

AZERBAIJAN

LAW ON SELECTION ACHIEVEMENTS

This Law shall govern the creation, use and legal protection of selection achievements in the Azerbaijani Republic.

TITLE

GENERAL PROVISIONS

Article 1

Basic Definitions

The following basic definitions shall be used in this Law:

“Selection achievement” means created as a result of a selection work and useful for the society varieties of plants, animal breed, their hybrids, genotypes, crossings and clones;

“Plant material” means seeds, bulbs, tubers, branches or other parts used for purposes of reproduction of the variety;

“Breed” (products, material) means high-producing animals as well as gametes and embryos thereof having State certificate;

“State Register of Selection Achievements” means State Register of legal protection of copyright and patents of plant material and pedigree animals;

“Protected selection achievements” means patented plant material and pedigree animal registered in the State register;

“Applicant” means legal entity or natural person who has filed an application for a grant of a selection achievement patent;

“Patent” means a document certifying an exclusive right of a patent owner to an innovation and protection of selection achievements;

“Author” means a natural person or a group of persons who have created a selection achievement;

“License contract” means a legal contract concerning the use of selection achievements, concluded between patent owners and natural persons or legal entities.

Article 2

Legislation of the Azerbaijani Republic
on Selection Achievements

The legislation of the Azerbaijani Republic on selection achievements consists of this Law and regulations made in conformity with it.

Article 3

Conditions of Patentability of Selection Achievements

An application for selection achievement patent shall meet the following conditions:

(a) Novelty

A selection achievement shall be deemed new if, at the date of filing of the application, the field plants or pedigree animals have not been sold or otherwise disposed of to others for the purposes of exploitation in the territory of the Azerbaijani Republic during one year, in the territory of any other State during four years, and in the case of grapevines, medicinal plants, forest and fruit trees – during six years.

(b) Distinctness

A selection achievement shall be clearly distinguishable from other well-known selection achievements existing on the filing date of the application;

A selection achievement entered in official catalogues or reference files or in a publication shall be deemed well-known;

A selection achievement with a patent granted shall be deemed well-known from the filing date of an application for a grant of a patent;

Elements and distinctive characteristics of selection achievements shall correspond to their comparison and correct description.

(c) Uniformity

A selection achievement shall be a sufficiently uniform subject to some variations of genotype or phenotype due to particular features of propagation.

(d) Stability

The relevant characteristics of a selection achievement shall remain unchanged after repeated propagation or at the end of each cycle of propagation.

Article 4

Objects and Subjects of Selection Achievements

The used plant varieties, animal breeds, their hybrids, genotypes, crossings, clones, seeds, gametes, embryos or other plant material and high-producing animals selected for propagation are the objects of selection achievements.

* Translation into English by the Office of the Union based on the Russian translation provided by the Azerbaijani authorities. The Law was signed by the President of the Azerbaijani Republic on November 17, 1996, and published in the Official Journal on January 29, 1997.

All legal entities and natural persons possessing a selection achievement and undertaking selection work are the subjects of selection achievements.

Article 5

State Authority Responsible for Protection of Selection Achievements Patent

The protection of selection achievements patent in the Azerbaijani Republic shall be effected by a competent State authority to be designated by a respective executive body of the Azerbaijani Republic.

TITLE II

GENERAL RULES OF EXAMINATION, TESTING AND REGISTRATION OF SELECTION ACHIEVEMENTS

Article 6

Right to File an Application for the Grant of a Patent

The right to file an application for the grant of a patent shall belong first of all to the author of a selection achievement or to his successor in title.

Where the selection has been carried out jointly by several persons or the applicants are successors in title of the author, the application shall be filed by several persons and relations between them are governed by a contract between them.

Where a selection achievement have been bred, created or discovered in the line of duty and unless otherwise provided in a contract between the author and the employer, the right to file an application for the grant of a patent shall belong to the employer. In that case the contract shall provide a compensation to the author (authors) for the exploitation of selection achievements.

The author retains the right to be granted a patent if the contract does not include a provision concerning the grant of a patent to the employer as an author or where the employer breaks the terms of the contract.

The right to file an application for the grant of a patent may be extended to a person mentioned in the author's application. In that case the author's application shall be filed before the grant of a patent by a competent authority.

Legal entities and natural persons of any other country are entitled to file an application for the grant of a patent in case of existence of an international treaty between the Azerbaijani Republic and this State.

During the whole period of their employment contract and three years after leaving this service the employees of the competent authorities have no right to file an application for the grant of a patent.

A separate application shall be filed for each selection achievement.

The documents of the application shall be submitted in official language of the Azerbaijani Republic or in other language. If the documents are submitted in another language, the application shall be accompanied by their translation into Azerbaijani.

The following documents shall be submitted for the grant of a patent:

- the request for a grant of a patent;
- technical questionnaire with description of the selection achievement;
- proof of payment of the prescribed fee.

The examination of documents submitted shall be carried out in conformity with the approved regulations.

Article 7

Selection Achievement Denomination

A selection achievement shall have a denomination proposed by the applicant and approved by the competent authority.

The denomination shall enable the selection achievement to be identified. It shall be short and different from any selection achievement denomination of the same or of a closely related botanical or zoological species.

Where the application for the grant of a patent for the same selection achievement is filed in the Azerbaijani Republic or in another country, the selection achievement shall remain under the same denomination.

Where the denomination proposed by the author does not satisfy the established requirements it shall be modified in accordance with the proposal of a competent authority.

The denomination of a selection achievement may be changed at the request of the applicant before the grant of a patent.

Article 8

Priority of the Selection Achievement

The priority of the selection achievement shall be determined by the filing date of the application with a competent authority.

Where two or more applications claiming the same selection achievement are filed, the priority shall be given to the first application received.

If after the filing of the selection achievement application a competent authority of the Azerbaijani Republic finds that an application for the same selection achievement had been filed in another country, the priority shall be determined by the application whose sending date is earlier and shall remain in force 12 months.

In such cases the applicant shall be required to indicate the date of priority of the first application. The applicant shall be

required to furnish a copy of the first application, certified by a competent authority of the respective State.

Article 9

Preliminary Examination of an Application for the Grant of a Patent

A preliminary examination of an application for the grant of a patent shall be carried out within one month. Its aim is to verify the compliance of the required documents with the prescribed conditions.

Over a period of preliminary examination the applicant shall have the right to supplement, amend or correct the documents of the application on his own initiative.

If the applicant fails, within the prescribed time limit, to make the necessary amendments or to submit documents missing on the date of receipt of the application, the application shall not be accepted for the purpose of examination with a due notification to the applicant.

Article 10

Examination of the Novelty of Selection Achievements

In accordance with the instructions concerning the selection novelty a competent authority shall examine the application received.

Within six months following the date of the publication of the particulars of the application any interested person may send to a competent authority a notice contesting novelty of the filed selection achievement.

The competent authority shall notify the applicant of the receipt of a grounded contest. In the case of disagreement with the contest the applicant may, within three months from the date of receipt of the said notice, send to the competent authority a grounded opposition. On the basis of additional documents the competent authority takes a decision and notifies the interested person accordingly.

Where the selection achievement does not comply with conditions (criterion of novelty) it is withdrawn from testing.

Article 11

Testing of Selection Achievements for Compliance thereof with the Conditions of Distinctness, Uniformity and Stability

The testing of a selection achievement for compliance with the conditions of distinctness, uniformity and stability shall be carried out in accordance with established methodology.

The applicant shall be bound to furnish for the purposes of testing the required seeds/pedigree material within the fixed time limit. A pedigree testing shall be carried out jointly with the Pedigree Animal Inspection of the Azerbaijani Republic.

In the case of disagreement with the examination and the results of the testing the applicant may, within three months from the

date of receipt of the decision, lodge an appeal with the Board of Appeals of the competent authority. The Board of Appeals shall act in accordance with the approved regulations.

If the examination and testing results are approved, the competent authority will take a decision to grant a patent.

Article 12

Registration of Selection Achievements.

A decision of the competent authority to grant a patent for a selection achievement shall constitute a ground for its registration in the State Register.

Article 13

On Publication of Selection Achievements

The registered selection achievements shall be published by the competent authority.

TITLE III

RIGHTS AFFORDED BY A PATENT TO THE AUTHOR

Article 14

Author

A natural person who has created a selection achievement shall be recognized as the author thereof. Where the selection achievement had been created by several persons those persons shall be recognized as joint authors.

Person (persons) who have given the author technical, technological, organizational or material assistance but not participated in the creation itself of the selection achievement may not be recognized as the author thereof.

A competent authority shall grant a certificate of authorship of the selection achievement.

The certificate of authorship attests the entitlement of the author to remuneration from the patent owner for the use of the selection achievement.

Right of the author is inviolable and may not be transferred to other person.

Right of the author may be transferred to successor in title in conformity with the legislation of the Azerbaijani Republic.

Article 15

Patent Owner

In response to the application concerning selection achievement included in the State Register the competent authority shall grant the patent within one month. Where several persons have been mentioned in the application they shall be granted one patent for all.

The grant of patents and certificates shall be carried out by a competent authority in accordance with approved regulations.

Article 16

Rights of the Patent Owner

A patent shall give the exclusive right to use a selection achievement and this right shall be protected by the State. It is not permissible to use the selection achievement without the patent owner's knowledge.

The patent related rights may be transferred in full or in part to another person by way established in the legislation of the Azerbaijani Republic. In those cases a contract concluded between the patent owner and those persons in the manner specified by legislation shall be registered with a competent authority.

To use a selection achievement any natural persons or legal entities shall be required to obtain from the patent owner the permission to do the following:

- production and reproduction;
- conditioning of seeds for the purpose of their propagation;
- offering for sale;
- selling or other marketing;
- exporting from the territory of the Azerbaijani Republic;
- importing to the territory of the Azerbaijani Republic;
- stocking for any of the aforementioned purposes.

The right of the patent owner shall extend also to plant material and marketable animals derived from the selection achievement or from pedigree animals and used for commercial purposes without authorization from the patent owner.

The authorization from the owner of the patent for protected selection achievement shall be required for the performance of the acts provided for in the third paragraph of this Article in relation to the seed of the variety or pedigree material:

- that are essentially derived from initial selection achievement and do not retain the characteristics of other variety or breed;
- that are not clearly distinguishable from the protected variety or breed;
- that require the repeated use of the protected selection achievement for production of seed.

A variety shall be deemed to be essentially derived from the initial variety when whilst clearly distinguishable from the initial variety,

- it retains the expression of the essential characteristics reflecting the genotype or combination of genotypes of the initial variety or breed;

- it conforms to the genotype or combination of genotypes of the initial variety or breed except for the differences due to the origin.

A variety that is predominantly derived from the initial variety could be obtained as individual selection from the initial variety or breed, selection of an induced mutant, back-crossing or genetic engineering.

The right of the patent owner shall not be deemed infringed when the selection achievement is being used for the following purposes:

- (a) private and non-commercial;
- (b) experimental.

Article 17

Protection of the Interests and Rights of the Subjects of the Existing Selection Achievements

Until the adoption of the Azerbaijani Republic Law "On selection achievements" the provisions of this Law shall extend also to the authors of the selection achievements created in the Azerbaijani Republic as well as to the patent owners.

Article 18

Term of the Patent

The term of a selection achievements patent shall be 20 years from the date of the registration in the State Register and for grapevines, ornamental, fruit or forest trees and pedigree animals shall be 25 years.

The term of a patent may be extended by the competent authority for a period not exceeding 10 years.

Article 19

Invalidation of a Patent

Any person may file with the competent authority a request for invalidation of a patent. The competent authority shall send a copy of the request to the patent owner. The patent owner shall, within three months from the sending date of the copy, furnish his grounded reply.

Where it is necessary, the competent authority shall carry out an additional testing and shall take within one year an appropriate decision.

The patent may be deemed invalid in the following cases:

- where a selection achievement at the filing date of the application no longer complies with the conditions of novelty and distinctness, or the patent had been granted on the grounds of the information concerning uniformity and stability that has not been confirmed;
- where the person indicated in the patent as a patent owner had no legitimate grounds for obtaining the patent.

Article 20

Cancellation of a Patent

The patent may be cancelled where:

- the owner of the patent has filed an appropriate request;
- a selection achievement no longer complies with the conditions of uniformity and stability;
- the patent owner fails to provide, after the request of the competent authority, seeds, pedigree material, documents and information deemed to be necessary for testing the protectability of the selection achievement or fails to provide opportunity for in-site inspection;
- the patent owner fails to pay a maintenance fee by the prescribed time limit.

TITLE IV

PROTECTION OF THE SELECTION ACHIEVEMENT

Article 21

Maintenance of Selection Achievements

The patent owner shall, throughout the life of the patent, maintain the selection achievement in such a way that all characteristics thereof are maintained.

On the request of the competent authority the patent owner shall be obliged to furnish seed of the variety or pedigree material for the purpose of testing and provide the opportunity for in-site inspection.

Article 22

Provisional Legal Protection of Selection Achievements

Throughout the period between the date of receipt of the application by the competent authority and the date of the grant of a patent, the applicant shall be afforded a right of protection of the selection achievement.

During this period of protection the selection achievement may be used only for scientific and testing purposes.

TITLE V

USE OF THE SELECTION ACHIEVEMENT

Article 23

License Contract

The use of the patented selection achievement shall be possible on the basis of a license contract.

Under a license contract the patent owner (in case of an exclusive or non-exclusive license) transfers the right to use

the selection achievement to another person (the licensee) within procedures of payments.

Under an exclusive license the licensee is afforded the exclusive right to use the selection achievement, but the patent owner retains at the same time a right to its part.

Under non-exclusive license the patent owner retains all rights, granted by the selection achievement patent, including the right to grant licenses to third parties.

Where the patent owner sells his right of patent ownership he shall lose completely his right to use a selection achievement.

A license contract shall be concluded in written form and enter into force accordingly after the registration by the competent authority.

The liability of parties and legal terms of the license contract shall be governed by the Azerbaijani Republic legislation.

Article 24

Open Licenses

The patent owner may publish in the Official Gazette of the competent authority a notice concerning the use of the selection achievement by any person. The patent owner and person who have concluded a license contract file a request with the competent authority for using an open license.

The competent authority shall enter particulars of the grant of an open license, including the amount of payments, in the State Register of Protected Selection Achievements.

Article 25

Compulsory Licenses

Any person may file a request with the competent authority for granting to him a compulsory license for a selection achievement.

The competent authority may grant a compulsory license where the following conditions are met:

- the application for the grant of a compulsory license has been filed after expiry of a three years period;
- the patent owner has refused the applicant the right to use the selection achievement or does not intend to grant such a right;
- a person requesting a compulsory license has proved that he was in a position, financially or otherwise to use the license in an efficient manner.

The compulsory license does not deprive the patent owner of the right to the selection achievement, including his right to grant license to another person.

When granting a compulsory license the competent authority determines the amount of payment to be paid by the compulsory license owner to the patent owner.

On the request of the competent authority the patent owner shall be obliged to furnish, at extra cost and on acceptable terms, to the compulsory license owner seeds of the variety and pedigree material of the breed in a quantity sufficient for the purpose of use.

A compulsory license shall be granted for a period not exceeding four years (extendable).

A compulsory license may be cancelled if its owner has infringed the terms under which the license was granted.

Article 26

Use of Selection Achievements for Purposes of Production

Only patented and registered selection achievements in the State Register shall be used in the Azerbaijani Republic for the purpose of production.

The plant and pedigree materials intended for realization shall be accompanied by certificate of quality issued by the competent authority.

The certificate shall be issued for the selection achievements entered in the State Register and having zoning assignment.

Article 27

Fees

The competent authority shall collect a fee for the following acts:

- examination and testing of selection achievements for the purpose of patenting;
- protection of selection achievements;
- grant of a patent;
- maintenance of a patent.

The fee shall be payable by the customer, the patent owner or by interested natural persons or legal entities.

The amount of the fee, terms of payment and possible compromises shall be governed by the legislation of the Azerbaijani Republic.

TITLE VI

STIMULATION OF SELECTION WORK BY THE STATE

Article 28

Profit of the Patent Owner and Remuneration to the Authors

The profit of a patent owner is consisting of the payment for the use of the selection achievements for the purpose of production and of proceeds from the sale of licenses. The amount of payments for selected achievements and of sale of

licenses shall be determined by a license contract concluded between the parties.

During the patent life the author of the selection achievement shall be entitled to receive a remuneration from the patent owner for the use of this selection achievement. The amount and terms of payment of a remuneration shall be determined by a contract.

Nevertheless, the amount of the remuneration shall not be less than 15% of the annual proceeds received by the patent owner for the use of the selection achievement, including proceeds from the sale of licenses.

Where a selection achievement has been created or discovered jointly by several authors the remuneration shall be divided among them in accordance with their shares.

The remuneration shall be payable to the author not later than three months after the expiry of each year during which the selection achievement had been used.

Article 29

Stimulation of Selection Work by the State

In accordance with the State Target Program the fundamental research and selection works, protection of genetic resources, most important activities, international symposiums, publication of catalogues, methodological instructions, bulletins and scientific reports shall be financed from the State budget of the Azerbaijani Republic.

TITLE VII

INTERNATIONAL COOPERATION

Article 30

Right to File an Application Abroad

To patent a selection achievement natural persons and legal entities of the Azerbaijani Republic shall be entitled to file applications with a competent authority of any other State and to be granted a patent.

Persons filing an application for the grant of a patent have to notify the competent authority of the Azerbaijani Republic.

The cost of obtaining a patent for the selection achievement in other States shall be borne by the applicant.

Article 31

Right of Foreign Natural Persons or Legal Entities to file an Application for the Grant of a Patent in the Azerbaijani Republic

The natural persons and legal entities of other States shall be entitled to file an application for the grant of a selection achievement patent with the competent authority of the Azerbaijani Republic.

Applications for the selection achievement in the Azerbaijani Republic filed by foreign natural persons and legal entities may be patented if they comply with the legislation of the Azerbaijani Republic.

Article 32

International Treaties

Where an international treaty to which the Azerbaijani Republic is a party contains provisions on testing, protection and use of selection achievements which differ from those of this Law the provisions of the international treaty shall prevail.

TITLE VIII

SETTLEMENT OF DISPUTES AND LIABILITY FOR INFRINGEMENT OF THE LEGISLATION ON SELECTION ACHIEVEMENTS

Article 33

Liability for Infringement of the Legislation

The natural persons and legal entities shall be liable for the following acts:

- use of a denomination for the produced and marketable selection achievement which differs from the registered denomination;
- intentional change of the selection achievement denomination or of the registered variety and pedigree material denomination;

- attribution to a selection achievement of a denomination which corresponds so closely to a registered denomination that it is misleading;
- use of selection achievements without conclusion of a license contract;
- misleading of a customer by selling a selection achievement patent under another denomination;
- sale of selection achievements without certificates;
- making a false entry in the State Register or in documents concerning application, examination or testing;
- forgery of documents, ordering to make forgery or other wrongful acts being in conflict with the legislation of the Azerbaijani Republic.

Any official or natural person infringing the Law “On Selection Achievements” shall be liable under the legislation in force of the Azerbaijani Republic.

Article 34

Settlement of Disputes

The settlement of disputes concerning examination, testing, use or protection of selection achievements shall be carried out judicially in accordance with the legislation of the Azerbaijani Republic.

President of the Azerbaijani Republic
Geydar Aliev
Baku, November 15, 1996
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