

to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.

(c) A later application shall not by itself establish that a characteristic newly described was in the variety at the time of the earlier application.

(Pub. L. 91-577, title II, §55, Dec. 24, 1970, 84 Stat. 1548; Pub. L. 103-349, §§5, 13(i), Oct. 6, 1994, 108 Stat. 3139, 3143.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-349, §5(1), designated first sentence as par. (1) and second sentence as par. (2).

Subsec. (a)(1). Pub. L. 103-349, §5(2), inserted before period at end “, not including the date on which the application is filed in the foreign country”.

Subsec. (a)(2). Pub. L. 103-349, §13(i)(1), substituted “in the application filed in the United States” for “in his application”.

Subsec. (a)(3). Pub. L. 103-349, §5(3), added par. (3).

Subsec. (b). Pub. L. 103-349, §13(i)(2), substituted “the predecessor in title of the person” for “his predecessor in title”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-349 effective 180 days after Oct. 6, 1994, see section 15 of Pub. L. 103-349, set out as a note under section 2401 of this title.

§ 2426. Confidential status of application

Applications for plant variety protection and their contents shall be kept in confidence by the Plant Variety Protection Office, by the Board, and by the offices in the Department of Agriculture to which access may be given under regulations. No information concerning the same shall be given without the authority of the owner, unless necessary under special circumstances as may be determined by the Secretary, except that the Secretary may publish the variety names designated in applications, stating the kind to which each applies, the name of the applicant, and whether the applicant specified that the variety is to be sold by variety name only as a class of certified seed.

(Pub. L. 91-577, title II, §56, Dec. 24, 1970, 84 Stat. 1549; Pub. L. 96-574, §12, Dec. 22, 1980, 94 Stat. 3350.)

AMENDMENTS

1980—Pub. L. 96-574 inserted provisions relating to name of applicant and sale of the variety.

§ 2427. Publication

The Secretary may establish regulations for the publication of information regarding any pending application when publication is requested by the owner.

(Pub. L. 91-577, title II, §57, Dec. 24, 1970, 84 Stat. 1549; Pub. L. 96-574, §13, Dec. 22, 1980, 94 Stat. 3350.)

AMENDMENTS

1980—Pub. L. 96-574 inserted “information regarding” after “publication of”.

PART F—EXAMINATIONS; RESPONSE TIME; INITIAL APPEALS

§ 2441. Examination of application

The Secretary shall cause an examination to be made of the application and if on such exam-

ination it is determined that the applicant is entitled to plant variety protection under the law, the Secretary shall issue a notice of allowance of plant variety protection therefor as herein-after provided.

(Pub. L. 91-577, title II, §61, Dec. 24, 1970, 84 Stat. 1549.)

§ 2442. Notice of refusal; reconsideration

(a) Whenever an application is refused, or any objection or requirement made by the examiner, the Secretary shall notify the applicant thereof, stating the reasons therefor, together with such information and references as may be useful in judging the propriety of continuing the prosecution of the application; and if after receiving such notice the applicant requests reconsideration, with or without amendment, the application shall be reconsidered.

(b) For taking appropriate action after the mailing to an applicant of an action other than allowance, the applicant shall be allowed at least 30 days, and not more than 180 days, or such other time as the Secretary shall set in the refusal, or such time as the Secretary may allow as an extension. Without such extension, action may be taken up to three months late by paying an additional fee to be prescribed by the Secretary.

(Pub. L. 91-577, title II, §62, Dec. 24, 1970, 84 Stat. 1549; Pub. L. 103-349, §§6, 13(j), Oct. 6, 1994, 108 Stat. 3140, 3143.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-349 in first sentence substituted “mailing to an applicant” for “mailing to him”, “the applicant shall” for “an applicant shall”, “at least 30 days, and not more than 180 days” for “six months”, “the Secretary shall” for “the Secretary in exceptional circumstances shall”, and “as the Secretary may” for “as he may”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-349 effective 180 days after Oct. 6, 1994, see section 15 of Pub. L. 103-349, set out as a note under section 2401 of this title.

§ 2443. Initial appeal

When an application for plant variety protection has been refused by the Plant Variety Protection Office, the applicant may appeal to the Secretary. The Secretary shall seek the advice of the Plant Variety Protection Board on all appeals, before deciding the appeal.

(Pub. L. 91-577, title II, §63, Dec. 24, 1970, 84 Stat. 1550.)

PART G—APPEALS TO COURTS AND OTHER REVIEW

§ 2461. Appeals

From the decisions made under sections 2404, 2443, 2501, and 2568 of this title appeal may, within sixty days or such further times as the Secretary allows, be taken under the Federal Rules of Appellate Procedure. The United States Court of Appeals for the Federal Circuit shall have jurisdiction of any such appeal.

(Pub. L. 91-577, title II, §71, Dec. 24, 1970, 84 Stat. 1550; Pub. L. 97-164, title I, §145, Apr. 2, 1982, 96