

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

Original: English

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

### Information from Members

#### Addendum

#### **CZECH 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 Czech Republic, by means of a communication from its Permanent Mission, dated 8 January 1999.<sup>1</sup>

#### **A. PATENT SYSTEM**

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?*

According to Section 4, paragraph c) of the Czech Patent Law No. 527/1990 Coll., patents are not granted on plant and animal varieties and essentially biological processes for the production and improvement of plants and animals. This provision is based on the Article 53(b) of the European Patent Convention. The inventions concerning plants and animals as such provided that they meet basic requirements of patentability do not fall under exclusion mentioned above. The application of patent practice in the Czech Republic does not dispose of any precedent of patent claim which would explicitly cover a plant or an animal.

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

(a) *Does your patent system not recognize entire plants or animals as inventions? If it does not, please cite the legal basis for this.*

See the reply 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 plant 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 reply to question 1 above.

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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.*

See Section 4, paragraph (a) of the Czech Patent Law according to which patents are not granted in respect of inventions contrary to public interest, particularly the principle 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.*

There has not been such a case in our implementing practice up to now.

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

There has not been such a case in our implementing practice up to now.

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

See the replies 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.*

See Section 2 (Terms Definitions) paragraphs (a) and (c) of the Law No. 132/1989 Coll., on Protection of Rights to New Plant Varieties and Animal Breeds. This Law was notified under the Article 63.2 of the TRIPS Agreement and was published in document IP/N/1/CZE/P/1 dated 27 February 1997.

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 paragraph (c) of the Czech 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)?*

According to the Czech Patent Law No. 527/1990 Coll., patents are granted to inventions which are new, which involve an inventive step and are susceptible of industrial application. The discoveries are not patentable. (See Section (3), paragraphs 1) and 2) of the Czech Patent Law.)

#### 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?

Yes.

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.

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 protection system is in conformity with the standards defined in the Act of International Convention for the Protection of New Varieties of Plants (UPOV) of 2 December 1961 in revised form in Geneva of 10 November 1972 and 23 October 1978.

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.*

Yes, the prior authorization is required.

*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 a 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).*

The Law 132/1989 Coll., on Protection of Rights to New Plant Varieties and Animal Breeds, in the Section 4, paragraph 2 and 3, determines the conditions for granting of plant variety. According to this Law a plant variety is new, if:

1. it was not sold nor offered for sale
  - (a) in the territory of the Czech Republic for more than one year prior to filling the application
  - (b) in the territory of another state for more than six years prior to filling the application
2. it was sold or offered for sale without the cultivator's consent.

*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, since these terms are clearly defined in the Law 132/1989 Coll.

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