

**Draft**

**LAW OF THE REPUBLIC OF KAZAKHSTAN**  
**ON LEGAL PROTECION OF SELECTIVE BREEDING**  
**ACHIEVEMENTS**

Commission for testing of new breeds of state body of the Republic for agricultural management of the Republic of Kazakhstan);

Pedigree material - pedigree live-stock, sperm of pedigree animal, its gametes or zygotes (embryos);

Tradable animal - an animal used in production of live-stock for trade;

Author (selectionist/breeder) - legal entities and natural persons that created, discovered or bred a variety or breed or its legal successors;

State Register of the Republic of Kazakhstan of Protected Varieties and Breeds of Animals, Fowl, Fish and Insects (hereinafter: the State Register) include varieties and breeds in respect of which the Authorized State Patent Office grants patents;

State Register of Selective Breeding Achievements Permitted for Use includes varieties and animals allowed to be used in production;

Applicant - a legal entity or natural person who files an application to receive a patent on a selective breeding achievement.

### **Article 3. Legal Protection of A Selective Breeding Achievement**

The right in a selective breeding achievement shall be protected under the Legislation of the Republic of Kazakhstan and shall be maintained by a patent. The patent shall attest the exclusive right of its holder to use its selective breeding achievements priority and the breeder's copyright.

The Authorized State Patent Office shall be charged to pursue and provide for the state policy in the area of legal protection of selective breeding achievements.

The Authorized State Patent Office shall review applications for patents of the Republic of Kazakhstan on plant varieties and breeds of animals.

The duration of a patent shall continue with 25 years for annual plants, 30 years for animal breeds, 35 years for grape varieties, arborvitae, ornamental, fruit and forest crops, including their stocks from the date of application to the Authorized State Patent Office.

The duration of a patent shall be extended by the Authorized State Patent Office as petitioned by the patent-holder, but no more than for 10 years.

## CHAPTER I. PROTECTABILITY OF A SELECTIVE BREEDING ACHIEVEMENT

### Article 4. Protectability Tests for a Selective Breeding Achievement

A patent shall be awarded in respect of a selective breeding achievement, which is novel, distinctive, homogeneous and stable.

A variety of breed shall be deemed novel if, as of the date of filing an application for a patent award, they were not known from available information sources, their seeds or any other planting material, or pedigree material of such a selective breeding achievement were not released in commerce and were not transferred to other parties by its breeder (selectionist) or by its legal successors to use the variety/breed within the territory of:

+ the Republic of Kazakhstan - one year prior to the date of application;

+ any other country - four years prior to the date of application with respect to annual crops and six years prior to the date of application filed in respect of perennial crops.

A variety and a breed that are registered in the State Register of Selective Breeding Achievements Permitted to Be Used as of the date of their inclusion into the State Register of Protected Selective Breeding Achievements may be deemed protectable without testing for novelty. The date of priority shall be established by the date, which the State Commission receives the application requesting such a selective breeding achievement to be permitted for use.

The duration of a patent stipulated in Article 3 of this Law on such selective breeding achievements shall be decreased and shall last from the year such selective breeding achievements are permitted for use until the year of award. No provisional/temporary legal protection envisaged in Article 6 of this Law shall extend to such selective breeding achievements.

A variety and a breed shall be distinctive if they obviously differ from any other variety or breed, which falls within the prior art at the moment of filing an application. To receive a patent or to enter a variety or breed in the official registers of new varieties and breeds in any country, an applicant shall make such varieties and breeds publicly known from the date of application provided the right of a breeder is granted or the variety and breed in question are included in the aforementioned registers as a result from such application.

The prior art of varieties and breeds may be also established by the fact of breeding, use and publication. The features allowing to determine the distinctive and specific of a variety or a breed must be reflected in their precise description.

A variety or a breed shall be deemed homogeneous if plants of such a variety or a breed is homogeneous by their selected features and by the specifics of their reproduction.

A variety or a breed shall be deemed to be stable if their essential features remain unchanged after each instance of reproduction, and in case of special reproduction cycle - at the end of each reproduction cycle.

## **Article 5. Application for a Selective Breeding Achievement**

1. An application to receive a patent on a selective breeding achievement shall be filed with the Authorized State Patent Office.

The right to file an application to request a patent shall be vested with a breeder or its legal assignee.

If a selective breeding achievement is created, discovered or bred within the framework of a breeder's employment, the right to patent shall be vested with the employer, unless provided otherwise in a contract between the employer and the breeder.

An application may be filed by several applicants if they jointly created, discovered or bred a selective breeding achievement or if they are legal assignees of the authors.

An application may be filed through a representative, who by virtue of authority given to it by a power of attorney handles matters related to patenting.

2. Natural persons domiciled outside the Republic of Kazakhstan or foreign legal entities, or their patent agents shall handle matters related to patents and their maintenance as well as other matters related to patents through patent agents registered with the Authorized State Patent Office. A patent agent's authorities shall be vested by a power of attorney issued to it by the applicant or the patent holder.

3. A separate patent application shall be filed in respect of each plant variety, animal breed and shall contain:

+ an application requesting to grant a patent;

+ a description of a selective breeding achievement;

+ a joint authorship contract;

+ a document supporting the payment of the patent fees pursuant to the statutory procedure or supporting the exemption from paying such fees as a document proving grounds to reduce their amount.

+ If an employer files an application, it should attach its contract with the concerned author of a selective breeding achievement.

4. A patent application shall be filed in either Kazak or Russian.

5. The Authorized State Patent Office shall set forth the requirements to the application documents and the procedure for their review. Other documents and material required for the examination of a variety or breed shall be provided upon further request of the Authorized State Patent Office.

#### **Article 6. Designation of a Selective Breeding Achievement**

1. The designation of a breeding achievement shall allow for a selective breeding achievement to be identified. It shall be designated different from designations of pre-existing selective breeding achievements and the same or a close botanical or zoological class. It shall not consist exclusively of digits. It shall not be confusing as to the features, origin and significance of a selective breeding achievement, the identity of its selective breeding achievement and shall not discord with the principles of humanism and moral.

2. If an application to receive a patent on the same variety or breed is filed in the Republic of Kazakhstan or in other countries then the designation of one and the same variety or breed shall be identical.

3. If the proposed designation fails to meet the requirements set forth by paragraphs 1 and 2 of this article, then the applicant shall be required to change the proposed designation within two months as requested by the Authorized State Patent Office.

4. Any entity that uses a protected selective breeding achievement shall be required to indicate the designation of such a variety or a breed, under which they are registered in the State Registers of Protected Varieties and Breeds, even after the termination of a patent granted thereon.

#### **Article 7. Priority of a Selective Breeding Achievement**

The priority of a variety or breed shall be established by the date of application to the Authorized State Patent Office requesting a patent and a description of selective breeding achievement in question.

The priority may be established by the date of the first application in a member state of the International Convention on Protection of Selective Breeding Achievements (conventional priority). The applicant shall use the right of conventional priority within 12 months from the date of application.

The applicant who is willing to use the conventional right of priority shall indicate the priority date of the first application on the application presented to the Authorized State Patent Office and within three months from the submission date of the subsequent application provide copies of the first application authenticated by the body which received that application.

The applicant shall have the right not to provide additional documentation and required testing material within three years from the date the first application is filed.

## **CHAPTER III. SELECTIVE BREEDING PA**

cases if such sale or other transfer is related

## **Article 12. Rights of an Author of a Selective Breeding Achievement**

1. The right of an author in a selective breeding achievement shall be an inalienable personal right and shall be protected by the State pursuant to Article 3 of this Law.
2. The authorship shall be attested by a certificate of authorship granted by the Authorized State Patent Office to each author of a selective breeding achievement, which is registered in the State Register of Protected Plant Varieties and Animal Breeds.
3. An author shall have the right to designate its name to its selective breeding achievement.

The author of a selective breeding achievement shall have the right to receive remuneration from the patentee for the patentee use of a plant variety or an animal breed created, discovered or bred by it within the duration of the patent. The amount and the schedule of payments shall be subject to agreement concluded between the patentee and the author.

If a plant variety or an animal breed is created, discovered or bred by several authors, then the remuneration shall be dispersed between them pursuant to their agreement.

## **Article 13. Selective Breeding Achievement Patentee**

A patent shall be granted to an applicant:

- + the author of a selective breeding achievement;
- + its legal assignee (assignees);
- + natural persons and/or legal entities (upon their consent) that are listed as the author (authors) or its (their) legal successors in the patent application or an application filed with the Authorized State Patent Office prior to the registration of a plant variety or an animal breed;
- + the employer, if a plant variety or an animal breed were created by its employee within the frameworks of its employment, unless the contract between the employer and employee provides otherwise.

If there are several persons, whose name a patent is applied for, they shall be granted one patent.

## **Article 14. Patentee Rights and Obligations**

1. The patentee shall have the exclusive right to plant varieties and animal breeds, unless such a use infringes upon the rights of other patentees. It is required to obtain permission from the patentee's for the following actions which are related to the protected plant variety or animal breed:

- + production or reproduction (multiplication);



- + securing the planting characteristics;
- + offer for sale;
- + sale or any other distribution;
- + export from the territory of the Republic of Kazakhstan;
- + import into the territory of the Republic of Kazakhstan;
- + storage for the aforementioned purposes.

2. The right of a patentee shall also extend to planting material, tradable live-stock that are produced from seeds, from pedigree animals, and release into commerce without the authorization of the patent holder.

3. The provisions of the first part of this article shall apply to seeds of plant varieties and pedigree material of protected selective breeding achievements that:

- + significantly inherit the features of protected varieties or breeds if such protected varieties or breeds did not inherit themselves the features of another selective breeding achievement;
- + do not obviously differ from protected varieties or breeds;
- + differ from protected varieties or breeds by changes caused by technique that allows to preserve the genotype or a combination of genes of a particular variety or breed, except the technique of individual selection, the selection of induced or cloned mutants, back-crossing and genetic engineering;
- + reproduction which requires repeated use of a protected variety or breed.

4. Other rights shall be subject to regulation by the incumbent Legislation of the Republic of Kazakhstan.

5. The patentee shall be obligated to:

- + release into commerce a variety or breed permitted for use in production;
- + maintain a variety or a breed within the duration of a patent to preserve its features indicated in its official description accepted by an expert body to protect that variety or breed.

#### **Article 15. Liability for Infringements Upon the Rights of a Patentee**

Any natural person or a legal entity that uses a plant variety or an animal breed in breach of this shall be deemed to be guilty of trespassing on the rights of the patentee.

A natural person or a legal entity shall be deemed to infringe the rights of a patentee if:

+ he/it discloses, without authorization, the data comprising the trade secret of a plant variety or an animal breed, for which an application has been filed;

+ provides a designation of protected plant varieties or pedigree animal live-stock, that are produced and distributed, that differ from their registered designations;

+ he/it provides a designation to produced and distributed protected plant varieties or pedigree animal live-stock, that are produced and distributed, that confusingly similar with

### **Article 18. A Licensing Agreement**

Any person who is not a patentee shall have ~~the~~ <sup>right</sup> to use a patented variety or breed only with the patentee's authorization ~~and~~ under a licensing agreement.

Under a licensing agreement, the patentee (~~the~~ <sup>licensor</sup>) assigns the right to use a protected variety or breed to another person (the licensee).

+ the patentee fails to prove that its non- or insufficient use has been caused for pardonable reasons.

The amount of payments shall not be less than the license value as assessed pursuant to the established practice.

Any compulsory license shall be granted in the first place to provide for the needs of the domestic market of the Republic of Kazakhstan.

A compulsory license shall be subject to termination upon cessation of the causes that led to its issuance. However, a person who has obtained a compulsory license shall have a priority to conclude a licensing agreement with the patentee.

## **CHAPTER VI. TERMINATION OF A PATENT**

### **Article 21. Recognition of a Patent Invalid**

1. Any person may apply to the Authorized State Patent Office with a reasonable application to recognize a patent invalid on the basis of legally grounded reasons.

2. The Authorized State Patent Office shall present a copy of such an application to the patentee who within three months from receipt may object on valid grounds.

The Authorized State Patent Office may adopt a decision on the issue within six months from the date it receives the valid objection provided there is no need for additional testing.

3. The patent on a plant variety or an animal breed may be invalidated if it is proven that:

+ it has been issued on the basis of unconfirmed data on the homogeneity and stability of a variety or breed as provided by the applicant;

+ as of the date of award, a variety or breed did not meet the requirement of novelty and distinctiveness;

+ the person who is indicated in the patent as its holder did not have any legal grounds to receive the patent.

### **Article 22. Annulment and Pre-Mature Termination of a Patent**

1. A patent on a selective breeding achievement shall be annulled by the Authorized State Patent Office in cases where:

+ it is recognized invalid pursuant to paragraph 3 of Article 21;

+ its selective breeding achievement no longer complies with the criteria of homogeneity and stability;

+ the patentee fails to present, within twelve months on the request of the Authorized State

Patent Office, seeds, planting or pedigree material and documents necessary to check the integrity of such a variety or breed or its parents to provide an opportunity to conduct an examination of that variety or breed in situ for the aforementioned purposes;

+ the designation of a variety or a breed issued after the award of the patent thereon, if the patentee fails to propose another more suitable designation.

2. Opposition to the annulment of the patent on the grounds set forth in paragraph 1 of this article shall be reviewed by the Appellate Council of the Authorized State Patent Office within six months from the date it is submitted in the presence of the person who filed the opposition.

3. The duration of patent shall be prematurely terminated:

+ on the basis of an application filed by the patentee with the Authorized State Patent Office;

+ due to the patentee's failure to deposit the patent maintenance fee in a timely fashion.

4. The Authorized State Patent Office shall publish information on annulments and premature terminations of patents on varieties and breeds in its official bulletin.

### **Article 23. Settlement of Disputes Related to the Application of this Law**

Disputes related to violations of the Varieties and Breeds Patent legislation shall be reviewed in court, for issues related to:

+ copyright in a variety or breed;

+ determination of the patentee;

+ infringement of the exclusive right to use a protected variety or breed and other property rights of the patentee;

+ conclusion and execution of licensing agreements to use a variety or breed;

+ compensations envisaged in this Law;

+ author's remuneration under a concluded contract.

## **CHAPTER VIII. FINAL PROVISION**

### **Article 24. Use of Selective Breeding Achievements in Production**

1. The State Commissions shall include in the State Registers of Selective Breeding

Achievements Permitted for Use, varieties and breeds that, based on the results of state testing for economic usefulness, and in respect of grape varieties, food, decorative, fruit and forest varieties, such inclusions shall be made on the basis of expert conclusions provided pursuant to the statutory procedure.

2. Distributed seeds and pedigree material shall be accompanied by appropriate documents attesting their variety, breed, origin and quality allowed to use in certain regions.

#### **Article 25. Patent Fees**

Patent fees shall be levied for legally significant actions related to protection of selective breeding achievements. The levying procedure, list of such actions, the amount and schedule of payments shall be established by the Authorized State Patent Office and other state bodies pursuant to the procedures established by the Legislation.

#### **Article 26. Publications**

1. The Authorized State Patent Office shall publish its official bulletin that contains information on the following:

+ on applications for patents, which have gone through preliminary examination with positive results, with an indication of the priority date of a selective breeding achievement, name (designation) of the applicant, designation of a selective breeding achievement, the last name and initials of the author, if the latter has declined his name to be mentioned as such;

+ on decisions adopted in respect of applications for patents;

+ on changes in designations of selective breeding achievements;  
on recognition of patents as invalid and their annulment;

+ other data related to the protection of selective breeding achievements.

2. Any person shall be entitled to familiarize himself with the materials of an application after publication of the application data, when an examination proved positive.

#### **Article 27. Selective Breeding Achievement Patenting**

The author (selectionist/breeder) shall have the right to file an application with the competent body of another country to request protection of its selective breeding achievement only three months after it files an appropriate application with the Authorized State Patent Office or earlier than a search for information/data that may compose a state secret is conducted pursuant to the procedure envisaged in the legislation of the Republic of Kazakhstan.

#### **Article 28. Rights of Foreign Nationals and Legal Entities**

Foreign nationals and legal entities shall enjoy the rights provided in this Law and other legislative and normative acts of the Republic of Kazakhstan in the sphere of legal protection of plant varieties and animal breeds for natural persons and legal entities of the Republic of Kazakhstan under international treaties of the Republic of Kazakhstan or on principles of mutuality.

#### **Article 29. International Treaties**

If international treaties of the Republic of Kazakhstan establish the rules other than those set forth in this Law, then the rules of international treaties shall be applied.

President of the Republic of Kazakhstan N. Nazarbaev

Almaty " \_\_\_\_ " \_\_\_\_\_ 1996

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