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UPOV

CAJ/XIII/7

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Thirteenth Session
Geneva, April 4 and 5, 1984

IMPROVEMENT OF UPOV MODELS

Document prepared by the Office of the Union

1. The Collection of the Texts of the UPOV Convention and Other Important Documents Established by UPOV (UPOV Publication 644) contains a number of models which have been adopted in the past either by the Council of UPOV or, with the authorization of the Council, by a Committee of Experts on International Cooperation in Examination; they include the UPOV Model Form for the Application for Plant Breeders' Rights (part 10 of the Collection), the UPOV Model Form for the Application for a Variety Denomination (part 11) and the UPOV Model Agreement for International Cooperation in the Testing of Varieties (part 19).

2. The UPOV Model Agreement for International Cooperation in the Testing of Varieties has been the basis for a number of bilateral agreements concluded between UPOV member States. The five UPOV member States which, in the framework of such bilateral cooperation, have so far performed examination work for other member States have tried, in expert meetings, to improve the system of cooperation. During the fifteenth ordinary Council session the work of those member States was explained as follows (paragraphs 80 and 81 of document C/XVII/15):

"The representatives of Denmark, France, the Federal Republic of Germany, the Netherlands and the United Kingdom had continued their efforts towards closer cooperation. It was now planned to introduce in the bilateral agreements between those States provisions to the effect that each of those States would automatically use the results of tests carried out by any other State of that group, in respect of the largest possible number of varieties of the largest possible number of species for which more than one national examination systems existed. In other words, the aim was that there should only be one single examination for each variety. To that end, the examination methods were to be harmonized even further. It was moreover envisaged that examination would be increasingly centralized with the services of a single member State that would carry out such examination on behalf of the services of all the other member States participating in the cooperation arrangements, particularly for species to which protection was to be newly extended in future by the States participating in the arrangements. Finally, work was in hand towards drawing up a standardized application form.

"Such cooperation should not be limited to the protection of new plant varieties but should also concern the national catalogues of varieties approved for marketing (it being understood that the States should continue to carry out separate tests to assess the value for cultivation and use where such had to be carried out prior to entry in the catalogues). Once such cooperation had taken shape, it would be necessary to examine the conditions for participation by any other interested member States of UPOV."

3. In the course of these efforts of the five UPOV member States drafts have been prepared by them for an improved Model Form for the Application for Plant Breeders' Rights and for an improved Model Agreement for International Cooperation in the Testing of Varieties. Both models, which are attached (with minor drafting improvements) as Annex I and Annex II respectively to this document, have been forwarded to the Office of the Union and the wish has been expressed that they be discussed in the Administrative and Legal Committee so that all member States have the opportunity to examine whether those models may be the subject of a general UPOV recommendation. Annex III to this document contains a new UPOV Model Form for the Application for a Variety Denomination which has been adapted by the Office of the Union to the new Model Form for the Application for Plant Breeders' Rights.

4. The Administrative and Legal Committee is invited:

(i) to examine the three models attached to this document;

(ii) to discuss the question of whether it should be recommended to the Council that the three models contained at present in parts 10, 11 and 19 of the Collection be replaced by appropriate new models.

[Annexes follow]

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ANNEX I

MODEL FORM

APPLICATION FOR PLANT BREEDERS' RIGHTS

prepared by five members States of UPOVOffice where
application is
filed

NOTE: First consult the instructions

(file mark)

1. An official copy of the submitted application including the date of filing is requested as a certification of priority in the following States:				
2. Applicant(s): name(s) and address(es)	3. Address to which correspondence is to be sent			
nationality(ies): _____	This is the address <input type="checkbox"/> of one of the applicants <input type="checkbox"/> of the agent/proxy <input type="checkbox"/> for service			
4. Species and crop				
5. Proposed denomination (in block letters) _____ Breeder's reference _____				
6. The original breeder(s) is (are) <input type="checkbox"/> the (all) applicant(s) <input type="checkbox"/> the following person(s): To the best of my/our knowledge there is no other original breeder.				
7. The variety was transferred to the applicant(s) by: <input type="checkbox"/> contract <input type="checkbox"/> succession <input type="checkbox"/> other (specify) _____				
8. The variety was bred in (States(s)) _____				
9. Further applications	Filing (State/date)	Application No.	Stage	Denomination or breeder's reference
Plant breeders' rights				
Official variety list				
Technical examination of the variety (for which protection is sought) has already been completed/is in progress (State):				
10. <input type="checkbox"/> Priority is claimed in respect of the application filed in (State) _____ on _____ (date)				
11. <input type="checkbox"/> The variety has not been offered for sale or marketed anywhere <input type="checkbox"/> The variety has been offered for sale or marketed for the first time in (State) _____ on (date) _____ under the denomination _____				
12. I/We declare that the material provided with the first application is representative of the variety and relevant to this application. Authorization is hereby given to the Plant Breeders' Rights Office to exchange with the competent authorities of any UPOV member State all necessary information and material related to the variety, provided that the rights of the applicant of the applicant are safeguarded.				
13. Other forms and documents attached: <input type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> a <input type="checkbox"/> b <input type="checkbox"/> c <input type="checkbox"/> d <input type="checkbox"/> e <input type="checkbox"/> f				

FOR OFFICIAL
USE ONLY

I/We hereby apply for the grant of plant breeders' rights.

I/We hereby declare that, to my/our knowledge, the information necessary for the examination of the application and given in this form and in the annexes is complete and correct.

Place _____ Date _____

INSTRUCTIONS FOR COMPLETING THE FORM

General Instructions

- 0.1 Dates should be written in year-month-day order (example: 76-01-14)
- 0.2 States are to be designated by their car registration codes (B, CH, D, DK, E, F, GB, H, I, IL, IRL, J, NL, NZ, S, USA, ZA)

ItemsAd 2:

- 2.1 Give the full name and address, including country, of the applicant (natural person or firm). Where there is more than one applicant, give the names and addresses of all of them; if the space under 2 is not sufficient for all the necessary details, give only the names under item 2 and add the addresses on a separate page attached to this form.
- 2.2 Where the applicant wishes to have correspondence sent to his own address, the address must be sufficiently complete to ensure delivery by the postal service. Telephone and telex numbers would be appreciated.
- 2.3 Specify nationality only in the case of natural persons.

Ad 3:

- 3.1 This must be an address in the State of application and must be sufficiently complete to ensure delivery by the postal service. Telephone and telex numbers would be appreciated.
- 3.2 Where one joint applicant has been authorized to act for the other joint applicants or an agent or proxy has been named, attach a power of attorney issued by the applicant(s) on whose behalf the joint applicant or agent is authorized to act.

Ad 4:

- 4.1 The names of the species (or genus, subspecies, etc.) must be the same as those appearing in the legislation of the State of application.

Ad 5:

- 5.1 Either the proposed variety denomination or a breeder's reference should be given. Where a variety denomination is given, a breeder's reference should preferably also be given. The breeder's reference must be the same in all applications; it may be the first variety denomination. If no breeder's reference is given any denomination given will be treated as the breeder's reference.
- 5.2 Where the applicant does not propose a denomination on this form, he will be required to do so at a subsequent date.

Ad 6:

- 6.1 Mark the first box with a cross if (all) the applicant(s) is (are) the breeder(s) of the variety.

Mark the second box with a cross if not all the applicants are the breeders of the variety and/or if (a) third person(s) is (are) the breeder(s) of the variety. Give the name(s) and address(es) of the breeders (if not given under 2).

Ad 9:

- 9.1 "Plant Breeders' Rights" includes plant patents and special titles of protection.
- 9.2 "Official variety list" means any list of varieties whose marketing is authorized by the competent authorities.
- 9.3 Specify all prior applications without exception in chronological order, including those filed in States that are not members of the International Union for the Protection of New Varieties of Plants (UPOV).
- 9.4 In the "Stage" column use the following abbreviations:
- A = application pending
 - B = application rejected
 - C = application withdrawn
 - D = plant breeder's rights granted or variety entered in official variety list
- 9.5 If the variety denomination under which the application was filed in the other State(s) was not accepted by the authority concerned, give also the accepted denomination and underline it.

Ad 13:

- 13.1 Application forms and other relevant forms are available at the Plant Breeders' Rights Office.
- 13.2 In addition to the application form, the following forms and documents are to be submitted to the Plant Breeders' Rights Office:
- 1 *) Variety description: Attach the description of the variety on the special Technical Questionnaire for the species to which the variety belongs and mark box 1 with a cross;
 - 2 Power of attorney: If one joint applicant has been authorized to act for the other joint applicants or an agent or proxy has been named, attach the power of attorney referred to in 4.2 and mark box 2 with a cross;
 - 3 Priority claim: If the priority of the first application is claimed, a certified copy of the documents which constitute that application must be forwarded to the Plant Breeders' Rights Office within three month of the date of filing of the present application; if that copy is attached, mark box 3 with a cross.

*) Special forms must be completed

[Annex II follows]

UPOV MODEL FORM (second version)
APPLICATION FOR A VARIETY DENOMINATION

prepared by the Office of the Union

Office where
application
is filed

NOTE: First consult the instructions

FOR OFFICIAL
USE ONLY

1. This application refers to the variety filed under application number _____ Initially proposed denomination or breeder's reference _____			
2. Applicant(s) name(s) and address(es)		3. Address to which correspondence is to be sent	
		This is the address <input type="checkbox"/> of one of the applicants <input type="checkbox"/> of the agent/proxy for service	
4. Species			
5. Proposed denomination (in block letters)			
6. Denominations submitted or registered in other member States of UPOV			
State	Stage	Denomination (if different from 5 above)	
7. <input type="checkbox"/> The proposed denomination has been filed by or registered for the applicant(s) as a trademark in the State of application, in a UPOV member State or with the International Bureau of the World Intellectual Property Organization (WIPO) in respect of products that are identical or similar within the meaning of trademark law.			
State and/or WIPO	Date of application	Date of registration	Registration number
8. Trademark renunciation: States will enter a renunciation clause drafted by them according to their domestic laws			
9. Applications in the Federal Republic of Germany only:			
<input type="checkbox"/> The priority of the trademark/mark filed or registered in the Federal Republic of Germany mentioned under item 6 is claimed. Proof of the application or registration certified by the German Patent Office <input type="checkbox"/> is attached <input type="checkbox"/> will be forwarded to the Bundessortenamt (Federal Office of Varieties) within three months			

Done at (place) _____ on (date) _____

Signature(s) _____

UPOV Model Form (Denomination)

INSTRUCTIONS FOR COMPLETING THE FORM

General Instructions

- 0.1 It is recommended that dates be written in year-month-day order (example: 76-01-14).
- 0.2 States are to be designated by their car registration codes (exception: United Kingdom = UK).
- 0.3 "State of application" means the State in which this application is filed.
- 0.4 "Plant Breeders' Rights Office" means the office competent for the grant of plant breeders' rights in the State of application.

ItemsAd 1:

Where this form is filed simultaneously with the form for the application for plant breeders' rights, nothing is to be entered under 1. Where this form is filed at a later stage, the application number to be given is that under which the application for plant breeders' rights has been registered by the Plant Breeders' Rights Office.

Ad 3:

- 3.1 Where the address is the same as for the application for the grant of a plant breeder's rights, nothing is to be entered under 3.
- 3.2 This must be an address in the State of application and must be sufficiently complete to ensure delivery by the postal service. Telephone and tel-ex numbers would be appreciated.
- 3.3 Where one joint applicant has been authorized to act for the other joint applicants, or an agent or proxy has been named, attach a power of attorney issued by the applicant(s) on whose behalf the joint applicant or agent is authorized to act.

Ad 4:

The name of the species (genus, subspecies, etc.) must be the same as that appearing in the legislation of the State of application.

Ad 5:

For the requirements that the proposed variety denomination has to fulfill, see the guide furnished by the Plant Breeders' Rights Office.

Ad 6:

- 6.1 Specify all prior denominations without exception in chronological order.

6.2 In the "Stage" column use the following abbreviations:

- A = application pending
- B = denomination rejected
- C = denomination withdrawn
- D = denomination accepted.

Ad 9

If the priority mentioned under 9 is claimed, the proof certified by the German Patent Office must, if not attached, be produced within three months of the filing of this form. Failure to produce the proof by the prescribed date, cancellation of the trademark or withdrawal or rejection of the application for the trademark before the grant of protection will lead to forfeiture of the priority claim for the variety denomination.

[Annex III follows]

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ANNEX III

DRAFT

MODEL ADMINISTRATIVE AGREEMENT FOR
INTERNATIONAL COOPERATION IN THE TESTING OF VARIETIES

prepared by five member States of UPOV

- WHEREAS the centralization of technical testing for distinctness, homogeneity and stability of varieties of plants belonging to certain genera/species has proved valuable in the field of cooperation,
- WHEREAS, where applications in respect of one variety have been filed in more than one country, it is desirable that the testing for distinctness, homogeneity and stability be carried out by only one authority,
- WHEREAS any arrangements in this respect must necessarily be made on a trial basis and be reviewed and evaluated after five years,
- WHEREAS parties should as far as possible offer each other testing facilities in order that their lists of genera/species eligible for protection may be standardized,
- WHEREAS parties are willing to contemplate comparable agreements with other countries,
- WHEREAS these arrangements should promote the standardization of technical procedures and the centralization of testing for distinctness, homogeneity and stability,

Party A

and

Party B

have agreed as follows:

Art. 1

(1) Authority A shall carry out, at the request of Authority B, the technical testing for distinctness, homogeneity and stability of varieties of plants, belonging to the genera/species listed in Annex I, for which applications have been made for the granting of plant breeders' rights in accordance with the International Convention for the Protection of New Varieties of Plants, and/or for which applications have been made for inclusion in the national lists of plant varieties.

(2) Authority B undertakes under the same conditions to carry out, at the request of Authority A, the same testing in respect of plant varieties belonging to the genera/species listed in Annex II.

Art. 2

Where the Council of UPOV has adopted Guidelines for the conduct of the testing of species subject to this agreement, the testing shall be conducted according to those Guidelines. In the absence of such Guidelines the authorities shall adopt the test methods by mutual consent before this administrative agreement is applied to the species in question.

Art. 3

- (1) For each variety the testing authority shall submit to the requesting authority the reports relating to each testing period and a final examination report.
- (2) The final report shall detail the results of the tests concerning the characteristics of the variety and shall state the opinion of the testing authority on the distinctness, homogeneity and stability of the variety. When those requirements are considered to be fulfilled or when the requesting authority asks for it, a description of the variety shall be added to the report.
- (3) Reports and descriptions shall be written in (language).
- (4) Notice of any emerging problems shall immediately be given to the requesting authority.

Art. 4

- (1) The authorities shall take all necessary steps to safeguard the rights of the breeder.
- (2) Except with the specific authorization of the requesting authority or the applicant, the testing authority shall refrain from passing on to a third person any material of the varieties for which testing has been requested.
- (3) Access to the documents and the test plots shall be given only to:
 - the requesting authority and the applicant and any person duly authorized by either of them;
 - the necessary staff of the institution that carries out the testing and special experts called in who are bound to secrecy in public service. Those special experts shall have access to the formulae of the hereditary composition of hybrid varieties only if it is strictly necessary and if the applicant does not object.

This paragraph does not exclude general access to test plots by visitors, provided due regard is had to paragraph 1 above.

- (4) If another authority has requested testing or test results under a similar agreement, access may be granted in accordance with the rules applicable under that agreement.

Art. 5

- (1) Each authority, unless it exceptionally decides otherwise, shall examine an application for the grant of plant breeders' rights on the basis of the test results of the other authority where that other authority has tested or agreed to test the variety for distinctness, homogeneity and stability following a prior application.
- (2) If the prior application ceases to exist, the authorities may agree on the continuation of the tests on behalf of the requesting authority.
- (3) With respect to one or more genera/species each authority may declare unilaterally that it will apply paragraph 1 to applications for inclusion in its national list of plant varieties.
- (4) [This Article does not apply/applies to varieties of the genera/species listed in Annex III].

(5) The testing authority under this Article shall apply Articles 2, 3, 4 and 5 mutatis mutandis.

Art. 6

Practical details arising out of this Agreement, including application forms, technical questionnaires and requirements as to propagating material, test methods, exchange of reference samples, maintenance of reference collections and the presentation of the results, shall be settled between the authorities by correspondence.

Art. 7

(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.

(4) Payments shall be effected within three months of receipt of an invoice specifying their amount.

Art. 8

(1) Each authority shall make available any information, facilities or services of experts that the other authority may need additionally, on condition that that other authority undertakes to pay the costs involved.

Art. 9

(1) This Agreement shall enter into force on (date) [and shall replace the Agreement of (date) on cooperation in the examination of plant varieties].

(2) This Agreement and its Annexes may be modified by mutual agreement.

(3) Any party wishing to revoke this Agreement in whole or in part shall give the other party notice to that effect.

(4) Unless the parties agree otherwise, any such revocation shall take effect only after observance of two years' notice, completion of pending tests and transmittal of the relevant reports.

[End of document]