



## Law of the Kyrgyz Republic on Legal Protection of Breeding Achievements

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This Law shall regulate economic and personal non-economic rights arising due to creation (exposure, raising), exploitation and legal protection of a breeding achievement for which the patents of the Kyrgyz Republic are granted.

The effect of the present Law shall extend to all botanical and zoological species, plant varieties and animal breeds pursuant to the list approved by the Government of the Kyrgyz Republic.

## **Section I** **General Provisions**

### *Definitions*

1. For the objectives of the present Law the following terms are used:

— The author of a breeding achievement (selectionist)—a person by whose creative labor a breeding achievement is created (exposed, raised);

— breed of animals—a group of animals, which possesses genetically conditioned biological and morphological qualities and features, which are specific for a given category of animals and differ it from other groups regardless of protection. A breed may be represented by a female or male individual or pedigree material. Protected categories of the breed shall be:

- a type, factory line, cross line and family;
- pedigree animal—an animal, used for reproduction of a breed;
- pedigree material—a pedigree animal, its gametes or zygotes (embryos);
- breeding achievement—a variety of plants, a breed of animals;
- protected breeding achievement—a variety of plants, a breed of animals, registered in the State Register of the protected breeding achievements;
- plant variety—a group of plants within the frame of one and the same botanical taxon the lowest from the known classes, which may be determined by the features characterizing a given genetic type or combination of genetic types and differs from other groups of plants of the same botanical taxon by at least one feature, irrespective of whether it meets the conditions of protectability, may be considered indivisible from the point of view of its usefulness in order to reproduce the plants of variety as a whole.

Protected categories of a plant variety shall be clone, line, hybrid of the first generation, population;

— seeds—generative and vegetative parts of plants which are used for reproduction of a plant variety;

— plant material—a plant or its parts, used for a purpose, other than reproduction of a plant variety;

counterfeit breeding achievement—a breeding achievement, reproduction and (or) commercial use of which entails violation of exclusive rights of a patent owner.

#### *Legal Protection of a Breeding Achievement*

**2.** The right for a breeding achievement shall be protected by this Law and certified with a patent.

The patent shall certify the authorship of selectionist, priority of breeding achievement, exclusive right of the patent owner to use breeding achievement.

The volume of legal protection for breeding achievement provided by a patent shall be determined by the aggregate of essential features in its description.

#### *State Regulation in the Area of Legal Protection of Breeding Achievements*

**3.** The State Intellectual Property Agency under the Government of the Kyrgyz Republic (hereinafter referred to as Kyrgyzpatent) shall exercise the state policy in the area of legal protection of breeding achievements pursuant to the present Law and execute the following function:

- accept for consideration applications for breeding achievements;



- provide publication of applications for granting of a patent;
- provide their preliminary examination;
- accept the decision to grant a patent or refuse to grant a patent on the basis of the results of examination on novelty, distinctiveness, similarity and stability;
- carry out the state registration of breeding achievements in the State Register of protected breeding achievements of the Kyrgyz Republic (hereinafter referred to as The State Register of protected breeding achievements);
- provide official publication of information regarding protection of selection achievements;
- grant patents, maintain their effectiveness and carry out other functions pursuant to the present Law and Regulation on Kyrgyzpatent approved by the Government of the Kyrgyz Republic.

In order to review disputes concerning breeding achievements, the Appellate Council is being established under Kyrgyzpatent. Regulation on Kyrgyzpatent shall be approved by Kyrgyzpatent.

Ministry of Agriculture and Water Resources of the Kyrgyz Republic shall establish the list of botanical and zoological varieties and species to which this Law is applicable (hereinafter the List).

The list shall be approved by the Government of the Kyrgyz Republic.

Ministry of Agriculture and Water Resources of the Kyrgyz Republic shall put forward proposals to the Government of the Kyrgyz Republic:

- to add new varieties and species to the List;
- to change the names of varieties and species included into the List;
- to delete from the List some varieties and species.

When including a type or kind to the List, the Ministry of Agriculture and Water Resources may exclude all varieties of plants of this type or kind which are not characterized by the special way of multiplication or reproduction or known final exploitation.

If types or kinds are deleted from the List, such deletion should not affect the rights of applicants submitted an application for protection of varieties of plants of these types or kinds prior to the date the deletion is enforced.

The State Commission on Examination of Plant Varieties of Agricultural Crops under the Ministry of Agriculture and Water Resources of the Kyrgyz Republic (hereinafter referred to as State Commission) and the State Inspectorate on Pedigree Work in Cattle Breeding and Monitoring of Pastures under the Ministry of Agriculture and Water Resources of the Kyrgyz Republic (hereinafter referred to as State Pedigree Inspectorate) are the state bodies and pursuant to the present Law shall carry out the following functions:



- conduct the state test of selection achievements for novelty, distinctiveness, similarity and stability on contractual basis with Kyrgyzpatent;
- maintain the State Register of district plants varieties of the Kyrgyz Republic and the State pedigree book of the Kyrgyz Republic;
- issue conclusions on admission to use the breeding achievement in production and carry out other functions pursuant to Regulations on them approved by the Ministry of Agriculture and Water Resources of the Kyrgyz Republic.

## Section II

### Conditions of Protectability of a Breeding Achievement and Application Filing Procedure for Granting a Patent

#### *Conditions of Protectability of a Breeding Achievement*

4. The patent shall be issued to a breeding achievement, which is related to botanical and zoological varieties and species, and which meets criteria of protectability.

Criteria for protectability of a breeding achievement are:

1) novelty

A variety of plants and a breed of animals shall be considered new, if on the date of filing of application for issuance of a patent, the seeds or pedigree material of a given variety or a breed had not been sold nor otherwise transferred to other persons by the selectionist, his/her successor or with their consent, for the use of the breeding achievement:

- on the territory of the Kyrgyz Republic—earlier than one year before this date;
- on the territory of another state—earlier than four years or, if it concerns grapes, arboreal decorative and fruit crops—earlier than six years before the established date.

The novelty of breeding achievement is not lost if sale of any material of a plants variety or a breed of animals is carried out by other persons before expiration of terms indicated in the present paragraph:

- in order to cause deliberate damage to the applicant;
- on execution the agreement on transfer the right to obtain a patent;
- in the course of execution the agreement on which the third party provides additional supplies of material for multiplication of a plants variety, breed of animal with the consent of an applicant under condition that such supplies are carried out under control of an applicant;
- in the course of execution the agreement on which the third party conducts field tests or laboratory researches or minor control tests on assessment of a variety or a breed;

2) distinctiveness

Breeding achievement shall meet the condition of distinctiveness if it obviously differs from any other plant variety or a breed of animals which is well-known on the date of filing an application.

Breeding achievement may be well-known if it exists in official catalogues, reference fund or has exact description in one of the publications, or the breeding achievement is included in the State Register of protected breeding achievements.

Publicity may also be established in respect of breeding achievement:

— which became a part of generally known level of knowledge in the result of its production, reproduction, sowing for multiplication, storage for the purposes mentioned above;

— which was offered for sale, soled, exported or imported.

3) similarity

Breeding achievement is considered as meeting the condition of similarity if, with consideration of the plant multiplication peculiarities, the animals with their features are sufficiently similar.

4) stability

Breeding achievement shall be considered stable, if its main features remain unchanged after repeated multiplication, or in the event of a specific cycle of multiplication, at the end of each cycle of multiplication.

*Persons Who Have the Right to Submit an Application for Granting a Patent*

5. The selectionist, employer, and their successor (hereinafter—applicant) shall have right to file an application for issuance of a patent (hereinafter—the application).

If the breeding achievement was created, grown or discovered jointly by several people, they shall have the right to file an application jointly.

The application may be filed via a trustee, who conducts business, dealing with receiving the patent, based on proxy.

Natural or legal entities of the other states who have no permanent residence in the Kyrgyz Republic shall conduct a business in order to receive a patent and keep in effective through the patent agents of the Kyrgyz Republic registered at Kyrgyzpatent, unless otherwise is provided by the international agreement of the Kyrgyz Republic.

The employees of Kyrgyzpatent, the State Commission and the State Pedigree Inspectorate shall not have the right to file applications for issuance of a patent for breeding achievement during the whole term of employment in these agencies.

*Breeding Achievement Created in the Official Order*

6. If a breeding achievement is created (grown or Discovered) in the course of execution of official task or official duties the rights to file an application shall belong to the employer unless otherwise is provided by the agreement between the selectionist and employer.

A breeding achievement shall be considered as created in the official order if in the course of its creation the selectionist executed the duties:

- executed the duties due to his official position;
- executed the duties with which he was specially entrusted in order to create breeding achievement;

If an employer does not file an application to Kyrgyzpatent or does not assign the right to file an application to another person, within four months as of the date of notification made by a selectionist on creation of breeding achievement, the selectionist shall have the right to file an application or to receive a patent on his own name. In this case the employer shall have the right to use breeding achievement with a payment of remuneration established on a contract bases to the patent owner—the author.

If an employee creates a breeding achievement using experience, material, technical and other facilities of the employer, but not while performing the duties or a tasks of an employer, a right to receive a patent shall belong to the employee. In this case an employer shall have a right for priority use of a breeding achievement paying to an owner of patent a compensation established on a contractual basis.

Other relationships arising due to creation of breeding achievement by a selectionist are regulated by the legislation of the Kyrgyz Republic.

*File of an Application to Grant a Patent*

7. The application to grant a patent shall be filed at Kyrgyzpatent. The application must contain:

- the application;
- descriptive summary of a variety of plant, or a breed of animals;
- a document, which certifies payment of the established fee for submission of the application, or which exempts from the payment of fee for file of the application, or which gives grounds for decrease of its amount.

The requirements to the indicated documents shall be stipulated in the Rules on compilation, submission and review of application for breeding achievement (hereinafter the Rules) established and approved by Kyrgyzpatent.

The application must be related to one breeding achievement.



Responsibility for correctness of the information submitted to Kyrgyzpatent shall be with the applicant.

The documents of the application shall be presented in the Kyrgyz or Russian languages. If the documents are presented in any other language, the application shall be attached with their translation into Kyrgyz or Russian language.

The date of receipt the documents by Kyrgyzpatent shall be considered the date of file of the application, stipulated by paragraph 1 of this Article.

The applicant shall have the right to revoke an application any time prior to the date of receipt the decision to grant a patent.

#### *Denomination of the Breeding Achievement*

**8.** Breeding achievement must have a denomination with indication of its gender affiliation.

The denomination of the breeding achievement must allow to identify it, be concise, differ from the denominations of the existing breeding achievements of the identical or close to it botanical and zoological gender. It must not consist of figures only, bring to confusion in respect of characteristics, origin, significance of the breeding achievement, selectionist's personality, and must not contradict the principles of the public morality.

Any person using the breeding achievement must apply denomination under which it was registered in the State register of protected breeding achievements.

If denomination of the breeding achievement does not meet the requirements of this Article, the applicant shall be obliged to change it within the terms, established by Rules. The appropriate fee shall be paid if the applicant changes denomination of breeding achievements at his own initiative.

A variety of plants, a breed of animals shall be presented in other countries under the same denomination. A competent body of the other country shall register the presented denomination of the breeding achievement, unless it decides that such a denomination is not acceptable in its territory. In this case it may require the selectionist to provide another denomination.

Any person offering for sale or distributing a breeding achievement on the territory of another country, which is protected on the indicated territory must use the denominations of this breeding achievement even after the end the patent term or the right of selectionist to this breeding achievement, unless the previously acquired rights do not prohibit such a use in accordance with paragraph 7 of this Article.

Previously acquired rights of the third persons shall not be covered, provided that by virtue of the previously acquired right, the exploitation of any denomination of a variety of plants or a breed of animals is prohibited to the person, who pursuant to paragraph 6 of this





Article must use it, the selectionist is obligated to submit another denomination for this plant variety or animal breed at the requirement of Kyrgyzpatent.

Denomination of selection achievement must not be used as a trademark.

#### *Priority Right*

**9.** Priority of a breeding achievement shall be established on the date of file of an application to grant a patent at Kyrgyzpatent.

In the event Kyrgyzpatent receives two (or more) applications to grant a patent for one and the same breeding achievement the priority shall be established on the earliest sending of an application. If in the course of examination it is established that these applications have the same date of sending, the patent may be granted to the application that has the earliest registration number of Kyrgyzpatent.

The priority of a breeding achievement may be established on the date of submission of the first application in the foreign country with which the Kyrgyz Republic has bilateral or multilateral international agreement on protection of plants varieties, breeds of animals, if the application was receipt at Kyrgyzpatent within 12 months as of the indicated date.

An applicant willing to use the right of priority on the basis of the first application must indicate it during submission of an application to Kyrgyzpatent. The copies of the initial application materials certified by the body who has received them as well as samples or another proof that this breeding achievement is the subject of both applications, is one and the same one, shall be submitted within three months.

In the cases when the first application is suspended or revoked the selectionist is provided with the sufficient time period and the opportunity to present any necessary information, documents or materials to Kyrgyzpatent required for examination purposes, within two years after expiration of the priority and after such suspension or revocation.

### **Section III Examination of a Breeding Achievement**

#### *Examination of the Application for Breeding Achievement*

**10.** Examination of the application shall be carried out by Kyrgyzpatent and shall include preliminary examination and examination of the claimed breeding achievement for the compliance with conditions of patentability.

#### *Preliminary Examination of the Application for a Breeding Achievement*

**11.** Preliminary examination of the application shall be carried out within the term of 2 months after the date of filing at Kyrgyzpatent. In the course of the preliminary examination the date of priority shall be established, the necessary documents shall be checked, and their



compliance with the established requirements of Rules and the present Law. The fee shall be paid for execution of preliminary examination.

During the month from the date of file of an application the applicant may add, clarify and update the materials of the application at his own initiative.

If the application is submitted in violation of the established requirements to the form and composition, the request shall be sent to the applicant with the suggestion to present corrected or missing materials within two months from the date of its receipt.

In the course of preliminary examination Kyrgyzpatent may request the applicant to provide additional materials, the answer on which must be presented within two months.

At the request of an applicant, under the presence of valid reasons and payment of an appropriate fee, Kyrgyzpatent may permit the extension of the term of an answer to the request, specified in paragraphs 3 and 4 of this Article for six months.

In the event the applicant does not provide the requested documents or the request to prolong the established term within the indicated term, the application is considered revoked.

If the applicant does not agree with the decision, made on the results of the preliminary examination, the applicant shall have the right to appeal the decision in the Appellate Council within 3 months as of the date of the receipt the decision.

The order and terms for consideration of appeals by the Appellate Council on the decision of preliminary examination shall be established by Kyrgyzpatent.

The appropriate fee shall be paid for file of an objection to the Appellate Council on the decision to refuse to grant a patent.

In the event of positive result of the preliminary examination, the applicant shall be notified of the acceptance of his/her application to consideration for compliance with the terms of protectability.

#### *Publication of an Application*

**12.** Kyrgyzpatent shall publish information on the application in the official bulletin no later than four months after completion of preliminary examination. Kyrgyzpatent shall determine the content of information for publication. After publication of the information on application any person shall have the right to familiarize himself with its materials. The appropriate fee is paid in order to familiarize with the materials of application.

The information on application is not published in the cases if prior to termination of the publication term the decision to grant a patent for this application is made or it is revoked or the decision on refusal to grant a patent is made which can not be appealed.

The author of a breeding achievement may refuse to be named as such in the publicized information on application, if he is not a patent owner.



*Provisional Legal Protection of a Breeding Achievement*

**13.** For the period from the date of publication of the application and to the date of issuance of the patent, the applicant shall be given a provisional legal protection of the breeding achievement.

After receipt of the patent, the patent owner shall have the right for indemnification from a person, who committed actions without the permission of the applicant during the period of provisional protection of breeding achievements, indicated in paragraph 1 of Article 24 of this law.

Within the term of the provisional legal protection of the breeding achievement the applicant shall be allowed to sell or otherwise transfer seeds, pedigree materials, solely for experimental purposes, and in the events, when selling or other transfer is connected with reassignment of the right to the breeding achievement or production of seeds, pedigree material, by the order of the applicant or with the purpose of creating a stock.

If the indicated requirements stipulated by paragraph 3 of the present Article are violated by the applicant or another person, with his/her contest, the provisional legal protection shall be deemed not ensued.

*Examination of Compliance of a  
Breeding Achievement with the Terms of Protectability*

**14.** In the course of examination of the declared breeding achievement, protectability of a plant variety, a breed of animal shall be checked, the priority shall be established if it has not been established in the course of preliminary examination.

The examination shall include the test of declared variety of plants or a breed of animals for compliance with the criteria of novelty distinctiveness, similarity and stability stipulated by Article 4 of this Law and conducted according to the methods and terms, established by the State Commission and the State Pedigree Inspectorate after the payment of fee for examination.

In the course of examination of a breeding achievement for novelty the claim of any interested person shall be taken into account submitted to Kyrgyzpatent within six months as of the date of publication of the information on application, pursuant to the Article 12 of the present Law.

Kyrgyzpatent shall notify the applicant on the receipt of a grounded claim with the description of the essence of this claim. In the event the applicant does not agree with the claim he has the right to submit motivated argument to Appellate Council within three months as of the date of the receipt the notification. The fee shall be paid for submission and consideration of a claim.

The Appellate Council shall make decision on the bases of available materials and inform the interested person about it.



If a breeding achievement does not comply with the criteria of novelty the decision on refusal to grant a patent shall be made.

In the course of assessment of the selection achievement on distinctiveness, similarity and stability, the State Commission and the State Pedigree Inspectorate may base on:

— the results of tests conducted on the agreements with legal entities and natural persons of the Kyrgyz Republic or competent organizations of foreign countries on testing of a breeding achievement with which the Kyrgyz Republic is connected by virtue of bilateral or multilateral agreements of protection of varieties of plants or breeds of animals;

— tests conducted by the applicant or on his assignment in the Kyrgyz Republic or outside of its borders.

The State Commission and the State Pedigree Inspectorate may request the applicant to provide all necessary information, documents or pedigree materials as well as offer the applicant to provide special tests of a variety of plant or a breed of animal.

On the basis of the tests of a breeding achievement the State Commission and the State Pedigree Inspectorate shall make a conclusion on compliance of the breeding achievement with the conditions of protectability and compile an official description of a breeding achievement.

In the course of technological development the State Commission and the State Pedigree Inspectorate shall have the right to add the description of a breeding achievement any time during the period of patent effectiveness.

On the basis of the results of examination on novelty, distinctiveness, similarity and stability, the materials of the report and conclusion of the State Commission and the State Pedigree Inspectorate and in compliance of denomination of a breeding achievement with the requirements stipulated in Article 8 of the present Law, Kyrgyzpatent shall take a decision to grant a patent or refuse to grant a patent.

The applicant may get acquainted with the materials used in the course of examination and observe the examination procedure.

The applicant may demand the copies of the claims against the materials of the application as well as complete information on the results of conducted tests within two months as of the date of the receipt the decision on application.

*Appeal Against the Decision of Examination and  
Restitution of the Missed Time Limits*

**15.** When disagreed with the expert decision, the applicant shall be entitled to file a grounded complaint with the Appellate Council of Kyrgyzpatent within four months from the date the applicant is notified of such decision on his/her application, or copies of the materials opposed to the application and requested by him and complete information on the upshots of the tests. The complaint shall be reviewed within four months from the date it is received.



This review term may be prolonged in respect of complex applications upon the consent of the applicant. The applicant shall be entitled to personally or through a representative participate in the review of his/her complaint.

The appropriate fee shall be paid for file of an appeal to the Appellate Council against the decision of examination.

The decision of the Appellate Council of Kyrgyzpatent may be contested by the applicant in court within six months from its adoption.

The time limits stipulated in paragraph 3, 4, and 7 of Article 11, paragraph 3 and 4 of Article 14, paragraph 1 of this article, Article 18 and paragraph 1 of Article 29 of this Law that have been missed by the applicant may be reinstated by Kyrgyzpatent provided there are solid reasons therefor, and the dues are paid.

A solicitation on the restitution of the missed time limits may be filed by the applicant no later than 6 months after the missed time limits.

#### **Section IV**

#### **Registration of a Breeding Achievement and Issuance of a Patent**

##### *Registration of a Breeding Achievement and Issuance of a Patent*

**16.** When the decision to grant a patent is made and the corresponding fee is paid, Kyrgyzpatent shall register the breeding achievement in the State Register of protected breeding achievements within two months.

The fee shall be paid within two months from the date the applicant receives the decision of examination to register breeding achievement or within three months from the date of expiration of the indicated two months term, under condition of payment of additional fee.

The order of introduction and the list of information introduced to the State Register of protected breeding achievements shall be determined by Kyrgyzpatent.

The patent to a breeding achievement shall be granted by Kyrgyzpatent in the name of the soliciting entity. If there are several entities seeking the patent, they shall receive one patent.

The patent to a breeding achievement shall be issued on behalf of the Kyrgyz Republic and signed by the Director of Kyrgyzpatent.

Kyrgyzpatent shall determine the format and the composition of data to be indicated in the patent.

Pursuant to Article 21 of this Law, Kyrgyzpatent shall issue the author certificate to the author of a breeding achievement who is not the patent owner.



Correction of obvious and technical mistakes in the issued patent shall be effectuated upon the patent owner's request.

In the event of loss of a patent, a duplicate shall be issued provided the corresponding fee is paid.

#### *Validity Term of a Patent*

**17.** The validity term of a patent to a plant variety shall be 30 years, to a variety of grapes, arboreal decorative, fruit crops and forest trees, including their stocks as well as animal breeds shall be 35 years from the date of registration of declared a breeding achievement in the State Register of protected breeding achievements.

#### *Patent Maintenance Fee*

**18.** The patent owner shall be obligated to pay annually a patent maintenance fee. The first year for the payment of the patent maintenance fee shall be the first calendar year following the year of issue.

#### *Publication of Information on a Patent*

**19.** Kyrgyzpatent shall publish information on a patent in its official bulletin within six three months from the registration date in the State Register of protected breeding achievements. The composition of data to be published shall be determined by Kyrgyzpatent.

#### *Patent Fees*

**20.** Patent fees shall be levied for file of an application for breeding achievement, conduct of examination, grant of a patent, validity of a patent, extension of the term of its validity as well as the performance of legally significant actions.

The Government of the Kyrgyz Republic shall establish the list of actions for which these fees are levied, their amount and terms of payment, as well as grounds for exempting from such payments, decreasing their amount or their refund.

The fees shall be paid by the applicant, owner of the patent or any legal entities or natural persons to Kyrgyzpatent, upon the agreement with him.

All means entered the account of Kyrgyzpatent in the form of fees including currency, payment for the services and materials shall be used by Kyrgyzpatent to cover costs related to the provision of actions stipulated in paragraph 1 of this Article as well as technical provision, creation and development of automated system, completion of the patent information fund, training and motivation of personnel.

## Section V Rights of the Author of a Breeding Achievement

### *Author of a Breeding Achievement*

**21.** A natural entity who has engineered (discovered or grown) a breeding achievement through his/her creative work shall be deemed to be the author of a breeding achievement. If several natural entities participate in the creation (exposure or raise) of a breeding achievement, all of them shall be deemed to be co-authors. The procedure to exploit rights of co-authors shall be guided by an agreement between them.

Persons who have not made personal contributions to the creation (exposure or raise) of a breed, but who have provided the author (authors) only with technical, organizational or financial assistance or who have only contributed to the legalization of the rights to a breeding achievement are not deemed to be co-authors.

Misappropriation of the authorship of a breeder, coercion into co-authorship shall entail liability in accordance with the Legislation of the Kyrgyz Republic.

The author of a breeding achievement shall hold the right of authorship that is inalienable personal right and is protected by the state infinitely. Disputes on authorship shall be resolved in court.

Disputes between the patent owner, who is not the author of a breeding achievement and the author, who is not the patent owner shall be resolved in judicial order.

Kyrgyzpatent shall issue the author's certificate to each author. The author certificate shall testify the authorship, as well as the right thereof to receive remuneration from a patent owner for his/her use of the breeding achievement in question.

In the event of loss of an author certificate, a duplicate shall be issued provided that the required fee is paid.

Kyrgyzpatent shall determine the format and the contents of the author certificate.

### *Remuneration to the Author of a Breeding Achievement Who is not the Patent Owner*

**22.** The author of a breeding achievement shall be entitled to receive remuneration from the patent owner for his/her exploitation of a breeding achievement grown (engineered or discovered) by the author within the validity term of his/her patent. The amount and terms of payments shall be determined by the agreement between the patent owner and the author.

If an animal breed or a plant variety is grown, created or discovered by several authors, the remuneration shall be distributed among them based on the agreement concluded between them.

If the agreement regarding the amount and the order of remuneration payment is not achieved by the parties, the dispute shall be settled in a judicial order.

## **Section VI** **Rights and Obligations of a Patent Owner**

### *Patent Owner*

- 23.** The right to obtain a patent shall belong to:
- the author (authors) of a breeding achievement;
  - employer, in the cases stipulated by Article 6 of the present Law;
  - their legal successor, including a person who received the appropriate right in the assignment order.

### *Rights of a Patent Owner*

- 24.** A patent owner shall have an exclusive right to use a breeding achievement.

The exclusive right of a patent owner shall mean the right to conduct or permit to conduct the following operations with seeds and pedigree material:

- production and re-production;
- brining to sowing condition with the subsequent multiplication;
- offer to sale;
- sale and other types of distribution;
- import to the territory of the Kyrgyz Republic;
- export from the territory of the territory of the Kyrgyz Republic;
- storage for the purposes mentioned above.

The right to a patent and the right to use breeding achievement, coming from the patent may be transferred to any natural person or legal entity on the patent assignment agreement or licensing agreement.

The permission from the patent owner is necessary in order to effectuate the operations provided in paragraph 1 of this article with the seeds or pedigree material, which:

- inherit substantially the features of a protected (original) animal breed or plant variety, if these protected breeds, in their turn, are not breeding achievements that significantly inherit the features of other breeding achievements;
- do not obviously differ from a protected animal breed or plant variety;



- require repeated use of a protected breed for the production of seeds.

A breeding achievement that substantially inherit features of another (original) protected breeding achievement shall be deemed a breeding achievement, which under obvious difference from the original:

- inherits the most generally significant features of an original breeding achievement or of a breeding achievement that itself inherits significant features of an original breeding achievement retaining basic features reflecting genetic code or a combination of genetic codes of a breeding achievement;

- coincides with the genetic code or a combination of genetic codes of the original breeding achievement with the exception of deviations caused by the application of methods, like individualized selection from the original animal breed or plant variety, selection of an induced mutant or genetic engineering.

#### *Actions That are not Deemed Violations of the Patent Owner's Right*

**25.** The following actions are not deemed to be infringement of the right of the patent owner:

- actions carried out for personal and non-commercial purposes (the use of new plant variety to re-produce in private gardens to be further consumed as food products);
- actions carried out for experimental scientific research;
- exploitation of a protected animal breed or plant variety as the original (base) material to engineer a new breeding achievement and with the exception of cases provided by paragraph 4 of Article 24 of this Law, as well as the actions provided in paragraph 1 of Article 24 of this Law in respect of other breeding achievements;
- use of the plant material engineered at an enterprise within two years as seeds to grow the variety within the territory of the enterprise. The list of varieties of plants and animal breeds shall be determined by the Government of the Kyrgyz Republic;
- reproduction of tradable animals to be used at a given enterprise.

#### *Maintenance of a Breeding Achievement*

**26.** The patent owner shall be obligated to maintain a plant variety or an animal breed within the entire term of validity of a patent in such a way that retains features indicated in the description of the variety or a breed as of the registration date in the State Register of protected breeding achievements.

Upon request of the State Commission, the patent owner shall be obligated to send seeds for test examinations and provide the conditions for inspections at place. Also, the patent owner shall be obligated to provide pedigree material for in-field testing when requested by the State Pedigree Inspectorate.

## Section VII Protection of the Patent Owner's Rights

### *Liability for Violation of the Patent Owner's Rights*

27. The civil, administrative and criminal liability shall commence upon violation of the rights of the a patent owner stipulated by the present Law.

A licensee may put forward claims against a violator, if appropriately provided in the licensing agreement.

A natural or legal entity, who does not comply with the requirements of this Law related to the exclusive rights of a patent owner, and, inclusively, imports seeds or pedigree material in the Kyrgyz Republic or any other breeding achievement without the patent owner's permission, shall be deemed a patent violator, and the breeding achievement shall be found counterfeit.

Breeding achievements, imported in the Kyrgyz Republic from countries where these breeding achievements have never been protected or their protection has ceased, however are protected by this Law shall be deemed counterfeit.

### *Protection of the Patent Owner's Rights*

28. The patent owner shall be entitled to demand from a violator:

- (a) recognition of the patent owner's rights;
- (b) restoration of the status quo and eradication of actions violating the rights or threatening to violate them;
- (c) indemnification of losses, including lost profit;
- (d) recovery of revenue gained by a violator in violation of the patent owner's rights instead of the indemnification of losses;
- (e) apply any other remedies provided by the normative legal acts related to the protection of the patent owner's rights.

Remedies provided in items (c) and (d) of this article shall be used at the patent owner's discretion.

The patent owner shall be entitled to appeal to court to protect his/her right, as well as investigation bodies, due to their competence.

Counterfeit seeds and pedigree material shall be subject to obligatory confiscation upon the decision of the court. Confiscated counterfeit seeds and pedigree material shall be destroyed except for the cases of their transfer to the patent owner upon his request.



In case of obvious evidence on a violation of the patent owner's rights, an investigation body or a court shall be obligated to undertake measures for a rescue and arrest of the breeding achievement, which is suspected to be counterfeit.

## **Section VIII** **Invalidation of a Patent and Its Annulment**

### *Invalidation of a Patent*

**29.** Any entity may apply to the Appellate Council with a grounded request to find a patent invalid within three months from the date of its data publication. Kyrgyzpatent shall send a copy of the request to the patent owner, who is required to present a grounded reply within three months from the date of notification thereof. A fee shall be levied for submission and consideration of the application to find a patent invalid.

The Appellate Council shall make a decision on the issue within six months, unless additional testing is required.

A patent shall be deemed invalid, if:

- a breeding achievement did not meet the condition of novelty, similarity, stability and distinctiveness on the date of the patent was issued;
- the entity identified in the patent as its owner did not have any legal rights to receive the patent.

### *Annulment of a Patent*

**30.** Kyrgyzpatent shall annul a patent, if:

- the patent owner has failed to pay the patent maintenance fee in the established term;
- the patent owner has failed to provide seeds, pedigree material, documents and other information to check patentability of a breeding achievement requested by the State Commission and State Pedigree Inspectorate within the established deadlines and failed to provide conditions for inspection of a breeding achievement at place;
- a breeding achievement does not comply with the conditions of similarity and stability.

### *Appealing Against the Decisions of the Appellate Council of Kyrgyzpatent*

**31.** The decision of the Appellate Council to grant a patent or to refuse to grant a patent, to consider the patent invalid and the decision of Kyrgyzpatent to annul the patent may be appealed in court.



## Section IX Licenses

### *Licensing Agreement*

**32.** Under a licensing agreement (exclusive and non-exclusive license), the patent owner (licenser) may transfer the right to use a breeding achievement to another party (licensee) within the contractual framework of the rights transferred, time limits, territory and order of payments.

When a non-exclusive license is transferred to a licensee, the licensee shall have the right to use a breeding achievement within the term and framework of the transferred rights provided in the licensing agreement. The issuance of non-exclusive license shall not hamper the licenser from issuing licenses to third parties or from his/her own using the breeding achievement in question. The license must not be transferred by the licensee to the third parties. The licensee shall not be entitled to issue sub-licenses.

When the exclusive license is transferred to a licensee, the licensee shall enjoy the exclusive right to use a breeding achievement on the negotiated terms and within the stipulated territory and within the contractual time limit. Under an exclusive license, the licenser shall not have the right to use the breeding achievement in question and to issue licenses to third parties within a given territory. The licensee shall have the right, upon the terms agreed with the licenser, to issue sub-licenses to third parties.

Terms of a licensing agreement imposing limits on a licensee that do not arise from the rights granted to him/her by the patent or which are not mandatory for retaining the patent shall be deemed void.

A licensing agreement as well as an agreement of patent concession provided in paragraph 2 of Article 24 of this Law shall become invalid after their registration with Kyrgyzpatent. A corresponding fee shall be paid for the registration of a licensing agreement as well as for the registration of an agreement of patent concession.

### *Open License*

**33.** The patent owner may publish in the official bulletin of Kyrgyzpatent that his/her breeding achievement may be used by any entity from the date the patent owner is notified thereof, provided he/she receives the announced fees.

The amount of the patent maintenance fee shall be decreased by 50% from January 1 of the year following the year an open license announcement appears.

Kyrgyzpatent shall enter in the State Register of protected breeding achievements a record on the open license announcement and indicates the amount of payments required.

Kyrgyzpatent shall enter a record in the State Register of protected breeding achievements on the termination of the open license announcement upon a petition filed by the patent owner with the consent of other open license-holders.

A corresponding fee shall be paid for filing of an application on termination of the effectiveness of the open license and publication of the information on termination of the effectiveness of the open license in the official bulletin.

### *Compulsory License*

**34.** In the event of non-use or insufficient use of a breeding achievement by a patent owner of the person to whom the rights are transferred within three years from the date of patent issuance, a person willing and prepared to use this breeding achievement, in the event of refusal of the patent owner to enter into a licensing agreement on the conditions that are in compliance with the established practice, shall have the right to apply to court soliciting a compulsory license to use the indicated breeding achievement.

In the event the patent owner fails to prove that non-use or insufficient use of a breeding achievement is conditioned by valid reasons, the court shall grant the indicated license determining the limits of its use, amount and order of payment. The amount of payment must be established not less than the price for the license determined in accordance with the established practice.

Under a compulsory license, the licensee shall receive the right to use a breeding achievement within the framework of non-exclusive license.

The court may obligate the patent owner to provide the licensee with multipliable material in the amount necessary to effectively use the compulsory license in exchange for a commensurate remuneration to the patent owner on acceptable conditions.

A compulsory license must be issued in the presence of the following conditions:

- the compulsory license applicant is in a financial, technical and scientific position to effectively use the rights of the patent owner;
- the patent owner refuses to authorize the compulsory license to the applicant to re-produce or trade in multipliable material of a breeding achievement to suffice the public needs or is not prepared to give such an authorization on acceptable terms;
- no grounds for the patent owner not to authorize such use of a breeding achievement as necessary;
- the application to grant a compulsory license was received after three years from the date of publication of the information on the issuance of a patent.

The term of a compulsory license shall be established by the court.

Compulsory license may be revoked upon the decision of the court in the event if the owner of compulsory license violates the conditions under which it was granted.



The information on compulsory license shall be published in the official bulletin and entered to the State Register of protected breeding achievements.

The licensee shall pay an appropriate fee for registration and publication of the information on the issuance of compulsory license in the official bulletin.

## **Section X** **International Cooperation**

### *The Right to File an Application in Other States*

**35.** An applicant shall have the right to file an application soliciting protection of a breeding achievement with competent bodies of another state. An application filed in other country must be registered at Kyrgyzpatent.

All expenses related to the protection of the rights to a breeding achievement outside the Kyrgyz Republic shall be with the applicant.

### *Rights of Foreign Nationals and Legal Entities*

**36.** Foreign natural and legal entities shall enjoy the rights provided in this Law equally with natural and legal entities of the Kyrgyz Republic by virtue of international agreements of the Kyrgyz Republic or on the basis of reciprocal principal.

### *Effectiveness of International Agreements*

**37.** If international agreements of the Kyrgyz Republic provide other rules than those set forth in this Law, than the rules of international agreements shall be applied.

## **Section XI** **Final Provisions**

### *Control Over Import and Export of Breeding Achievements*

**38.** The control over import and export of breeding achievements registered in the State Register of protected breeding achievements shall be effectuated by the State Customs Inspection under the Government of the Kyrgyz Republic.

### *Legal Treatment of Certificates, Author's Certificates to Breeding Achievements Registered by the State Committee of the USSR on Invention and Discovery Affairs*

**39.** The effectiveness of certificates and author's certificates to a breeding achievement registered by the State Committee of the USSR on invention and discovery affairs shall be recognized in the territory of the Kyrgyz Republic.



The owners of certificates and authors' certificates to varieties of plants on which the term of 20 years is not expired and to a variety of grapes, arboreal decorative, and forest trees, as well as animal breeds 25 years term of protection from the date of file of an application shall be granted the right to request for their exchange to patents of the Kyrgyz Republic. The request shall be submitted to Kyrgyzpatent. The order of submission and review of the request shall be determined by the Rules.

The applications to grant the authors' certificates to a new plant variety or a breed of animal filed before implementation of the present Law, on which the testing has been conducted by the State Commission and State Pedigree Inspectorate and the decision to allow their use has been made, the applicant is entitled to request to grant a patent to the breeding achievement of the Kyrgyz Republic, under condition that this breeding achievement complies with the requirements of protectability pursuant to the present Law.

The request to grant a patent shall be filled to Kyrgyzpatent within 12 months from the date of implementation of the present Law.

The applications on which requests submitted in the established term, as provided in paragraph 3 of the present Article, shall be considered pursuant to the order established by this Law and the Rules, without claiming the requirement of novelty to this breeding achievement in accordance with Article 4 of this Law.

The patents of the Kyrgyz Republic to a breeding achievement granted on the requests to exchange certificates, authors' certificates shall be effective from the date of registration of the declared breeding achievement in the State Register of protected breeding achievements and before expiration of 20 years term for plant varieties and 25 years term for a variety of grapes, arboreal decorative, and forest trees, as well as animal breeds from the date of file the application.

#### *Enforcement of the Present Law*

**40.**—(1) Enforce the present Law from the date of its publication. (“Erkin Too”, June 26, 1998, #81—82)

(2) Within the three months period after publication of the present Law, the Government of the Kyrgyz Republic shall:

— approve the list of botanical and zoological species, plant varieties and animal breeds which will be protected in accordance with the present Law;

— bring the prior decisions adopted by the Government of the Kyrgyz Republic to the compliance with the present Law.

The President of the Kyrgyz Republic  
A. Akaev

Adopted by the Legislative Assembly of the Jogorku Kneshe of the Kyrgyz Republic  
May 26, 1998

