

IMPLEMENTING REGULATIONS
OF THE LAW
ON THE PROTECTION OF THE NEW PLANT VARIETIES NO. 255/1998

CHAPTER I
GENERAL PROVISIONS

Rule 1
Object of Protection

Breeders' rights on the new plant varieties, granted in the conditions of the Law, are recognized and protected in the territory of Romania, through the grant of a variety patent by the State Office for Inventions and Trademarks.

Rule 2
Definitions

For the purpose of the present regulations:

- a) *law* means the Law on the protection of the new plant varieties No. 255/1998, published in the Official Gazette of Romania no. 525 of December 31, 1998;
- b) *regulations* means the Implementing Regulations of the Law on the protection of the New Plant Varieties No. 255/1998;
- c) *O.S.I.M.* means the State Office for Inventions and Trademarks;
- d) *M.A.A.* means The Ministry of Agriculture and Food Industry;
- e) *competent national authority* means The State Institute for Testing and Registration of Varieties (I.S.T.I.S.) or an authority designated by M.A.A.;
- f) *National Register of Variety Patent Applications* means the register for entering the variety patent applications (RNCBS);
- g) *National Register of Variety Patents* means the register for entering the granted variety patents (RNBSPP);
- h) *Official Bulletin of Industrial Property* - the section for varieties protected by variety patents (BOPI- SSPBS);
- i) *authorized agent* means the natural or legal person having the place of residence or headquarter in Romania, certified by O.S.I.M. and empowered to represent the applicant or

the holder in the proceedings before the O.S.I.M.;

j) *candidate variety* means the variety for which an application for a variety patent was filed with O.S.I.M.;

k) *protected variety* means the bred and cultivated variety for which O.S.I.M. granted a variety patent;

l) *initial variety* means the protected variety which may be the starting material for a new variety essentially derived;

m) *dependent variety* means the variety which, for the purpose of production, needs the repeated use of an initial protected variety, or which is essentially derived from a protected variety, provided that said variety is not in its turn essentially derived; the dependent variety may be the subject-matter of a variety patent independently from the protected initial variety, provided that it fulfils the distinctness, uniformity and stability conditions stipulated by the law;

n) *essentially derived variety* means the variety derived from another protected initial variety, provided that it is predominantly derived from the initial variety or from another variety which is predominantly derived from the initial variety and who keeps the expression of the essential characteristics resulting from a genotype of the initial variety or from a combination of genotypes; the essentially derived variety shall be clearly distinguishable from the initial protected variety by one or more characteristics which may be precisely described;

o) *genetically modified variety* means any variety obtained by genetic engineering;

p) *ornamental tree variety* means a variety of trees belonging to any horticultural or forest species on which breeding was developed;

q) *variety of commun knowledge* means a variety existing in a recognized reference collection, in a gene bank or in an official catalogue/ register and which may be reproduced and cultivated whenever necessary.

Rule 3 Representation

(1) The applicant or holder of a variety patent may be represented in the proceedings before the O.S.I.M. by an authorized agent having the place of residence or headquarter in Romania.

(2) The applicant or holder of a variety patent who does not have the place of residence or headquarter in the territory of Romania has to be represented before O.S.I.M. by an authorized agent.

(3) The designation of the authorized agent is made by a written communication submitted to O.S.I.M., named power of attorney, and which comprises the applicant's or holder's name and signature, as the case may be.

(4) The power of attorney will refer to only one variety patent application or to a variety patent belonging to the mandant.

(5) Any document requested through the authorized agent regarding the withdrawal of the variety patent application, the renunciation to the variety patent and any application relating to the transfer of rights in a variety, will be made by a special document mentioning expressly the withdrawal, renunciation or transfer.

(6) When the applicant is represented by an authorized agent, this one may sign the variety patent application on the basis of the power of attorney given to him by the applicant. If, within 3 months from the filing date of the application the power of attorney is not submitted to O.S.I.M., the application will be rejected, in conformity with Art. 20 (2) of the Law.

(7) The applicant or the holder may have only one authorized agent, or if the application or other document indicates more authorized agents, only the first written will be taken into consideration.

CHAPTER II PATENTABILITY OF NEW PLANT VARIETIES

Rule 4 Conditions of Protection

O.S.I.M. grants a variety patent if the conditions provided for in Art. 5 of the Law, respectively novelty, distinctness, uniformity and stability, depending on the group of species, are fulfilled cumulatively, and if the variety has a correct denomination, according to Art. 15 of the Law.

Rule 5 Novelty

(1) The variety shall not be lost the novelty within the meaning of Art.6 paragraph (2) of the Law, if it:

(a) forms part of an agreement whereby a person produces propagating material of said variety in the name of the breeder or of his successor in title, provided that the harvested propagating material returns to the breeder or to his successor in title and is not used for the propagation of another variety;

(b) forms part of an agreement whereby a person conducts trials in the field or laboratory or cultivates the variety to a small-scale for its evaluation;

(c) forms the object of an administrative commitment with regard to the biological security or the registration of the varieties in an official catalogue of varieties admitted for commerce;

(d) involves the harvested material as a subproduct, a secondary product or a surplus resulting from the new variety or from the activities provided for in paragraphs (1)(a) to (c).

(2) In implementing Art. 6 (2) of the Law, following acts do not destroy novelty:

(a) the commercial exploitation of the variety by the breeder, on the territory of Romania, earlier than one year before filing the application for a variety patent with O.S.I.M.; the breeder may sell the propagating or harvested material in order to prospect the market, earlier than one year before filing the application for a variety patent with O.S.I.M.;

(b) for the varieties created by foreign applicants, the exploitation or commercialisation of the variety in other countries, earlier than four years before filing the application for the variety patent with O.S.I.M.; for the species of trees or of vines the commercial exploitation is earlier than six years before the filing date of the application with O.S.I.M.

Rule 6 Distinctness

(1) The distinctness is established, according to Art. 7 of the Law, in comparison with a reference variety and any other variety whose existence is a matter of common knowledge on the filing date of the application for the variety patent or on the date of the priority, if the candidate variety is clearly distinguishable by the expression of one or more relevant characteristics.

(2) The morphological, physiological and/or biochemical characteristics taken into consideration when examining the variety for establishing the distinctness, are the characteristics considered relevant and independent from the environment and easy to be described.

(3) Filing the application for protection or registration of a variety in a catalogue of varieties accepted for marketing makes the variety a matter of common knowledge, provided that the application leads to the grant and recognition of the breeders' rights and to the existence of the variety as living material.

(4) In order to establish that the existence of a variety is a matter of common knowledge in Romania, documents proving the exploitation of the variety may be presented, respectively the registration in an official catalogue of varieties or in a registered professional association, if included in a reference collection recognized internationally or in a member State of the International Union for the Protection of New Plant Varieties.

(5) As a rule, when establishing the distinctness of a variety, the characteristics regarding the agronomic value of the variety may also be taken into consideration; these are used only for the agricultural species and to the extent in which said characteristics are precise and not fluctuant due to the environment.

Rule 7 Uniformity

- (1) The uniformity is determined by taking into consideration the group of species the variety belongs to and the expected interspecific variations produced during the sexually or vegetative propagation, if the variety remains uniform in the expression of the relevant characteristics used for establishing the distinctness and for the variety description.
- (2) For the vegetatively propagated varieties or for the varieties obtained from self-pollinating species, the degree of uniformity is established depending on the species.
- (3) For the varieties belonging to cross-pollinating species and which have a high degree of heterogeneity, the uniformity is measured in relation to the comparison varieties.

Rule 8 Stability

The stability of a candidate variety, within the meaning of Art. 9 of the Law, is determined after repeated propagation and in compliance with the specificity of each propagation cycle of the new variety, provided that the variety remains unchanged in the expression of the relevant characteristics for distinctness and for the variety description.

CHAPTER III RIGHT TO PROTECTION

Rule 9 Right to a Variety Patent

- (1) The person entitled to be granted the protection under Art. 10 (1) of the Law is the breeder, who bred, discovered and developed the new variety.
- (2) Where the breeder has assigned his rights in the variety by an assignment contract, a licence or by any other way of transfer these rights belong to his successor in title as provided for in Art. 35 of the Law. The transfers are published in BOPI.
- (3) Where two or more breeders, bred or discovered the new variety jointly, the variety patent shall be granted to them jointly.
- (4) Where two persons bred, discovered and developed the same variety independently, the person entitled to be granted the variety patent is the one who first filed the variety patent application.
- (5) Where the applications for the same variety were filed with O.S.I.M. by two applicants on the same day, the protection shall be granted to both applicants and the variety shall be exploited jointly.

(6) The right to the variety patent shall belong to the breeder and to any other person jointly, if the two declare in writing that they agree to hold this right jointly.

(7) Where an interested person notifies to O.S.I.M. that the applicant is not the person entitled to be granted the protection for a new variety and that the ownership is appealed against, O.S.I.M. suspends the examination procedure until a final and irrevocable decision is communicated.

CHAPTER IV PROCEDURE FOR THE EXAMINATION OF AN APPLICATION

Rule 10 Filing the Application for Variety Patent

(1) Any natural or legal person who wants to protect a new variety and who is entitled to the grant of a variety patent, may file the application with O.S.I.M., directly or through an authorized agent.

(2) The application for the variety patent may be filed:

- a) directly and with the confirmation of the receipt from the Receipt bureau of O.S.I.M.;
- b) by mail, registered and with confirmation of the receipt;
- c) by electronic means, the original being afterwards sent by mail.

(3) The Receipt bureau writes down on the application the year, month and day of receipt.

Rule 11 Content of the Application for Variety Patent

(1) The application for the variety patent is drawn up in two copies, on standardized printed forms, and relates to only one variety.

(2) The application for the grant of a variety patent shall contain;

- a) an express request for the grant of a variety patent;
- b) name and surname / denomination and address / registered office of the applicant(s);

c) name and surname / denomination and address / registered office of the breeder, if the breeder is not the same as the applicant;

d) when the applicant is a foreign natural or legal person, the name of the state the citizen of which he is or the name of the state where he has the place of residence or registered office;

e) when represented by an authorized agent, the name and place of residence thereof;

f) identification of the botanical taxon, with both the Latin and common name of the species the variety belongs;

g) provisional denomination of the variety given by the breeder on a separate printed form;

h) in case of claiming the priority of a first application filed in another state, a priority declaration proving the date of the first filing;

i) a standardized description of the variety in compliance with the international guidelines on the description of protected varieties, with at least one colour reproduction annexed;

j) geographical origin of the variety;

k) the applicant's or his authorized agent's signature, as the case may be.

(3) The application for the variety patent shall be accompanied by the following documents:

a) proof of payment of the filing fee;

b) power of attorney for the representation of the applicant or holder, drawn up in Romanian or accompanied by the legalized translation in Romanian;

c) a declaration from the applicant on his own responsibility that the variety has not been commercialised, as provided in Art. 6 (1) of the Law;

d) name/denomination of the breeder and a declaration from the applicant, according to which, to the best of his knowledge, no other persons have been involved in breeding, discovery and development of the new variety;

e) the assignment contract, where the applicant is different from the breeder;

f) documents confirming the priority in another state.

(4) The variety patent application may be accompanied by any other documents providing

information about a first application, filed in another country.

(5) All documentation shall be submitted in Romanian.

(6) Where the priority of a first application filed in another state is claimed, O.S.I.M. shall invite the applicant within 3 months to provide a Romanian translation of that application.

Rule 12 **Official Filing Date of the Variety Patent Application**

(1) The official filing date of a variety patent application shall be the date of filing with O.S.I.M. a variety patent application containing at least the elements provided for in Art. 12 (1) (a) to (d) of the Law, drawn up in Romanian and accompanied by the proof of payment of the filing fee, as provided for in Art. 12 (3) (a) from the law.

(2) The official filing date provided for in Art.13 paragraph (1) of the Law shall be the same with the date of filing for foreign applicants, whether natural or legal persons, provided that the application filed in a foreign language will be translated in Romania and submitted within 3 months from the filing date.

(3) Within two months of the date of receipt of the application, O.S.I.M. examines whether the conditions provided for in Art. 12 (1) (a) to (d) and (2) (a) of the Law are fulfilled. If the conditions are fulfilled, O.S.I.M. decides to give an official filing date, to enter the application date in RNCBS, to notify the applicant and publish the application identification data in the Official Industrial Property Bulletin - SSPBS.

(4) In case some elements of the application provided for in paragraph (3) are missing, O.S.I.M. notifies the applicant a time limit of 3 months to remediate.

(5) Where the applicant regulates the application within the time period provided for in paragraph (4), the official filing date shall be the date of receipt of the documentation by O.S.I.M.

(6) Failing the regulation of the application within the time limit, O.S.I.M. will consider that the application has not been filed and will return the documentation to the applicant, refunding the examination fees in case they have been paid.

Rule 13 **Right of Priority**

(1) The provisions of Art. 14 paragraph (1) and (2) of the Law are also applicable to the applications whose subject-matters are new plant varieties, if the legislation, according to which they have been filed, stipulates identical criteria for the grant of protection, respectively distinctness, uniformity and stability.

(2) Where a priority is claimed according to Art. 14 paragraph (2) of the Law, the applicant shall mention it expressly in the variety patent application filed with O.S.I.M. and shall submit documents for identifying the first filing of the application.

(3) In order to prove the priority from another state, the applicant shall submit to O.S.I.M., within three months from filing the variety patent application, a certified copy in Romanian language of the priority documents provided for in paragraph (2).

(4) If the applicant fails to observe the time limit provided for in paragraph (3), or fails to pay the priority fee, O.S.I.M. shall not recognise the claimed priority .

(5) The filing of other applications, within 12 months of the date of the first official filing, the publishing of the identification data of other applications, the use of the variety for which protection is applied, do not constitute grounds for rejection of a subsequent application within this time period, and do not give rise to any third party rights.

(6) The non-recognition of the priority for a new variety shall be considered as the first file application with O.S.I.M.

Rule 14 **Variety Denomination**

(1) The protected variety shall be designated by a generic denomination to permit its identification on the market. The denomination shall be specified in the granted variety patent.

(2) The denomination shall be proposed by the applicant and shall be transmitted to O.S.I.M. at the same time with the variety patent application, being filled in on separate printed form.

(3) As a rule, the variety denomination shall consist of a word or of combination of words with or without significance, which may be accompanied by letters or figures, so as to differ from any other denomination of another known protected variety or contained in a catalogue of protected varieties or in a trade catalogue and which belongs to a species, subspecies, variety, of plants closely related to the candidate of the botanical taxon with the lowest rank variety.

(4) The denomination of the new variety shall not consist only of figures, except where this is an established international practice for the designation of said species.

(5) During the term of protection of the variety patent it is forbidden on the territory of Romania to use the denomination of the protected variety to designate another related variety which could cause confusion concerning its distinct characteristics.

(6) The interdiction provided for in paragraph (5) shall also be maintained after the expiry of the term of protection of the variety patent, if the variety exploitation continues or if the denomination is under the incidence of Art. 7 of the Law.

(7) Any person who offers for sale, sells or markets propagating material of the protected variety is obliged to use the denomination of that variety. This provision also applies to varieties referred to in Art. 27(2) (b) of the Law.

(8) If applications for the grant of variety patent are filed in Romania and simultaneously in other countries, the variety shall be registered under the same denomination, unless:

a) O.S.I.M. considers the denomination unsuitable for that variety;

b) the denomination has already been used by third parties for the said variety or for another variety and this may cause confusion on the autochthonous market.

Under the conditions provided for in letter a) and b) O.S.I.M. shall request the applicant to propose another denomination for the candidate variety.

(9) The filing of the variety denomination shall be refused if it contains an element liable to cause a damage or to give rise to a risk of confusion with another trade name of other variety or of a trademark, or of another previously protected industrial or intellectual property right.

(10) Where O.S.I.M. considers that the provisions of Art. 15 from the Law are fulfilled, the denomination proposed by the applicant for the candidate variety is published in BOPI-SSPBS.

(11) Within three months from the publishing date, any interested person may draw up written objections concerning the denomination of the candidate variety.

(12) O.S.I.M. notifies the objections to the applicant inviting him to submit his observations within 30 days of receiving the notification.

(13) The applicant may transmit a new proposal for the variety denomination within a time limit given by O.S.I.M., provided for in paragraph (12).

(14) The new proposal for the variety denomination shall be examined and published in BOPI-SSPBS, if the conditions provided for in the Law are fulfilled.

(15) When the new denomination does not comply with the provisions of Art. 15 of the Law, O.S.I.M. shall notify the applicant and ask him to propose another denomination. If the applicant does not answer, the variety patent application shall be rejected.

(16) The final denomination shall be mentioned in the variety patent.

(17) O.S.I.M. cancels the denomination, where:

a) it has been ascertained that the denomination does not meet at least one of the conditions under Art. 15 paragraph (1) to (9) of the Law;

b) the applicant requests the cancellation, of the denomination proving a legitimate

interest;

c) there exists a final and irrevocable decision forbidding the use of the denomination for that variety.

(18) O.S.I.M. shall inform the applicant about the reasons of cancellation provided for in paragraph (17) (a) or (c) and shall request him to propose a new denomination for the variety, within 30 days of the date of receiving the notification.

(19) The proposed denomination shall undergo the examination and publication procedures.

(20) Before filing a variety patent application and in order to propose a correct denomination for the candidate variety, any interested person may request O.S.I.M. to perform a preliminary search, subject to payment of the fee provided for in the appendix to the Law.

Rule 15 **Examination of the Application as to Form**

(1) The examination of the variety patent is performed by O.S.I.M. that shall check whether the documentation filed by the applicant satisfies the provisions of Art.10 paragraph (1) to (4) and of Art. 12 of the Law.

(2) O.S.I.M. examines, according to the provisions of Art. 10 paragraph (1) to (4) of the Law, whether:

- a) the applicant is the breeder;
- b) the right to the grant of the variety patent belongs to more breeders;
- c) the right to the grant of the variety patent belongs to the breeder and to other person jointly, according to the written declaration signed by them;
- d) the breeder being an employee and creating the variety during his employment, the right to the patent belongs to the employer.

(3) O.S.I.M. examines, according to the provisions of Art. 12 of the Law, whether the variety patent application contains:

- a) the applicant's name/denomination and address/headquarter;
- b) the proposal of denomination for the new variety;
- c) the botanical taxon/Latin name of the genus, family, species, subspecies to which the variety belongs, common and/or trade name;

- d) the geographic origin of the new variety;
- e) the presentation of the new variety in standardized form, according to the international norms for the description of a new variety belonging to a species; if this is not correct, the applicant is granted a two-month time limit to remedy it;
- f) the claimed priority of a first application for the candidate variety as well as the priority documents;
- g) whether the variety patent application is accompanied by the proof of payment of the filing fee;
- h) whether there exists a power of attorney signed by the applicant;
- i) the applicant's declaration on his own responsibility, that he did not market the new variety, according to the provisions of Art. 6 of the Law;
- j) the name and address of the applicant or applicants involved in breeding or discovering and developing the new variety;
- k) the document of assignment of the right to the grant of the variety patent, if the case may be;
- l) other documents and information concerning the origin and crop cultivating conditions for the candidate variety.

(4) Where it has been ascertained that the variety patent application fulfils the provisions of Art. 12 of the Law, the variety patent application shall be given an official filing date, it shall enter in the RNCBS and the applicant shall be notified.

(5) The filed applications are published in BOPI-SSPBS within 3 months of the official filing date.

(6) For each candidate variety the species, the variety denomination and the provisional denomination, the application filing date, the claimed priority, if the case may be, the applicant's name and address shall be published.

(7) Where the application is incomplete, incorrect or contains irregularities, O.S.I.M. notifies the deficiencies to the applicant and an extension of 30-days time limit shall be granted to remedy them.

(8) Failing the answer or request for extension of the time limit or failing the regulation of the description, O.S.I.M. rejects the variety patent application.

Rule 16
Substantive Examination of the Application

(1) The variety patent application which fulfils the conditions provided for in Art.16 paragraph (1) of the Law shall be examined as to the substance on the basis of the information provided by the applicant, in order to verify whether:

- a) the application refers to a variety within the meaning of Art. 2 letter a) of the Law;
- b) the variety belongs to the declared botanical taxon;
- c) the candidate variety is new according to the provisions of Art. 6 of the Law;
- d) the denomination, proposed by the applicant is correct and fulfils the provisions of Art, 15 of the Law.

(2) O.S.I.M. shall not reject the variety patent application before notifying the applicant the reasons of rejection and allowing a maximum three-month time limit for correcting the deficiencies.

(3) Upon express request by the applicant, O.S.I.M. may extend, by two months, the time limit provided for in paragraph (2), according to the provisions of Article 17(3) of the Law.

(4) Where the application fulfils cumulatively the provisions of Articles 6, 10, 12 and 16 of the Law, O.S.I.M. shall decide the start of the technical examination and shall request the applicant to submit the propagating material necessary for conducting the growing tests.

(5) Failing the answer within the time limit, O.S.I.M. shall reject the variety patent application.

Rule 17
Technical Examination of the New Variety

(1) I.S.T.I.S. or the authority designated by M.A.A. shall perform an examination in accordance with Article 8 of the Law, in order:

- a) to verify that the candidate variety belongs to the botanical taxon declared by the applicant and identified during the formal examination;
- b) to establish that the variety is distinct, uniform and stable within the meaning of Art.7 to 9 of the law;
- c) to establish that the official description of the new variety is drawn up so as to permit the differentiation of that variety from the reference variety.

(2) When the applicant does not submit the findings of the tests for the new variety conducted by another internationally recognized competent authority, autochthonous growing tests for distinctness, uniformity and stability shall be developed:

a) by I.S.T.I.S. or another authority on behalf thereof, designated by M.A.A.;

b) by the applicant, upon request by I.S.T.I.S. or O.S.I.M. for the rare species for which there does not exist the reference collection.

(3) In order to perform the growing tests correctly, the applicant shall supply documents relative to cultivation of the candidate variety.

(4) Where I.S.T.I.S. or the authority designated by M.A.A. or an internationally recognized authority have not conducted tests, O.S.I.M. may decide to grant the protection based on the technical report drawn up by a competent authority, provided that the applicant agrees to buy this technical report and pays the fee prescribed in the annex to the Law.

(5) In order to conduct the growing tests, the applicant shall supply, free of charge, propagating material in the amount requested by the authority performing the tests and shall notify, in writing, the amount and the type of the transmitted propagating material as well as the date of delivery, both to the competent national authority and to O.S.I.M.

(6) By way of exception, the testing period may be extended by I.S.T.I.S. or upon request by the applicant, provided that the prescribed fee of the annex to the Law is paid.

(7) Where the protection is rejected and the decision is appealed against, the applicant may request the repetition of the trials, provided that the prescribed fee for verification of the growing tests of the annex to the Law is paid.

(8) Based on the trial findings I.S.T.I.S. shall draw up a technical report containing the morphological and physiological relevant characteristics which make the variety distinct, uniform and stable in comparison with any other variety belonging to the same taxon, whose existence is a matter of common knowledge.

(9) The technical report drawn up by an international authority or by the breeder may be subjected to an analysis by the competent national authority, with a view to validating or invalidating the same.

(10) Where O.S.I.M. states that the tests have been invalidated by the competent national authority, it notifies the results to the applicant and allows him a three-month time limit for reaction.

Upon expiry of this time-limit, if the applicant fails to answer, O.S.I.M. rejects the variety patent application and publishes the decision of rejection in BOPI-SSPBS.

(11) During the entire period of examination of the new variety, O.S.I.M. and the competent

national authority shall inform each other about the examination procedure of the variety patent application.

(12) The decision to reject the variety patent application may be appealed against by the applicant before the O.S.I.M. Board of appeal, within three months from the communication.

The appeal may be lodged in writing with a statement of reason and the prescribed fee provided for in the annex to the Law shall be paid.

(13) The Board of Appeal may decide, as the case may be:

- a) to accept the applicant's appeal and grant the patent for the candidate variety;
- b) to accept the applicant's appeal and to return the variety patent application to the substantive examination board and, where applicable, request the repetition of the growing tests;
- c) to reject the appeal and keep the decision of rejection of the application.

(14) The decisions taken by the Board of Appeal are registered in RNCBS and are published in BOPI-SSPBS.

Rule 18 **Testing the New Variety**

(1) The competent national authority, depending on the species to which the variety belongs, conducts and organizes its own trials and may consider and/or inspect the crops and trials conducted by the breeder and/or applicant and may estimate whether the variety fulfils the requirements of distinctness, uniformity and stability.

(2) The growing tests methodology for each species is established by M.A.A. together with O.S.I.M., according to the international guidelines and with the national norms regarding the examining the varieties registered in the official list of varieties and considering the specific pedoclimatic conditions of the country.

(3) Where the growing tests are conducted according to Art. 19 paragraph (3) of the Law, O.S.I.M. together with the competent national authority shall establish the amount of propagating material necessary for organizing the trials, the place and the address where the applicant shall submit the material.

(4) O.S.I.M. and/or I.S.T.I.S or the authority designated by M.A.A. may request the applicant to submit all information, materials and documents necessary for the conducting of the technical examination.

(5) Failing an answer to the request provided for in paragraph 4 and a request for postponing with a statement of reason, within the time limit, the variety patent application shall be rejected.

(6) The applicant at his request, has the right to inspect the crop trials performed for establishing the distinctness, uniformity and stability for his variety during the testing of the new variety.

Rule 19 **O.S.I.M. Decisions**

(1) O.S.I.M. shall take the decision to grant the variety patent and publish this decision in BOPI, when the conditions provided for in Art. 7 to 9 and 16 are fulfilled. Otherwise, the variety is deemed being unqualified for protection and the variety patent application shall be rejected.

(2) The decision to reject is taken by O.S.I.M. only after having notified the applicant in writing about the grounds for rejection of the variety patent application and after having allowed a 3-month time limit for reply. For justified grounds, the applicant may request the postponing with a view to preparing a pertinent answer.

(3) Any interested party may object in writing and on justified reasons to the grant of the variety patent application and may request the revocation provided that the prescribed revocation fee of the annex to the Law is paid.

(4) The official description of the protected variety may be amended by the holder or by O.S.I.M. during the validity period of the variety patent in response to development in agrobiological knowledge and variety description methods, without the scope of protection being thereby affected. Amendments are made by O.S.I.M. only with the holder's agreement after to mutual consultation. Amendments made to the official description shall be published in BOPI-SSPBS.

(5) The appeals shall be settled by the Board of Appeal of O.S.I.M., these being submitted and drawn up within 3 months from publishing the decision.

Rule 20 **Provisional Protection**

(1) The applicant may request that third parties should be prevented to commit the acts provided for in Art. 27 of the Law only after publishing the variety patent application, within the period provided for in Art. 16 paragraph (3) of the Law.

(2) When the variety patent application has been rejected, the applicant shall not enjoy the rights provided for in Art. 27 of the Law.

Rule 21 **Extension of the Time Limit**

(1) The applicant may request the extension of the time limit for the examination of the application up to one year.

(2) The extension of the time limit for the examination may be applied for in a written request with a statement of reason, which is submitted to O.S.I.M. and shall be subject to the payment of the fee, adequate to the procedure to which it refers, of the annex to the Law.

Rule 22
Withdrawal of Variety Patent Application

(1) The applicant may withdraw the variety patent application filed with O.S.I.M., any time until a decision on the grant of the variety patent is taken.

(2) Were the technical examination procedure of the variety has started, the examination fees shall not be refunded to the applicant.

(3) Withdrawal of the variety patent application by the applicant is performed by submitting a notification to O.S.I.M.

Rule 23
Revocation of the Decision to Grant a Variety Patent

(1) The decision to grant the variety patent is published in BOPI-SSPBS.

(2) Within 3 months from the date of publication any interested person may apply to O.S.I.M. for the revocation of the decision to grant a variety patent, only where the following conditions have not been met:

- a) the variety is not new;
- b) the variety is not distinct;
- c) the variety is not uniform;
- d) the variety is not stable;
- e) the applicant is not the person entitled to be granted protection;
- f) the variety denomination is not adequate or infringes previous rights.

The request for revocation shall be made in writing with statement of reason and shall be accompanied by the proof of payment of the examination fee prescribed in the Law, and by the documents supporting the revocation.

(3) Within maximum 3 months from the date of filing thereof, the Board of Appeal of O.S.I.M. shall examine the request for revocation and shall take a decision regarding the candidate variety.

- (4) In order to take a decision, O.S.I.M. may ask the person who lodged the request for revocation to submit documents and additional concerning the variety.
- (5) When the request for revocation is based on non-fulfilment of the requirements of distinctness, uniformity and/or stability, the Board of appeal may request the repetition of the trials by I.S.T.I.S. or by other authority designated by M.A.A.
- (6) The Board of Appeal may request the examination of the candidate variety by crop experts.
- (7) In such cases O.S.I.M. shall inform the applicant that a request for revocation was submitted and shall allow him a time limit for reply.
- (8) In case of growing tests repetition, the applicant may inspect the crop in order to support his variety.
- (9) Within 15 days from the pronouncement of the decision of the Board of Appeal shall be submitted both to the applicant and to the person who requested the revocation.
- (10) The final and irrevocable decisions shall be published in BOPI-SSPBS within 30 days and may be challenged as provided for in Art. 38 of the Law.

Rule 24
Issue of the Variety Patent and Registration
of the Variety Denomination

- (1) When, after the variety examination, it has been established that the variety fulfils cumulatively the requirements provided for in Art. 5 of the Law and that the applicant is the person entitled to the grant of the variety patent, the Examination Board of O.S.I.M. decides to grant the variety patent. Within 6 months from the publishing of the decision in BOPI-SSPBS, the director general of O.S.I.M. issues a variety patent to which the official description of the protected variety is attached.
- (2) The protected variety is entered in RNBSB which is open to the public and may be consulted on payment of the inspection fee prescribed by the Law.
- (3) Where the variety patent application is filed with O.S.I.M by two or more applicants, the variety patent accompanied by the official description is granted to the first applicant mentioned in the application and the others shall be issued a duplicate thereof, on payment of the fee prescribed in the annex to the Law.

CHAPTER V

Rule 25 Duration of Variety Protection

- (1) The term of protection of the variety shall be 25 years as from the date of grant of the variety patent.
- (2) For the new varieties of fruit-trees, vines and ornamental trees, forest trees included, the duration of protection is of 30 years as from the date of the grant of the variety patent.
- (3) During the whole variety protection period, the applicant shall pay the annual maintenance fees of the variety patent at the terms prescribed in the annex to the Law.

CHAPTER VI RIGHT OF THE VARIETY HOLDER

Rule 26 Exclusive Right of the Variety Patent Holder

In implementing the provisions of Art. 27 of the Law, the variety patent holder shall enjoy the exclusive right of exploitation of the new variety and the right to prevent third party without his authorization from performing the following acts, in relation to the propagating material: production and reproduction of the biological material for the purpose of propagation, processing for the purpose of propagation, offering for sale or selling, exporting or importing and stocking for these purposes.

Rule 27 Exceptions to the Exclusive Right of the Variety Patent Holder

Any interested person may perform, without the holder's authorization, the following acts, according to the provisions of Art. 28 of the law:

- a) the use of the protected variety for personal and non-commercial purpose, for example by the farmer for his household necessities or by an amateur in his garden;
- b) the use of the protected variety for experimental purposes and in the process of breeding, which allows to carry on the use of the protected varieties and ensures the of breeding of new varieties.

Rule 28 Exhaustion of the Variety Patent Holder's Rights

- (1) Within the meaning of Art. 29 of the Law, the acts relating to any material of the

protected variety shall not be considered an infringement of the holder's rights to the protected variety or to a variety covered by the provisions of Art. 27 of the Law, if sold or marketed by the breeder or with his consent.

- (2) Within the meaning of paragraph (1), material is considered:
- a) the propagating material of any kind;
 - b) entire plants or parts of plants; and
 - c) any product made directly from the harvested material.

CHAPTER VII LAPSE OF THE VARIETY PATENT

Rule 29 Invalidation of the Variety Patent

- (1) Any interested person may file a request for invalidation of the variety patent with O.S.I.M. any time during the period of protection for any of the reasons provided for in Art. 30 paragraph (2) of the law.
- (2) The request for invalidation of the variety patent shall be submitted in writing with statement of reason to the Board of appeal of O.S.I.M, being accompanied by the documents sustaining the invalidation and by the proof of payment of the legal fee.
- (3) The Board of Appeal shall invalidate the variety patent when it has been established that:
- a) the interested person proves that at the date of filing the variety patent application, the variety did not fulfil the novelty requirement condition in terms of Art. 6 of the Law;
 - b) the interested person proves that the variety was not distinct in terms of Art. 7 of the Law;
 - c) the variety was not uniform in terms of Art. 8 of the Law;
 - d) the variety was not stable in terms of Art. 9 of the Law on the date of granting the variety patent;
 - e) finds out, based on the notification submitted by the interested person, that the applicant was not entitled to be granted protection.
- (4) Where a transfer of rights on a new variety took place and the variety patent was granted without fulfilling the provisions of Article 10 paragraph (1) of the Law, O.S.I.M. invalidates the granted variety patent and grants another variety patent to the person to whom the right to the variety patent was transferred.

(5) The Board of Appeal of O.S.I.M. takes no decision before informing the applicant that a request of invalidation has been filed, giving him the opportunity to express his opinion in front of the Board.

(6) The decision of the Board of Appeal shall be submitted to the parties within 15 days from the pronouncement and it may be challenged under Art. 38 of the Law.

(7) The final and irrevocable decision of invalidating the variety patent shall be entered into RNBSPP and published in BOPI-SSPBS.

(8) The variety patent is deemed being invalidated starting from the date when the variety patent application was filed with O.S.I.M.

Rule 30 Forfeiture of Rights

(1) O.S.I.M. shall declare the holder's rights forfeit only after having notified the holder about the non-fulfilment of one of the conditions provided for in Art. 31 paragraph (1) of the Law and after a three-month period for reply has been granted.

(2) Failing the answer from the applicant within the period allowed or failing the request of extension of the time period for correcting the deficiencies, O.S.I.M. declares the variety patent holder's rights forfeit and the forfeiture is entered into the RNBSPP and published in BOPI-SSPBS, and it shall be effective as of the date of entering.

(3) The holder shall enjoy a six-month time limit from the date of publication of forfeiture and may request the revalidation of the variety patent after having corrected the deficiencies and having paid the related annual fee.

(4) The request of revocation of the variety patent shall be submitted to O.S.I.M. and shall be settled by the Board of Appeal depending on the reason for which the holder's rights have been declared forfeit.

(5) The decisions of the Board of Appeal relating to the request of revalidation of the variety patent shall be communicated to the applicant within 15 days of being pronounced and may be challenged under Art. 38 from the Law.

(6) The final and irrevocable decisions of revalidation shall be published in BOPI-SSPBS.

(7) Committing the acts provided for in Article 27 from the law, namely the commercial exploitation of the variety in the period between the forfeiture of rights and the revalidation of the variety patent, according to the provisions of Article 31(5) from the Law shall not constitute infringement of the holder's rights.

Rule 31
Renunciation to the Variety Patent

- (1) Renunciation shall be made on the basis of a written declaration signed by the holder, submitted to O.S.I.M.
- (2) The holder shall inform the breeder of his intention to renounce the variety patent prior to renunciation.
- (3) The breeder has the right to request the holder to transfer his rights in the patent to him and the holder is obliged to transfer this right.
- (4) Renunciation or the transfer of right in the protected patent, as the case may be, becomes effective on the date of entering into the RNBSP.

CHAPTER VIII
EXPLOITATION OF THE PROTECTED VARIETY

Rule 32
Maintenance of the Protected Variety

- (1) Upon request, the holder shall supply samples of the protected variety or, if required, components thereof to O.S.I.M., I.S.T.I.S or to the authority designated by M.A.A. in a preestablished period of time.
- (2) O.S.I.M. may ask the holder to maintain and preserve samples of propagating material on behalf of O.S.I.M., I.S.T.I.S and of the authority designated by M.A.A.
- (3) Upon request by O.S.I.M., the holder is obliged to supply propagating material in order to verify whether the variety was maintained adequately or whether the protected variety still satisfies the distinctness, uniformity or stability conditions.
- (4) The holder is obliged to submit information and documents attesting the existence of the protected variety upon request by O.S.I.M.
- (5) Where the holder does not comply with the requests by O.S.I.M. and /or I.S.T.I.S or by the authority designated by M.A.A., O.S.I.M. shall declare his rights under the variety patent forfeit, in accordance with Art. 31 (1) (a) from the Law.

Rule 33
Transfer of Variety Rights

- (1) The transfer of rights on the variety is performed in accordance with Article 34 of the Law and can be total or in part.

(2) Where the protected varieties are pendent of other protected varieties the transfer of rights must be total and with the first protected variety holder's consent.

(3) The request for transfer of rights will be sent to OSIM accompanied by the documents as the case may be:

- a) assignment contract
- b) licence contract
- c) act of legal or testamentary successions
- d) other documents for proving the new holder.

(4) The transfer of rights shall not affect the previous rights of third parties.

(5) The assignment or licence contract shall be registered in RNCBS or in RNBSP simultaneously with its publishing in BOPI-SSPBS and it shall take effects to third parties beginning with the date of registration.

(6) The registration according to paragraph (5) will be made on condition of payment of the fee provided for in the Annex to the Law.

Rule 34 Assignment Contract

(1) The assignment is made in writing by an assignment contract in which the identification data of the breeder and of the person to whom the assignment was made are mentioned, the object of assignment, also the data and the interested parties signatures in authentic form.

Rule 35 Licence Contract

(1) The licence can be exclusive when it is granted only to one person or non-exclusive when it is granted to more interested persons.

(2) In the case of an exclusive licence the holder gives to the licensee an exclusive right of exploitation of the protected variety.

(3) The exclusive licence is limited in time.

(4) The licence of a non-exclusive licence has no right to grant the rights of exploitation of the protected variety to third parties.

(5) The non-exclusive licence may be registered at request in RNBSP on condition of payment of the prescribed fee specified in the Annex of the Law.

(6) At the holder's request and on the condition of payment of the legal fee, OSIM publishes in BOPI the offer for granting the licences for a protected variety and the identification data of the holder in order to be contacted by interested persons.

Rule 36 Compulsory License

(1) Any interested person may request to OSIM the granting of a compulsory licence in the conditions set up in Article 37 of the Law.

(2) The request for a compulsory licence must contain the applicant's identification data, the reason of requesting the grant of a compulsory licence for the protected variety, documents to proof his competence, finances and facilities to exploit in good conditions.

(3) The request must contain the proof of payment of the fee specified in the Annex of the Law.

(4) Compulsory licence confers to the licensee a non-exclusive right of exploitation of the protected variety.

(5) Compulsory licence being non-exclusive does not prevent the variety patent holder from exploiting and/or from granting licences to third parties.

(6) OSIM shall grant compulsory licences at the request of an interested person, only after substantiated analysis and if necessary asking the advice of professional organizations.

(7) The Board of Appeal shall establish the specific conditions for exploitation of the protected variety, the duration and the amount of compensation payable to the holder.

(8) Non-compliance of the licensee with the conditions of exploiting the variety may determine the withdrawal of the licence by OSIM.

(9) Compulsory licence may be withdrawn to the request of the holder on justified grounds.

(10) The withdrawal of a compulsory licence shall be made by the Board of Appeal of OSIM.

(11) OSIM may extend a compulsory licence if the matter of public interest is maintained and the conditions of granting are unchanged.

(12) Decisions of granting or withdrawal a compulsory licence shall be notified to the parties within 15 days from pronouncement and they are published in BOPI-SSPBS and may be appealed

against according to Article 38 of the Law.

Rule 37

- (1) All decisions made by OSIM may be appealed against before the Board of Appeal within three months from communication.
- (2) Appeals or requests for revocation, cancellation or revalidation of the variety patent shall be made in writing and accompanied by substantiating documents and the proof of payment of the fee.
- (3) The Board of Appeal will be different from the examination committee and will consist of a president and 2 or 4 members, depending on the grounds of appeal, in its composition M.A.A. and OSIM experts being designated as the case may be; one of the members of the Board of Appeal will be a legal adviser of OSIM.
- (4) the members of the Board of Appeal will be approved by the order of OSIM's Director General.
- (5) The Board of Appeal shall analyse the requests within 3 months from the date of filing at OSIM.
- (6) For justified cases, which require the repetition of the growing tests, the time limit for the examination can be extended.

Chapter IX

Rule 38 Competence

- (1) For the implementing of Art.44 paragraph (2) of the Law, OSIM's competences are to:
 - a) register the variety patent applications;
 - b) publish in BOPI - SSPBS the variety patent applications having official filing date;
 - c) examine the variety patent application as to form and substantive respectively to be in conformity with Rules 15 and 16;
 - d) send the formally and substantively examined and admitted application to the national competent authority for validation when the applicant filed the findings after technical examination or for organising growing tests in order to establish distinctness, uniformity and stability of the candidate variety;

e) grant and issue variety patents and establishes the final description based on findings sent by ISTIS or by the competent authority designated by M.A.A. in a standardized form;

f) organize and keep RNCBS and RNBSP.

(2) OSIM periodically issues BOPI-SSPBS comprising all information regarding the variety patent applications and the granted variety patents.

(3) OSIM publishes in BOPI the information as follows:

a) the variety patents applications;

b) the denominations of the varieties;

c) the registered denominations for the protected varieties;

d) the withdrawn variety patents applications;

e) the rejected applications;

f) the variety patents granted;

g) the changing of persons respectively applicants and holders;

h) the changing of authorized agents;

i) the invalidation of variety patents;

j) the licences;

k) all modifications and observations.

(4) All information mentioned shall be registered in an electronic form on CD in order to ensure the changing of information with offices and national administrations from other states and with organizations and international specialised bodies.

(5) OSIM establishes together with M. A. A. for every species the characteristics to be mentioned in the technical questionnaire and in the standardized description, these documents being part of the variety patent application filed with OSIM for examination and for granting the variety patent.

(6) For the representation of the applicants by an authorised agent in the procedure of examination, OSIM together with M.A.A. organise training courses and authorise them.

(7) M.A.A. for the implementation of Articles 18 and 19 of the Law has the

competences to:

- a) establish the methodology of conducting the growing tests and organising the trials in the field and/or in greenhouses in conformity with the existing experience in the country and in accordance with international guidelines;
- b) establish the flow of technical examination of plant varieties;
- c) cooperate with OSIM, breeders' national association, variety patents, holders association, seed and plant, material multiplication producers associations and with other bodies specified in Article 44 paragraph (3) lit.b) of the Law;
- d) establish different criteria of evaluation of the new varieties of plants and of the changing of the methodology and appoints experts or researcher-breeders to produce the methodology of conducting the growing tests and identifying new varieties and species of plants;
- e) designate crop experts for the OSIM's Board of Appeal in cases of appeal in which technical examination of the candidate variety is involved.

Rule 39 Time Limits

- (1) Time limits established on day basis comprise calendar days and do not include the first and the last day. Monthly time limits are considered to elapse in the day of the next month equivalent to the day on which the documents were sent.
- (2) The time limit beginning with the day of 29, 30 or 31 of the month and ending in a month not having such a day shall be the first day of the next month.
- (3) The time limit ending on a holiday will be extended to the end of the first working day.
- (4) The time limits begin to run from the date of sending the procedural documents, namely the date on which the document issued by OSIM, was received by the applicant, holder or agent as the case may be.

This date shall be confirmed by the receiving post office stamp.

- (5) Procedural documents sent to OSIM by mail shall be considered to observe the time limits, if they were mailed before the end of the time limit.
- (6) Non-compliance with the time limits notified by OSIM for sending the procedural documents shall not result in sanctions provided for in the Law, if the applicant proves that he was prevented from doing that, by circumstances beyond his will and if he complies with the procedure, within two months.

Rule 40
Forms

- (1) In the filing procedure before OSIM, standardized forms shall be used.
- (2) OSIM shall furnish upon request the forms specified at paragraph (1).

Rule 41
National Register of Variety Patent Applications

In the National Register of Variety Patent Applications (RNCBS) the following indications are published:

- a) number of the application;
- b) species, botanical taxon and the denomination;
- c) official filing date;
- d) name and address of the applicant;
- e) name and address of the breeder;
- f) name and address of the agent;
- g) modifications in the legal status.

Rule 42
National Register of Protected Varieties

In the National Register of Protected Varieties several indications are registered:

- a) date and number of the application filed with OSIM;
- b) priority date;
- c) official filing date;
- d) name and the address of the applicant;
- e) State on which territory the applicant has the place of residence;
- f) name and address of the agent;
- g) name and address of the breeder;

- h) botanical taxon;
- I) final denomination of the variety;
- j) name/denomination and address/ holder's headquarter;
- k) changing of the address and of the holder's name;
- l) any modifications or transfer of rights;
- m) payment of issuing and maintenance of variety patent fees;
- n) variety patent holder;
- o) declaration of renunciation to the variety patent;
- p) decision of annulment or invalidation of the variety patent, as the case may be.