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| International Union for the Protection of New Varieties of Plants |  |

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| Working Group on Variety Denominations  Fourth Meeting Geneva, October 27, 2017 | UPOV/WG-DEN/4/3  Original: English  Date: September 3, 2018 |

REPORT

adopted by the Working Group on Variety Denominations

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# Opening of the meeting

The Working Group on Variety Denominations (WG-DEN) held its fourth meeting in Geneva on October 27, 2017, under the chairmanship of the Vice Secretary‑General of UPOV.

The meeting was opened by the Chair, who welcomed the participants. The list of participants is reproduced in Annex I to this report.

# Adoption of the agenda

The WG-DEN adopted the draft agenda as reproduced in document UPOV/WG-DEN/4/1.

# Revision of document UPOV/INF/12/5 “Explanatory Notes on Variety Denominations”

The WG-DEN considered documents UPOV/WG-DEN/4/2 and UPOV/INF/12/6 Draft 4.

The WG-DEN noted the matters agreed by the WG-DEN at its third meeting, as reported in document UPOV/WG-DEN/4/2, paragraph 6.

The WG-DEN agreed to change the reference of the document from the “INF” series to the “EXN” series in accordance with the title and contents of the document “Explanatory Notes on Variety Denominations under the UPOV Convention”.

## Preamble

The WG-DEN agreed to add a note that the term “variety” refers to the definition of variety in Article  1 (vi) of the 1991 Act of the UPOV Convention.

## Paragraph 1 [Designation of varieties by denominations; use of the denomination]

The WG-DEN agreed to add a new Section 1.3 to read as follows:

“1.3 If an authority allows a denomination to be registered when the breeder of the variety is also the holder of a trademark that is identical to the variety denomination, the authority should inform the breeder of the obligation to allow the use of the denomination in connection with the variety, even after the expiration of the breeder’s right.”

## Paragraph 2 [Characteristics of the denomination]

The WG-DEN welcomed the presentation made by the Delegation of Argentina on the Resolution on Variety Denominations in Argentina. The presentation by the Delegation of Argentina is reproduced in Annex II to this report.

#### Section 2.3.1 “Characteristics of the variety”

The WG-DEN agreed to maintain Section 2.3.1 (b) unchanged.

The WG-DEN agreed that the Office of the Union should prepare options to amend Section 2.3.1 (c) in order to reflect the different practices of authorities regarding the acceptance or rejection of denominations in relation to characteristics of the variety. The WG-DEN noted that one authority could accept a denomination for a variety which was similar to the denomination of another variety, even though the two varieties were unrelated and had different characteristics, if the varieties were from the same breeder; another authority in the above scenario would reject the denomination which was similar to that of another variety if the varieties had different characteristics and were not related.

The WG-DEN agreed to include the examples of paragraph 21.20 of the Ninth Edition of the International Code of Nomenclature for Cultivated Plants (ICNCP), as follows:

“21.20. Except where linguistic custom demands, a name is not established if on or after 1 January 1996 its cultivar epithet contains the Latin or common name(s) of the genus to which it is assigned.

*Ex. 33. Castanea ‘Pale Chestnut’, Gladiolus ‘Pink Gladiolus’, Narcissus ‘Davis Daff’, Narcissus ‘Granny’s Daffodil’, Paeonia ‘Sussex Peony’, Phlox ‘Phlox of Sheep’, and Rhododendron ‘Rhododendron Mad’ may not be established.*

*Ex. 34. Dianthus ‘Rupert’s Pink’ is established; “pink” is not the common name for all plants in the genus Dianthus.*

*Ex. 35. Prunus ‘Sato-zakura’ is established; “zakura” is the Japanese word for flowering cherries, rather than a name for the whole genus.*

*Ex. 36. Pyrus bretschneideri ‘Ya Li’ contains the word “li”, which is the Chinese common name for the genus Pyrus. According to Chinese linguistic custom, “li” is inseparable from “ya”, and its inclusion in the cultivar epithet is therefore necess*ary and acceptable. ”

#### Section 2.3.2 “Value of the variety”

The WG-DEN agreed to amend Section 2.3.2 to read as follows:

“The denomination should not consist of, or contain, comparative or superlative designations that are liable to mislead or to cause confusion concerning the characteristics or value of the variety.

*Example of unsuitable denominations:*  ~~a denomination which includes terms such as~~ “Best performer”, “Superior taste”, “Sweeter than the rest”.

*Examples of suitable denominations:* “Lake Superior”, “Best wishes”.”

#### Section 2.3.3 “Identity of the variety”

The WG-DEN agreed to amend the draft of the example 2 of the Section 2.3.3 (a) (i) to reflect the practices of the authorities. The WG-DEN requested the Office of the Union to issue a circular to invite the authorities to provide their guidance on the cases which could cause confusion phonetically but not visually.

The WG-DEN agreed to amend the draft of the new Section 2.3.3 (b) (currently, Section 2.3.3 (a) (ii) and (iii)). It agreed that Brazil should provide its guidance on that matter, which would be used as a basis to develop a proposal for a revision to be considered at the fifth meeting of the WG-DEN.

With regard to the re-use of denominations in Section 2.3.3 (c), the WG-DEN agreed to include the guidance from Article 30.2 of the Ninth Edition of the ICNCP, for further discussion at the fifth meeting of the WG-DEN, as reproduced below:

“30.2. An International Cultivar Registration Authority may only accept re-use of a cultivar, Group or grex epithet if that authority is satisfied that the original cultivar, Group, or grex (a) is no longer in cultivation, and (b) has ceased to exist as breeding material, and (c) may not be found in a gene or seed bank, and (d) is not a known component in the pedigree of other cultivars, Groups, or grexes, and (e) the name has rarely been used in publications, and (f) re-use is unlikely to cause confusion.”

#### Section 2.3.4 “Identity of the breeder”

The WG-DEN received a presentation by Ms. Marina Foschi, Legal Officer, Policy and Legislative Advice Section, WIPO, entitled “Trademarks: General Overview”. The presentation by Ms. Foschi is reproduced in Annex III to this report.

The WG-DEN agreed that themes without a common word, prefix nor suffix, should not be an acceptable practice.

The WG-DEN requested the Office of the Union to issue a circular to invite the authorities to provide their guidance on prefixes, suffixes and common word to identify the breeder or other practices by the breeder.

#### Section 2.5 “Variety denomination classes”

The WG-DEN requested the Office of the Union to issue a circular to invite the authorities to share examples and proposals on possible need to review or create new denomination classes.

With regard to a new Section 2.6 on UPOV denomination similarity search tool, the WG-DEN requested the Office of the Union to issue a circular to invite the authorities and users to provide their views on possible ways to use the denomination similarity search tool.

## Paragraph 4 [Prior rights of third persons]

The WG-DEN agreed to amend Section 4 (a) to read as follows:

“(a) An authority should not accept a variety denomination if a there is an existing prior right, the exercise of which may prevent the use of the proposed denomination~~, has already been granted to a third party under plant breeder’s right law, trademark law or any other intellectual property legislation~~. It is the responsibility of the title holder of a prior right to assert his rights through the available objection or court procedures. However, authorities are encouraged to make prior searches in relevant publications (e.g. official gazettes) and databases (e.g. UPOV Plant Variety Database (PLUTO) <http://www.upov.int/pluto/en/>) to identify prior rights for variety denominations. They may also make searches in other registers, such as trademark registers, before accepting a variety denomination.”

## Paragraph 5 [Same denomination in all members of the Union]

With regard to Section 5.2 (b), the WG-DEN agreed that the Office of the Union should prepare a proposal for the fifth meeting of the WG-DEN, in order to achieve more realistic guidance reflecting good practices by authorities.

The WG-DEN noted the proposal from New Zealand to provide guidance for a possible way forward where several denominations for the same variety existed and agreed that New Zealand should prepare a proposal for the fifth meeting of the WG DEN, to address the above situation.

## Paragraph 6 [Information among the authorities of members of the Union]

The WG-DEN agreed to add a new Section 6.8 to read as follows:

“6.8 The contribution of data by members of the Union to the PLUTO database provides support for the examination of variety denominations. Members of the Union are encouraged to provide data as soon as practical after it is published by the authority(ies) concerned. The PLUTO database will be updated with new data as quickly as possible after receipt, in accordance with the uploading procedure. The PLUTO database can, as necessary, be updated with corrected data, in accordance with the uploading procedure.”

The WG-DEN agreed that the Office of the Union should prepare, for its fifth meeting, a new draft of document “Explanatory Notes on Variety Denominations under the UPOV Convention”, incorporating the proposals that had been agreed by the WG-DEN or had been agreed to be considered further.

The WG-DEN agreed to consider this matter at the fifth meeting of the WG-DEN.

# UPOV Denomination Similarity Search Tool

The WG-DEN agreed that matters under agenda item 4 “UPOV Denomination Similarity Search Tool” would be considered at a later meeting on the basis of the document presented at the second meeting. It was agreed that the Office of the Union should propose how to progress the discussion on these matters at the fifth meeting of the WG-DEN.

# Expansion of the content of the PLUTO database

The WG-DEN agreed that matters under agenda item 5 “Expansion of the content of the PLUTO database” would be considered at a later meeting on the basis of the document presented at the second meeting. It was agreed that the Office of the Union should propose how to progress the discussion on these matters at the fifth meeting of the WG-DEN.

# Non-acceptable terms

The WG-DEN agreed that matters under agenda item 6 “Non-acceptable terms” would be considered at a later meeting on the basis of the document presented at the second meeting. It was agreed that the Office of the Union should propose how to progress the discussion on these matters at the fifth meeting of the WG‑DEN.

# Date, place and program of the next meeting

The WG-DEN agreed to hold its fifth meeting in Geneva, in the evening of October 30, 2018.

The following program was agreed for the fifth meeting of the WG-DEN:

1. Opening of the meeting
2. Adoption of the agenda
3. Revision of document UPOV/INF/12/5 “Explanatory Notes on Variety Denominations under the UPOV Convention”
4. UPOV denomination similarity search tool
5. Expansion of the content of the PLUTO database
6. Non-acceptable terms
7. Date, place and program of the next meeting

*This report was adopted by correspondence.*

[Annexes follow]

UPOV/WG-DEN/4/3

ANNEX I

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[Annex II follows]

UPOV/WG-DEN/4/3

ANNEX II

*[See the PDF version]*

[Annex III follows]

UPOV/WG-DEN/4/3

ANNEX III

*[See the PDF version]*

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