introduction of amendments and the documents attached thereto shall be submitted in a sufficient number of copies necessary for the attachment to all the files of the plant varieties for which the amendment is requested.

162. The examination of the application for introduction of amendments and the documents attached shall be carried out within two months from the date of filing thereof.

163. In the examination process of the application for introduction of amendments and the documents attached thereto, the following shall be checked:

- 1) presence of data provided for in point 157 of this Regulation;
- 2) presence of other documents necessary for the introduction of the requested amendments, specified in point 159 of this Regulation and their compliance with the provisions of this Regulation and the legislation in force;
- 3) whether the requested amendment effectively constitutes an amendment specified in point 158 of this Regulation;
- 4) compliance of the data indicated in the request for introduction of amendments and the data contained in the attached documents with the data entered in the National Register of Plant Variety Patent Applications or, where appropriate, in the National Register of Plant Variety Patents;
- 5) the existence of the proof of payment of the fee for introduction of amendments, where appropriate.

164. If in the examination process AGEPI finds:

- 1) irregularities in the application for the introduction of amendments or in the attached documents,
- 2) lack of documents specified in point 159 of this Regulation,
- 3) non-payment of the fee for introduction of amendments or payment thereof in an amount lower than the prescribed one, it shall notify the applicant/owner or his representative/authorized attorney, designated by a power of attorney, and shall grant him a period of two months from the date of receipt of the notification to remedy the irregularities found.

Any notification of AGEPI, delivered in the course of the examination procedure of the application for introduction of amendments and the attached documents, shall extend the examination term for a period equal to the term that elapsed from the date of dispatch of the notification prior to the date of receipt of the response.

165. Depending on the result of the examination of the application for introduction of amendments and the documents attached, AGEPI shall issue one of the following decisions:

- 1) to accept the amendments, if all the requirements established by the Law and this Regulation are met;
- 2) to refuse the amendments, if in the examination process the existence of at least one ground specified in point 166 of this Regulation was found.

166. AGEPI shall issue the decision to refuse the amendments if:

- 1) the irregularities referred to in point 164 of this Regulation, found in the examination process of the application for introduction of amendments and the documents attached, and communicated to the applicant/owner or his representative/authorized attorney, were not remedied within the granted time limit and no request for extension of this time limit was filed;
- 2) the document attached to the application for introduction of amendments does not confirm the change in the data of the breeder/applicant/owner or contains provisions that contravene the legislation in force and/or the provisions that are mutually exclusive;
- 3) the proposed amendment constitutes a rectification of the error regulated by Section 5 of this Chapter;

4) the proposed amendment is based on the assignment of rights in the patent application/patent;

5) the proposed amendment is based on the surrender by a co-owner/co-owners of the patent in accordance with Article 25 of the Law;

6) the application for introduction of amendments is not signed by each applicant/owner, if the patent application is filed by several applicants or the patent is issued in the name of several owners, except for the case when the application for introduction of amendments is signed by the representative/authorized attorney designated by them;

7) there is no agreement of all breeders/applicants on the inclusion or exclusion of a breeder/breeders or applicant/applicants in/from the application or, where appropriate, in/from the patent, except for the situation regulated by point 160 of this Regulation;

8) there is no agreement of all owners on the inclusion or exclusion of a owner/owners in/from the patent, except for the situation regulated by point 160 of this Regulation;

9) there is no declaration by the breeders/applicants/owners of the fact that the requested change will not infringe the rights of the person who cannot be contacted, in the case of an amendment in the composition of breeders/applicants/owners, without the consent of this person.

167. Accepted amendments shall be published in BOPI, except for amendments in respect of applications whose data have not been published, and shall be entered in the National Register of Plant Variety Patent Applications or, where appropriate, in the National Register of Plant Variety Patents.

The publication of data on accepted amendments shall include the following information:

- 1) type of industrial property object;
- 2) number of the filing/patent;
- 3) number of BOPI in which the data concerning the application/patent were published;
- 4) initial data prior to rectification;
- 5) amended data.

168. The amendment of the address for correspondence shall be made by entering the updated data in the application materials/patent data, without the AGEPI decision being issued.

Section 5

Rectification of Errors

169. The request for rectification of errors made in the application/patent or in other documents submitted to AGEPI shall be filed by the applicant/owner or, where appropriate, by his representative/authorized attorney, on the standard form approved by AGEPI and shall be accompanied by proof of payment of the error rectification fee. The request for rectification of errors filed within two months from the filing date of the patent application shall not be subject to payment of the fee.

170. In the request for rectification of errors, the following data shall be indicated:

- 1) the number and filing date of the patent application or the number of the patent to which the request for rectification of errors relates (if the patent application does not yet have a filing number, the assigned entry number shall be indicated);
- 2) name (denomination) and address of the applicant/owner;
- 3) name and address of the representative/authorized attorney, where appropriate;
- 4) address for correspondence, where appropriate;
- 5) indication of the error whose rectification is requested and the proposed rectification;
- 6) the request for issuance of a certificate confirming the rectification of data, if the issuance of a new patent is not requested;

7) signature of the applicant/owner, where appropriate, of the representative/authorized attorney, according to point 13 subpoint 15) of this Regulation.

171. The following documents shall be attached to the request for rectification of errors:

1) the power of attorney signed by the applicant/owner, if the request for rectification of errors is filed through a representative/authorized attorney ;

2) the document confirming the correctness of the data whose rectification is requested according to the request for rectification of errors;

3) proof of payment of the error rectification fee, if the rectification of errors was requested after the expiry of the 2-month period from the date of filing.

172. It is sufficient to file a single request for rectification of errors indicating the number and date of the applications/patents to which it relates, if the rectification of the same error is requested in several applications/patents of the same applicant/owner, provided that the error rectification fee is paid for each application/patent separately. The request for rectification of errors and the documents attached thereto shall be filed in a sufficient number of copies necessary for attachment to all the files of the plant varieties for which the rectification of errors is requested.

173. The examination of the request for rectification of errors shall be carried out within 2 months from the date of filing thereof.

In the examination process, the following shall be checked:

1) presence of the data provided for in point 170 of this Regulation;

2) conformity of the data indicated in the request for rectification of errors and the data contained in the attached documents with the data entered in the National Register of Plant Variety Patent Applications or, where appropriate, in the National Register of Plant Variety Patents;

3) whether the proposed rectification does not constitute an amendment regulated by Section 4 of this Chapter;

4) existence of the proof of payment of the error rectification fee, if the rectification of errors was requested after the expiry of the 2-month period from the date of filing.

174. If AGEPI, during the examination process, finds irregularities in the request for rectification of errors or if the error rectification fee has not been paid or has been paid in an amount lower than that prescribed one, it shall notify the applicant/owner or his representative/authorized attorney and shall give him a time limit of two months from the date of receipt of the notification to remedy the irregularities found.

Any notification of AGEPI, delivered within the framework of the examination procedure of the request for rectification of errors, shall extend the examination term for a period equal to the term that has elapsed from the date of dispatch of the notification prior to the date of receipt of the response.

175. Depending on the result of the examination of the request for rectification of errors, AGEPI shall issue one of the following decisions:

1) to accept the rectification of errors, if all the requirements established by the Law and this Regulation are met;

2) to refuse the rectification of errors, if in the examination process the existence of at least one ground specified in point 176 of this Regulation was found.

176. AGEPI shall issue a decision to refuse the rectification of the error if:

1) the proposed rectification constitutes an amendment regulated by Section 4 of this Chapter;

2) the irregularities found have not been remedied within the time limit granted in accordance with point 174 of this Regulation and no request for extension of this time limit was filed.

177. Rectifications of errors shall be published in BOPI, except for rectifications in respect of applications whose data have not been published, and shall be entered in the National Register of Plant Variety Patent Applications or, where appropriate, in the National Register of Plant Variety Patents.

The publication of data on rectified errors shall include the following information:

- 1) type of industrial property object;
- 2) number of the filing/patent;
- 3) number of BOPI in which the data concerning the application/patent were published;
- 4) initial data prior to rectification;
- 5) rectified data.

178. The accepted amendments and rectifications, made before the grant of the patent, shall be included in the patent. In the case of amendments/rectifications made after the grant of the patent, a certificate confirming the amendment/rectification of the data or a new patent containing the accepted amendments/rectifications shall be issued, at the request of the owner, provided that the fee for issuance of a patent has been paid and the previous copy of the title of protection or its duplicate has been returned.

179. The amendment introduction fee and the error rectification fee shall not be refunded, except in cases where the application for introduction of amendments or the request for rectification of errors was withdrawn before the initiation of the examination procedure.

Section 6

Limitation of Patent Owner's Rights

180. The provisions of Article 16 (2) of the Law shall apply to the following agricultural plant species of:

1) Fodder plants:

Cicer arietinum L. - Chickpea milkvetch

Lupinus luteus L. - Yellow lupin

Medicago sativa L. - Lucerne

Pisum sativum L. (*partim*) - Field pea

Trifolium alexandrinum L. - Berseem/Egyptian clover

Trifolium resupinatum L. - Persian clover

Vicia faba - Field bean

Vicia sativa L. - Common vetch;

2) Cereals:

Avena sativa - Oats

Hordeum vulgare L. - Barley

Oryza sativa L. - Rice

Phalaris canariensis L. - Canary grass

Secale cereale L. - Rye

X Triticosecale Wittm. - Triticale

Triticum aestivum L. *emend. Fiori et Paol.* - Wheat

Triticum durum Desf. - Durum wheat

Triticum spelta L. - Spelt wheat;

3) Potatoes:

Solanum tuberosum - Potatoes;

4) Oil and fibre plants:

Brassica napus L. (*partim*) - Swede rape

Brassica rapa L. (*partim*) - Turnip rape

Linum usitatissimum L. – linseed with the exclusion of flax.

181. An “own holding” within the meaning of Article 16 paragraph (2) of the Law shall be considered to be any holding or part thereof which the farmer actually exploits for plant growing, whether as his property or otherwise managed under his own responsibility and on his own account, in particular in the case of leaseholds.

182. Farmers may use, for propagating purposes, the product of the harvest prepared by themselves or by processors, provided that the product subjected to processing is identical to that resulting from the processing.

183. The level of equitable remuneration to be paid to the patent owner pursuant to Article 16(3) of the Law may form the object of a contract between the owner and the farmer concerned.

184. The individual obligation of a farmer to pay the equitable remuneration shall come to existence at the time when he actually makes use of the product of the harvest for propagating purposes in the field. The patent owner may determine the date and the manner of payment.

185. The patent owner shall be entitled to request, in writing, from farmers the relevant information on the product of the harvest of a protected variety obtained and on the identity of the processors.

186. The patent owner may address the request for information directly to the farmers concerned or the request may be sent to farmers through the following persons or organisations, with their consent:

- 1) organisations of farmers or cooperatives, concerning all farmers who are members thereof;
- 2) processors, concerning all farmers to whom they have supplied a service of processing the relevant product of the harvest for planting;
- 3) suppliers of licensed propagating material of varieties of the patent owner, concerning all farmers to whom they have supplied such propagating material.

The persons and organisations may be authorised by the farmers concerned to forward the required information to the patent owner.

187. Processors shall, upon request, provide the patent owner with information in writing on the quantity of the product of the harvest of a protected variety delivered for processing and obtained after processing, the date and place of processing and the identity of the person for whom the processing was carried out.

188. The patent owner may address the request for information directly to the processors concerned or the request may be sent to processors through the following persons or organisations, with their consent:

- 1) organisations of processors, concerning all processors who are members of, or represented in, such organisation;
- 2) farmers, concerning all processors who have processed the product of the harvest for planting.

The persons and organisations may be authorised by the processors concerned to forward the required information to the patent owner.

189. The patent owner shall, upon request, provide farmers with information in writing on the amount charged for the licensed production of propagating material of the protected variety of the lowest biological category qualified for official certification.

190. Relevant information shall be provided to the owners on their request, by farmers and by processors. Relevant information may equally be provided by national authorities involved in the control of agricultural production, if such information has been obtained through ordinary performance of their tasks, without additional burden or costs. These provisions are without prejudice, in respect of personal data, to national legislation on the protection of individuals with regard to the processing and free movement of personal data.

191. Responsibility for the control of the application of Article 16 paragraphs (2)-(4) of the Law or of the provisions adopted pursuant to that article shall exclusively belong to the patent owner. In organizing this control, he may not resort to the services of the competent national authorities.