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UPOV

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## INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

## ADMINISTRATIVE AND LEGAL COMMITTEE

## Thirtieth Session

Geneva, April 8 and 9, 1992

## FEES IN RELATION TO COOPERATION IN EXAMINATION

Document prepared by the Office of the Union

1. At its twenty-fifth ordinary session (October 24 and 25, 1991), the Council decided that the Administrative and Legal Committee (hereinafter referred to as "the Committee") should study the question of fees paid in connection with cooperation in examination, in particular the present relevance of the Recommendation on Fees in Relation to Cooperation in Examination, which was last amended on October 17, 1980, and the implications on cooperation in examination of the disparities between the various national fee tariffs, including the question whether it was appropriate for UPOV to make recommendations on these matters (see paragraph 21 of document C/25/12). The above-mentioned Recommendation is reproduced in the Annex to this document.

2. The Committee examined this question and other questions linked with it at its twenty-ninth session (October 21 and 22, 1991) and concluded that there was no need to update the Recommendation since it contained an escape clause [concerning the recommended level of examination fee for the principal species] (see paragraph 27 of document CAJ/29/7).

3. Two factors contribute to differences between the various levels of fee:

(i) the principles governing the financing of the authorities responsible for the protection of plant varieties (self-financing or subsidization);

(ii) the differences between economies and the purchasing power of currencies (see particularly paragraph 26 of document CAJ/29/7).

4. In view of these significant differences, the Office of the Union suggests that the Committee examine the possibility of amending the Recommendation in the following way:

(i) so as to provide that the payments linked to cooperation in examination be disassociated from the national fee levels and fixed (and periodically revised):

(a) at UPOV level, or

(b) bilaterally by the States which are cooperating;

(ii) by eliminating the recommended level of examination fee for the principal species.

5. The Office of the Union will prepare revised versions of the Recommendation and of the Model Agreement for International Cooperation in the Testing of Varieties\* in accordance with the decisions taken by the Committee.

6. The Committee is invited to take a position on the suggestions contained in paragraph 4 above.

[Annex follows]

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\* Its Article 7(1) to (3) reads as follows:

"(1) The requesting authority shall pay to the testing authority an amount equal to the full testing fee that would have been charged if an application in respect of the variety under test had been filed on the same date in the country of the testing authority.

"(2) When paragraph 2 of Article 5 applies, the amount payable shall be equal to the difference between the full testing fee and the testing fee which has been/is to be charged in respect of the prior application.

"(3) However, if the full testing fee has been/is to be charged in respect of a prior application, an administrative fee corresponding to the recommendation of the Council of UPOV or agreed upon by correspondence between the competent authorities shall be charged instead."

## ANNEX

**RECOMMENDATION ON FEES IN RELATION TO COOPERATION IN EXAMINATION**

adopted by the Council at its fourteenth ordinary session

The Council of the International Union for the Protection of New Varieties of Plants,

By virtue of Article 21(h) of the International Convention for the Protection of New Varieties of Plants (hereinafter referred to as "the Convention"),

Having regard to Article 30(2) of the Convention,

Having regard to the agreements on cooperation in examination already concluded between member States on the basis of the UPOV Model Agreement for International Cooperation in the Testing of Varieties,

Considering it of the utmost importance that cooperation in examination be based on a uniform and clearly defined system of fees and considerations,

Considering that the experience of cooperation in examination acquired on the basis of the aforesaid agreements makes it desirable to replace the Resolution on Fee Questions adopted during its seventh ordinary session, in October 1973 (document UPOV/C/VII/23), by the following,

Recommends to the member States of the Union that they establish or amend, as the case may be, their national plant variety protection legislation or practice, on the one hand, and the agreements on cooperation in examination, on the other hand, in accordance with the following principles.

1. Where the authority of one member State of the Union ("Authority B") takes over an examination report established by the authority of another member of the Union ("Authority A") for the purposes of its own procedure or of a procedure before a third authority:

(a) Authority B shall pay a fixed consideration equivalent to 350 Swiss francs to Authority A;

(b) in the State of Authority B, the applicant for the protection of the variety to which the examination report relates:

(i) shall be exempted from the examination fee, and

(ii) shall be charged an administrative fee which shall at least correspond to the consideration referred to in subparagraph (a) above.

2. Where Authority A conducts an examination at the request of Authority B:

(a) Authority B shall pay to Authority A a consideration equal to the appropriate examination fee payable in the State of Authority A;

(b) in the State of Authority B, the applicant for the protection of the variety to which the examination report relates shall be charged an amount which shall, as far as possible, correspond to the consideration referred to in subparagraph (a) above.

3. Member States of the Union shall, as a target fee at least for the economically most important genera and species, fix the fee for the normal examination period of two years or growing cycles at an amount corresponding to about 1350 Swiss francs unless special reasons justify the fixing of a different fee level.

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