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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

DRAFT

Associated Document
to the
General Introduction to the Examination
of Distinctness, Uniformity and Stability and the
Development of Harmonized Descriptions of New Varieties of Plants (document TG/1/3)

DOCUMENT TGP/5

“EXPERIENCE AND COOPERATION IN DUS TESTING”

Section 2: UPOV Model Form for

the Application for Plant Breeders’ Rights

~~as amended by the Council on October 14, 1984~~
~~reproduced from document C/XVIII/9 Add., Annexes II and IV, Part I~~

Document prepared by the Office of the Union to be considered by the
Technical Committee at its forty-fourth session,
to be held in Geneva, from April 7 to 9, 2008

Administrative and Legal Committee at its fifty-seventh session,
to be held in Geneva, on April 10, 2008

Note for Draft version

Unless otherwise indicated:

~~Strikethrough~~ indicates deletion from the currently adopted text, proposed by the Administrative and Legal Committee (CAJ) on the basis of all comments made by the Technical Committee (TC), Technical Working Parties (TWPs) and CAJ in 2007

Underlining indicates insertion to the currently adopted text, proposed by the CAJ on the basis of all comments made by the TC, TWPs and CAJ in 2007

UPOV MODEL FORM FOR THE APPLICATION FOR PLANT BREEDERS' RIGHTS

(Office Authority
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 certification¹ of priority for an application in the following States with the following State or Intergovernmental Organization:

<p>1.(a) Applicant(s) <u>Breeder</u>²</p> <p>Name(s) _____</p> <p>Address(es) _____</p> <p>_____</p> <p>Telephone No.(s) _____</p> <p>Fax No.(s) _____</p> <p>E-mail address(es) _____</p> <p>(b) nationality(ies): _____</p> <p>(c) residence (State): _____</p> <p>(d) registered offices for legal entities (State): _____</p> <p>[New] A procedural representative/agent/proxy will be used: Yes <input type="checkbox"/> No <input type="checkbox"/></p>	<p>2.(a) Name and address to which correspondence is to be sent (if different from 1.(a)):</p> <p>Name _____</p> <p>Address _____</p> <p>_____</p> <p>Telephone No.(s) _____</p> <p>Fax No.(s) _____</p> <p>E-mail address(es) _____</p> <p>(b) This is the name and the address:</p> <p><input type="checkbox"/> of one of the applicants</p> <p><input type="checkbox"/> of the procedural representative /agent/proxy</p> <p><input checked="" type="checkbox"/> for service</p>
<p>3. (a) Species and crop Botanical name: _____</p> <p>(b) Common name: _____</p>	
<p>4.(a) Proposed denomination (in block letters): _____</p> <p>(b) Breeder's reference: _____</p>	
<p>5.(a) The original breeder(s) person(s)³ who bred, or discovered and developed, the variety is (are)</p> <p><input type="checkbox"/> the (all) applicant(s) <input type="checkbox"/> the following person(s): _____</p> <p><input type="checkbox"/> To the best of my/our knowledge there is no other original breeder person who bred, or discovered and developed the variety.</p> <p>(b) The variety was transferred by the person(s)³ who bred, or discovered and developed, the variety to the applicant(s) by:</p> <p><input type="checkbox"/> contract _____</p> <p><input type="checkbox"/> succession _____</p> <p><input type="checkbox"/> other (specify) _____</p> <p>(c) The variety was bred in (State(s)):¹ _____</p>	

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OFFICIAL
USE ONLY

¹ Within the prescribed time limit (minimum 3 months)

² The "applicant" should be the "breeder" according to the definition of "breeder" in Article 1(iv) of the 1991 Act of the UPOV Convention which is:

– the person who bred, or discovered and developed, a variety,
– the person who is the employer of the aforementioned person or who has commissioned the latter's work, where the laws of the relevant Contracting Party so provide, or
– the successor in title of the first or second aforementioned person, as the case may be".

³ The term "person" in Article 1(iv) of the 1991 Act of the UPOV Convention should be understood as embracing both physical and legal persons (e.g. companies).

6. Further Other applications	Filing (State or Intergovernmental Organization / date)	Application No.	Stage	Denomination or breeder's reference
(a) Protection				
(b) Official variety list ⁴				
7. Priority is claimed in respect of the application filed in (State / Intergovernmental Organization) _____ on (date) _____ under the denomination _____				
8. The variety has been offered for sale or marketed in [State of application] [sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety] ⁵ / [offered for sale or marketed, with the agreement of the breeder] ⁶ (Authority to delete as appropriate) in [territory of application]: _____ <input type="checkbox"/> not yet <input type="checkbox"/> for the first time (date) _____ under the denomination _____ and in [other States territories]: _____ <input type="checkbox"/> not yet <input type="checkbox"/> for the first time (territory and date) _____ under the denomination _____				
9.(a) The technical examination of the variety <input type="checkbox"/> has already been completed in _____ <input type="checkbox"/> is in progress in _____ <input type="checkbox"/> will be 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 Authority 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: <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				
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)				

⁴ General term to cover an official register, for example, of varieties admitted to trade (e.g. National List, Official Catalogue etc.).

⁵ Article 6(1) of the 1991 Act.

⁶ Article 6(1)(b) of the 1978 Act.

INSTRUCTIONS FOR CONVERTING THE UPOV MODEL FORM
FOR THE APPLICATION FOR PLANT BREEDERS' RIGHTS
INTO ~~NATIONAL~~ AN AUTHORITY'S OWN FORM

A. General Instructions

0.1 When converting the UPOV Model Form into a ~~national~~ an Authority's own form and when drafting explanations for completing ~~the national forms~~ that form ("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~~ Authority's own forms.

0.2 The right-hand 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 members of the Union~~ are to be referred to. The following instructions are proposed:

- ~~"Dates should be written in year-month-day order (example: 76-01-14);~~
"The format of dates should be specified and should include a requirement for the year to be provided in 4-digit format (e.g.: 2007);"
- ~~"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)."~~
"members of the Union are to be designated by the two-letter ISO codes applicable to States and Intergovernmental Organizations (e.g. AL (Albania), QZ (European Community (Community Plant Variety Office (CPVO)))."

B. Instructions on the Individual Items

Item 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~~ Telephone number(s), e-mail address(es) and fax number(s) would be appreciated."

1.2 In some ~~States members of the Union~~ 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 members of the Union 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 members of the Union, protection may be obtained irrespective of the applicant's nationality, place of residence or registered offices. Those States members of the Union can delete Item 1.(b), (c) and (d).

Item 2

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

- “This must be an address [in the State territory of application] and must be sufficiently complete to ensure delivery by the postal service. ~~Telephone and telex numbers~~ Telephone number(s), e-mail address(es) and fax number(s) 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 territory of application).

2.3 In some States members of the Union, only natural persons can be procedural representatives, 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 a procedural representative, 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 of the member of the Union. In the main, two different sets of rules are met with:

(a) 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 botanical Latin name of the most suitable taxonomic unit (genus, species, subspecies) be given, together with the common name.

(b) 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 of the member of the Union 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 (a).

Item 4

4.1 The explanations should mention that under the national legal provisions of the member of the Union corresponding to Article 20(5) of the 1991 Act and Article 13 (5) of the 1978 Act of the UPOV Convention, the variety must be filed in each of the member States members of the Union under the same denomination.

4.2 Where permitted under the national law of the member of the Union, 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) is (are) the breeders of person(s) who bred, or discovered and developed, the variety.
- Mark the second box with a cross if not all the applicants are the breeders of persons who bred, or discovered and developed, the variety and/or if (a) third person(s) is (are) the person(s) who bred, or discovered and developed, breeder(s) of the variety. Give

the name(s) and address(es) of the ~~breeder(s) person(s) who bred, or discovered and developed, the variety~~ (if not given under ~~2 1.(a)~~¹¹).

~~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 members of the Union~~ eligibility for protection depends on the nationality/~~residence (State)/registered office (State)~~ of the breeder. In such case, the explanations should mention that nationality/~~residence (State)/registered office (State)~~ has also to be stated for the persons named in this item if not already done under Item 1.(b), ~~(c) and (d)~~.

Item 5.(b)

5.4 The explanations should mention that nothing has to be entered under this item if the first box has been marked in Item 5(a).

5.5 Where the applicant is not the ~~breeder of person who bred, or discovered and developed,~~ the variety, some ~~States members of the Union~~ require a document be submitted from which the right of the ~~breeder applicant~~ 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.(e)

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

Item 6

6.1 The explanations should request 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~~ with States / Intergovernmental Organizations 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) member(s) of the Union 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 of the member of the Union.

Item 8

8.1 The structure of this item corresponds to Article 6(1)(b) of the 1991 Act 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 "sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety" (1991 Act) / "offered for sale or marketed, with the agreement of the breeder" (1978 Act) in the law of the member of the Union; 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 members of the Union which give a "period of grace" and States members of the Union which do not afford such a period.

8.3 States Members of the Union, whose national law stipulates a transitional limitation of the novelty requirement under Article 6(2) of the 1991 Act or Article 38 of the 1978 Act 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 members of the Union request detailed information on prior commercial use, in particular the date of first commercial use in each country territory 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 members of the Union participating in a system of international cooperation in the testing of varieties. States Members of the Union 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 members of the Union.

Item 10 “Other forms and documents attached”

10.1 This item has not been given a number to allow each State member of the Union using the UPOV Model Form to add further items to its national own 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 members of the Union. 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 a procedural representative, 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 Authority within the prescribed time in the applicable law (minimum of three months from 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 member of the Union 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.

[End of Section 2]

ⁱ To be considered in conjunction with “Instructions for Converting the UPOV Model Form for the Application for Plant Breeders’ Rights into National an Authority’s Own Form”: B, Item 5.(c).

ⁱⁱ Amendment proposed by the Enlarged Editorial Committee (TC-EDC), at its meeting on January 8, 2008.

* Special forms must be completed.