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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

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EFFECTS OF A PRIORITY CLAIM

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1. The UPOV Convention and, consequently, the national laws contain a provision to the effect that

“Events occurring within the period [between two applications], such as the filing of another application or the publication or use of the variety that is the subject of the first application, shall not constitute a ground for rejecting the subsequent application [...]”

(Article 11(4) of the 1991 Act).

2. The above provision was taken, just as the principle of priority itself, from patent law when the 1961 UPOV Convention was drafted, although it was recognized at the time that

“in view of the specific nature of breeders’ rights, particularly the concept of novelty, [...] the question of priority would not seem to arise in the same manner as for patents for invention”

(Records of the 1957-1961 and 1972 Conferences (in French), page 36).

3. The effects of a priority claim are described as follows in the Model Law on the Protection of New Varieties of Plants:

“The effect of priority shall be that, with respect to the conditions of protection attaching to the variety, the application shall be deemed to have been filed at the date of filing of the first application”

(Article 34(4)(a); subparagraph (b) concerns the two-year period for furnishing information, etc.).

4. Technical Board of Appeal 3.3.4 of the European Patent Office decided on 5 August 1998 to refer the following point of law to the Enlarged Board of Appeal:

“For the purposes of Article 55(1) EPC, in the case where a priority is recognised for a European patent application, is the time period of six months ‘preceding the filing of the European patent application’ to be calculated from the filing date of the priority application (the priority date) or from the date of the actual filing of the European patent application?”

Article 55(1) provides that certain cases of disclosure of an invention that occur less than six months before the filing of the application shall not prejudice the novelty of the invention.

5. In view of the parallel nature of the provisions in the Paris Convention for the Protection of Industrial Property and those in the UPOV Convention, the findings of the Enlarged Board of Appeal are liable to have an impact on the application of plant variety protection law. The Office of the Union will advise the Committee of those findings when they are known.

6. The Committee is invited to note the above information.

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