

Interpretation of the Supreme People's Court on Some Issues Concerning the Application of Law in the Trial of Cases Involving the Disputes over Infringement upon the Rights of New Plant Varieties

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Announcement of the Supreme People's Court

The Interpretation of the Supreme People's Court on Some Issues Concerning the Application of Law in the Trial of Cases Involving the Disputes over Infringement upon the Rights of New Plant Varieties, which was adopted at the 1411th meeting of the Judicial Committee of the Supreme People's Court on December 25, 2006, is hereby promulgated, and shall come into force as of February 1, 2007.

Supreme People's Court
January 12, 2007

Interpretation of the Supreme People's Court on Some Issues Concerning the Application of Law in the Trial of Cases Involving the Disputes over Infringement upon the Rights of New Plant Varieties (Adopted at the 1411th meeting of the Judicial Committee of the Supreme People's Court on December 25, 2006 Judicial Interpretation No. 1 [2007])

In order to correctly hear the cases involving the disputes over infringement upon the rights of new plant varieties, and according to the General Principles of the Civil Law of the People's Republic of China and the Civil Procedure Law of the People's Republic of China, several issues concerning the specific application of law are prescribed as follows by considering the trial experiences and actual situation on the cases involving the disputes over infringement upon the rights of new plant varieties:

Article 1 In case the owner of rights to new plant varieties (hereinafter referred to as the owner of varieties) or interested party considers that his rights to new plant varieties have been infringed upon, he may lodge a lawsuit to the people's court.

The "interested party" as mentioned in the preceding Paragraph includes the licensee of the license contract on implementing new plant varieties and the legal inheritor of property rights to varieties, etc.

The licensee of an exclusive licensing contract may lodge a lawsuit to the people's court on its own initiative. The licensee of a sole licensing contract may lodge a lawsuit together with the owner of the variety, or may lodge a lawsuit alone if the said owner does not want to do so. And the licensee of a common licensing contract may lodge a lawsuit upon explicit authorization of the owner of the variety.

Article 2 Where, without the licensing of the owner of the variety, the propagation materials of an authorized variety are produced or sold for commercial purpose, or are repeatedly used for producing the propagation materials of another variety for commercial purpose, the people's court shall affirm the infringement upon the rights to new plant varieties.

Where the characteristic or feature of the infringing variety as charged is the same as that of an authorized variety, or the difference of characteristic or feature between the said two varieties are

caused not because of genetic variation, the people's court shall generally affirm that the infringing variety as charged belongs to the propagation materials of the authorized variety produced or sold for commercial purpose.

Where the tortfeasor as charged repeatedly uses the propagation materials of an authorized variety as the parents for another propagation together with other parents, the people's court shall generally affirm that the propagation materials of the authorized variety are repeatedly used for producing the propagation materials of another variety for commercial purpose.

Article 3 Where the appraisal is required for a specific issue involved in a case of dispute over the rights to new plant varieties, both parties shall, upon negotiations, determine a qualified appraisal institution and appraisers for conducting the appraisal. Where the negotiations fail, the people's court shall designate a qualified appraisal institution and appraisers for conducting the appraisal.

Where there is no appraisal institution or appraisers as prescribed in the preceding Paragraph, the appraisal may be conducted by a professional institution and professionals with a corresponding variety detection technical level.

Article 4 Specific issues involved in the cases of disputes over the rights to new plant varieties may be appraised by ways of field observation and measurement and genetic fingerprint detection, etc.

Appraisal conclusions made through the methods prescribed in the preceding Paragraph shall be cross-examined by the people's court for proving their weight of proof.

Article 5 Where the owner of a variety or interested party lodges a lawsuit to the people's court for the infringement upon the rights to new plant varieties, and simultaneously requests the stop of infringement upon the rights to new plant varieties or the evidence preservation in advance, the people's court may render rulings in advance upon examination.

When adopting the measures of evidence preservation, the people's court may, according to the specific conditions about the case, invite relevant professional technicians to assist in the evidence collection according to corresponding technical procedures.

Article 6 The people's court shall, when hearing the cases of disputes over the infringement upon the rights to new plant varieties, order the tortfeasor to stop the infringement, compensate for the losses or assume other civil liabilities according to Article 134 of the General Principles of the Civil Law and by considering the specific conditions of the cases.

The people's court may, upon request of the infringed party, determine the damages according to the losses of the infringed party from the infringement or the interests of the tortfeasor from the infringement. In case the infringed party requires to determine the damages on the basis of the licensing fee for implementing the new plant variety, the people's court may reasonably determine the damages on the basis of the type, time and scope, etc. for the licensing use of the new plant variety and by referring to the fee for licensing use of the new plant variety.

Where it is difficult to determine the damages according to the preceding paragraph, the people's court may determine the damages under 500,000 yuan by comprehensively considering the nature, duration, and influences of the infringement, the amount for licensing use of the new plant variety, the type, time, and scope for licensing use of the new plant variety, and the reasonable expenses paid by the infringed party for investigating and stopping the infringement.

Article 7 In case both the infringed party and the tortfeasor agree to convert the infringing objects into the money and use it to compensate for the losses suffered by the infringed party, the people's court shall permit it. In case either the infringed party or the tortfeasor does not agree to the said

deduction, the people's court shall, upon request of the relevant party, order the tortfeasor to eradicate the activity of the infringing goods and make them unable to be the propagation materials.

Where the infringing goods are in the stage of growth or the destruction of the infringing goods will cause major unfavorable influences, the people's court may not adopt the method of ordering the destruction of the infringing goods, unless it is otherwise prescribed by the laws or administrative regulations.

Article 8 In case any individual or rural household for contracted management accepts the entrustment of someone else for reproducing the propagation materials that infringe upon the rights to varieties, and does not know that the goods entrusted for propagation are the propagation materials infringing upon the rights to varieties, and has pointed out the trustor, he may not assume the liability of compensation.