

**§97.210**

(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.