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motion, or upon the request of any person who has applied for protection on the same variety, for which an adverse certificate has been issued, for the purpose of determining the question of priority between two or more parties claiming development or discovery of the same novel variety; *Provided, however*, That any person shall have forfeited his or her right to assert priority when an adverse certificate has been issued, if he or she fails to make a request for the institution of a priority contest within 1 year of the publication in the Official Journal of issuance of the adverse certificate by the Secretary, or if he or she fails to make the request within the period for taking action after refusal of the application on the basis of the adverse certificate.

§ 97.206 Preparation for priority contest between applicants.

(a) Before a priority contest will be handled by the Office, an examiner must determine that the same novel variety is involved in separate applications filed by two or more parties and apparently certifiable to each of the parties, subject to the determination of the question of priority.

(b) The fact that a certificate has been issued will not prevent a priority contest.

§ 97.207 Preparation of priority papers and declaration of priority contest.

(a) When a priority question is found to exist, the examiner shall forward the pertinent files to the Commissioner, together with a written statement showing the reason for the contest.

(b) The Commissioner shall institute and declare the priority contest by forwarding a notice to each of the applicants involved. Each notice shall include the name and residence of each of the other applicants or those of his or her attorney or agent, if any, and of any assignee, and will identify the application of each opposing party by number and filing date, or in the case of a certificate, by the number and date of the certificate. The notice shall specify the basis of the priority con-

the Act as it was in force prior to April 4, 1995.

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test. The notice shall specify a time, not to exceed 2 months, for filing preliminary statements.

(c) When a notice is returned to the Office undelivered, or when one of the parties resides abroad and his or her agent in the United States is unknown, notice may be given once by publication in the Official Journal.

§ 97.208 Burden of proof.

The parties to a priority contest will be presumed to have developed their varieties in the chronological order of the filing dates of their applications for certificates involved in the priority contest, and the burden of proof will rest upon the party who last filed an application.

§ 97.209 Preliminary statement on novel variety developed in the United States.

(a) Each party to the priority contest is required to file on or before a date fixed by the Office, a concise preliminary statement giving the facts and dates relating to the development of his or her alleged novel variety. The preliminary statement must be signed by the owner; *Provided, however*, That in appropriate circumstances, as when the owner is dead or legally incapacitated, or a showing is made of inability to obtain a statement from the owner, the preliminary statement may be made by the assignee or by someone authorized or entitled to make the statement, having knowledge of the facts.

(b) Preliminary statements shall be filed with the Office in duplicate. A copy shall be forwarded to each opposing party by the Office as soon as practicable after both parties have filed their statements within the requisite period.

(c) In filing a preliminary statement each party must show the following information:

(1) The date upon which the first determination of the novel variety was made.

(2) The date upon which the first written description of the novel variety was made. If a written description of the novel variety has not been made prior to the filing date of the application, it must be so stated.

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(3) The date of the first act or acts susceptible of proof (other than making a written description or disclosing the novel variety to another person), which, if proven, would establish determination of the novel variety, and a brief description of such act or acts. If there have been no such acts, it must be so stated.

(4) The date of the actual production of the novel variety. If the novel variety had not been actually produced before the filing date of the application, it must be so stated.

(d) When an allegation as to the first written description (paragraph (c)(2) of this section) is made, a copy of such written description shall be attached to the statement.

(e) If a party intends to rely on a prior application, domestic or foreign, the preliminary statement shall clearly identify such prior application. Copies of the cited application and related documents will be served by the Office, upon all interested parties to the contest. In the case of an application filed in a foreign country, English translations shall be served to all interested parties by the party relying on the application filed in the foreign country.

§ 97.210 Preliminary statement on novel variety developed in a foreign country.

When the novel variety was developed in a foreign country, the preliminary statement must show (a) the information specified in § 97.209 (c) through (e) and (b) whether, and if so, when and under what circumstances the novel variety was introduced into the United States by or on behalf of the party.

§ 97.211 Statements sealed before filing.

The preliminary statement shall be submitted in a sealed envelope bearing the name of the party filing it and the number and title of the priority contest as shown on the notice issued by the Office. The envelope should be enclosed in an outer mailing envelope marked "To Be Opened Only by the Commissioner."

§ 97.212 Correction of a statement on motion.

In case of material error arising through inadvertence or mistake, a preliminary statement may be corrected upon a satisfactory showing to the Commissioner that the correction is of material significance. Correction of the statement must be made as soon as practicable after the discovery of the error.

§ 97.213 Failure to file statements.

If any party to a priority contest fails to file a preliminary statement, he or she shall be restricted to his or her earliest effective filing date.

§ 97.214 Access to preliminary statements.

The preliminary statements shall be open to the inspection of any party after the date set for the filing of preliminary statements (§ 97.207(b)), but shall not be open to inspection prior to that time.

§ 97.215 Dissolution at the request of the Commissioner.

If during a priority contest, information is submitted or found which, in the opinion of the Commissioner, may render the variety ineligible for a certificate, the priority contest may be suspended by the Commissioner and referred to an examiner for consideration of the matter. The parties will be notified of the reason for the suspension. Arguments of the parties regarding the suspension will be considered, if filed within 60 days of the notification. The suspension will then be continued, modified, or dismissed, in accordance with the determination by the Commissioner.

§ 97.216 Concession; abandonment.

(a) An applicant or a certificate holder involved in a priority contest may, at any time, file a written concession of priority, or abandonment of the certificate, signed by him or her. Upon the filing of such an instrument by any party, the decision shall be rendered against the interested party by the Commissioner.

(b) A concession of priority may not be made by an assignee of a part interest.