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Law on plant breeder's right

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ACT

of 12 March 1993

Relating to the Plant Breeder's Right

CHAPTER I

GENERAL PROVISIONS

Section 1

The Plant Breeder's Right. Scope

Any person who has bred a plant variety or to whom the breeder's right has passed (the variety owner) may upon application be granted in accordance with this Act the sole right to exploit the variety commercially as specified in Section 3 (plant breeder's right).

The plant breeder's right is granted in respect of plant varieties belonging to those plant genera or plant species to which the King has determined that the Act shall apply.

The plant breeder's right may only be granted to variety owners who

- (a) are resident or have their registered office in this Realm or
- (b) are nationals of or are resident or have their registered office in a State which is a member of the International Union for the Protection of New Varieties of Plants.

The King may by regulations or individual decisions prescribe that the plant breeder's right may be granted in cases other than those mentioned in the first sentence.

Section 2

Conditions for the Grant of the Plant Breeder's Right. Priority.

The plant breeder's right may only be granted in respect of varieties

- (a) which can be clearly distinguished from all other varieties that were known before the date of application, cf. the second paragraph,
- (b) which are sufficiently uniform,
- (c) which are stable in the characteristics enabling the variety to be clearly distinguished from the other varieties specified in litra (a), when propagated as indicated by the variety owner, and

- (d) which have not been sold or offered for sale with the consent of the variety owner
 - (1) in this Realm before the date of application, or
 - (2) abroad more than six years before the date of application in the case of vines, trees and their rootstocks or more than four years before the date of application in the case of other plants.

A plant variety shall be deemed to be known according to litra (a) of the first paragraph if material thereof has been offered for sale commercially or otherwise marketed. A plant variety shall also be deemed to be known if it has been entered in an official list of varieties, included in a generally accessible reference collection, described in detail in a generally available publication, or become known to the public in other ways. A variety described in an application for a plant breeder's right, for a patent or for entry in an official list of varieties in this Realm or in another State shall also be deemed to be known from the date of application if the application results in the granting of the breeder's right or the patent, or entry in the list of varieties.

If the variety owner has applied for a breeder's right or a patent for a variety in one or more other States which are members of the International Union for the Protection of New Varieties of Plants, and applies within twelve months from the date of filing of the first application for a plant breeder's right in respect of the variety in this Realm, the application in this Realm shall be deemed, for the purposes of litrae (a) and (d) of the first paragraph, if the variety owner so requests, as having been filed on the same date as the first application. The King will issue regulations laying down in detail the conditions under which such priority may be claimed and may prescribe by regulations that priority may also be claimed in cases other than those mentioned in the first sentence.

Section 3

Substance of the Plant Breeder's Right

The plant breeder's right entails that persons other than the variety owner may not exploit the variety commercially, without the consent of the variety owner, by

- (a) producing plant material of the variety with a view to offering it for sale or otherwise marketing it for purposes of propagation,
- (b) importing plant material of the variety with a view to offering it for sale or otherwise marketing it for purposes of propagation, or
- (c) offering for sale or otherwise marketing plant material of the variety for purposes of propagation.

In respect of ornamental plants, the plant breeder's right also entails that persons other than the variety owner may not, without the latter's consent, exploit plants or parts of plants of the variety as propagating material for the commercial production of cut flowers or other materials for ornamental purposes.

The consent of the variety owner shall not be required for the use of a protected variety in the breeding of a new variety or for the exploitation of the new variety. The consent of the variety owner shall be required, however, if repeated use of the protected variety is necessary in the commercial production of the new variety.

The consent of the variety owner shall not be required for exploitation within the meaning of litrae (b) and (c) of the first paragraph of plant material which has been placed

on the market in the European Economic Area by the variety owner or with his consent.

CHAPTER II

APPLICATIONS FOR A PLANT BREEDER'S RIGHT AND THE PROCESSING OF APPLICATIONS

Section 4

Applications

The application for the granting of a plant breeder's right in respect of a variety shall be submitted in writing to the Plant Variety Board.

The application must contain a description of the variety, specifying the characteristics which distinguish it from other varieties. The application must contain a proposed variety denomination. The breeder's name and address shall be stated. If the applicant is not the breeder, the basis for his title to the variety shall be stated.

The application must disclose such prior exploitation of the variety as may be an obstacle to the granting of the plant breeder's right under litra (d) of the first paragraph of Section 2, or state that the variety has not been so exploited.

The Plant Variety Board may order the applicant to provide, within a prescribed period, the plant material and give the information necessary for the examination of the variety according to Section 9. An applicant who claims priority according to the third paragraph of Section 2 may not be ordered to do this in connection with his application, and may not be ordered to do it earlier than four years after the expiry of the period of priority unless the application on which the priority is based has been rejected or withdrawn.

The applicant shall pay the application fee prescribed by regulations.

Each application may only relate to the protection of one variety.

Section 5

Variety Denomination

The variety denomination shall enable the variety to be distinguished from other varieties.

A designation may not be used as a variety denomination

- (a) if it consists solely of figures, except where this is an established practice for denominating varieties of the same kind,
- (b) if it may be misleading,
- (c) if it is contrary to the law or to public order, or is likely to cause offence,
- (d) if it can be confused with a designation entered or proposed for entry in the Register of Plant Varieties or entered in a register of protected varieties in another

State as the denomination of another variety of the same or a closely related species, or already used as the denomination of a variety or for the propagating material of a variety of the same or a closely related species,

- (e) if it can be confused with a trademark, name, company name or other distinguishing mark for which a person other than the applicant enjoys protection of a kind which prevents the designation from being registered as a trademark for plant material or similar kinds of goods, or
- (f) if it can be confused with a trademark for plant material or similar kinds of goods for which the applicant enjoys protection.

If the applicant has applied for the protection of the variety in a foreign State which is a member of the International Union for the Protection of New Varieties of Plants, the same variety denomination shall be used in this Realm as in the foreign State, unless the denomination used in the foreign State is contrary to the first or second paragraph or is unsuitable for some other reason as the denomination of the variety in this Realm.

Section 6

Provisional Examination of the Application

If the application and the variety denomination fail to satisfy Sections 4 and 5, or if the application points to some other obstacle to its acceptance, the applicant shall be invited to submit comments or to make corrections within a prescribed time limit.

If the applicant fails, within the time limit, to submit comments or to correct a defect which has been notified, the application shall be shelved. However, the processing of the application shall be resumed if, within four months from the expiration of the said time limit, the applicant submits comments or makes the corrections and also pays the fee for resumption of the processing prescribed by regulations.

If, after the applicant has submitted comments or made corrections, an obstacle remains to the acceptance of the application on which the applicant has had the opportunity to comment, the application shall be rejected unless the Plant Variety Board finds that the applicant should be given a further opportunity.

Section 7

Publication of the Application

If the application and the variety denomination satisfy Sections 4 and 5 and the application does not point to any obstacle to its acceptance, the Plant Variety Board shall publish a notice concerning the application.

Section 8

Transfer of Applications

If anyone shows to the satisfaction of the Plant Variety Board that he, and not the applicant, is entitled to the variety, the Board shall, upon his request, transfer the application to him. The transferee shall pay a new application fee.

Until a request for transfer has been finally decided, both the applicant and the person requesting the transfer shall be allowed to take whatever action is necessary to

prevent the application from being shelved or rejected. Public notices relating to the case shall state that a transfer has been requested.

Section 9

Examination of the Variety

The Plant Variety Board shall ensure that the variety is examined in order to establish whether it meets the conditions specified in litrae (a) to (c) of the first paragraph of Section 2. The Board may decide to forgo the examination in full or in part if the variety has already been examined in connection with an application for a plant breeder's right abroad or in any other way.

The applicant shall pay for the examination in accordance with the rules prescribed by regulations.

Section 10

Further Processing. Registration and Announcement of the Plant Breeder's Right

When the examination of the variety has been completed, the processing of the application shall be resumed. Section 6 shall apply. The Plant Variety Board may order the applicant to state whether the variety is protected or protection has been applied for in other States, and if so to give full details of what the plant breeder's right authority of the State in question has notified the applicant concerning the consideration of the application.

If a plant breeder's right is granted, the variety shall be entered in the Register of Plant Varieties. The decision to grant the right shall be published, together with a notice that objections to the granting of the right may be lodged within a prescribed time limit.

If an application is shelved or rejected after it has been published in accordance with Section 7, a notice to that effect shall be published once the decision is final. The same shall apply where an application is withdrawn after having been published.

Section 11

Reconsideration

If an objection to the granting of a plant breeder's right is submitted in writing to the Plant Variety Board within the time limit prescribed pursuant to the second paragraph of Section 10, the application shall be reconsidered with a view to deciding on the objection. Section 6 shall apply. The reconsideration of the application shall be announced and registered in the Register of Plant Varieties. The decision, once final, shall be announced and registered.

Section 12

Appeal and Legal Proceedings

If the final decision of the Plant Variety Board is adverse to him, the applicant may appeal against the decision to the Board of Appeals of the Norwegian Patent Office. If the application is granted following reconsideration, the person who raised the objection may appeal against the decision. Any decision of the Plant Variety Board concerning a request

for the transfer of an application may also be the subject of an appeal to the Board of Appeals of the Patent Office. The appeal must be lodged with the Plant Variety Board within two months from the date on which notification of the decision was sent to the person concerned. The appellant must pay the appeal fee prescribed by regulations.

If the Board of Appeals of the Patent Office rejects an application upon appeal, the applicant may institute legal proceedings concerning such rejection within two months from the date on which notification of the rejection was sent to him.

CHAPTER III

DURATION OF THE PLANT BREEDER'S RIGHT. ANNUAL FEES

Section 13

Duration of the Plant Breeder's Right

The plant breeder's right may be maintained until the end of the twentieth calendar year after the year in which it was granted. For trees and vines, the plant breeder's right may be maintained until the twenty-fifth year.

For the plant breeder's right to be maintained for the calendar year following the year in which it was granted, the annual fee prescribed by regulations must be paid.

Section 14

Payment of Annual Fee

The due date for payment of an annual fee shall be the first working day of the calendar year to which the fee applies. The annual fee may not be paid before the 1st of July of the preceding year. The annual fee for the first calendar year following the year in which the plant breeder's right was granted shall fall due at the earliest two months after notification of the granting of the right was sent to the variety owner.

Upon payment of an additional fee prescribed by regulations, annual fees may be paid within six months after the due date.

The King may by regulations make provisions concerning extension of time to pay or exemption from annual fees.

CHAPTER IV

TERMINATION OF THE PLANT BREEDER'S RIGHT, ETC.

Section 15

Renunciation

If the variety owner renounces his plant breeder's right in writing to the Plant Variety Board, the Board shall declare the right terminated.

If a request for a transfer has not been finally decided, or if legal proceedings have been instituted concerning a transfer or the plant breeder's right has been attached, the said right shall not be declared to be terminated until the question of the transfer has been finally decided or the attachment has ceased to apply.

Section 16

Non-payment of the Annual Fee

If an annual fee has not been paid in accordance with Sections 13 and 14, the plant breeder's right shall lapse as from the beginning of the calendar year for which the fee has not been paid.

Section 17

Invalidity or Transfer Following Legal Proceedings

A plant breeder's right granted contrary to Section 1 or litra (a) or (d) of the first paragraph of Section 2 shall be adjudged invalid by a court of law.

Legal proceedings on the ground that a plant breeder's right is invalid because it was granted to someone other than the person entitled to the variety may only be instituted by the person who claims to be so entitled. The court may, instead of declaring it invalid, transfer the plant breeder's right to the person entitled, upon his request.

Section 18

Termination by Decision of the Plant Variety Board

The Plant Variety Board shall decide to terminate a plant breeder's right if

- (a) the variety owner is no longer able to supply the Plant Variety Board with propagating material of the variety with the characteristics which the variety was stated to have when the plant breeder's right was granted, or
- (b) the variety owner fails to supply within the prescribed time limit the propagating material or the documents or information needed by the Plant Variety Board for verifying the maintenance of the variety.

Sections 6 and 12 shall apply **mutatis mutandis**.

Section 19

Announcement and Registration of Termination, etc.

When a plant breeder's right is finally terminated or adjudged invalid pursuant to Sections 15 to 18, the Plant Variety Board shall publish a notice to that effect and note the termination in the Register of Plant Varieties. The same shall apply to the transfer of a plant breeder's right.

CHAPTER V

THE USE, ALTERATION AND CANCELLATION OF VARIETY DENOMINATIONS

Section 20

Use of the Variety Denomination

Anyone who commercially offers propagating material of a protected variety for sale or otherwise markets it shall apply the registered variety denomination to the variety. The registered variety denomination shall also be used after the termination of protection.

The variety denomination registered for a particular variety shall not be used to designate another variety of the same or a closely related species, or propagating material of such a variety. The same shall apply to designations which can be confused with the registered variety denomination.

Section 21

Alteration and Cancellation of Variety Denominations

If a variety denomination has been registered contrary to Section 5 and the error has not been corrected, the Plant Variety Board shall, on the basis of a proposal from the variety owner, announce and register a new variety denomination. The same shall apply where a variety denomination no longer satisfies litrae (b) and (c) of the second paragraph of Section 5.

The Plant Variety Board may decide that a registered variety denomination which is no longer in use shall be struck from the Register of Plant Varieties if the breeder's right has been terminated and the breeder so requests or there are other reasons for doing so.

CHAPTER VI

LEGAL PROTECTION

Section 22

Penalties

Any person who wilfully infringes the sole right conferred by a plant breeder's right, or who is accessory thereto, shall be liable to fines or a term of imprisonment not exceeding three months.

Any person who wilfully or through gross negligence violates the provisions of Section 20 governing the use of variety denominations, or who is accessory thereto, shall be liable to fines.

Public prosecution shall only take place at the request of the aggrieved person.

Section 23

Damages

Any person who wilfully or negligently infringes a plant breeder's right shall be liable to pay compensation for the exploitation of the variety and compensation for any further damage caused by the infringement. The compensation may be reduced when the infringer is only slightly to blame. If the infringer has acted with care and in good faith, the court may, to the extent found reasonable, order the infringer to pay compensation for the losses caused by the exploitation.

Any person who wilfully or negligently violates the provisions of Section 20 relating to variety denominations shall be liable to compensate for the losses caused by the violation. The compensation may be reduced when the infringer is only slightly to blame.

Section 24

Surrender and Destruction of Plant Material

In order to prevent further infringement, the court may, upon request and to the extent found reasonable, decide that the plant material to which the infringement relates shall be surrendered to the aggrieved party, in return for payment, or that the plant material shall be destroyed.

The first paragraph may not be applied to a person who has acquired the plant material with due care and in good faith and has not himself committed an infringement.

Section 25

Temporary Legal Protection

Insofar as an application results in the granting of a plant breeder's right, the provisions of Section 3 relating to the sole right of the variety owner and the provisions of Section 23 relating to compensation for infringement shall also apply to the period between the publication of the application in accordance with Section 7 and the granting of the plant breeder's right.

CHAPTER VII

MISCELLANEOUS PROVISIONS

Section 26

The Plant Variety Board and the Register of Plant Varieties

The composition of the Plant Variety Board, its registered office, and its right to delegate decision-making powers, etc. shall be laid down by the King. Further provisions governing applications for a plant breeder's right, their processing, the availability to the public of the documents in each case, and reinstatement in the case of non-compliance with a time limit, etc. shall be made in regulations.

The Register of Plant Varieties shall be kept by the Plant Variety Board. The Register shall be public. Any person may request certified transcripts thereof. Concerning annotations in the Register and the effect of annotations, Section 44 of the Patents Act shall apply *mutatis mutandis*. Further provisions concerning the Register and the fees for

transcripts and annotations shall be made in regulations.

Section 27

Agent

Any applicant who is not resident or does not have his registered office in this Realm shall have an agent who is resident or has his registered office in this Realm and is empowered to represent him in all matters relating to the application. The holder of a plant breeder's right who is not resident or does not have his registered office in this Realm shall have an agent who is resident or has his registered office in this Realm and who is empowered to receive on his behalf notifications from the Plant Variety Board, announcements and other procedural communications.

Exceptions from the obligation for foreign variety owners to have a Norwegian agent may be made in regulations.

Section 28

Compulsory Licences

Where the variety owner fails to make arrangements for propagating material of the protected variety to be offered for sale or otherwise marketed on reasonable terms and to the extent necessary to meet the requirements of national food supply or other important considerations of public interest, any person who wishes to exploit the variety may sue for and obtain a compulsory licence for that purpose, provided that there is no legitimate reason for the failure. Sections 49 and 50 of the Patents Act shall apply **mutatis mutandis**. The court may order the variety owner to supply the holder of the compulsory licence with the necessary propagating material of the variety.

Section 29

Provisions on Legal Proceedings

Actions concerning the right to a plant variety for which a plant breeder's right has been applied, actions concerning the transfer of a plant breeder's right, and actions under the second paragraph of Section 12, Section 17, the second paragraph of Section 18 cf. the second paragraph of Section 12, and Section 28 shall be brought before the City Court of Oslo.

The City Court of Oslo shall be the venue for applicants and holders of plant breeders' rights who have no place of residence or registered office in this Realm.

Sections 64 to 66 of the Patents Act shall apply **mutatis mutandis**.

Section 30

Entry into Force, etc.

The Storting consents to Norway's accession to the International Convention for the Protection of New Varieties of Plants adopted on 2 December 1961, and amended on 10 November 1972, and 23 October 1978.

This Act shall enter into force on such date as the King shall decide. The first paragraph of Section 30 shall nevertheless enter into force immediately.

As from the date on which this Act enters into force, other Acts shall be amended as follows:

- (1) Act No. 7 of 2 July, 1910, relating to the Norwegian Patent Office shall be amended as follows:

In the first paragraph of Section 2, a new third sentence shall read:

"The Board of Appeals shall also decide on appeals against decisions by the Plant Variety Board as mentioned in Section 12 and Section 18, cf. Section 12 of the Act relating to Plant Breeders' Rights."

The present third sentence shall become the fourth sentence.

The second sentence of the first paragraph of Section 5 shall read:

"Of the members, three shall be technical, commercial or agricultural experts and two shall be legal experts."

The second and third paragraphs of Section 5 shall read:

"The decisions taken by the Board of Appeals shall not be bound by the facts which were available when the decision was taken in the first instance."

"Where a fact is adduced which was not considered in the first instance, the Board of Appeals may refer the matter to the first instance for reconsideration."

- (2) Subsection 5 of Section 273 of Act No. 6 of 13 August 1915, the Civil Procedure Act, shall read:

"actions relating to patents, circuit diagrams for integrated circuits, plant breeders' rights, trademarks and designs,"

- (3) Litra (b) of the second paragraph of Section 3-4 of Act No. 2 of 8 February 1980, the Liens Act, shall read:

"rights to trademarks, patents, designs, circuit diagrams for integrated circuits and plant breeders' rights, and acquired copyrights including rights to the performance of works by performing artists."