

On April 28, 1997 a new Law, numbered 9456/97, providing protection by means of a Certificate for plant varieties, has been sanctioned in Brazil, following the UPOV pattern.

This is the sole form of industrial property protection available in Brazil with respect to such subject-matter, as Law 9279/96 (new Industrial Property Law enacted on May 15, 1997) specifically excludes from patentability natural living beings, in whole or in part.

1) Which plants can be protected

Novel plant varieties on given species are protectable, the same occurring with the so-called essentially derived plant varieties. Definitions of these, as well as of other important terms, are furnished in Article 3rd, Title I of the Law (please refer to the attached English version of this Law). Other plant varieties (neither novel nor essentially derived) can also find protection provided the following requirements are cumulatively met:

- a) the request for protection is submitted within a specific deadline to be established by the Government Agency responsible for providing said protection; and
- b) commercialization of the plant was firstly effected, at most, ten years before the request for protection;

2) The National Plant Varieties Protection Service

The law has created the "National Plant Varieties Protection Service" (in Portuguese initials - SNPC), which will be the Government Agency in charge of protection of plant varieties. The structure, prerogatives, functioning of the SNPC depend on further ruling, which should be implemented within 90 days of this Law's publication (that is, by July 28, 1997).

It will not be possible to file applications requesting protection for plant varieties on all kinds of plant species once the Law is regulated (by July 28, 1997). The SNPC, starting on the day the effective regulation of the Law is published, will progressively disclose the plant species on which plant variety protection may be requested. This is depicted on the 3rd paragraph of art. 4 of the law; initially, protection for plant varieties will be available concerning only 5 plant species (still to be defined).

3) What can be protected in and concerning a plant variety

The protection of a plant variety will concern its reproduction or vegetative multiplication material of the entire plant, and will ensure the proprietor the right of exclusive commercial reproduction of the variety in question (some exceptions to this rule are foreseen in article 10).

4) Term of protection

The term of protection will generally be of fifteen years counted from the granting of the Provisional Certificate of Protection, exception made for vines, fruit trees, forest trees and ornamental trees, in which cases the protection will be of eighteen years.

4) Administrative proceedings

Whenever the protection is requested by individuals or firms domiciled abroad, according to article 50 of the law, an attorney, duly qualified and domiciled in Brazil, should be appointed, being duly empowered to represent them in all relevant administrative and judicial acts.

Article 14 of the law discloses the necessary contents of a given application for protection.

It is important to say that the documents should all be submitted in Portuguese Language.

The application should include the result of the "Test of distinctiveness, homogeneity and stability" (DHE), which will attest the compliance with the absolute requirements for the granting of the Certificate and that, comparing with the Patent system of protection, roughly correspond to the patentability requirements of novelty, industrial applicability and inventive step

At the time of filing, a formal examination is made.

Within 60 days from filing, the application for protection, in a abstract form, will be published, opening a 90 day term for the presentation of oppositions on behalf of third parties. This publication will imply in the granting of a Provisional Certificate of Protection which already enables the Certificate holder to exclusively commercialize the plant variety in question.

The examination to be done by the SNPC's experts concerning what is depicted on article 4 of the law, will clarify whether the application for protection is both legally and technically acceptable.

Office actions may be issued, opening a 60-day term for complying thereto.

From an eventual rejection decision, an appeal may be filed within 60 days.

The Plant Variety Protection Certificate shall immediately be issued after the appeal term elapses or, if an appeal was filed, upon the Official decision in its respect, finally granting the protection which was applied for.

This Newsletter has the main intention of briefly presenting the most relevant concepts and proceedings of this Plant Varieties' new law.

We shall revert to this subject in the near future, once the law is fully regulated (by July 28, 1997).