

WORLD TRADE ORGANIZATION

RESTRICTED

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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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REVIEW OF THE PROVISIONS OF ARTICLE 27.3(b)

Information from Members

Addendum

SLOVAK REPUBLIC

The present document represents the information requested by the Council for Trade-Related Aspects of Intellectual Property Rights which the Secretariat has received from the Slovak Republic, by means of a communication from its Permanent Mission, dated 8 July 1999.¹

A. INTRODUCTION

The protection of plant and animal inventions is regulated in the Slovak Republic with the provisions of two laws: the provisions of Law No. 527/1990 Coll. on Inventions, Industrial Designs and Rationalization Proposals and Law No. 132/1989 Coll. on the Protection of Rights of New Varieties and Animal Breeds.

In Section 4, paragraph (c) of the Slovak Patent Law there is an exclusion of plant and animal varieties from patentability. The *sui generis* system of their protection is provided by Law No. 132/1989 Coll. on the Protection of Rights of New Varieties and Animal Breeds.

B. PATENT SYSTEM QUESTIONS

1. *In your territory, is there any basis for denying a patent on an invention consisting of an entire plant or animal that is novel and involves an inventive step?*

Yes, pursuant to Section 4, paragraph (c) of the Slovak Patent Law No. 527/1990 Coll., "patents shall not be granted in respect of plant or animal varieties and biological processes for the production and improvement of plants or animals, with exception of industrial micro-organisms serving for production and biotechnological processes and the products thereof, which are patentable." The patent practice in the Slovak Republic does not dispose of any precedent of patent claim, which would explicitly cover a plant or an animal.

¹ The questions to which answers are provided are those which can be found in document IP/C/W/126.

2. *If the answer to question 1 is yes, please respond to the following questions:*

- (a) *Does your patent system exclude entire plants or animals as inventions? If it does, please cite the legal basis for this.*

See the answer to question 1 above.

- (b) *If your patent system does recognize entire plants and animals as inventions, does it exclude all such inventions from being patentable subject-matter, or does it only exclude certain types of plants or animals? If it excludes all, please cite the legal basis for their exclusion (e.g. lack of industrial applicability). If it excludes only certain types, please identify the categories or characteristics of inventions that are excluded and cite the legal basis for their exclusion.*

See the answer to question 1 above.

- (c) *Is there any other basis in your law that precludes the grant of a patent on any categories of plant or animal inventions that otherwise are novel, involve an inventive step and are capable of industrial application? If so, please cite the legal basis for that exclusion from patent eligibility.*

According to Section 4, paragraph (a) of the Slovak Patent Law No. 527/1990 Coll., "patents shall not be granted in respect of inventions contrary to public interest, particularly the principles of humanity and morality."

3. *Other than with respect to subject-matter you defined as being ineligible to be patented under question 2, is it possible in your territory to obtain a patent claim defined in any of the following ways?*

- (a) *A patent claim that is not limited to a specific plant or animal variety.*

We have not had such a case in our practise yet.

- (b) *A patent claim that is expressly limited to a plant or animal variety.*

See the reply above.

- (c) *A patent claim that is expressly limited to a group of plants or animals, where the group is defined through reference to a shared characteristic such as incorporation of a particular gene.*

See the reply above.

- (d) *If the answers you provide to question 3(a) to (c) vary, please provide the definitions of a "plant variety" and an "animal variety" that are used by your examining authority.*

Extract from Law No. 132/1989 Coll., on Protection of Rights to New Varieties and Animal Breeds, Section 2, paragraphs (a) and (c):

"Terms Definitions

"For the purposes of this Law, under the following terms it is understood:

- (a) **'variety'** shall mean a set of plants within a common lowest botanical taxon, which regardless of whether the terms for granting a Breeder's Certificate are fulfilled, may be:
- (1) defined by the expression of characteristics arising from the given genotype or combination of genotypes;
 - (2) distinguished from any other set of plants by expression of at least one of the said characters;
 - (3) deemed to be unified owing to its ability to remain unchanged in propagation.
- (c) a **'breed'**: refers to an animal population derived from single origins, with characteristic morphological and physiological features, capable of reproduction besides breed, this includes its lower taxons - races, strains and lines as well as their hybrids and eventually also utility breeds of farm animals."

4. *Is it possible to obtain a patent in your territory on a microorganism that is novel, involves an inventive step and is capable of industrial application? If not, please identify the legal basis under which these inventions are deemed ineligible to be patented.*

Yes.

5. *Is it possible to obtain a patent in your territory on an essentially biological process for the production of a plant or animal (i.e. a process limited to those acts that are necessary for sexual or asexual reproduction of a plant or animal)? If not, please identify the legal basis under which a patent on such a process would be denied.*

No. See Section 4(c) of the Slovak Patent Law.

6. *Is it possible to obtain a patent in your territory covering subject-matter that is identical to that found in nature (e.g. a plant or animal in its natural state)?*

No, according to Section 3, paragraph (1) of the Slovak Patent Law patents shall be granted for any inventions which are new, which involve an inventive step and which are susceptible of industrial application. Because mere discoveries, including materials existing in nature, do not meet all mentioned criteria, they are not patentable.

C. PLANT VARIETY PROTECTION SYSTEMS

7. *Do the laws applicable to your territory provide for a sui generis form of protection for a new plant variety?*

Yes, Slovak laws provide for a *sui generis* form of protection for a new plant variety.

8. *If the answer to question 7 is "yes", does that protection conform to the standards defined in one of the Acts of the International Convention for the Protection of New Varieties of Plants (UPOV)?*

Yes, it does.

9. *If the answer to question 8 is "yes", please specify the Act of the UPOV Convention upon which your legislation is based (i.e. the 1991 Act, the 1978 Act or the 1961/1972 Act).*

Law No. 132/1989 Coll. on the Protection of Rights of New Varieties and Animal Breeds was in conformity with standards defined in the 1978 Act, but the amendment introduced by Law No. 22/1996 Coll. brought the protection system in conformity with standards defined in the 1991 Act of the International Convention for the Protection of New Varieties of Plants.

10. *If sui generis protection for plant varieties is provided in your territory, would any of the following acts require the prior authorization of the right holder:*

(a) *acts performed for research or experimental purposes, or to develop new varieties of plants;*

There is no need for the prior authorization.

(b) *acts performed to commercially exploit a variety distinct from the protected variety but sharing its essential characteristics;*

Yes, the prior authorization is required.

(c) *acts performed by a farmer of harvesting seed from his planting of a protected variety legitimately obtained, storage of that seed, and replanting of that seed on the farmer's land.*

There is no need for the prior authorization.

If prior authorization is not required for any of the above examples of activities, is there any requirement that the party undertaking the specified actions provide the right holder with remuneration in any form?

No, there is not such requirement.

11. *Can protection be obtained for a plant variety that was known to the public, or was publicly available, prior to the application for sui generis protection for that plant variety, and, if so, under what conditions (i.e. what are the time-limits during which public disclosure or availability will not preclude the grant of protection)?*

Law No. 132/1989 Coll. on the Protection of Rights of New Varieties and Animal Breeds as amended by No. 22/1996 Coll. in Part II, Article 4, paragraph 5 determines the conditions for granting breeder's certificates in respect of a variety. The variety is "new" if its propagating or harvesting material has not been sold or otherwise disposed to others:

(a) within the territory of the Slovak Republic previous to one year before the date of filing the application;

(b) within the territory of any country:

(1) in the case of varieties of fruit trees, forest or garden woods, or wines, previous to six years before the date of filing the application;

(2) in the case of varieties of any other species, previous to four years before the date of filing of the application.

12. *Can protection be predicated on identification of an unexpressed gene, on an unexpressed set of genes present in the genome of the plant variety, or on the characteristics of germplasm, rather than the expressed characteristics of plant varieties derived from such genes or germplasm?*

No.
