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STATUTORY INSTRUMENTS

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**2002 No. 247**

**The Patents and Plant Variety Rights  
(Compulsory Licensing) Regulations 2002**

**PART III**

**COMPULSORY PLANT VARIETY LICENCES**

**Applications**

**11.**—(1) Where a proprietor of a patent for a biotechnological invention cannot exploit a biotechnological invention protected by the patent without infringing prior plant breeders' rights, he may apply in accordance with Breeders' regulations to the Controller of Plant Variety Rights for a licence and on such application shall pay the plant breeders' fee.

(2) An application under paragraph (1) shall be accompanied by particulars which seek to demonstrate that—

- (a) the proprietor of the patent for a biotechnological invention cannot exploit the biotechnological invention protected by the patent without infringing prior plant breeders' rights,
- (b) the proprietor of the patent has unsuccessfully applied to the holder of the prior plant breeders' rights for a licence, and
- (c) the biotechnological invention protected by the patent constitutes significant technical progress of considerable economic interest in relation to the plant variety protected by the prior plant breeders' rights.

(3) If and so far as any agreement purports to bind any person not to apply for a licence under paragraph (1), it shall be void.

**Proceedings before controllers**

**12.**—(1) On receipt by the Controller of Plant Varieties of an application under regulation 11(1) and payment of the appropriate plant breeders' fee, the controllers shall consider and process the application in accordance with Breeders' regulations.

(2) In proceedings before them in relation to an application under regulation 11(1), 16(1) or 16(2) the controllers, in addition to any powers conferred by Breeders' regulations, may give such directions as they think fit with regard to the subsequent procedure.

(3) Any person entitled under Breeders' regulations to make written or oral representations on an application under regulation 11(1), 16(1) or 16(2) shall do so in accordance with Breeders' regulations and shall pay the appropriate plant breeders' fee.

**Grant**

**13.** Where, having considered the application under regulation 11(1), the controllers are satisfied that—

- (a) the proprietor of a patent for a biotechnological invention cannot exploit the biotechnological invention protected by the patent without infringing prior plant breeders' rights,
- (b) the proprietor of the patent has unsuccessfully applied to the holder of the prior plant breeders' rights for a licence, and
- (c) the biotechnological invention protected by the patent constitutes significant technical progress of considerable economic interest in relation to the plant variety protected by the prior plant breeders' rights,

the controllers shall grant to the proprietor of the patent for the biotechnological invention (or, where the proprietor is a government department, to any person specified in the application) a licence to use the plant variety protected by prior plant breeders rights on the conditions set out in regulation 14 and on such other terms as the controllers see fit.

### Conditions

14.—(1) A compulsory plant variety licence shall—

- (a) not be exclusive,
- (b) entitle the holder of the plant breeders' rights concerned to an appropriate royalty, and
- (c) entitle the holder of the plant breeders' rights concerned to a cross licence on reasonable terms to use the biotechnological invention protected by the patent.

(2) Where the controllers grant a compulsory plant variety licence to a proprietor of a patent for a biotechnological invention, the holder of the plant breeders' rights concerned may request the grant of a cross licence on reasonable terms to use the biotechnological invention protected by the patent and, on such request, the controllers shall grant such cross licence to the holder of plant breeders' rights (or, where the holder is a government department, to any person specified in the request).

### Community plant variety rights: cross licences of patents

15.—(1) Where the Community Plant Variety Office has granted—

- (a) on the grounds specified in Article 12(3) of Directive 98/44/EC of the European Parliament and of the Council on the legal protection of biotechnological inventions<sup>(1)</sup>, and
- (b) under Article 29 of Council Regulation,

a compulsory exploitation right in respect of a Community plant variety right to a proprietor of a biotechnological invention protected by a patent, who could not otherwise exploit in the UK the biotechnological invention protected by the patent without infringing a Community plant variety right, the holder of the Community plant variety right concerned may, in accordance with rules, apply to the Comptroller General of Patents for a cross licence of the biotechnological invention protected by the patent and on such application shall pay the prescribed fee.

(2) On receipt of an application under paragraph (1) and payment of the prescribed fee, the Comptroller General shall consider and process the application in accordance with rules.

(3) Where the holder of the Community plant variety right concerned has paid the prescribed fee and demonstrates in his application to the satisfaction of the Comptroller General of Patents that—

- (a) he has a Community plant variety right, and
- (b) the Community Plant Variety Office has granted, under Article 29 of Council Regulation, a compulsory exploitation right in respect of it which allows a proprietor of a patent for a

<sup>(1)</sup> OJNo. L 213, 30.7.98, p. 13.

biotechnological invention to exploit in the UK the biotechnological invention protected by the patent,

the Comptroller General of Patents shall order the grant of a cross licence on reasonable terms to the holder of the Community plant variety right concerned (or, where the holder is a government department, to any person specified in the application) to use in the UK the biotechnological invention protected by the patent.

### **Variation and revocation**

**16.**—(1) Any person may at any time apply to the Controller of Plant Variety Rights in accordance with Breeders' regulations to extend, limit or in any other respect vary a compulsory plant variety licence or cross licence granted under regulation 14(2) and, on making such application shall pay the appropriate plant breeders' fee, and on receipt by the Controller of Plant Varieties of the application and the fee, the controllers shall consider and process the application and may extend, limit or in any other respect vary the compulsory plant variety licence or cross licence granted under regulation 14(2).

(2) Any person may at any time apply to the Controller of Plant Variety Rights in accordance with Breeders' regulations to revoke the grant of a compulsory plant variety licence or a cross licence under regulation 14(2) if the circumstances which led to the grant of the compulsory patent licence or the cross licence under regulation 14(2) have ceased to exist or are unlikely to recur and, on making such application, the applicant shall pay the appropriate plant breeders' fee.

(3) On receipt of an application under paragraph (2) and payment of the appropriate plant breeders' fee, the controllers shall consider and process the application in accordance with Breeders' regulations and if the controllers are satisfied that the circumstances which led to the grant of the compulsory plant variety licence or the cross licence under regulation 14(2) have ceased to exist or are unlikely to recur, the controllers may revoke the grant of the compulsory plant variety licence or the cross licence under regulation 14(2), subject to such terms and conditions as they think necessary for the protection of the legitimate interests of the holder of the compulsory plant variety licence or cross licence granted under regulation 14(2).

(4) On the application of any party at any time in accordance with rules, the Comptroller General of Patents may, having considered and processed the application in accordance with rules, extend, limit or in any other respect vary an order for grant of a cross licence under regulation 15(3) and extend, limit or in any other respect vary the licence granted under the order accordingly.

(5) A party may at any time apply to the Comptroller General of Patents in accordance with rules for an order to revoke a cross licence ordered to be granted under regulation 15(3), if the circumstances which led to an order for grant of the cross licence under regulation 15(3) have ceased to exist or are unlikely to recur.

(6) On receipt of an application under paragraph (5), the Comptroller General of Patents shall consider and process the application in accordance with rules and if the Comptroller General is satisfied that the circumstances which led to an order for grant of a cross licence under regulation 15(3) have ceased to exist or are unlikely to recur, the Comptroller General of Patents may revoke the order and terminate the licence granted under the order, subject to such terms and conditions as they think necessary for the protection of the legitimate interests of the holder of the cross licence.

(7) In paragraphs (4), (5) and (6), “party” means the proprietor of the patent concerned or the applicant, as the case may be, in an application under regulation 15(1) or their respective successors in title.