

Decree №2-132 of the Minister of Agriculture of Georgia

of August 30, 2007

“On Approval of the Rule of Consideration of the Opposition of Interested Persons in Connection with Publication of the New Plant Variety Data, the Rule of Application Proceeding, Extension of Procedural Terms, Termination and Reinstatement and the Rule of Granting of a Compulsory License”

In accordance with Paragraph 1(b) of Article 47 of the Law of Georgia “On New Breeds of Animals and Varieties of Plants”(18.02.2011 N 2–21), **The following shall be carried out:**

1. The attached Rule of Consideration of the Opposition of Interested Persons in Connection with Publication of the New Plant Variety Data, the Rule of Application Proceeding, Extension of Procedural Terms, Termination and Reinstatement and the Rule of Granting of a Compulsory License shall be approved.

2. The Legal Department (L.Totladze) according to the Law of Georgia “On Normative Acts” shall ensure recording of the Decree in the State Register of Normative Acts and its publication in the Legislative Herald of Georgia.

3. Control of the fulfilment of the Decree shall be carried out by Deputy Minister Lili Begiashvili.

The Decree shall enter into force upon publication.

P.Tsiskarishvili

**The Rule of Consideration of the Opposition of Interested Persons in Connection
with Publication of the New Plant Variety Data, the Rule of Application
Proceeding, Extension of Procedural Terms, Termination and Reinstatement
and the Rule of Granting of a Compulsory License”**

Chapter I

Article 1. Application

1. The application for a new plant variety for granting the breeder’s right shall be filed with the National Intellectual Property Center of Georgia Sakpatenti (hereinafter – “Sakpatenti”).

2. The application shall contain:

- a) a request, with the indication of the name and address of the breeder;
- b) the proposed denomination of the new plant variety;
- c) the description of the new plant variety, the main morphological, biological and botanical characteristics;
- d) the photographic image of the new plant variety;
- e) a written obligation of the breeder to supply to the accredited person under Article 3(2) of the Law of Georgia “On New Breeds of Animals and Varieties of Plants” samples of propagation material of the plant variety, within the prescribed term, with the prescribed quantity, free of charge. *(18.02.2011 N 2–21)*
- f) indication of the date when the propagation material of the variety was sold with the purpose of exploitation or was otherwise disposed of to others by the breeder or with his/her consent.

3. Where the application is filed by a representative, within one month from the day of filing the application, the application shall be attached a document confirming the representation.

4. Where the application is filed by a successor, within one month from the day of filing the application, the application shall be attached a document confirming the succession.

Article 2. Request

1. The request shall be drafted according to the rule established by Sakpatenti.

2. The application shall contain:

a) the name and address of the breeder;

b) the denomination of the new plant variety proposed by the breeder;

c) a written obligation of the breeder to supply to the accredited person under Article 3(2) of the Law of Georgia “On New Breeds of Animals and Varieties of Plants” samples of propagation material of the plant variety, within the prescribed term, with the prescribed quantity, free of charge. *(18.02.2011 N 2–21)*

d) the date when the propagation material of the variety was sold with the purpose of exploitation or was otherwise disposed of to others by the breeder or with his/her consent.

3. The denomination of a foreign plant variety shall be written in the breeder’s language with the Georgian transcription. Botanical concepts shall be written in Latin.

Article 3. Description of a New Plant Variety

The description of a new plant variety shall contain the following data:

- a) the genus, species and denomination of the plant variety (in Georgian and Latin);
- b) the name and address of the breeder;
- c) the proposed denomination of the plant variety;
- d) the origin of the plant variety, with the indication of the breeding, discovering and developing method and initial (parent) forms;
- e) the peculiarities of maintenance and propagation of the plant variety;
- f) the distinguishing and characteristic features of the plant variety;
- g) the denominations and features of similar plant varieties in which they differ from the new plant variety;
- h) the description of special conditions necessary for testing the plant variety (if necessary);
- i) in case of a multi-line plant variety or population (plants propagated by self-fertilization and vegetation), the description of a separate plant variety on all lines, with the indication of percentage ratio.

3. The description of the plant variety shall be signed by the breeder.

Article 4. Photographic Image

An application shall be accompanied by a certified colour photographic image of the new plant variety 9X12 cm or 13X18 cm, in two copies, against a white background, with a ruler. If necessary, a colour image of the flowers shall be submitted – bud, flower (top view, side view, bottom view), raceme, reproductive parts of the plant (ears, cob, cluster of spikelets, seed, fruit, berry, bulb, edible tuber, etc.), as well as the plant normally developed in the household development phase; for perennial trees - the entire plant or bush and its separate part (one-year sapling, fruit-bearing organs, branch, leaf, bunch, etc.).

Article 5. Denomination of a New Plant Variety

1. The denomination of the new plant variety, indicated in the request, shall be proposed by the breeder.

2. If the new plant variety submitted for registration, prior to filing an application with Sakpatenti, was registered in a state contracting party of the International Convention for the Protection of New Varieties of Plants (hereinafter – UPOV Convention) or an application for registration of the same variety is filed with any Member State of the UPOV Convention, at the time of filing an application with Sakpatenti the breeder shall indicate for the new plant variety the same denomination, application number and filing date, which he/she indicated in the application filed in the Member State of the UPOV Convention.

3. If the denomination provided for Paragraph 2 of this Article is incompatible with the requirements of the legislation of Georgia or requirements of Paragraph 4 of this Article, Sakpatenti shall request from the applicant to indicate another denomination for the new plant variety.

4. The denomination of a new plant variety further shall be the generic denomination of this variety and make it easily identifiable. It shall be distinguishable from every denomination designating the variety of plant of the same or closely related botanic species, shall not be contrary to the commonly recognized norms of morality, shall not insult religious feelings, shall not consist only of figures except, where this is an established practice and shall not cause confusion concerning the characteristics, origin, value, identity of the variety, or the identity of the breeder.

6. Filing an Application

1. A breeder shall file an application requesting registration of a new plant variety and granting a certificate with Sakpatenti.

2. Sakpatenti shall confirm the receipt of the application materials by issuing an office certificate developed by it.

3. An application can be filed through a representative.

4. An application shall be filed in the state language, and other application materials may be filed in any other language. Where the application materials are filed in a foreign language, the applicant within 3 months term shall file their notarized Georgian translation.

5. A request, the description of the plant variety and the photographic image shall be file with Sakpatenti in two copies. Other application materials shall be submitted in one copy.

6. An application shall be deemed as filed with Sakpatenti from the day when the following materials are submitted:

a) a request with the indication of the denomination of the new plant variety;

b) the description of the new plant variety.

Article 7. Filing an Application with Sakpatenti, Filed Earlier in Another Country

1. The breeder wishing to enjoy the priority established under the UPOV Convention shall be obliged to file an application with Sakpatenti within 12 months from the date of filing of the earlier application in the contracting party of the UPOV Convention.

2. In the application filed with Sakpatenti in accordance with Paragraph 1 of this Article the date of filing the application in another country shall be indicated. The applicant shall be obliged to present within 6 months from the day of filing the application with Sakpatenti the copy of the application certified by the competent authority of the country where the application was first filed, and its translation into the Georgian language. A notarized translation of the above-mentioned copy shall be

submitted to Sakpatenti no later than within 2 months term from the day of its submission in the foreign language.

Article 8. Examination of an Application as to Form

1. Sakpatenti shall perform examination of the application as to form that includes checking the completeness and drafting of the application materials, including the confirmation of the application filing date.

2. The examination of the application as to form shall be performed within one month from the day of filing the application.

3. If in the process of examination as to form the breeder was given the term for repairing a deficiency of the application provided for by this Rule, during the term intended for repairing the deficiency, the course of the term established for examination as to form shall be stopped.

4. If the application for which the priority date was confirmed lacks a document certifying succession or representation, the breeder shall be sent a notification requesting repairing of the deficiency within one month term. If the applicant fails to satisfy this request, proceeding of the application shall be terminated.

5. If the date of filing the application in another member state of the UPOV Convention is claimed as a priority, and the application lacks the document provided for by Article 7(2) of this Rule, the breeder shall be sent a notification requesting repairing of the deficiency within the term defined by Article 7(2) of this Rule. If the applicant fails to satisfy this request, proceeding of the application shall be terminated.

6. If the application lacks the notarized Georgian translation of the document provided for by Article 7(2) of this Rule, the breeder shall be sent a notification

requesting repairing of the deficiency within 3 months. If the applicant fails to satisfy this request, proceeding of the application shall be terminated.

7. If it is confirmed that the application complies with the requirements of examination as to form, the application shall be given a number and its priority shall be established.

8. If the requirements of Article 6 of this Rule are complied with, the breeder shall be sent a copy of the request with the filled-out data, and the materials shall be submitted for publication.

9. Within one week from conducting examination as to form Sakpatenti shall conduct examination as to novelty. During examination as to novelty it shall be checked whether one year has passed from the date of the first disposal of the propagation material of the claimed variety by the breeder or with his/her consent, indicated in the application, to the filing of the application with Sakpatenti.

Article 9. Confirmation of the Application Filing Date

1. Sakpatenti shall confirm the application filing date within 2 days from the day of filing the application, if the documents defined by Article 6(6) of this Rule are submitted.

2. If the application materials lack the description or request, the filing date of the application shall not be confirmed, and if the identity and address for correspondence of the breeder are known, the breeder shall be sent a notification requiring repairing of the deficiency. If the applicant repairs the deficiency within one month from the day of receiving the notification, the date of filing the requested documents fully shall be confirmed as the filing date of the application.

3. If the application fails to satisfy the requirement of Paragraph 2 of this Article, the application shall not be deemed as filed and the materials shall be returned to the breeder.

Article 10. Publication

1. Sakpatenti shall publish the data on the application of the new plant variety in the Official Bulletin.

2. The following shall be published in the Official Bulletin:

a) the data on the breeder;

b) the date of filing the application;

c) the proposed denomination of the new plant variety;

d) the brief description of the new plant variety, the description of the new plant variety shall be laid open to public for familiarization.

3. Following the publication, the materials within 2 weeks shall be handed over for testing to the accredited person defined under Paragraph 2 of Article 3 of the Law of Georgia “On New Breeds of Animals and Varieties of Plants”. (18.02.2011 N 2–21).

4. The accredited person defined under Paragraph 2 of Article 3 of the Law of Georgia “On New Breeds of Animals and Varieties of Plants” shall test the new plant variety for distinctness, uniformity and stability. (18.02.2011 N 2–21).

5. The testing defined by Paragraph 4 of this Article shall be carried out in accordance with the UPOV Rules on conducting examination of distinctness, uniformity and stability.

Article 11. Registration of a New Plant Variety

1. In case of a favourable conclusion of the new plant variety testing, Sakpatenti shall take a decision to register the new plant variety data and to issue a certificate.

2. The following shall be recorded in the Register of New Plant Varieties:

- a) the genus and species of the new plant variety;
- b) the denomination of the new plant variety;
- c) the description and photographic image of the new plant variety;
- d) the name and address of the breeder;
- e) the number and date of registration.

3. Following recording the data in the Register, a certificate shall be issued, the form of which shall be developed by Sakpatenti, and the data shall be published in the Official Bulletin.

4. Sakpatenti shall publish in the Official Bulletin: the name and address of the breeder, the registration number and date, the genus and species of the new plant variety, the denomination of the new plant variety, the description and photographic image of the new plant variety.

5. Any person shall be entitled to familiarize with the data of the Register of New Plant Varieties under the established order.

Article 12. Entering Amendments in the Register

1. During the validity term of the new plant variety registration, the breeder shall be authorized to enter changes or additions in the registered data only in respect to the address of the breeder or his/her representative.

2. The amendments referred to Paragraph 1 of this Article shall be published in the Official Bulletin of Sakpatenti.

Chapter II.

Extension of Procedural Terms, Termination and Reinstatement

Article 13. Extension of Procedural Terms

1. At any stage of the application proceeding, before publication of the application, on the basis of a written request the applicant may request extension of procedural terms for one month term.

2. Submission of such a request shall be admissible no more than three times.

Article 14. Termination

The applicant, at any stage of the application proceeding, may withdraw the application or request termination of the application proceeding.

Article 15. Reinstatement of an Application

1. On the basis of a written request the applicant is authorized to request reinstatement of terminated proceeding on an application no later than two months from the termination.

Article 16. Consideration of Objections

1. Within 3 months from the publication of the new plant variety data in the Official Bulletin, any person shall be authorized to present to Sakpatenti a written objection if:

- a) the new plant variety does not comply with the criteria of protectability;
- b) the description of the new plant variety does not convey a complete impression for the evaluation of the new variety;
- c) false data are given in the description of the new plant variety;
- d) the priority claimed for the new plant variety described in the application is baseless according to the application presented for this variety in another country.

2. Within 1 week from the receipt of an objection Sakpatenti shall hand over the objection materials for making a conclusion to the accredited person defined in

Paragraph 2 of Article 3 of the Law of Georgia “On New Breeds of Animals and Varieties of Plants”. Copies of the objection materials shall be handed over to the applicant. *(18.02.2011 N 2–21)*.

3. With respect to the objection Sakpatenti shall take a decision on the basis of the conclusion made by the accredited person defined under Paragraph 2 of Article 3 of the Law of Georgia “On New Breeds of Animals and Varieties of Plants”. *(18.02.2011 N 2–21)*.

4. The applicant may appeal against a decision of the examination as to form on the refusal to consider the application or on the termination of proceeding on the application at the Chamber of Appeals of Sakpatenti within 3 months from the receipt of the decision.

5. The Chamber of Appeals of Sakpatenti shall hear the appeal within 2 months term from its filing.

6. A decision of Sakpatenti or the Chamber of Appeals of Sakpatenti may be appealed in court according to the rule prescribed by the legislation.

Chapter III.

Issuing a Compulsory License for New Plant Varieties

Article 17. Issuing a Compulsory License

1. A compulsory license for the use of a new variety (seed or plant material, yielded harvest) shall be issued on the basis of a recommendation given by the National Council of Seeds (hereinafter – the Council) functioning at the Ministry of Agriculture of Georgia, by the order of the Minister of Agriculture of Georgia.

2. A compulsory license shall be issued only in the form of a simple license.

Article 18. Conditions of Issuing a Compulsory License

A compulsory license may be granted upon the request of any interested person only for reasons of satisfying public interest and it may be issued only when the interested person earlier was trying to obtain the license from the breeder with reasonable conditions and terms, but his/her attempt was not successful.

Article 19. Scope of Use of a New Plant Variety

The scope of use of a new plant variety, validity term of the compulsory license, rights and obligations of the breeder and the licensee and the amount of remuneration shall be defined by the order of the Minister of Agriculture of Georgia.

Article 20. Validity Term of a Compulsory License

1. The validity term of a compulsory license shall not exceed the remaining term of validity of the exclusive rights on a new plant variety at the moment of issuing the compulsory license for the use of the new plant variety.

2. The term of validity of the compulsory license agreement shall be extended if by examination performed by the Ministry of Agriculture of Georgia it is ascertained that conditions of the license are complied with and there is a necessity of extension.

Article 21. Obtaining a Compulsory License

1. A compulsory license shall be issued on the basis of a recommendation given by the National Council of Seeds functioning at the Ministry of Agriculture of Georgia, by the decision of the Minister of Agriculture of Georgia.

2. To obtain a compulsory license an interested person shall apply with a request to the Ministry of Agriculture of Georgia. The latter in its turn shall within two weeks send the received request to the Council of Seeds functioning at the Ministry of Agriculture of Georgia.

3. The request shall contain:

a) a proof that the interested person has conducted negotiations with the breeder but could not reach an agreement concerning obtaining a license for the new plant variety with lawful conditions;

b) the proof that the breeder does not make sufficient use of the new plant variety, which damages public interest;

c) the scope of use of the new plant variety;

d) the validity term of the license.

4. Within one month from sending the request the Council shall consider it and shall take a decision.

5. Upon issuing a compulsory license the Council decision shall contain:

a) the scope of use and the validity term of the license;

b) the amount of the breeder's remuneration.

6. The Council decision shall have the form of a recommendation.

Article 22. Termination of Effect of a Compulsory License

If the examination carried out during the validity term of the compulsory license proves that the grounds for the effect of the compulsory license no longer exist, the effect of the compulsory license shall be terminated on the basis of an order of the Ministry of Agriculture of Georgia.

Article 23. Appealing against a Decision

A decision of the Minister of Agriculture of Georgia concerning granting or refusal to grant a compulsory license may be appealed according to the rule prescribed by the legislation of Georgia.