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UPOV**CAJ/XIII/5****ORIGINAL:** French**DATE:** March 16, 1984**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS****GENEVA****ADMINISTRATIVE AND LEGAL COMMITTEE**

Thirteenth Session
Geneva, April 4 and 5, 1984

**PILOT PROJECT IN THE EXAMINATION OF
PROPOSED VARIETY DENOMINATIONS**

Document established by the Office of the Union

1. At its twelfth session the Administrative and Legal Committee decided to examine the feasibility of a pilot project for centralized testing of proposed variety denominations as against pre-existing denominations. This pilot project would relate to *Elatior begonia* and *Chrysanthemum* and would be executed by the competent services of the Federal Republic of Germany and the United Kingdom, in participation with the member States of UPOV which are engaged in the system of cooperation in the field of examination of variety for the two species concerned.

2. As far the procedural details of the establishment of the project and its execution are concerned, the Delegations of the Federal Republic of Germany and the United Kingdom have been asked to contact, if necessary, the delegations of the other States participating in the project, and to report to the Committee at the next session. The proposals of the Delegations of these two States are attached as Annexes to this document.

[Annexes follow]

ANNEX I

PROPOSAL OF THE DELEGATION OF THE UNITED KINGDOM

Letter which Mr. G.J. Mossop, Plant Variety Rights Office of the United Kingdom, sent to the Vice Secretary-General on January 26, 1984



The Plant Variety Rights Office
White House Lane Huntingdon Road Cambridge CB3 0LF

Telex 817422

Telephone Cambridge (0223) 277151 ext

Dr H Mast
UPOV
34 Chemin des Colombettes
1211 Geneva 20
Switzerland

Your reference

Our reference

Date

26 January 1984

Dear Dr Mast

1. At its twelfth session, the Administrative and Legal Committee decided that UPOV would undertake a pilot project of centralised examination of proposed variety denominations against existing ones. The United Kingdom delegation agreed to carry out the project in respect of chrysanthemum varieties, and that of the Federal Republic of Germany in respect of elatior begonia.
2. We in the Plant Variety Rights Office (PVRO) at Cambridge have now considered all aspects of the project and our proposals are set out hereafter.
3. It may help if I outline briefly our current procedure for denomination checking. Until recently we relied on (i) a manual check within the office against variety denominations known to us (ii) a further check with the International Registration Authority for Chrysanthemums (IRA) and (iii) against expert knowledge of the trade as a high proportion of varieties are neither subject to Rights nor registered with the IRA. The first check is now computerised and we have plans to incorporate the IRA list of denominations into our computer system. We will retain the third check as a long stop. We are satisfied that denominations accepted by us are not likely to be confused with other UK variety denominations or those known to the IRA. We have relied on other Member States to check denominations proposed in our Gazette against denominations known to them and until the centralised checking system is fully operational this would continue.

/...

4. The UK computer system for denomination checking (Soundex) is a phonetic one assigning the same value to similar sounding letters and identifying denominations where there is coincidence of four sequential consonantal sounds. The following are the seven groups into which the alphabet is divided: all letters within a group are assigned the same value:

- 0 = A E H I O U W Y
- 1 = B F P V
- 2 = C G J K Q S X Z
- 3 = D T
- 4 = L
- 5 = M N
- 6 = R

We have found that the system copes adequately with the vagaries of English pronunciation and consider the limited groupings should suffice to identify potentially similar sounds in other European languages. Admittedly a few changes may be necessary, eg. W to group 1 and Y to group 2 but we could effect such fairly easily.

5. Maximum option

The PVRO on completion of its reference collection of denominations (see paragraph 8) is prepared to check submitted proposed denominations and comment as follows:

(A) Guidelines for variety denominations (C/VII/22 of October 12, 1973)

- (i) The proposed denomination does/does not contravene Articles 1, 2, 3, 5(2), 6, 7, 9 or 10.
- (ii) The proposed denomination does/does not, as far as the UK alone is concerned, contravene Articles 4, 5(1), 5(3), 5(4) or 8.

(B) Recommendations on variety denominations (10M/I/5 of May 4, 1983)

- (i) The proposed denomination does/does not contravene Recommendations 1, 2, 3, 5(i)-(iv), 7, 8 or 9.
- (ii) The proposed denomination does/does not, as far as the UK alone is concerned, contravene Recommendations 4, 5(v) or 6.

In either instance we would give the reasons for the contravention (including similar denominations). Under this option we would expect the UK recommendation under A(i) or B(i) to be followed normally and Member States to make the decision on A(ii) or B(ii). The Member State would inform us if the name is rejected.

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6. Minimum option

The PVRO would limit its check to Article 7 or Recommendation 7 and notify the requesting Member State of any similar denomination or that none had been found. The Member State would make the final decision and notify us if the name is to be rejected.

7. The CAJ is requested to decide which of the options outlined in paragraphs 5 and 6 it requires to be operated or agree a third option within that range.

8. In order to perform effectively the PVRO will need to assemble a reference collection of denominations covering all Member States of UPOV for which it tests chrysanthemum varieties. We will therefore need a substantial initial input from these other states. This we will require in the format set out in the Annex: it should cover all protected varieties (including those once protected but no longer and those for which there are current applications) and other varieties used for denomination checking in the individual states. It would be helpful but not essential if Member States could supply lists of names which they have rejected (on other than colour grounds) and would do so in future if proposed. In addition we would appreciate the name and address of the authority from which we could obtain a copy of the National Register of varieties.

9. Operation of project

Following the decision at paragraph 7 Member States would submit their lists (paragraph 8 and Annex) to the PVRO. We would not guarantee effective operation until the last list was received and assimilated into our system. Until I have some idea of the input from other states I am unwilling to give a starting date.

10. Notification to PVRO of denominations for checking

In an ideal world all Gazettes would arrive in other Member States shortly after publication and allow ample time for objections to denominations to be made. This does not always happen and there have been occasions when we have received Gazettes after the objection period has expired. The opinion and agreement of the CAJ is sought on which of the following courses should be followed:

- (i) Member States to submit denominations direct to the PVRO prior to or contemporaneously with publication in their Gazette.
- (ii) Objections to Chrysanthemum denominations from PVRO, UK to be taken notice of even if received after the 3 month period.
- (iii) The form for the request of examination results (C/XI/5 Annex) be taken by PVRO as the request for denomination checking and the result of the check to be communicated when that form is returned.

/...

11. Procedure at PVRO

On receipt of denominations they would be checked within one week and a recommendation as to their suitability made to the originating state. If the denomination includes a colour our recommendation would be that although the denomination would not cause confusion acceptance of the colour part of that denomination must await the outcome of the DUS test. If 10(i) or (ii) is adopted we would prefer to make a composite reply monthly on the last working day of the month if such is acceptable to the CAJ.

12. I am copying this letter to Member States with whom we have or are about to have bilateral agreements on chrysanthemum testing in case they wish to open discussions with us prior to the April meeting.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'David J. Mossop', with a stylized flourish at the end.

D J Mossop

[Appendix follows]

APPENDIX TO ANNEX I

Denomination	Breeders' Reference if different	Breeder	W H E R E A P P L I C A B L E				
			Application number in Member State	Application No. 15/...	I F K N O W N		Any other useful information
					Trade Names Used	Other states in which commercialised	

- Column 1 For protected varieties enter the name protected
For non-protected varieties enter the name generally used
- 2 Enter if known and if different from that in column 1
- 3 Enter name of breeder where known
- 4 If an application for protection has been received enter the application number assigned
- 5 If the variety has been tested in the UK enter the UK AFP Number in abbreviated form, ie. the number following 15/ only
- 6 Enter any names other than that in Column 1 under which the variety is known to have been commercialised
- 7 Enter the country code of any other country in which you know the variety is commercialised
- 8 Enter any further information about the variety which you consider would be useful

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ANNEX II

PROPOSAL BY THE GERMAN FEDERAL PLANT VARIETIES OFFICE

Transmitted to the Office of the Union
with Letter of March 6, 1984

1. Proposal by the Plant Variety Rights Office (PVRO)

The PVRO proposal contained in their letter of January 26, 1984 (Annex I to this document) would enable us to participate in the centralized examination of variety denominations for Chrysanthemum. Any further unresolved details could be agreed bilaterally. In addition, section 3 below gives our comments on a number of points in the proposal.

The fact that our procedures differ slightly is not expected to cause any problems for the pilot project since the basic principles are the same and lead to the same results and since the knowledge likely to be gained from the pilot project will make further harmonization possible.

2. Procedures in the Federal Plant Varieties Office

In order to provide some general information on the services we are able to supply within the project, we would first like to describe our system:

2.1 Stored Variety Denominations

In addition to the German variety denominations, we have also stored variety denominations that, as far as we are aware from the official gazettes, have been approved in other member States. Variety denominations from other States, which have only been submitted but not yet approved, are only put in secondary storage if the information available to us does not permit the approved variety denomination to be stored.

2.2 Variety Denominations for Examination

We check against the variety denominations stored in accordance with paragraph 2.1 all the denominations,

2.2.1 submitted to the Federal Plant Varieties Office,

2.2.2 published in the official gazettes of other member States as having been submitted, in order to check whether we have any comments to make on those variety denominations with regard to UPOV regulations. Such comments could also be forwarded to the authorities of another member State in those cases where a previous variety denomination opposes the proposed denomination in another member State, although not in the Federal Republic of Germany.

2.3 Computerized Examination

The variety denominations to be examined (paragraph 2.2) are checked on the computer against the stored variety denominations (paragraph 2.1) for identity or possible confusion by means of a phonetic code. This code is used to find those denominations that have the same phonetic sequence as the examined denomination, whereby the number of letters comprising the sequence (three, four or five) depends on the length of the denomination. Those letters and groups of letters which (at least in German) may be phonetically similar, as described in paragraph 4 of the PVRO letter, are grouped together. The groups are composed as follows:

1. a, aa, ah
2. b, bb, p, pp
3. cc, ch, ck, g, gg, k, kk and c, except when before e, i or y,
4. d, dd, dt, t, th, tt
5. ae, aeh, e, ee, eh, eux, oe
6. f, ff, pf, ph, v, ww
7. h
8. i, ie, ih, iy, ue, ui, y
9. j
10. l, ll
11. m, mm, n, nn
12. o, oh, oo, ow
13. qu, kw
14. r, rh, rr
15. s, ss
16. u, uh, uu, ou
17. x
18. z, zz, ts, tz and c, if followed by e, i or y
19. ce
20. ci, cy
21. sch, sh
22. aeu, au, eu
23. ai, aj, ay, aye, ei, eie, ey eye

As a result of this relatively complicated breakdown, a relatively large number of variety denominations is sometimes obtained which the subsequent examination--particularly as regards other languages--then determines as not in fact liable to cause confusion. However, this procedure provides a very high probability of missing no variety denomination that could have any similarity whatsoever with the examined denomination, not only as regards German, but probably also in other languages.

2.4 The Result of the Computerized Examination

The result of the examination referred to in paragraph 2.3 is a computer printout containing (in addition to various data for internal use which are irrelevant in this case) the following data in respect of the examined denomination and the variety denominations already stored:

- the variety denomination,
 - the serial number given by the State of application,
 - the name of the applicant if known in the German Register of Applicants (that is to say where he has also submitted a denomination in the Federal Republic of Germany); further extension to the names of breeders who have not as yet submitted applications to the Federal Plant Varieties Office would not seem impossible, at least at first view, in respect of the pilot project,
 - date of approval or of notification of approval of the variety denomination
- and, additionally, for the stored denominations:
- the date of grant of protection and, as appropriate,
 - the date of deletion of the variety.

The printout is forwarded to the examiner responsible for the variety, who then takes a decision on the denomination, taking two aspects into account:

2.4.1 Is the submitted denomination in fact so similar to another denomination contained in the printout that it could be confused with that denomination?

2.4.2 Does the denomination also satisfy the UPOV recommendations, (e.g. suitability as a generic designation, not misleading)? We normally carry out this examination first and only if no objections are forthcoming do we carry out the examination under paragraph 2.4.1. The above sequence would also be appropriate for the purposes of centralized examination, for the reasons listed below.

Proposal for a Centralized Examination Procedure

3.1 The responsible authorities of the other participating member States would communicate to us at the beginning of the project their collections of approved variety denominations to enable us to check our collection of stored variety denominations (see above paragraph 2.1) as to its completeness and, where necessary, to supplement it.

In view of the differing systems used in the member States, bilateral agreement can be reached as regards the communication, but it should contain at least the data listed in paragraph 2.4.

3.2 The participating authorities would then each communicate to us their applicant denominations for examination. This could be done as follows:

3.2.1 Publication in the official gazette followed by prompt communication to us of the gazette. However, we also perceive the problems set out in paragraph 10 of the PVRO paper.

3.2.2 Communication of a request in accordance with paragraph 10(i) of the PVRO proposal, for which a form corresponding to the model in the Annex is proposed for discussion.

3.3 After examination of the variety denomination in accordance with paragraph 2.3, the Federal Plant Varieties Office will return the completed form, together with the printout referred to in paragraph 2.4, to the requesting authority. The examinations referred to in items 2.4.1 and 2.4.2 would thus be the responsibility of the requesting authority, which alone would have to take the decision, on the basis of the complete documentation. This would therefore correspond to the minimum option in paragraph 6 of the PVRO paper. However, in those cases in which we wish to make comments on the variety denomination in accordance with the second sentence of Article 13(6) of the Convention, we could enclose the corresponding UPOV form with the examination report. This would constitute a mixed version of the maximum option and the minimum option in paragraphs 5 and 6 of the PVRO paper.

3.4 The office of submittal would inform the examining office in those cases in which it rejects the variety denomination and would state its grounds wherever possible (paragraph 6 of the PVRO paper).

It would also be desirable for the office of submittal to inform the examining office of the approval of the examined variety denomination to enable it to be stored as rapidly as possible after approval.

[Appendix to this Annex follows]

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APPENDIX TO ANNEX II

M o d e l

(Requesting Authority)

To
(Examining Office)

Subject: Centralized Examination of Variety Denominations

The following variety denomination has been submitted:

Species, common name:

botanical name:

Denomination submitted:

Applicant:

Original breeder (if not applicant)

Submitted on:

Serial No.:

Please inform us of any existing variety denominations that are identical or could be confused with the above denomination.

Observations (other information available, reference to withdrawal or refusal of an earlier denomination submitted for the same variety, etc.):

(signature)

(examining office)

Original to
(requesting office)

☒ No denominations have been found

☐ The denominations listed in the attached printout have been found

☐ Other observations in separate attachment

(signature)

[End of document]