



Disclaimer: unless otherwise agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

This document has been scanned from a paper copy and may have some discrepancies from the original document.

Avertissement: sauf si le Conseil de l'UPOV en décide autrement, seuls les documents adoptés par le Conseil de l'UPOV n'ayant pas été remplacés peuvent représenter les principes ou les orientations de l'UPOV.

Ce document a été numérisé à partir d'une copie papier et peut contenir des différences avec le document original.

Allgemeiner Haftungsausschluß: Sofern nicht anders vom Rat der UPOV vereinbart, geben nur Dokumente, die vom Rat der UPOV angenommen und nicht ersetzt wurden, Grundsätze oder eine Anleitung der UPOV wieder.

Dieses Dokument wurde von einer Papierkopie gescannt und könnte Abweichungen vom Originaldokument aufweisen.

Descargo de responsabilidad: salvo que el Consejo de la UPOV decida de otro modo, solo se considerarán documentos de políticas u orientaciones de la UPOV los que hayan sido aprobados por el Consejo de la UPOV y no hayan sido reemplazados.

Este documento ha sido escaneado a partir de una copia en papel y puede que existan divergencias en relación con el documento original.

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COUNCIL

Eighteenth Ordinary Session
Geneva, October 17 to 19, 1984

REPORT ON THE PROGRESS OF THE WORK OF THE
ADMINISTRATIVE AND LEGAL COMMITTEE

- - - - -

UPOV MODELS

Document prepared by the Office of the Union

Introduction

1. At the last--seventeenth ordinary--session of the Council, the representative of the Federal Republic of Germany reported on the work of a group of member States for the improvement of the system of international cooperation in the examination of varieties. His explanations were recorded in the report on that session as follows: (paragraphs 80 and 81 of document C/XVII/15):

"80. 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 system 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.

"81. 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."

2. The Office of the Union submitted to the Administrative and Legal Committee the models prepared by that group of member States, namely the Model Administrative Agreement for International Cooperation in the Testing of Varieties (hereinafter referred to as "Model Administrative Agreement") and the Model Form for the Application for a Plant Breeders' Right together with a new version, prepared by the Office itself, of the Model Form for the Application for a Variety Denomination. It asked the Committee to examine those three models and discuss to recommend to the Council that the models currently contained in Sections 19, 10 and 11 of the Collection of Texts of the UPOV Convention and Other Important Documents Established by UPOV (UPOV publication 644) be replaced by the new models.

3. The Administrative and Legal Committee examined the three new models during its thirteenth session in April 1984. The result of the examination and the Committee's conclusions are contained in paragraphs 71 to 74 of the report on that session, reading as follows:

"71. It was explained that the draft model administrative agreement for international cooperation in the testing of varieties differed from the model agreement previously used insofar as its Article 5 placed an obligation on the office of one contracting member State to take over results of testing carried out by the office of the other contracting State in the event of both offices having testing structures for the species involved. The draft, that had also been improved as regards its wording in comparison with the preceding model agreement, could be used to replace the latter if it were stated that that article were to be excluded and that consequential amendments were to be made to a number of further articles in a cooperation agreement by which, basically, the office of one member State entrusted to the office of another member State the testing of varieties of certain species.

"72. As regards the model forms, it was explained that they had been drawn up on the same principle as the UPOV Model Plant Breeders' Rights Gazette and that they therefore gave more freedom to the member States in drawing up their national forms, the essential factor being to respect the numbering and the subject matter of the items.

"73. It emerged from the discussions that certain States, that had made use of the model forms previously adopted, were satisfied with those forms and would prefer them to be maintained, at least in their general layout. The proposed forms nevertheless offered a number of very interesting improvements (particularly the indication of the State in which testing had been carried out or was in progress and the designation of the representative sample of the variety), but certain items, such as the item concerning prior marketing, still needed reviewing. In addition, since certain States would possibly copy the UPOV model forms for drawing up their own national forms, it seemed advisable to adapt those forms to the amendments made to the Convention in 1978 (for example, by providing for the indication of the mode of propagation or the final use of the variety in the item on the botanical identity of the variety, and by giving an alternative in the item on prior marketing to cover the possibility of a period of grace). Finally, it was desirable to give more information to the member States on how to convert the model forms into national forms.

"74. Finally, the Committee decided to request the Office of the Union to carry out a review of the proposed model forms, based on the considerations recorded in the preceding paragraph, and to submit the revised forms to the Council for adoption."

Model Administrative Agreement
for International Cooperation in the Testing of Varieties

4. The Model Administrative Agreement as prepared by the above-mentioned group of UPOV member States and examined by the Administrative and Legal Committee at its thirteenth session is attached as Annex I to this document. That Model Administrative Agreement already serves, as has been reported to the Office of the Union, as a basis for the preparation of bilateral agreements which in the near future will be concluded between a number of States. It is recommended that the model be accepted for bilateral agreements between the Offices of those member States which are prepared to enter into the obligation deriving from Article 5 of the Model Administrative Agreement.

5. According to the opinion of the Administrative and Legal Committee, the Model Administrative Agreement may furthermore replace the UPOV Model Agreement for International Cooperation in the Testing of Varieties (hereinafter referred to as the "UPOV Model Agreement") which is at present contained in Section 19 of the Collection, provided that it made clear that the administrations of those States which only wish to enter into the obligation deriving from Article 1 of the UPOV Model Agreement (and Article 1 of the Model Administrative Agreement), namely to perform at the request of the other States the technical work in connection with the examination of varieties, but not the more far-reaching obligation deriving from Article 5 of the Model Administrative Agreement, can also base their bilateral agreements on the Model Administrative Agreement by simply deleting Article 5 and adjusting the subsequent articles of the Model Administrative Agreement. It must also be added that the Model Administrative Agreement can likewise serve as a basis for bilateral agreements in the opposite case, namely that of two States wishing to enter into obligations going beyond those of the Model Administrative Agreement; in that case the Model Administrative Agreement needs to be implemented.

6. Should the opinion expressed in the Administrative and Legal Committee be followed, that the Model Administrative Agreement should not only be included in Section 19 of the Collection in addition to the UPOV Model Agreement now published there but should replace that UPOV Model Agreement, it is suggested to add in Section 19 of the Collection a note worded as follows:

"The Model Administrative Agreement can also serve as a basis for bilateral agreements for those Contracting Parties which only wish to enter into the obligation deriving from Article 1 but not the obligation deriving from Article 5. In that case, Article 5 has to be deleted and the subsequent articles have to be adapted to that variant. Should two Parties intend to enter into obligations which go beyond the stipulations in the Model Administrative Agreement, additional provisions will have to be included; where appropriate the Articles 2 and 5 would also have to be replaced or amended. The Office of the Union is prepared to assist in the drafting of bilateral agreements should cases of that kind arise."

7. The drafting of the final wording of the note could be delegated to the Administrative and Legal Committee.

8. The Council is recommended:

(i) to approve the Model Administrative Agreement for International Cooperation in the Testing of Varieties contained in Annex I to this document and to agree to its publication under Section 19 of the Collection in replacement of the UPOV Model Agreement now published there;

(ii) to approve the note which should be added to the Model Administrative Agreement in the event of publication in Section 19 of the Collection as proposed in paragraph 6 of this document or to delegate the final decision on this note to the Administrative and Legal Committee.

UPOV Model Forms

9. The UPOV Model Forms for the Application for Plant Breeders' Rights and for the Application for a Variety Denomination, published at present in Sections 10 and 11 of the Collection, owe their existence to a decision of the former Committee of Experts on International Cooperation in Examination (ICE). The decision taken on May 17, 1976, was worded as follows:

"(i) When reissuing their national application forms, member States should follow the UPOV Model Application Form. They should use the same wording for the items and the same numbering, but they should be free to use a different size, form and layout, to delete parts of the items and to insert additional items at the end of the form. They should also be free to phrase the final statement according to their national needs.

"(ii) The member States should be free to draft the Explanatory Notes on the application form according to their differing legal requirements.

"(iii) The Office of the Union should prepare, in the light of the discussion, a new draft for the UPOV Model Application Form to be presented to the forthcoming Council session. The draft UPOV Model Application Form should be accompanied by Explanatory Notes capable of serving as a basis for the various national Explanatory Notes."

10. During the thirteenth session of the Administrative and Legal Committee the opinion was expressed that the model forms should leave a greater freedom to member States in the drafting of national forms. It was important that the numbering of the paragraphs and their subject matter be maintained in the national forms. As far as the contents of the Model Forms were concerned, the Office of the Union improved their drafting:

(i) It included the improvements agreed upon by the above-mentioned group of member States (which had already been included in the versions presented to the Administrative and Legal Committee at its thirteenth session).

(ii) As wished by those States which use the presently published UPOV Model Forms for their national work, the Office of the Union tried to maintain the general structure and the numbering of paragraphs of the forms as published in the Collection.

(iii) As requested by the Administrative and Legal Committee, the Office of the Union did not adopt the paragraph on prior marketing suggested by the above-mentioned group, but left that paragraph unchanged.

(iv) The Instructions for Completing the Forms which are added to the UPOV Model Forms in the Collection have been included in the Instructions for Converting the Model Forms Into National Forms (see Article 14 below).

12. The Model Forms as amended by the Office of the Union are attached as Annex II and Annex III to this document.

13. The Council is invited:

(i) to approve the Model Form for an Application for Plant Breeders' Rights and the Model Form for an Application for a Variety Denomination, as contained in Annexes II and III to this document;

(ii) to recommend to member States that they follow the model forms as far as possible when they draw up their national forms, whereby it is important that the numbering of the paragraphs and their subject matter remain the same.

14. During the thirteenth session of the Administrative and Legal Committee, the wish was expressed that more information be given to the member States on how to convert the model forms into national forms. Annex IV to this document contains for each of the two forms (Annex II and Annex III) a proposal made by the Office of the Union for Instructions for Converting the model forms into national forms. The Instructions for Completing the Forms, which in the Collection are added to the UPOV Model Forms, have been integrated into these proposed instructions. Such a combination of instructions addressed to the applicant and instructions addressed to the member States to assist them in converting the model forms into national forms seems a good idea since it permits explanations to be given which are more readily understandable and ensures that member States take due account of their national law in drafting instructions for their national forms. The instructions should be published in Sections 10 and 11 of the Collection.

15. Should it emerge from discussions in the Council that opinions differ as to the contents of these instructions or should it generally be felt that they need to be discussed in detail, their finalization could be delegated to the Administrative and Legal Committee.

16. The Council is invited either to adopt the instructions contained in Annex IV to this document or to delegate the final decision on their adoption to the Administrative and Legal Committee.

[Annex follows]

ANNEX I

MODEL ADMINISTRATIVE AGREEMENT FOR
INTERNATIONAL COOPERATION IN THE TESTING OF VARIETIES

- 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 and 4 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.

[Annex II follows]

ANNEX II

UPOV MODEL FORM

APPLICATION FOR PLANT BREEDERS' RIGHTS

(Office where
application is
filed)

NOTE: First consult the instructions

(file mark)
(Date of receipt)

An official copy of the submitted application including the date of filing is requested as a certification of priority for an application in the following States: _____

FOR
OFFICIAL
USE ONLY

1. (a) Applicants: name(s) and address(es):

2. (a) Address to which correspondence is to be sent:

(b) nationality(ies): _____

(b) This is the address:

of one of the applicants

of the agent/proxy

for service

3. Species and crop:

4. (a) Proposed denomination (in block letters): _____

(b) Breeder's reference: _____

5. (a) The original breeder(s) is (are) the (all) applicant(s) the following person(s):

To the best of my/our knowledge there is no other original breeder

(b) The variety was transferred to the applicant(s) by:

contract _____

succession _____

other (specify) _____

(c) The variety was bred in (State(s)): _____

6. Further applications	Filing (State/date)	Application No.	Stage	Denomination or breeder's reference
(a) Protection				
(b) Official variety list				

7. Priority is claimed in respect of the application filed in (State) _____
on (date) _____ under the denomination _____

8. The variety has been offered for sale not yet for the first time (date) _____
or marketed in [State of application] _____
under the denomination _____
and in other States not yet for the first time in (State) _____
under the denomination _____

9. (a) The technical examination of the variety has already been completed _____
 is in progress in _____
 will be in carried out in _____

(b) I/We declare that the material provided with the first application is representative of the variety and relevant to this application.
(c) 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 are safeguarded.

Other forms and documents attached:
 1 2 3 a b c d e f

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

(place) _____ (date)
Signature(s)

UPOV-MODEL FORM

(Office where application is filed)

APPLICATION FOR A VARIETY DENOMINATION

NOTE: First consult the instructions

(Date of receipt)

FOR OFFICIAL USE ONLY

1. (a) This application refers to the variety filed under application number _____
 (b) Initially proposed denomination or breeder's reference _____

2. (a) Applicant(s) name(s) and address(es) _____
 (b) Address to which correspondence is to be sent: _____
 (c) This is the address
 of one of the applicants
 of the agent/proxy
 for service

3. Species and crop _____

4. Proposed denomination (in block letters): _____

5. Denominations submitted or registered in other member States of UPOV:

State	stage	Denomination (if different from 3 above)

6. 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

7. Trademark renunciation: States will enter a renunciation clause drafted by them according to their domestic laws

I/We hereby apply for the registration of the proposed variety denomination.

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

_____ (Place) _____ (date)

Signature(s)

ANNEX IV

INSTRUCTIONS
FOR CONVERTING THE UPOV MODEL FORMS INTO NATIONAL FORMS

PART I

UPOV MODEL FORM

APPLICATION FOR PLANT BREEDERS' RIGHTS

A. General Instructions

- 0.1 When converting the UPOV Model Form into a national form and when drafting explanations for completing the national forms ("explanations"), the contents and the terminology of the applicable national law have to be taken into particular account. Subsequently, reference is made to some particularities. To ensure that the Model Form fulfills its function, it is important that the general structure, the contents and the numbering of the individual parts be maintained in the national forms.
- 0.2 The righthand margin is reserved for official use; it may also be used for references to instructions in the explanations.
- 0.3 In the explanations, instructions should be given on how dates are to be written and how States are to be referred to. The following instructions are proposed:

"Dates should be written in year-month-day order (example: 76-01-14)

"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)."

B. Instructions on the Individual ItemsItem 1.(a):

- 1.1 The following explanations should be given on Item 1.(a) :

"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.

"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."

- 1.2 In some States an official document has to be filed noting those persons authorized to represent a legal person. Reference could be made to this obligation under this item or under the unnumbered item "Other forms and documents attached."
- 1.3 Where there is more than one applicant, some States request that the sharing of the rights be stated. Attention could be drawn to this particularity under Item 1 by requesting that together with the name and address of each applicant his share in the right be mentioned.

Item 1.(b)

- 1.4 The explanations should mention that the nationality is to be stated only in the case of natural persons.
- 1.5 Under the law of some States, protection may be obtained irrespective of the applicant's nationality, place of residence or registered offices. Those States can delete Item 1.(b).

Item 2

- 2.1 The explanations should mention that an address has to be given in the State of application; this remark might be worded as follows:

"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."

- 2.2 The explanations should state the conditions under which it is necessary to give an address for service (normally in cases in which the applicant has no residence in the State of application).
- 2.3 In some States, only natural persons can be agents or proxies. Attention should be drawn to this fact in the explanations.
- 2.4 The explanations should mention the cases in which a power of attorney is necessary; this could be worded as follows:

"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."

Item 3

- 3.1 The contents of the explanations concerning this item depend mainly on how botanical genera and species eligible for protection are defined in the national law. In the main, two different sets of rules are met with:

(i) The law defines these genera and species in a general way. In this case, the explanations should mention that the particulars given under that item must allow exact identification of the variety under both botanical and, as the case may be, technical aspects (for example: "polyantha rose" and not just "rose;" or "maize, parent line," and not only "maize"). It is recommended that the Latin name of the most suitable taxonomical unit (genus, species, sub-species) be given, together with the common name.

(ii) The law contains a list identifying the genera and species (where appropriate, with limitations as to type of propagation or final use or with particularities, depending on the type of the variety. In respect of period of protection, fees or conditions for obtaining protection in respect of the applicant's nationality, place of residence or registered offices). In this case, it is advisable to draw attention to the fact that the particulars given under this item must make it possible to determine whether the variety is eligible for protection. Furthermore it is recommended that the applicable legal provisions are referred to. The terminology used should be that of the national law or at least compatible with it. Where necessary, the particulars should allow exact identification of the variety under both botanical and, as the case may be, technical aspects. Some problems might arise where the legal definition refers to a botanical family ("Orchidaceae," Bromilaceae" belonging to [particular genera or hybrids between these genera] or similar indications). In such case, reference is made to the explanations in subparagraph (i).

Item 4

- 4.1 The explanations should mention that under the national legal provisions corresponding to Article 13 (5) of the UPOV Convention the variety must be filed in each of the member States under the same denomination.
- 4.2 Where permitted under the national law, the variety denomination may be filed at a later stage in the procedure. The explanations should refer to this possibility, but attention should be drawn to the fact that it is necessary to give at least a breeder's reference, i.e. a provisional designation of the variety.

- 4.3 Attention should be drawn in the explanations to the fact that it is desirable to give the breeder's reference even in cases where a variety denomination is proposed.
- 4.4 If a special form must be used for applying for variety denomination, reference should be made to this obligation in the explanations.
- 4.5 Where necessary, the explanations should mention that accents may not be deleted from a variety denomination.

Item 5.(a)

- 5.1 The explanations should give the following instructions:

Mark the first box with a cross if the applicant or all applicants are the breeders of the variety.

Mark the second box with a cross if not all the applicants are 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 breeder(s) (if not given under 2).

- 5.2 In some countries, only natural persons can be breeders. Attention should be drawn to this fact in the explanations.
- 5.3 In some States eligibility for protection depends on the nationality of the breeder. In such case, the explanations should mention that nationality has also to be stated for the persons named in this item if not already done under Item 1.(b).

Item 5.(b)

- 5.4 The explanations should mention that nothing has to be entered under this item if the second box has been marked in Item 5(a).
- 5.5 Where the applicant is not the breeder of the variety, some States require a document be submitted from which the right of the breeder to protection can be seen. Attention could be drawn to this obligation under this item or under the unnumbered item "Other forms and documents attached."

Item 5.(c)

- 5.6 Some States make the grant of protection to foreigners dependent on the country which the variety has been bred. Item 5.(c) is necessary for such States. The other States may omit this item.

Item 6

- 6.1 The explanations should requested that the particulars given under this item be complete and be given in abbreviated form; this could be done as follows:

"The term "protection" comprises special titles of protection, plant patents and industrial patents.

"Official variety list" means any list of varieties whose marketing is authorized by the competent authorities.

"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).

"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

"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."

Item 7

- 7.1 It could be worthwhile mentioning the conditions for claiming the priority of a former application, using the terminology of the national law.

Item 8

- 8.1 The structure of this item corresponds to Article 6(1)(b) of the Convention. Its wording must, however, in certain cases be adapted to the terminology used for the terms "variety" or "offering for sale or marketed" in the national law; if necessary, further clarification must be given in the explanations.

- 8.2 The item is so structured that it may be used for both States which give a "period of grace" and States which do not afford such a period.

- 8.3 States, whose national law stipulates a transitional limitation of the novelty requirement under Article 38 of the UPOV Convention should refer in the explanations to the fact that applicants wishing to benefit from that limitation might be required to give additional information.

If such cases are frequent, a special form should be provided.

- 8.4 Certain States request detailed information on prior commercial use, in particular the date of first commercial use in each country and the names under which the variety was marketed there. It is recommended that this information be requested on a special form.

Item 9

- 9.1 This item is of interest to States participating in a system of international cooperation in the testing of varieties. States not participating in such a system can omit the item.

- 9.2 The declarations provided for under Items 9(b) and (c) might not be applicable in some States.

Item "Other forms and documents attached"

- 10.1 This item has not been given a number to allow each State using the UPOV Model Form to add further items to its national form, which might be needed under its national law.

- 10.2 The UPOV Model Form requires that a box be marked for each added form or document. Three annexes have to be added in the great majority of States. The boxes which have to be marked in that case have been given the numbers 1, 2 and 3. They concern the following information and the explanations given could be worded as follows:

- "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 [2.4] 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 [Office for variety protection] within three month of the date of filing of the present application; if that copy is attached, mark box 3 with a cross."

10.3 The additional boxes, which are marked with letters have been added to permit each State to ask for additional information, for instance an application form for a variety denomination, communication of natural persons authorized to represent a legal person (Item 1.(a)), approval of the transfer of a right to protection (Item 5.(b)), form containing more detailed information on prior marketing (Item 8), declaration signed by the applicant that to the best of his knowledge the variety is new or proof that the application fee has been paid.

--- oOo ---

*) Special forms must be completed

PART II

UPOV MODEL FORM

APPLICATION FOR A VARIETY DENOMINATION

A. General Information

- 0.1 A special application form for a variety denomination is required by a few member States only. In other member States, it is sufficient to give the particulars required under Item 4.(a) and (b) and Item 6 on the Application Form for Plant Breeders' Rights or, if the variety denomination is submitted at a later stage in the procedure, in a special letter.
- 0.2 When converting the UPOV Model Form into a national form and when drafting explanations for completing the national forms ("explanations"), the contents and the terminology of the applicable national law have to be taken into particular account. Subsequently, reference is made to some particularities. To ensure that the Model Form fulfills its function, it is important that the general structure, the contents and the numbering of the individual parts be maintained in the national forms.
- 0.3 The righthand margin is reserved for official use; it may be used for references to individual instructions.
- 0.4 In the explanations, instructions should be given on how dates are to be written and how States are to be referred to. The following instructions are proposed:
- "Dates should be written in year-month-day order (example: 76-01-14).
- "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)."
- 0.5 In the explanations the following instructions could be given:
- "State of application" means the State in which the application was filed.
- "Office for variety protection" refers to the Office responsible in the State of application for granting variety protection."

Instructions concerning individual items

Item 1

- 1.1 The explanations accompanying the national forms should state how this item is to be completed; this explanation could be worded, for example, as follows:
- "Where this form is filed simultaneously with the Application for Plant Breeders' Rights, nothing is to be entered under 1. Where this form is filed at a later stage, the number under which the Application for Plant Breeders' Rights has been registered [by the Plant Breeders' Rights Office] is to be given under Item 1(a)."

Item 2

- 2.1 For the explanations to be given on this item, reference is made to Item 2.1 of the Application Form for Plant Breeders' Rights. Furthermore, the explanations should contain the following instructions:
- "If the address is the same as that used in the Application for Plant Breeders' Rights, add only the name of the applicant(s) in Item 2 of this form."

Item 3

- 3.1 For the explanations to be given on this item, reference is made to Item 3 of the Application Form for Plant Breeders' Rights.

Item 4

- 4.1 For the explanations given on this item, reference is made to Item 4 of the Application Form for Plant Breeders' Rights, in particular to the remarks under paragraphs 4.1 and 4.5.

Item 5

- 5.1 The explanations should request that the information be given in chronological order of the applications for protection and in abbreviated form, for instance as follows:

"Specify all prior variety denominations without exception in chronological order. The variety denominations used are to be given at the end of the list.

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

"A = application pending

"B = denomination rejected

"C = denomination withdrawn

"D = denomination accepted."

Further items

- 8.1 Each member State may add further items mandatory under its legislation. For applications in the Federal Republic of Germany, the following Item 8 may be added, for instance:

The priority of the trademark 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

is attached

will be forwarded to the Bundessortenamt (Federal Office of Varieties) within three months."

[End of Annex and of document]