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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Ninth Session
Geneva, April 26 and 27, 1982

HARMONIZATION OF PROCEDURES FOR THE EXAMINATION
OF PROPOSED VARIETY DENOMINATIONS

Document prepared by the Office of the Union

At its eighth session, the Administrative and Legal Committee decided to put on the agenda of its ninth session the item "harmonization of procedures for the examination of proposed variety denominations" and invited member States to send to the Office of the Union, by December 31, 1981, a brief description of the procedure observed by them and the resulting costs (see document CAJ/VIII/11, paragraph 27). The contributions of member States for the examination of this item appear in the annexes to this document as follows:

- Annex I : South Africa
- Annex II : Germany (Federal Republic of)
- Annex III : Denmark
- Annex IV : United States of America
- Annex V : France
- Annex VI : Israel
- Annex VII : New Zealand
- Annex VIII : Sweden
- Annex IX : Switzerland

[Annexes follow]

CONTRIBUTION OF SOUTH AFRICA

Extract of a Letter, Dated February 2, 1982, from Mr. J.F. Van Wyk,
Director of the Division of Plant and Seed Control,
to the Vice Secretary-General

The following is a brief description of the procedure observed in the examination of proposed variety denominations:

- (a) A proposed denomination must in South Africa be supplied at time of application for both Plant Breeders' Rights and Variety Listing.
- (b) For this reason Table IIA in the local publication, S.A. Plant Variety Journal, contains only the words "Vide IA", Table IA being the table of applications.
- (c) Local acceptance of the proposed denomination is based on comparisons with Journals supplied by other UPOV members, various catalogues of local and foreign commercial firms and different countries where available.
- (d) Objections are required from other UPOV countries within 60 days of publication.
- (e) Applications for both PBR and Variety Listing are published in the Government Gazette for notice and objection by locally interested parties.
- (f) The cost entailed in the procedure is probably in the neighbourhood of R30 per variety.

[Annex II follows]

CONTRIBUTION OF THE FEDERAL REPUBLIC OF GERMANY

Extract of a Letter, Dated February 9, 1982, from Mr. H. Kunhardt,
Federal Office of Plant Varieties, to the Vice Secretary-General

Variety denominations must be submitted in the Federal Republic of Germany on a special form which may be filed at the same time as the application for protection or at a subsequent date. The variety denomination submitted is then examined as to the risk of confusion with other variety denominations of the kind stipulated by Article 13 of the Convention by our computer service, using a program that is also described in a communication in our Gazette ("EDP Examination of Variety Denominations for Potential Confusion," see below). To this end, we store in our computer a collection of all variety denominations known to us (currently some 35,000). This inventory is continuously updated from the official gazettes of the other member States.

The computer print-out then provides a varying number of denominations having certain common phonetic features with the submitted denomination. The print-out is transmitted to the examiner within our office who is responsible for the relevant species. This examiner then decides on his own whether any of the prior denominations listed in the computer print-out does in fact have sufficient similarity with the submitted denomination for confusion to exist. It is also for the examiner alone to examine and decide whether the submitted denomination is otherwise suitable, in its composition, to be used as a variety denomination (e.g. whether it is pronounceable or whether it is not misleading).

No special fees are required from the applicant for the examination, publication and registration of the variety denomination. The applicant is required to pay a general fee amounting to DM 500 (in addition to the examination fees) for the administrative procedure. This covers all expenses in respect of the variety denomination. The costs we incur in processing a variety denomination are very difficult to estimate since in all divisions the examination of variety denominations always constitutes but a part of the processing of the application. Print-out of the stored variety denominations would, however, cost some 10 pfennigs per variety.

EDP Examination of Variety Denominations for Potential Confusion
(Extracts)

[...]

The examination for potential confusion is carried out with the help of a computer program. For this purpose, all variety denominations from the UPOV and EC States are entered in a file contained on punch cards and on magnetic discs. This data file is continually updated from the publications in the States mentioned above and from the changes in variety denominations made in the Federal Office of Plant Varieties.

It would not suffice to search the variety denomination file simply in accordance with alphabetical sequence since the similarity between two denominations can result from a word element in the middle or at the end of the denomination. A computer program has therefore been devised in which all letters or groups of letters having a similar sound are converted to code numbers.

During coding, all letters are checked step by step from left to right [see table 1].

[...]

The sequence of code numbers thus obtained in respect of the proposed variety denomination is then compared with those of the prior denominations in the computing program.

It can be decided in advance how long the section of the word is to be which may not coincide in two variety denominations. In the case of short denominations comprising four code numbers at most, a sequence of three numbers is used and in the case of longer denominations, a sequence of four or five numbers. In addition, since 1973, short denominations are also searched for sequences of letters in which, exceptionally, one letter changes in the coded sequence, e.g. the denominations "Manta" and "Malta."

Following this check, the computer prints a list for preliminary sorting of those variety denominations that could lead to refusal of the new denomination being examined. The decision is taken, in any event, by the corresponding examination division of the Federal Office of Plant Varieties, in which all other statutory grounds for exclusion are also examined.

Table 1

Letter group	Code number	Letter group	Code number
1	01	i, ie, ih, iy, ue, ui, y	19
2	02	j	20
.	.	l, ll	21
.	.	m, mm, n, nn	22
.	etc.	o, oh, oo, ow	23
9	09	qu, kw	24
0	10	r, rh, rr	25
space	11	s, ss	26
a, aa, ah	12	u, uh, uu, ou	27
b, bb, p, pp	13	x	28
cc, ch, ck, g, gg, k, kk and c not followed by e, i or y	14	z, zz, ts, tz and c followed by e, i or y	29
d, dd, dt, t, th, tt	15	sch, sh	32
ae, aeh, e, ee, eh, eux, oe	16	aeu, au, eu	33
f, ff, pf, ph, v, w	17	ai, aj, ay, aye, ei, eie,	
h	18	ey, eye	34

Table 2

Coding and comparison (on the basis of five code numbers)									
1) alphabetical coded		<u>E</u> <u>N</u> <u>D</u> <u>E</u> <u>R</u> L E I N		similar to	F A S S B <u>E</u> <u>N</u> <u>T</u> <u>E</u> <u>R</u>				
		<u>16</u> <u>22</u> <u>15</u> <u>16</u> <u>25</u> 21 34 22			17 12 26 13 <u>16</u> <u>22</u> <u>15</u> <u>16</u> <u>25</u>				
2) alphabetical coded		<u>E</u> <u>N</u> <u>D</u> <u>E</u> <u>R</u> L E I N		similar to	W <u>E</u> <u>E</u> <u>N</u> <u>D</u> <u>E</u> <u>R</u>				
		<u>16</u> <u>22</u> <u>15</u> <u>16</u> <u>25</u> 21 34 22			17 <u>16</u> <u>22</u> <u>15</u> <u>16</u> <u>25</u>				
3) alphabetical coded		E N D <u>E</u> <u>R</u> L E I N		similar to	S U P <u>E</u> <u>R</u> <u>L</u> <u>A</u> <u>I</u> <u>M</u>				
		16 22 15 <u>16</u> <u>25</u> 21 34 <u>22</u>			26 27 13 <u>16</u> <u>25</u> 21 34 <u>22</u>				

[Annex III follows]

CONTRIBUTION OF DENMARK

Extract of a Letter, Dated February 15, 1982, from Mr. L. Hendriksen,
Plant Variety Board, to the Office of the Union

As far as the Danish procedure of the examination of proposed variety denominations is concerned we can inform you that this is done manually by checking proposed variety denominations published in the other UPOV member States gazettes with the denominations for varieties granted Plant Breeders' Rights, added to the national Variety List or applied for any of these purposes in Denmark.

Due to the fact that this work is an integrated part of the other work in the office it is difficult to specify the costs in connection with checking proposed variety denominations. An estimate will be that the office spends about 24 hours each month on the subject variety denominations and about one half of this work is spent on proposed variety denominations.

[Annex IV follows]

CONTRIBUTION OF THE UNITED STATES OF AMERICA

Extract of a Letter, Dated February 12, 1982, from Mr. R.D. Tegtmeyer,
Assistant Commissioner for Patents, to the Vice Secretary-General

The United States has not yet finalized its practice. These comments should, therefore, be understood as no more than an indication of the features we presently expect our practice to include. This explanation applies only to the Patent and Trademark Office's registration of variety names.

Each applicant for a plant patent will at the time of filing a patent application be required to provide the variety name proposed for registration. The registration of the variety name will be a formal requirement for the obtaining of a plant patent. Therefore, no patent may be granted until the variety name has been approved by the examiner.

The examiner will examine the proposed variety name for compliance with the naming requirements set forth in the International Code of Nomenclature for Cultivated Plants. In addition, the examiner will determine if the variety name meets each requirement of UPOV Article 13(2). As part of the examination process, the examiner will consult the trademark register to assure as far as possible that the proposed variety name does not, in fact, conflict with any third party proprietary right.

In judging compliance of a proposed variety name with the requirements of UPOV Article 13(2), it is, of course, necessary to know the variety names already in use in the United States and elsewhere for the same species. Accordingly, the Patent and Trademark Office is now establishing collections of such names. We have corresponded with each of the international societies and associations concerned with the naming of asexually reproduced plant varieties. Replies and lists are being continually received. We also have available standard references of variety names and other sources of variety names in our existing library collection.

The issuance of a patent will constitute the registration of a variety name. We are planning a procedure for publishing proposed variety names prior to their registration. Thus, objections by a third party to a particular registration can often be resolved prior to issuance of the patent. We may also provide a procedure for substituting a new variety name after registration of the original name. It may turn out, for example, that a registered variety name is also someone else's trademark. If so, the patent owner is prohibited from using the name and should be given an opportunity to select another.

I trust this information will be helpful to the Secretariat in preparing for the next meeting of the Administrative and Legal Committee. I regret that we are not able to estimate the costs of our planned procedures, since their details are not finalized and we have yet to examine a variety name for registrability.

CONTRIBUTION OF FRANCE

Annex to a Letter, Dated January 28, 1982, from Mr. M. Simon,
Secretary General of the Committee for the Protection of
New Plant Varieties, to the Vice Secretary-General

DESCRIPTION OF THE PROCEDURE USED IN FRANCE FOR EXAMINING
PROPOSED VARIETY DENOMINATIONS

SchematicI. Reference listsCatalogued species

National catalogue
Common catalogue
OECD catalogue
National lists - protected varieties
National lists - varieties under examination
- approved denominations
- proposed denominations

Non-catalogued species

National lists - protected varieties
National lists
- approved denominations
- proposed denominations

II. Examination of proposed denominations

This is based on two types of examination, both of which are as yet far from perfect,

- a visual, empiric examination made by GEVES and by the CPOV Secretariat
- a systematic examination by publication of the variety denominations in the Committee's information bulletin in order to receive any objections.*

The visual check is to be replaced in 1982 or 1983 by a computerized check, meaning that all the registered and proposed denominations will have to be fed into the computer.

It is for the applicant to ensure that the proposed denomination does not conflict with an existing trademark.

The typed lists of variety denominations, periodically updated, will be communicated to the National Institute of Industrial Property--Trademark Office--as far as possible.

Annual costCurrent situation

- staffing: corresponding to 1,200 man hours for an administrative officer
- visual check
- publication in the bulletin
- running costs: secretariat, letters, telephone, telex, meetings: highly variable, more than 5,000 francs in 1981

* Experience shows that many users do not read these publications.

Future situation

- input, checking, phonetic translation, approximate cost: between 1 franc and 1.35 franc, not including the cost of operating manpower.
- comparison: one denomination compared against 1,000 in the file, approximate cost: 500 francs.

These very approximate data apply,

- after the hardware investment has been made
- and after the program has been written.

They will of course be reviewed once experience has been gained.

[Annex VI follows]

CONTRIBUTION OF ISRAEL

Letter, dated December 16, 1981, from Dr. H. Gelmond,
Chairman of the Plant Breeders' Rights Council,
to the Vice Secretary-General

Herewith is a short description of the procedure followed for the examination of proposed variety denominations, as requested.

Upon the receipt of an application for the registration of breeders' rights, we examine whether the proposed denomination is identical or similar to any other variety of the same species already granted breeders' rights in Israel. Due to the relatively limited number of applications annually filed in Israel, this is not difficult, especially so when the proposed denominations are Hebrew names, unlikely also to be identical to variety denominations registered abroad. To be on the safe side, however, we check plant breeders' rights gazettes received from member states, for duplications.

In case the proposed variety denomination is identical or misleading, we ask the applicant to propose another variety denomination, stating our reasons for our request. Usually, our request is met.

Moreover, we try to avoid accepting identical or similar variety denominations also for various crops. Here too, we ask the applicant to propose another denomination, although in this instance, we do not have a legal claim to reject it, should he insists on his first choice.

With respect to costs involved, as we do not publish acceptance or rejection of variety denominations as such, no expenses are incurred. Please note, variety denominations are published in Reshumot and in our gazettes as part of the description of the whole application.

May we take this opportunity to propose that the UPOV compile variety denominations of registered varieties in member states for distribution. Such a list will facilitate the examination procedure of variety denominations.

[Annex VII follows]

CONTRIBUTION OF NEW ZEALAND

Extract of a Letter, Dated January 26, 1982, from Mr. F.W. Whitmore,
Registrar of Plant Varieties, to the Vice Secretary-General

(a) When a variety denomination proposal is received, the staff of the Plant Varieties Office will check the denomination to ensure that it conforms with:

- the requirements of the New Zealand plant varieties legislation
- the requirements of UPOV
- the International Code of Nomenclature of Cultivated Plants 1969.

The proposed denomination may be rejected at this stage.

(b) The proposed denomination will be published in the "New Zealand Gazette" and also in the "New Zealand Plant Varieties Journal." As it is normal for the denomination proposal to be submitted with the application for variety protection, the notice of application for variety protection is usually combined with the notice of the proposed denomination.

The Plant Varieties Office would consider any objections that may be raised to a proposed denomination following publication.

(iii) Every proposed variety denomination is referred to the New Zealand Patent Office. Staff of the Patent Office conduct a search of their records and advise whether the denomination or one similar is protected by trade mark registration.

A proposed denomination may be refused as a result of advice from the Patent Office.

[Annex VIII follows]

CONTRIBUTION OF SWEDEN

Letter, Dated February 9, 1982, from Mr. E. Westerlind,
Head of Office, National Plant Variety Board,
to the Vice Secretary-General

Denominations proposed in connection with applications in Sweden for Plant Breeders' Rights and inclusion in the National list (about 80 denominations annually) are checked against registers for

- family names
- trade marks (Class 31)
- company names
- varieties registered in Sweden and other UPOV countries
- variety names in the Swedish national list (agricultural crops and vegetables), the EG and OECD lists and some European national lists.

Denominations published by other UPOV countries has been checked almost to the same extent up to April 1981. After that these denominations are chiefly checked against registers for cultivars registered in Sweden and varieties included in our national list. Concerning family names, trade marks and company names no special examination is done. Observations are made only in the case it is evident that proposed denominations are in conflict with commonly used family names, trade marks and company names.

Furthermore it is checked whether the denominations are in conflict with UPOV and national rules.

The examination is carried out manually by the office staff and the result is presented to the executive committee of the board for a final examination and decision.

The amount of work spent on checking variety denomination is estimated to about 15 % of the work of a secretary and 5 % of the work of the head of office. The resulting costs are estimated to 25,000 SwCrs annually or about 5 % of our total budget.

[Annex IX follows]

CONTRIBUTION OF SWITZERLAND

Extract of a Letter, Dated February 3, 1982, from Dr. W. Gfeller,
Head of the Office for the Protection of New Varieties,
to the Vice Secretary-General

1. Each proposed variety denomination is examined for confusion with an already protected variety denomination, using our file of variety denominations that contains all variety denominations that are protected in at least one member State of UPOV.
2. Using the objections collected so far from member States of UPOV in respect of proposed variety denominations, we also examine whether the proposed variety denomination has been the subject of observations from a member State of UPOV.
3. The proposed variety denomination is then published in the Patents, Designs and Marks Gazette if it fulfills the requirements of Article 6 of the Plant Varieties Protection Law.
4. On expiry of the three-month period for objections following publication, the proposed variety denomination is deemed de facto to be accepted.
5. Where the Office for the Protection of New Varieties considers a proposed variety denomination to be capable of confusion with a denomination that was filed at an earlier date or is already protected, but is not entirely certain, it can ask a consultative variety denomination committee for its opinion by correspondence. This variety denomination committee comprises experts from production and trade who are dealing every day with variety denominations.
6. All proposed and all registered variety denominations are communicated to the Marks Section in the Federal Office of Intellectual Property, particularly in order to implement Article 13(8)(b) of the UPOV Convention of 1961.
7. As far as the estimated costs are concerned, we base ourselves on actual processing time of some two hours for each variety denomination, including the time spent on maintaining and updating of our variety denomination file and also the costs for publication that are probably only covered in part. We estimate that a figure of 100 francs for each variety denomination would not be far out.

[End of document]