

Act of April 1, 2004 (No. 2004:160)
Amending the Act on the Protection of Plant Breeders' Rights (1997:306)

In accordance with the decision by Parliament it is prescribed, as regards the Act on the Protection of Plant Breeders' Rights (1997:306)

that Chapter 7, Article 4, shall read as follows, and

that one new Article shall be inserted in the Act, numbered Chapter 7, Article 3a, and reading as follows.

Chapter 7

3a. The holder of a patent on a biotechnical invention who cannot exploit it without infringing a prior plant breeders' right, may obtain a compulsory license to exploit the plant variety that is protected by the plant breeders' right. Such a license may be granted only if the applicant proves that the invention constitutes a significant technical progress of considerable economic interest in relation to the plant variety.

If the holder of a plant breeders' right obtains a compulsory license in a patent, the patent holder is entitled to obtain, on reasonable conditions, a compulsory license (cross-license) to exploit the protected plant variety.

Provisions on the possibility for a plant breeder to obtain, on certain conditions, a compulsory license to exploit an invention protected by a patent, are contained in Article 46a of the Patents Act (1967:837).

4. A compulsory license may be granted only to a person who can be assumed to exploit the plant variety in an acceptable manner and in accordance with the license. The applicant must also prove that he or she has unsuccessfully turned to the holder of the plant breeders' right to obtain a contractual license on reasonable conditions.

A compulsory license does not prevent the holder of the plant breeders' right from exploiting himself or herself the plant variety or to grant licenses. A compulsory license may be assigned to someone else only together with a business where it is exploited or intended to be exploited. In respect of such compulsory licenses as mentioned in Article 3a, first Paragraph, also applies that the license may be assigned only together with the patent to which the license applies.

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1. This Act enters into force on May 1, 2004.
 2. The new provisions apply also to plant breeders' rights, which have been granted or applied for before the entry into force.