

PANAMA
MINISTRY OF COMMERCE AND INDUSTRIES
EXECUTIVE DECREE NO. 13

(of March 19, 1999)

Regulating Title V of Law 23 of July 15, 1997

The President of the Republic

by virtue of his constitutional and legal powers

CONSIDERING

That Law No. 23 of July 15, 1997, “Approving the Marrakesh Agreement establishing the World Trade Organization and the Protocol of Accession of Panama to the said Agreement, together with its annexes and list of undertakings, and by which national legislation is adapted to international provisions and other provisions are enacted,” contains provisions in its Title V for the protection of new plant varieties,

That, by virtue of the regulatory power conferred on it by Article 179.14 of the Political Constitution, the Executive has to enact regulations under those laws that so require for their better implementation, but without departing in any event from the text or spirit thereof,

That the Executive, acting through the Ministry of Commerce and Industries, having consulted the sectors concerned with agricultural and livestock breeding, development, registration and research, and also institutions concerned with new varieties of plants, has drawn up the regulatory provisions for Title V of Law No. 23 of July 15, 1997, which are adopted by this Decree with a view to easing the formalities and other action for the defense and protection of rights under the provisions for the protection of new plant varieties;

DECREES AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

Article I

The purpose of this Decree is to regulate the rights of the breeder of a plant variety that complies with the provisions laid down in Title IV of Law No. 23 of July 15, 1997.

Article 2

For the purposes of this Decree, the definitions given in Title V of Law No. 23 of July 15, 1997, and the following shall apply:

- (a) “Law” means Title V of Law No. 23 of July 15, 1997.
- (b) “Board” means the Plant Variety Protection Board.
- (c) “Public interest” means a situation that transcends the specific individual context and affects centers of civil society in their various dimensions and at the various levels of social, economic and political development.

Article 3

In addition to the powers conferred on it by Article 276 of the Law, the Council is empowered by this Decree to:

- (a) recommend to the Minister of Agricultural and Livestock Development the genera and species to which the Law shall apply;
- (b) recommend to the Minister of Agricultural and Livestock Development the amendment of the list of genera and species to which the Law applies by the addition or exclusion of new genera or species with effect from a specified future date;
- (c) lay down the terms of reference for the accreditation of bodies to be entrusted with carrying out technical examinations;
- (d) recommend to the Directorate General of the Industrial Property Registry that it grant breeders’ rights after verification that the technical examination has complied with the guidelines laid down for the genus or species to which the application relates;
- (e) recommend to the Executive the grant and the term of compulsory licenses;
- (f) keep the register of accredited bodies or organizations;
- (g) establish the procedures for its own organization and operation;
- (h) perform any other function equivalent to those specified.

Article 4

The Minister of Agricultural and Livestock Development shall appoint by resolution the members of the Board to whom Article 276 of the Law refers, and who shall consist of a titular member and an alternate, each with a term of office of two years.

Article 5

The procedures for the organization and operation of the Board shall be determined by resolution issued by the Ministry of Agricultural and Livestock Development.

Article 6

Where a genus or species is excluded from the list of genera or species to which the Law applies with effect from a specific date, the exclusion shall not affect the rights of applicants who have filed applications for the protection of varieties of that genus or species prior to the said date.

Article 7

The owner of a variety to whom breeders' rights are granted may be a natural person or a legal entity.

Article 8

A request for the transfer of breeders' rights, like the breeders' rights themselves, shall be set down in writing and duly authenticated by a notary. Any transfer shall be recorded in the Register of Protected Plant Varieties at the Directorate General of the Industrial Property Registry, provided that the request is filed through an attorney and the document attesting the transfer and the payment of the prescribed fees is enclosed. No transfer by succession shall be binding on third parties until such registration has taken place.

Article 9

Joint applicants for breeders' rights, or joint owners of such rights, may act separately to transfer the shares accruing to them and exclude third parties from the exploitation of the variety. However, they may only exploit the variety and grant licenses with the consent of the other joint applicants or joint owners.

CHAPTER II

CONTRACTUAL LICENSES

Article 10

When the owner of the breeders' rights grants exploitation licenses to third parties for the use of protected varieties, he shall submit the following to the Directorate General of the Industrial Property Registry:

- (a) a request, on the form provided for the purpose;
- (b) a power of attorney;
- (c) a contract or document clearly evidencing the license; the effects of registration shall be determined by the contents of the document that is registered;

- (d) payment of the prescribed fee.

Article 11

The license contract shall be in writing, signed by both parties and duly authenticated by a notary. The contract shall specify the following in particular:

- (a) the exclusive or non-exclusive character of the license;
- (b) its term;
- (c) the sublicensing or assignment of the license, as the case may be, except where otherwise provided.

Article 12

License contracts shall be without effect if they are invalidated or where their owner is deprived of them. Nevertheless, the licensee may not, on the grounds of the invalidation or deprivation of rights, demand repayment of royalties paid prior to the date of invalidation or deprivation of rights.

Article 13

Unless otherwise provided by contract, the owner of breeders' rights and the licensee may bring either jointly or separately such legal actions as may be appropriate for the defense of the rights conferred by the breeder's certificate.

CHAPTER III

COMPULSORY LICENSES

Article 14

The Executive is the body empowered to grant, at the request of the party or parties concerned, compulsory licenses to one or more natural persons or public or private legal entities, but only where the public interest so dictates and after consultation of the Board.

Article 15

In addition to those laid down in Article 14, the following conditions shall be met for the grant of a compulsory license:

- (a) three years must have elapsed since the grant of the breeders' rights without their having been exploited;
- (b) the party requesting the grant of a compulsory license must be financially or otherwise capable of exploiting the breeders' rights competently and efficiently, and willing to do so;

- (c) the owner of the breeders' rights must have refused to permit the party requesting the compulsory license to produce or market propagating material of the protected variety in a manner sufficient to meet the needs of the general public, and must be unwilling to grant such permission on the normal terms;
- (d) the conditions in which the owner of the breeders' rights might be expected to allow the use of the variety in the manner requested must not exist;
- (e) the party requesting the compulsory license must have paid the prescribed fee.

Article 16

The request for a compulsory license must include the following:

- (a) The identity of the requesting party and of the owner of the variety.
- (b) The denomination of the variety or varieties.
- (c) A statement explaining the public interest concerned, which must include details of the facts, evidence and arguments adduced in support of the allegations.
- (d) A proposal for the coverage of the compulsory license requested.

Article 17

The request for a compulsory license shall be accompanied by documents attesting the objecting owner's refusal of his request for a contractual license.

Article 18

A request for a contractual license shall be considered refused for the purposes of Article 15(c) of this Decree where:

- (a) the owner has not given a final answer to the requester within a period of one year following his request;
- (b) the owner has refused to grant the requester a contractual license;
- (c) the objecting owner has offered the requester a contractual license on terms that are clearly unreasonable, for instance with respect to the fees to be paid or other terms.

Article 19

The Decree by which a compulsory license is granted shall include a statement setting forth the relevant public interest involved and also the equitable remuneration that the licensee has to pay the breeder.

Article 20

Among other reasons in the public interest, requesters may invoke the protection of human, animal or plant life or health.

Article 21

The Board shall recommend the term of the compulsory license to the Executive. The compulsory license shall not be granted for a term shorter than two years or longer than four years. The term may be prolonged where, on the basis of further examination, it is found that the circumstances that gave rise to it are still present after the first term has expired.

Article 22

The Executive shall revoke the compulsory license if its owner violates the terms on which it was granted.

CHAPTER IV

TRANSFER OF REGISTRATION

Article 23

The request filed with the Directorate General of the Industrial Property Registry for the grant of protection for a plant variety under the provisions of Article 256 of the Law shall be filed through an attorney on the requisite form and accompanied by the following documents:

- (a) power of attorney;
- (b) technical questionnaire published in the Official Bulletin of the Industrial Property Registry for the genera and species concerned, endorsed by a suitable professional recognized by the National Technical Council for Agriculture.

The applicant shall supply the material for registration in the amounts and on the date and in the place specified when the technical examination is ordered by the body that carries it out.

Article 24

The documents accompanying the application shall be filed in Spanish, separately, in one original and three copies. The documents shall be accompanied by a translation done by an official translator where documents in another language are involved. Those documents shall in addition carry consular certification from the country of origin and such legalization as is appropriate, or an explanatory note.

Article 25

The filing date of the application for plant variety protection shall be that on which a valid application has been received on the premises of the Directorate General of the

Industrial Property Registry, in accordance with the provisions of Article 256 of the Law and Article 23 of this Decree.

Article 26

Every application shall be numbered in strict order of receipt, with a mention of the hour and date of filing, which shall be shown on the copy returned to the applicant.

Article 27

The applicant for breeders' rights who wishes to benefit from the priority of an earlier application under Article 257 of the Law shall enclose a written declaration with his application, which shall give the date and number of the earlier application, the country in which he and his predecessor in title filed the said application and the number under which it was filed.

Article 28

With the exception of cases in which the Law, this Decree and the provisions regulating it specify a different period, the application shall lapse where the relevant file remains blocked, through the fault of the party concerned, for three months following the appearance of a notice at the Directorate General of the Industrial Property Registry.

The decision declaring the application lapsed shall be brought to the attention of the person concerned by means of a notice at the Directorate General of the Industrial Property Registry.

Article 29

Where protection has been applied for earlier abroad, the breeder shall have a period of two years, counted from the expiry of the period of one year referred to in Article 257 of the Law, within which to supply the additional documents and the material for registration requested under the second paragraph of Article 23 of this Decree.

Article 30

Within a period not exceeding two months from the publication of the application for breeders' rights in the Official Bulletin of the Industrial Property Registry, any person may file observations questioning the grant with the Directorate General of the Industrial Property Registry; such observations shall be examined by the Board.

Observations may be based on the allegation that the applicant is not the owner of the variety, or they may claim that the variety was not new, distinct, uniform and stable.

Article 31

On the expiry of the period accorded to third parties for the filing of observations on the grant of breeders' rights, the documents filed shall be forwarded to the applicant so that he may comment on them within a period not exceeding two months.

Article 32

Where the observations are found to be justified, the Directorate General of the Industrial Property Registry, on a report by the Board, shall issue a resolution rejecting the application.

Article 33

In accordance with Article 253 of the Law, denominations proposed under Article 267 of the Law shall likewise be published in the Official Bulletin of the Industrial Property Registry, and objections may be filed within a period not exceeding two months from the said publication.

Article 34

Where the variety is already protected in another country, or where an application for protection of the variety has been filed in such a country, only the denomination of the proposed or registered variety may be proposed and registered, and the Directorate General of the Industrial Property Registry shall not register any other designation as a denomination for the variety. Nevertheless, where the variety denomination used in the other country is unsuitable for any of the reasons for rejection mentioned in Article 266 of the Law, the applicant shall propose another denomination for the variety.

Article 35

In the event of an objection to the registration of the variety denomination, the Directorate General of the Industrial Property Registry, on a report from the Institute of Agricultural and Livestock Research of Panama, shall invite the applicant for breeders' rights to file, within 30 days, a proposed new denomination for the variety, on the expiry of which it shall be declared abandoned.

Article 36

Once the substantive examination has taken place, if the Directorate General of the Industrial Property Registry is not aware of any impediment to the grant of breeders' rights, it shall make arrangements for the technical examination to take place in order to establish compliance with the conditions provided for in Articles 245, 246 and 247 of the Law.

Article 37

The Institute of Agricultural and Livestock Research of Panama or a body designated by it shall determine, by virtue of general provisions or on request in individual cases, the date and place for the filing of the material to be registered with a view to the technical examination, and also the quantity thereof.

Article 38

With a view to compliance with the conditions set forth in Articles 245, 246 and 247 of the Law, the Institute of Agricultural and Livestock Research of Panama or a body designated

by it shall undertake any other investigation that may be necessary for the purposes of the technical examination.

Article 39

The conduct of the technical examination shall conform to the Test Guidelines issued by the Board.

Article 40

For the purposes of the technical examination, the Institute of Agricultural and Livestock Research of Panama or other accredited bodies approved by the Board, may use the services of other technically qualified organizations and recognize the results obtained by them or by the applicant, subject to a sworn statement, and payment of the fee for the service.

Article 41

The Institute of Agricultural and Livestock Research of Panama or the accredited body shall convey the findings of the technical examination to the applicant and give him the opportunity of making his comments before the final report is sent to the Board.

Article 42

Where the Board considers that the examination report does not constitute a sufficient basis for the issue of its recommendation, it may, either *ex officio* or at the request of the applicant, order the conduct of an additional examination which shall be considered an integral part of the technical examination.

Article 43

The breeder's certificate shall contain:

- (a) the name of the person, whether natural person or legal entity, to whom the plant breeders' rights are granted, and his address;
- (b) the number and date of the registration of the breeders' rights with the Directorate General of the Industrial Property Registry;
- (c) the expiry date of the protection, the genus and the species;
- (d) the denomination of the variety protected.

Article 44

The breeder shall enjoy provisional protection during the period between the filing of the application and the grant of the certificate.

Action for damages or prejudice may only be brought once the breeder's certificate has been issued, but it may extend to damages caused by the defendant as from the publication of the application.

Article 45

The term of protection of breeder's rights shall start on the date of the resolution by which the breeders' rights certificate is granted.

Article 46

The Board shall confirm the registration of commercial varieties registered with the National Seeds Committee provided for in Article 280 of the Law provided that the application is filed within the year following the entry into force of this Decree for the genus and species to which the variety belongs.

The validity of the breeder's certificate shall be proportional to the period that has elapsed since the date of registration with the National Seed Committee.

Article 47

Where the variety has been entered in the register of cultivars of any of the member countries of the International Union for the Protection of New Varieties of Plants, or in a register of protected varieties of any country having special legislation on plant variety protection that grants reciprocal treatment to the member country in which the application is filed, that registration may be confirmed, before the Board, within the year following the entry into force of this Decree.

The validity of the breeder's certificate granted under this provision shall be proportional to the period that has already elapsed since the entry or registration. Where the variety has been registered in two or more countries, the entry or registration bearing the earliest date shall be applicable.

Article 48

In accordance with Article 270 of the Law, the grant of breeders' rights shall be subject to payment of the following fees every five years throughout the term of protection:

- (a) 800 balboas (B) for the first five years of protection;
- (b) 1,600 B for the following five years;
- (c) 2,400 B for the five years thereafter;
- (d) 3,200 B for the remainder of the term of protection.

Article 49

The Directorate General of the Industrial Property Registry shall charge fees for services connected with the protection of plant varieties in the following cases:

Fee for	Fee
(a) application for breeders' rights	230
(b) anticipation request	25

(c) request for certification	10
(d) retrieval of a document	1
(e) request for change of owner, address	55
(f) request for authenticated copy of a document	1
(g) request for recording of contractual or compulsory license	10
(h) request for assignment or transfer	10
(i) one entry published in the BORPI	10
(j) breeder's certificate	50

Article 50

This Decree shall start to apply as from its promulgation.

THE FOREGOING IS TO BE COMMUNICATED AND PUBLISHED

Done in Panama City on this nineteenth day of March, 1999.

Ernesto Pérez Balladares
President of the Republic

Raul A. Hernández L.
Minister of Commerce and Industries