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UPOV

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Twelfth Session

Geneva, November 7 and 8, 1983

PROCEDURES FOR THE EXAMINATION OF PROPOSED VARIETY DENOMINATIONS

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DATA BASE FOR THE COMPARISON OF PROPOSED DENOMINATIONS WITH
PREEXISTING DENOMINATIONSDocument prepared by the Office of the Union

1. At its eleventh session, the Administrative and Legal Committee decided to enter on the agenda for its current session the matter of the comparison basis used in the examination of proposed denominations (see paragraph 32 of document CAJ/XI/11).
2. The Office of the Union invited the members of the Committee to reply before August 1, 1983, to the following two questions to enable it to draw up a document to serve as a basis for discussions:
 1. Assuming that the comparison basis contains the denominations of varieties whose existence is recognized, for example by the issue of a title of protection or inclusion in the catalogue, does the comparison basis also contain:
 - (a) denominations that are "approved" although protection or inclusion is still pending?
 - (b) proposed denominations?
 2. In the event of a positive reply to the preceding question, from which countries do those denominations come (that is to say, from the gazettes of which countries are they extracted)?
3. The Office of the Union received replies from the following States: Belgium, France, Germany (Federal Republic of), Hungary, Ireland, Israel, Japan, New Zealand, South Africa, Switzerland, United Kingdom. Their replies are summarized below.
4. In Hungary, the basis for comparison is currently limited to the denominations of varieties certified at national level. An extension of this basis is ongoing as a result of accession by Hungary to UPOV.

5. In Switzerland, the basis for comparison is limited to registered denominations by reason of the fact that 97% of applications for protection filed in that country concern varieties that have already been applied for or already granted protection in other member States of UPOV.

6. The other States take account in their examination of proposed denominations of other proposed denominations and of approved denominations. These are normally taken from the gazettes of all the other member States. In this respect, it should be noted that:

(i) Taking into account proposed or approved denominations, or even those that are officially registered in relation with the issue of titles of protection or entry of the varieties in the catalogue, presumes that the gazettes have both been produced and exchanged within a period of time that is compatible with the time needed for examining the proposed denominations (some of the replies contain a limitative list of States whose gazettes are taken into consideration and in one of the replies it is said that the denominations that have been proposed or approved in other member States are taken into consideration wherever possible).

(ii) It is possible that denominations from one State are not taken into consideration in another State where the linguistic differences are such that the risk of error on account of such omission are practically nil.

(iii) Taking into consideration the proposed or approved denominations raises a practical problem which also comprises legal aspects. Management of the data base must take into account the status of the various denominations (proposed, approved or definitively fixed) including their "disappearance" following refusal or the termination of the protection or entry procedure by reason of the rejection or withdrawal of the application. In this case, it has to be checked whether, despite withdrawal or rejection of the application, the corresponding denomination does not need to be maintained in the data base due to the fact that it has acquired some significance and its use may continue.

(iv) Taking these denominations into consideration also raises two basically legal problems:

(a) On which date priority is to be based (filing date or publication date)? It would seem from the replies that opinions differ.

(b) The member States do not all have the necessary legal basis for refusing a proposed denomination where it conflicts with a denomination proposed in another State. In such cases, the procedure for the denomination is suspended in Ireland, pending the decision taken as to the competing denomination. In the Federal Republic of Germany, the applicant is advised of the situation and of the fact that it is recommendable to propose a different denomination to avoid possible subsequent difficulties. Generally, the applicants follow this advice.

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