

DRAFT

APPROVED

by Resolution of the Cabinet of  
Ministers of Ukraine of 19 August  
2002 No. 1183

(as revised by Resolution of the  
Cabinet of Ministers of Ukraine  
of „\_\_\_” \_\_\_\_\_ 2007 No  
\_\_\_\_)

## **PROCEDURE**

### **for payment of duties for actions related to the acquisition, effectuation and protection of intellectual property rights to plant varieties**

#### **General part**

1. The Procedure for payment of duties for actions related to the acquisition, effectuation and protection of intellectual property rights to plant varieties (the “Procedure”) shall determine terms and mechanisms for payment of duties for actions related to the acquisition, effectuation and protection of intellectual property rights to plant varieties as well as the amounts of the said duties in accordance with the Annex.

If, on behalf of the Government of Ukraine, an agreement has been concluded on payment of duties for actions related to the acquisition, effectuation and protection of intellectual property rights to plant varieties stipulating a different procedure for payment of such duties, the provisions of this agreement shall apply.

2. Individuals permanently residing in states where gross domestic income per capita is less than USD 3 thousand a year (in accordance with the latest data publicized by the World Bank) and legal entities located in these states shall pay the duties in the amounts stipulated in line 3 of the Annex to this Procedure.

Other persons shall pay duties in the amounts stipulated in accordance with line 4 of the Annex to this Procedure.

Individuals permanently residing outside Ukraine and legal entities located outside Ukraine may pay duties in the national currency of Ukraine or in Euro at the official NBU rate as of the date of paying the duty.

The amount of the duty shall not include the value of services related to its payment.

If there are several payers of the duty, the amount of the duty established for each of them in accordance with line 3 or line 4 of the Annex to this Procedure, shall be distributed in accordance with the agreement concluded between them on dissemination of property rights to the brand and/ or the agreement on the use of the brand, which copy shall be provided to the State Service for Protecting Rights to Plant Varieties (the “Derzhsortsluzhba”) or to the authorized expert institution (the “expert institution”) designated by Derzhsortsluzhba.

If an expert opinion, prepared by a competent authority of any member-state of the International Union for the Protection of New Plant Varieties is attached to the materials of the application for the plant brand, but pursuant to the opinion of the expert institution, additional qualified inspection is required, the difference shall be paid between the amount of

the duty stipulated in subparagraph “a” of paragraph 3 and the amount of the duty stipulated in subparagraph “b” of paragraph 3 of the Annex to this Procedure. This difference may be paid in the national currency of Ukraine or in Euro at the official NBU rate as of the date of paying the duty.

Duties and actions related to the acquisition, effectuation and protection of intellectual property rights to plant varieties shall be mandatory contributions to the special fund of the State Budget of Ukraine made by applicants for the fulfillment of the state functions related to the exercise of rights and liberties of citizens in connection with their possession and use of property and personal intellectual non-property rights to plant varieties and shall not be included in payments for commercial services that may be provided by expert institutions.

3. The duties shall be paid through banking institutions. Duties that are paid in the national currency shall be transferred to the special registration (transit) account of Derzhsortsluzhba opened in the State Treasury of Ukraine or to special registration accounts of expert institutions opened in relevant territorial bodies of the State Treasury of Ukraine.

Duties that are paid in Euro shall be transferred to the hard currency account of Derzhsortsluzhba opened in the bank specifically authorized by Derzhsortsluzhba. Hard currency funds received from payment of duties shall be sold, pursuant to instructions by Derzhsortsluzhba, by the authorized bank in accordance with the procedure stipulated by the National Bank of Ukraine and the proceeds from their sale shall be transferred to the special registration (transit) account of Derzhsortsluzhba opened in the State Treasury of Ukraine.

Information about Derzhsortsluzhba and expert institutions accounts opened for the transfer of duties shall be publicized by Derzhsortsluzhba in the official bulletin of Derzhsortsluzhba.

Duty proceeds are targeted and shall be used in accordance with the procedure stipulated by Derzhsortsluzhba only for the purposes of supporting the development and functioning of expert institutions by transferring funds from the special registration (transit) account of Derzhsortsluzhba opened in the State Treasury of Ukraine to special registration accounts of expert institutions opened in relevant territorial bodies of the State Treasury of Ukraine in accordance with the procedure for cash execution of the State Budget of Ukraine. Financing the expenses of Derzhsortsluzhba with the funds received from payment of duties shall be prohibited.

4. Derzhsortsluzhba and expert institutions shall account for documents confirming payment of duties and exercise control over payments in accordance with the requirements stipulated by this Procedure.

5. The document confirming payment of duty shall be a copy of the money transfer order to transfer the amount of the duty with the mark of the banking institution or a relevant receipt. The document confirming payment of duty shall have the name of the duty payer, type (a list of types) of the duty, the amount of the paid duty as well as the number of the application (numbers of applications), if such information has been provided to the applicant or the number of the patent (patents) or the certificate (certificates), the name of the non-resident payer's country. If the duty, whose amount is established in Euro, has been paid in UAH, the official NBU exchange rate as of the date of duty payment shall be specified.

6. The date of receipt of the document confirming payment of the duty shall be the date of crediting the duty amount to the Treasury account of Derzhsortsluzhba or the expert institution. If the duty amount is credited before the relevant application for the plant brand, petition, objection, etc. is received (the “application”) by Derzhsortsluzhba or the expert institution, the date of receiving the document confirming duty payment shall be the date on which Derzhsortsluzhba or the expert institution receives this application, if it arrives:

a) within three months after crediting the amount of the duty provided during that period the amount of the duty remained unchanged;

b) within one month after taking effect by the changed amount of the duty.

7. The duty amount shall be refunded to the payer (in full or in part), if the amount of the paid duty exceeds that stipulated by this Procedure.

The duty amount shall be refunded, if a relevant application is submitted to Derzhsortsluzhba or the expert institution during three month after the day of crediting this amount to its account with due regard to covering the expenses for bank services related to the refund.

The funds recognized as subject to refund, pursuant to the payer's application, may be offset against the amount of the duty that the payer must pay for other actions.

8. Budget institutions that paid duties for actions related to the acquisition, effectuation and protection of intellectual property rights to plant varieties shall get refunds from the state budget in accordance with the procedure stipulated by law.

#### **Terms for submitting documents confirming payment of duties for actions related to the acquisition, effectuation and protection of intellectual property rights to plant varieties**

9. The document confirming payment of duty for filing the application for a plant brand and the duty for conducting its formal inspection must be received by Derzhsortsluzhba together with the application or within two months after filing the application.

10. The document confirming payment of duty for the conduct of qualified (technical) inspection of the application for a plant brand to recognize the brand as meeting the eligibility criteria for the acquisition of intellectual property rights to it for the first year of field studies must be received by Derzhsortsluzhba or the expert institution together with the plant brand application or during two months after filing the application.

The document confirming payment of this duty for each following year of field studies of the plant brand must be received by Derzhsortsluzhba or the authorized expert institution within two months after applicant's receiving the report on the results of field studies conducted in the year preceding the current year.

If field studies of complicated hybrids are conducted, the duty shall be paid separately for inspecting each component of the hybrid. Overall, the duty shall not exceed the triple amount of the duty for conducting a qualified inspection of a plant brand to recognize the brand as meeting the eligibility criteria for the acquisition of intellectual property rights to it.

11. The document confirming payment of the duty for brand inspection with the view to establishing its suitability for dissemination in Ukraine for the first year of field studies must be received by Derzhsortsluzhba or the expert institution together with the plant brand application or within two months after filing the application.

The document confirming payment of this duty for each following year of field studies must be received by Derzhsortsluzhba or the expert institution during the last two months after applicant's receiving the report on the results of field studies conducted in the year preceding the current year.

12. The document confirming payment of the duty for including the brand in the list of plant varieties that are promising for their dissemination in Ukraine must be received by

Derzhsortsluzhba or the expert institution during six months after the date of approving the decision to include the brand on this list.

13. The document confirming payment of the duty for state registration of the intellectual property right to disseminate the brand and input information onto the State Registry of Plant Varieties Suitable for Dissemination in Ukraine must be received by Derzhsortsluzhba or the expert institution during three months after applicant's receiving the decision on state registration.

14. The document confirming payment of the duty for the issuance of the author's certificate on the plant brand must be submitted to Derzhsortsluzhba together with the application for such a certificate.

15. The document confirming payment of the duty for the issuance of plant brand state registration certificate and of a notarized copy of the plant brand state registration certificate must be submitted to Derzhsortsluzhba together with the application for such a certificate.

16. The document confirming payment of the duty for the issuance of a notarized copy of the plant brand patent must be submitted to Derzhsortsluzhba together with the application for the issuance of a copy.

17. The document confirming payment of the duty for introducing changes to the State Registry of Intellectual Property Rights to plant varieties regarding intellectual property rights to the plant brand on the initiative of the person who holds the rights and publishing the information in the official bulletin of Derzhsortsluzhba must be submitted to Derzhsortsluzhba at the same time the application for the introduction of changes is submitted.

18. The document confirming payment of the duty for reinstating the validity of intellectual property rights to the plant brand after eliminating the grounds for which it was terminated must be submitted to Derzhsortsluzhba at the same time the application is submitted.

19. The document confirming payment of the duty for receiving intellectual property rights to the plant brand and the patent by the person entitled to it, if the holder of the patent waives such right, and publishing the information in the official bulletin of Derzhsortsluzhba must be submitted to Derzhsortsluzhba at the same time the application is submitted.

20. The document confirming payment of the duty for inputting onto the State Registry of Intellectual Property Rights to Plant Varieties, information and changes thereto regarding the issuance of a license for the use of the brand and assignment of intellectual property rights to the plant brand on the initiative of the parties to the license agreement or an agreement on assignment of intellectual property rights to the plant brand and publishing the information in the official bulletin of Derzhsortsluzhba must be submitted to Derzhsortsluzhba at the same time the application is submitted.

21. The document confirming payment of the duty for the consideration of the application to issue a forced license for the use of the plant brand must be submitted to Derzhsortsluzhba together with the application.

22. The document confirming payment of the duty for the introduction of changes to the State Registry of Plant Varieties Suitable for Dissemination in Ukraine on the initiative of the person who holds the intellectual property right to disseminate the brand and publishing the information in the official bulletin of Derzhsortsluzhba must be submitted to Derzhsortsluzhba together with the application for the introduction of changes.

23. The document confirming payment of the annual duty for the first year of maintaining the validity of intellectual property rights to the plant brand (the validity of a patent) must be received by Derzhsortsluzhba or the expert institution during the last four months of the year of state registration of intellectual property rights to the plant brand or the first four month of the current year.

The document confirming payment of this duty for each following year must be received by Derzhsortsluzhba or the expert institution during the last four months of the current calendar year.

The duty for maintaining the validity of intellectual property rights to the plant brand (the validity of a patent) may be paid during twelve months after the expiration of the established term. In this case, the amount of the duty increases by 50 per cent and the document confirming its payment must be received by Derzhsortsluzhba or the authorized expert institution during the said twelve months.

24. . The document confirming payment of the annual duty for the first year of maintaining the validity of intellectual property rights to the plant brand dissemination in the State Registry of Plant Varieties Suitable for Dissemination in Ukraine must be received by Derzhsortsluzhba or the expert institution during the last four months of the year of state registration of the plant brand or the first two month of the following year.

The document confirming payment of this duty for each following year must be received by Derzhsortsluzhba or the expert institution during the last four months of the current calendar year.

The duty for maintaining the validity of intellectual property rights to the plant brand dissemination in the State Registry of Plant Varieties Suitable for Dissemination in Ukraine may be paid during twelve months after the expiration of the established term. In this case, the amount of the duty increases by 50 per cent and the document confirming its payment must be received by Derzhsortsluzhba or the expert institution during the said twelve months.

25. The document confirming payment of the duty for the application regarding the effectuation of any actions related to the consideration of a plant brand application stipulated by Law and renewal of the term for the effectuation of any actions related to its consideration stipulated by law must be received by Derzhsortsluzhba or the expert institution together with the application, unless other terms are stipulated by this Procedure.