

**REVIEW OF THE PROVISIONS OF ARTICLE 27.3(b)**

Information from Members

Addendum

ICELAND

The present document represents the information requested by the Council for Trade-Related Aspects of Intellectual Property Rights which the Secretariat has received from Iceland, by means of a communication from its Permanent Mission, dated 23 June 2000.<sup>1</sup>

A. 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?*

No, it is not directly prohibited in the Patents Act to grant a patent for plants and animals, *per se*. However, according to Article 1(4)(2) of the Icelandic Patents Act No. 17/1991, a patent shall not be granted for plant or animal varieties.

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;*

(No reply necessary.)

(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;*

(No reply necessary.)

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

- (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.*

(No reply necessary.)

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.*

Yes, it is possible.

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

No, it is not possible.

- (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.*

Yes, it is possible.

- (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.*

(No reply provided.)

4. *Is it possible to obtain a patent in your territory on a micro-organism 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.*

According to Article 1(4)(2) of the Icelandic Patents Act No. 17/1991, it is possible to obtain a patent for microbiological processes and products resulting from such processes. It is not directly prohibited in the Patents Act to grant a patent for a micro-organism.

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, according to Article 1(4)(2) of the Icelandic Patents Act, patents shall not be granted for "essentially biological processes for the production of plants or animals".

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)?*

Yes, if the invention is novel, involves an inventive step and is susceptible to industrial application.

B. 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?*

On 19 May 2000, a bill on plant variety protection was passed in the parliament. The Icelandic Plant Variety Protection Act No. 58/2000 provides 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, the provisions of the Icelandic Plant Variety Protection Act correspond to the International Convention for the Protection of New Varieties of Plants (UPOV) from 1991.

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).*

The Plant Variety Protection Act is based on the 1991 Act of the UPOV Convention.

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;*

No, an authorization is not required. According to Article 18(2) of the Plant Variety Protection Act, the breeder's right shall not extend to utilization for experimental purposes.

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

Yes, an authorization is required. According to Article 16 of the Plant Variety Protection Act, the protection shall include a variety which is essentially derived from the registered variety. A plant variety is considered essentially derived from a variety if it is predominantly derived from the initial variety or from a variety that is itself predominantly derived from the initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety.

(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 farmers' land.*

No, an authorization is not required. According to Article 18(1) of the Plant Variety Protection Act, protection does not extend to private utilization for non-commercial purposes.

According to Article 17(3), the Minister can set rules to oblige parties propagating varieties of specifically prescribed species, exclusively for use in their own operations, to pay licence fees.

*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?*

According to Article 18(1) of the Plant Variety Protection Act, an authorization is not required for private utilization for non-commercial purposes.

According to Article 17(3) the Minister can set rules to oblige parties propagating varieties of specifically prescribed species, exclusively for use in their own operations, to pay licence fees.

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)?*

According to Article 2(1)(4) of the Plant Variety Protection Act, a protection can be granted if the variety is new, i.e. propagating or harvested material of the variety has not been sold or offered for public sale or otherwise disposed of, by or with the consent of the breeder, for purposes of commercial utilization of the variety:

- in Iceland, earlier than one year before the above-mentioned date; or
- in another country, earlier than four years or, in the case of trees or of vines, earlier than six years before the above-mentioned date.

According to Article 2(2), a variety is considered to be known if it has been sold or offered for public sale, is registered in an official variety list or is generally known through other means.

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.

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