

Supreme People's Court's Several Provisions on the Issue of Application of Specific Laws to Cases of Dispute Arising from Infringement of the Right of New Variety of Plants

(Adopted at the 1411th Meeting of the Adjudication Board of
the Supreme People's Court on 25 December 2006)
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With a view to duly hearing cases of dispute arising from infringement of the right of new variety of plants, these Provisions on the specific law application have been hereby set forth below under the General Principles of the Civil Law of the People's Republic of China and the Civil Procedure Law of the People's Republic of China and with reference to the practical experience and situation of trial of cases of dispute arising from infringement of the right of new variety of plants.

Article 1 Where an owner of the right in a new variety of plant (hereinafter referred to as a variety right owner) or an interested party believes that his right of new variety of plant is infringed, he may institute proceedings in the People's Court.

The interested parties mentioned in the preceding paragraph include licensees of contracts for exploiting new vari-

ety of plants and lawful heirs in title of the variety property right.

how the amount of damages caused because of the infringement of the patent right is determined; the amount of the damages caused because of the infringement of a trade secret under Articles 5, 9 and 14 of the Unfair Competition Law may be determined with reference to how the amount of damages caused because of the infringement of the exclusive right to use a trademark is determined.

Where an infringing act renders a trade secret known to the public, the amount of damages shall be determined on the basis of the commercial value of said trade secret. The commercial value of a trade secret shall be determined by taking into account of the factors, such as the cost of its R&D, revenue from exploiting it, its obtainable benefits, and the time when it keeps its competitive edge.

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A licensee of a contract for solely exclusive exploitation of a new variety of plant may solely institute proceedings in the People's Court; a licensee of a contract for exclusive exploitation of a new variety of plant may institute proceedings in the People's Court with the variety right owner, or does so when the variety right owner does not; and a licensee of a contract for non-exclusive exploitation of a new variety of plant may alone institute proceedings in the People's Court with express authorisation of the variety right owner.

Article 2 The People's Court shall establish, as infringement of the right of a new variety of plant, acts of making or marketing propagating material of the granted variety for commercial purposes without authorisation of the variety right owners or acts of repeated use of a granted propagat-

Article 18 The first-instance civil cases of unfair competition under Articles 5, 9, 10 and 14 of the Unfair Competition Law shall generally be under the jurisdiction of the intermediate people's courts.

A higher people's court may authorize a grassroots people's court to accept the first-instance civil cases of unfair competition according to the practical circumstances of the region under its jurisdiction and upon approval by the Supreme People's Court. A grassroots people's court that has been authorised to hear civil intellectual property cases may continue to do so.

Article 19 This Interpretation shall come into effect on 1 February 2007. ■

ing material to make another propagating material.

Where the character or nature of an alleged infringing article is identical with that of a granted variety, or the difference in character or nature does not result from genetic modification, the People's Court shall generally establish that the alleged infringing article is the propagating material of the granted variety made or marketed for commercial purposes.

Where an alleged infringer repeatedly and separately propagates, by using the propagating material of a granted variety, for the parent and another parent, the People's Court shall generally establish that the act is one of repeated use of the propagating material of the granted variety to make the propagating material of another variety for commercial purposes.

Article 3 Where the technical issue involved in a case of dispute arising from infringement of the right of a new variety of plant needs to be appraised, the appraisal shall be made by the qualified appraisal organisation or appraiser appointed by both parties through negotiation; where such negotiation fails, the qualified appraisal organisation or appraiser shall be appointed by the People's Court.

In the absence of the appraisal organisation or appraiser provided for in the preceding paragraph, the appraisal shall be made by a special technical organisation or those skilled in the art of testing of the relevant variety.

Article 4 In respect of a technical issue involved in a case of dispute arising from infringement of the right of a new variety of plant, appraisal may be made by way of field observation and testing, gene-finger print map testing.

The People's Court shall cross examine and determine, under the law, the evidential force of the conclusion of appraisal made in the manner provided for in the preceding paragraph.

Article 5 Where a variety right owner or interested party, when instituting proceedings in the People's Court against infringement of the right of a new variety of plant, also requests pre-trial cessation of the infringement of the right of the new variety of plant or requests evidence preservation, the People's Court may make a decision to this effect upon examination.

When taking the measure of evidence preservation, the People's Court may, under the specific circumstances of the case, invite those skilled in the art to assist in obtaining evidence under the relevant technical rules and procedure.

Article 6 The People's Court, in hearing a case of dis-

pute arising from infringement of the right of a new variety of plant, shall decide, under Article 134 of the General Principles of the Civil Law and the specific circumstances of the case, that the infringer is civilly liable for ceasing and desisting from infringement and for the damages.

The People's Court may determine, at the request of the infringe, the amount of damages on the basis of the injury suffered by the infringe or the benefits acquired by the infringer because of the infringement. Where an infringe requests to determine the amount of damages on the basis of the royalties for licensing the new variety of plant, the People's Court may duly determine the amount of damages on the basis of such factors as the type, time and scope of the license for exploiting the new variety of plant with reference to the royalties for licensing the new variety of plant.

Where it is difficult to determine the amount of damages under the preceding provision, the People's Court may take into account the factors, such as the nature, duration and consequence of the infringement, the amount of the royalties for licensing the new variety of plant, the type, time and scope of the license for exploiting the new variety of plant, and the reasonable fees the infringe has paid for making discovery and for ceasing the infringement, and determine the amount of the damages of no more than RMB 500,000 yuan.

Article 7 Where both the infringe and infringer agree on making evaluation in terms of money to cover the injury suffered by the infringe, the People's Court shall grant its permission. Where the infringe and infringer do not agree on making evaluation in terms of money to cover the injury, the People's Court orders, at the request of an interested party, the infringer to treat the infringing article by inactivation thereof, so that it will no longer be used as propagating material.

Where the infringing article is in the period of growth or where destruction of it will cause serious consequence, the People's Court may not take the method of destroying the infringing article, except otherwise provided for in the law and administrative regulations.

Article 8 Where a person or a leaseholding rural household undertaking farming or forest planting who breeds a propagating material with entrustment does not know that the propagating material is an infringing propagating material, and identifies the entrusting party, he or it shall not be liable for the damages. ■