

ITALY

Implementing Regulations of the Decree of the President of the Republic No. 974 of August 12, 1975, on the Protection of New Plant Varieties*

Consolidated Text of the Decree of October 22, 1976, as Amended
by Decree of February 26, 1986

CHAPTER I

APPLICATION FOR AND GRANT OF THE PATENT FOR A NEW PLANT VARIETY

Article 1

The application for a patent for a new plant variety shall be filed in two copies, the original on the prescribed stamped paper.

The application shall be filed, together with the enclosures referred to in Article 3, with the Provincial Chamber of Industry, Commerce and Handicrafts of Rome, which is competent to receive filings, in accordance with the Ministerial Decree of September 25, 1972,¹ of documents which may be filed directly with the Central Patent Office.

The application may also be sent directly to the Central Patent Office by registered mail, in accordance with Article 2 of Decree of the President of the Republic No. 540 of June 30, 1972.²

The other documents, if any, relating to the application, the filing of which is prescribed by Article 1, first paragraph, of the said Decree of the President of the Republic No. 540 of 1972 may also be filed with the Chamber of Industry, Commerce and Handicrafts in other capital towns of Provinces.

Article 2

The application shall include:

(1) the name, first name, nationality and residence of the applicant and the name of his representative, if any;

(2) the indication, in the form of a title, of the botanical name in Italian and Latin of the genus and/or species to which the plant variety belongs, and, in brief and concise terms, of its essential distinctive botanical characteristics;

(3) the indication of the denomination that the applicant proposes to give the variety in order to distinguish it from other known varieties;

(4) the indication of the breeder or breeders of the new plant variety;

(5) other indications that, in accordance with the legislative provisions concerning patents for industrial inventions, the applicant may include in the application, concerning any priority rights that may be claimed, or any rights of third parties;

(6) a list of the documents enclosed.

The indication referred to in (4) above may be given in a separate document, subject to observance of the provisions relating to stamps, within two months from the filing of the application.

Article 3

The following shall be enclosed with the application for a patent:

(a) a description of the plant variety, in three copies, drafted in accordance with the provisions of Article 4, first and second paragraphs;

(b) a photographic representation of the variety, in three copies measuring 21 x 30 centimeters for the better identification of the variety and, in particular, of its specific characteristics;

(c) the information referred to in Article 4, third paragraph, in three copies;

(d) a statement in conformity with the provisions of Article 5, signed by the applicant, in two copies;

(e) proof of payment of the application fee, the fee for the first three-year period, the fee for publication of the description and, where applicable, the fee for the power of attorney;

(f) the power of attorney or other authority where there is a representative; the possibility of filing such a document within the months from the date of filing of the application is reserved, however;

(g) documents evidencing any priority that may be claimed; the possibility of filing them within an absolute time limit of six months following the filing of the application is reserved, however.

The application for a patent shall not be admissible if it is not accompanied by at least one copy of the description of the plant variety, with at least one copy of the photographs, where referred to in the description, and proof of payment of the prescribed fees; in this respect the relevant provisions of Decree of the President of the Republic No. 540 of June 30, 1972, shall apply.

Article 4

The variety shall be described in such a way as to make it clear how it was obtained and what the morphological or physiological characteristics are that distinguish it from other known similar varieties. The description shall mention the denomination proposed by the applicant.

If the repeated use of another variety is necessary for the commercial production of the variety, the characteristics of such other variety shall also be described.

The description may be supplemented with any information and documentation that is considered to be useful for the purposes of the examination of the application and with respect to the results of any growing tests that may have been carried out in Italy or abroad, particularly with respect to the homogeneity and stability of the characteristics. If the documentation is written in a foreign language, a translation in Italian, certified by the applicant or his representative, shall be enclosed.

Article 5

In the statement referred to in Article 3, under (d), the applicant shall indicate:

(1) that the variety in respect of which protection is applied for is, to his knowledge, a new plant variety within the meaning of Article 1 of Decree of the President of the Republic No. 974 of August 12, 1975;

(2) that the variety and its reproductive or vegetative propagating material have not been, with the agreement of the breeder or his successor in title, the subject of commercial acts for longer than one year in Italy, or for longer than six years in the case of grapevine, forest trees, fruit trees and ornamental trees, including, in each case, their rootstocks, or for longer than four years in the case of the other plants in the territory of any other State;

(3) whether the repeated use of any other protected variety is required for the commercial production of the variety; if so, the written authorization of the owner of the patent to use that other variety shall be enclosed;

(4) that he undertakes to furnish, at the request of the competent bodies of the Ministry of Agriculture and Forestry, within the time limit fixed by those bodies, the reproductive or vegetative propagating material of the variety for the purposes of the examination of the variety;

(5) whether an application for protection has been filed for the same variety in other States; if so, the applicant shall indicate the fate of the application or applications in the various States;

(6) that he renounces the trademark that he may be using if it is identical with the denomination proposed for the variety, and that he undertakes to sign an official instrument of renunciation of the registered mark prior to the grant of the patent.

In the event of failure to comply with the obligation referred to under (4), the application for a patent shall, after notice has been given and a reasonable period allowed for compliance, be considered to have been withdrawn.

Article 6

Appropriate forms may be prescribed by the Central Patent Office for the application for a patent, the description of the variety, the statement under Article 5 and the record of the filing of the application.

Article 7

The denomination of the variety proposed by the applicant must comply with the provisions of Articles 5 and 6 of the Decree of the President of the Republic No. 974 of August 12, 1975.

Where the variety has already been the subject of an application for protection in another State of the International Union for the Protection of New Varieties of Plants, and where its denomination has already been accepted by that State, that denomination shall also be used in Italy, subject to the right of the Central Patent Office to request an Italian translation of the original denomination.

Where a variety, together with its denomination, is in the process of being entered or has already been entered in an official Italian register of plant varieties, the same denomination shall be proposed in the application for a patent.

Article 8

The record of the filing of the application for a patent shall contain the indications referred to in Article 1 of Decree of the President of the Republic No. 540 of June 30, 1972, as well as the other indications provided for in the form that may have been prescribed in accordance with Article 6; a copy of the filing record shall be transmitted to the Ministry of Agriculture and Forestry.

The Central Patent Office shall keep copies of the filing records in bound volumes; these volumes shall constitute the “Register of Applications for Patents for New Plant Varieties.”

The date of posting of the notice referred to in the second paragraph of Article 9 of Decree of the President of the Republic No. 974 of August 12, 1975, and the transcriptions and annotations provided for in the legislative and regulatory provisions on patents for inventions shall be recorded in the said Register.

Article 9

The notice to be posted on the notice board of the Office pursuant to Article 9, second paragraph, of Decree of the President of the Republic No. 974 of August 12, 1975, shall indicate the date of filing of the application for a patent, the name and address of the applicant and the name of the breeder, if the latter is not the applicant, the proposed denomination and the genus or species to which the variety belongs, and the essential distinctive characteristics of the latter.

Article 10

The observations to which the examination of the application gives rise shall be communicated to the interested party in accordance with the provisions of Article 9 of Decree of the President of the Republic No. 540 of June 30, 1972.

The advice referred to in Article 11 of Decree of the President of the Republic No. 974 of August 12, 1975, shall be communicated to the interested party only if it is not, or is only partly, in favor of the acceptance of the application for a patent. In such a case, any counter-statements that the interested party may make shall be communicated to the Ministry of Agriculture and Forestry for the formulation of

the final advice on which the Office has to act in accordance with Article 12, first paragraph, of the aforementioned Decree. The aforementioned advices shall be accompanied by the indication of adequate grounds.

Where the application for a patent cannot be accepted or is considered to have been withdrawn, the Office shall inform the interested party accordingly and shall proceed to refund the fees paid, with the exception of the application fee. The compensation paid pursuant to the provisions of Article 22*bis* of Decree of the President of the Republic No. 974 of August 12, 1975, shall only be reimbursed if the technical control tests provided by Articles 11 and 12 of the said Decree of the President of the Republic No. 974/75 have not been started.

Article 11

The applicant shall be invited to propose a new denomination if, in the opinion of the Ministry of Agriculture and Forestry or according to observations presented by offices of other member States of the Union for the Protection of New Varieties of Plants (UPOV), the denomination originally proposed is not in conformity with the provisions of Articles 5 and 6 of Decree of the President of the Republic No. 974 of August 12, 1975.

The proposal for a new denomination shall be submitted within two months from the date of the communication from the Central Patent Office and shall contain a complementary declaration with respect to item (6) of Article 5 above.

If the applicant does not propose a new denomination within the time limit mentioned above, the application for a patent shall be considered to have been withdrawn.

If the rejected denomination is in the process of being entered or has already been entered in an official Italian register of plant varieties, the applicant shall, prior to the grant of the patent, submit appropriate documentation proving that the earlier denomination has been replaced by the approved one.

Article 12

Patents for new plant varieties shall be given serial numbers according to their date of grant, in a manner different from that of patents for inventions. They shall include the indications provided for in Article 13 of Ministerial Decree of February 22, 1973,³ and shall mention the denomination of the variety.

The patents shall be drawn up in one original and two certified copies; one of the copies shall be remitted to the interested party with the description and the drawings or photographs, and the other shall be retained in the application file.

The originals of the patents shall be kept in separate bound collections, which to all intents and purposes shall constitute the “Register of Patents for New Plant Varieties” and in which the prescribed transcriptions and annotations shall be made in respect of each patent.

The Central Patent Office shall inform the Minister of Agriculture and Forestry of the grant of patents concerning new plant varieties.

Article 13

After the grant of the patent, the description shall be published.

Article 14

The “Register of Denominations of New Plant Varieties” provided for in Article 5, fourth paragraph, of Decree of the President of the Republic No. 974 of August 12, 1975, shall be composed of loose leaves in the alphabetical order of the final denomination given to each patented variety.

All data contained in the corresponding granted patent shall be transcribed on the loose leaf.

Article 14bis

The information of the public provided by Article 30 of the Paris Convention for the Protection of New Varieties of Plants of December 2, 1961, shall be made through the publication of an “Official New Plant Varieties Gazette,” edited under the responsibility of the Central Patent Office.

The Bulletin shall be published at least at six months intervals and shall contain:

- (a) the list of the applications for patents, arranged by varieties and giving, in addition to the number and date of the filing of the application, the name and address of the applicant and the name of the breeder, if the latter is not the applicant, the proposed denomination and a short description of the variety for which protection is applied for;
- (b) the list of the patents granted, grouped by genera and species and giving the number and the date of the grant of the patent, the number and the date of filing of the corresponding application, the name and the address of the owner and the variety denomination finally established;
- (c) any other information of interest to the public.

The Bulletin shall be sent free of charge, on the basis of exchange, to the competent offices of the other member States of UPOV.

CHAPTER II

VERIFICATION OF THE FEATURES OF PLANT VARIETIES

Article 15

The Advisory Commission established under Article 18 of Decree of the President of the Republic No. 974 of August 12, 1975, shall have its seat at the Ministry of Agriculture and Forestry.

The Chairman, members and alternates referred to in the said Article 18, under (7) to (10), shall be appointed, on a proposal by the competent administration, by a decree issued by the Minister of Agriculture and Forestry.

The same shall apply, in the case of vacancy of a post, to the replacement of the Chairman, members and alternates referred to in the preceding paragraph.

Article 16

The request for an advice submitted to the Commission shall be accompanied by a report from the competent office of the Ministry of Agriculture and Forestry, indicating the required experiments, methodology and inspections, as well as the results obtained and any reports and observations that may have been made by the applicant. The Commission may hear the functionaries who performed the aforementioned acts.

Article 17

The Advisory Commission shall be convened whenever its Chairman considers this necessary.

Convocation shall be by registered letter sent at least ten days prior to the date fixed for the meeting.

The convocation shall indicate the date and time of the meeting and the items on the agenda.

Any member of the Commission may ask the Chairman to include matters of a general nature in the agenda; members may also, prior to the meeting, acquaint themselves with the facts and documents relating to the business to be dealt with.

Article 18

The Commission shall have a quorum when, in addition to its Chairman, the majority of its members are present.

Decisions shall be taken by an absolute majority of the members; in the case of equally divided votes, the Chairman's vote shall prevail.

Article 19

The convocation of parties in the cases provided for in Article 18, last paragraph, of the Decree of the President of the Republic No. 974 of August 12, 1975, shall take place at the discretion of the Chairman, who may set a time limit for the submission of documents and memoranda.

Article 20

Every meeting of the Advisory Commission shall be recorded in minutes drawn up by the Secretary, indicating the agenda, the names of the members present, the summary of the discussion and the decisions taken, with details of the votes.

The minutes shall be signed by the Chairman and by the Secretary and shall be transmitted to all the members of the Commission; in the absence of any observations within 30 days following the date of transmittal, the minutes shall be regarded as approved.

Article 21

The Secretariat of the Commission shall keep the collection of minutes and the protocol register, in which all instruments received and transmitted by the Commission are recorded, and shall keep the files of processed applications for patents.

Article 22

The Ministry of Agriculture and Forestry shall, if this is necessary for the examinations referred to in Article 17 of the Decree of the President of the Republic No. 974 of August 12, 1975, invite the applicant to submit reproductive or vegetative propagating material of the variety.

In the case of hybrid varieties, the Ministry of Agriculture and Forestry may also request, if necessary, the provision of reproductive material of the genealogical components.

Article 23

The institutions and services designated by the Ministry of Agriculture and Forestry to carry out the tests must do so within the time limits and according to the procedure laid down by the Ministry. They shall give a receipt for the material provided and, if the material reaches them in an insufficient quantity or is defective on account of the way in which it has been stored or transported, they shall state the fact in a report, a copy of which they shall transmit to the Ministry.

If the tests do not produce results, or if the results are unreliable, repetition of the tests may be ordered.

Article 24

The applicant may follow the tests; to this end, he may request authorization from the Ministry of Agriculture and Forestry to inspect the growings.

On completion of the tests, the designated institution shall submit to the said Ministry, which shall send a copy to the applicant, a detailed report of the results obtained; the applicant may submit his observations or comments within 30 days following receipt of the copy of the report.

Article 25

In order to ascertain whether the conditions required for the grant of the patent are maintained in the new plant variety being the subject of the patent, the Ministry of Agriculture and Forestry may request, of the owner or his successor in title, the reproductive or vegetative propagating material necessary for the carrying out of the check.

Where a lack of permanency of the conditions is established, or where the material referred to above is not submitted within the time limit set by the Ministry, the documents shall be transmitted to the Advisory Commission for an advice.

The Ministry of Agriculture and Forestry shall communicate the results of its verification to the Central Patent Office.

* Italian title (of the Decree of October 22, 1976): Decreto Ministeriale 22 ottobre 1976 - Norme di esecuzione del decreto del Presidente della Repubblica 12 agosto 1975, n. 974, concernente la protezione delle nuove varietà vegetali. The Decree of the President of the Republic was amended by Articles 76 to 78 of Decree No. 338 of June 22, 1979, and Law No. 620 of October 14, 1985.

Consolidated text prepared by the Office of the Union from the texts published in the *Gazzetta Ufficiale della Repubblica Italiana*:

Decree of October 22, 1976: *GU* of January 18, 1977;

Decree of February 26, 1986: *GU* of May 7, 1986.

¹ Determination of the Offices with Which Applications and Documents Concerning Patents for Inventions, Utility Models, Industrial Designs and Trademarks Must Be Filed (*GU* of October 4, 1972).

² On the Simplification of Administrative Procedures in the Field of Patents for Inventions, Utility Models, Industrial Designs and Trademarks (*GU* of September 22, 1972 - as amended by Decree of the President of the Republic No. 338 of June 22, 1979 - *GU* of August 7, 1979).

³ Implementing Regulations of Decree of the President of the Republic No. 540 of June 30, 1972, in the Field of Patents for Inventions, Utility Models, Industrial Designs and Trademarks (*GU* of March 15, 1973).