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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

Geneva

**ADMINISTRATIVE AND LEGAL COMMITTEE****Seventy-Second Session  
Geneva, October 26 and 27, 2015**

## VARIETY DENOMINATIONS

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## EXECUTIVE SUMMARY

1. The purpose of this document is to report on work concerning the possible development of a UPOV similarity search tool for variety denomination purposes and to consider the possible revision of document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention".

2. The CAJ is invited to:

(a) make an initial consideration of the proposals of the WG-DST concerning a possible revision of document UPOV/INF/12, in particular, in relation to the following matters:

(i) Section 2.2.2 (b), proposal to clarify the terminology concerning accepted market practices in the context of "established practice" (see paragraph 28);

(ii) Section 2.3.1 (c), proposed examples that "convey the impression that the variety is derived from, or related to, another variety when that is not, in fact, the case" (see paragraph 29);

(iii) new Section 2.3.1 (d), concerning new guidance on possible confusion of the use of the botanical or common name of a genus to which that variety does or does not belong (see paragraphs 30 to 32);

(iv) Section 2.3.3 (a), proposed initial guidance and examples on possible confusion concerning "the identity of the variety" and whether it would be appropriate to differentiate between letters in the form of words and other cases (see paragraph 33 (i) to (iii));

(v) Section 2.3.3 (b), proposed additional example of "Helena" and "Elena", and the deletion of the example "Raion" and "Lion", to illustrate that a clear visual difference may not provide a clear phonetic difference (see paragraphs 35 and 36); and

(vi) Section 2.3.3 (d), proposed recommendation that consideration be given to avoiding re-use of denominations in all cases (see paragraph 37 and the proposal to expand the PLUTO Database, paragraph 38); and

(b) consider a possible way forward for the revision of document UPOV/INF/12, taking into consideration the initial comments of the CAJ on the above matters, and in conjunction with the work of the WG-DST for the development of an effective UPOV similarity search tool.

3. The CAJ is invited to note the proposal to expand the content of PLUTO database to include all varieties, including those that had not been, or were no longer, registered/protected, will be considered in document CAJ/72/6 “UPOV Information Databases”, as set out in paragraph 38.

4. The CAJ is invited to consider the proposals of the CAJ-AG on a revision of document UPOV/INF/12/5, Sections 2.2.2 (c), 4(a) and 4(e)(i), as set out in paragraph 41.

5. The structure of this document is as follows:

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6. The following abbreviations are used in this document:

CAJ: Administrative and Legal Committee  
CAJ-AG: Administrative and Legal Committee Advisory Group  
WG-DST: Working Group for Variety Denomination Search Tool

## PURPOSE

7. The purpose of this document is to report on work concerning the possible development of a UPOV similarity search tool for variety denomination purposes and the possible revision of document UPOV/INF/12 “Explanatory Notes on Variety Denominations under the UPOV Convention”.

## POSSIBLE DEVELOPMENT OF A UPOV SIMILARITY SEARCH TOOL FOR VARIETY DENOMINATION PURPOSES

8. The background to this matter is provided in document CAJ/71/3 “Variety denominations”.

Report of the WG-DST Test study and possible use of a UPOV denomination similarity search tool within UPOV

*Test Study*

9. The WG-DST, at its second meeting<sup>1</sup>, received a presentation by Mr. Glenn Mac Stravic, Head, Brand Database Section, Global Databases Service, on the intermediate results of the Test Study. A copy of the presentation is available in document UPOV/WG-DST/2/4.<sup>2</sup>
10. The Test Study identified the 11 best algorithms out of 15 which, after initial testing, performed better than all existing tools as measured by F3<sup>3</sup>. The F3 measure had been chosen because recall was of higher importance than precision.<sup>4</sup>
11. The selected algorithms had been used to form 2,047 different combinations, and each of the combinations had been tested with 100 different “cutoff values”<sup>5</sup> (total of 204,700 settings). The top 10 settings that showed the best performance among all the tested settings measured by F3 were shown in the presentation<sup>6</sup>.
12. The WG-DST agreed on using the F3 measure as a suitable basis for assessing performance because of the importance of recall for denomination similarity search purposes.<sup>7</sup>
13. The WG-DST agreed that the second step of the Test Study should be to consider whether to add an additional layer of phonetic criteria to the potential algorithms, by assessing if it would improve performance. In particular, it was agreed that it would be necessary to assess if precision would be sacrificed.<sup>8</sup>
14. The WG-DST agreed to prepare two or three algorithms with a phonetic layer and to compare the results to the algorithms without a phonetic layer. It was further agreed that the second step of the Test Study should be done on the PLUTO database using a dedicated test site. The WG-DST proposed to invite CAJ members and observers to participate in the second step of the Test Study, subject to consultation with the Chair of the CAJ. The Chair of the CAJ, Mr. Martin Ekvad, agreed on the plan and schedule of the second step of the Test Study and on the invitation to the CAJ members and observers to participate<sup>9</sup>.
15. The WG-DST agreed that the set of algorithms for the test should be available by September 1, 2015 at the latest, and the result to be reported to the WG-DST, at its third meeting, to be held in Geneva, on October 2, 2015.<sup>10</sup>
16. In response to a request from the Community Plant Variety Office of the European Union (CPVO) to test the set of algorithms on its own system, the WG-DST agreed that the source code of the set of algorithms written in JAVA would be made available, on request, to WG-DST members.<sup>11</sup>
17. During the process to prepare of the selected algorithms with a phonetic layer, it was found that the selected algorithms showed substantially lower performance when applied to the PLUTO database. In particular, the algorithms produced too many denominations that were above the cut-off value for similarity (low precision).

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<sup>1</sup> Held in Geneva, on June 9, 2015.

<sup>2</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 4.

<sup>3</sup>  $F3 = (1 + 3 \times 3) \times (\text{precision} \times \text{recall}) / (3 \times 3 \times \text{precision} + \text{recall})$ .

<sup>4</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 5.

<sup>5</sup> The size of difference between a denomination and the test denomination calculated by an algorithm is called the similarity index. Cutoff value is the threshold of similarity index to determine whether the denomination is regarded as not so similar to the test denomination to the extent that it would require further, individual consideration before deciding if the denomination was (sufficiently) different from existing denominations (see Article 20(2) of the 1991 Act and Article 13(2) of the 1978 Act and 1961 Convention).

<sup>6</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 6.

<sup>7</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 7.

<sup>8</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 8.

<sup>9</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 9.

<sup>10</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 10.

<sup>11</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 11.

18. On that basis, the WG-DST, at its third meeting, will be invited to consider a new proposal for a next step and its conclusion will be reported to the CAJ, at its seventy-second session.

*Non-acceptable terms for variety denomination*

19. The WG-DST, at its second meeting, agreed to invite the CAJ to consider whether to develop a list of non-acceptable terms for variety denominations as an additional feature for the UPOV denomination search tool<sup>12</sup>.

20. The WG-DST agreed that the list of non-acceptable terms could include, for example, botanical names. With regard to the inclusion of offensive terms, it agreed that it could be problematic to develop such a list.<sup>13</sup>

21. The matter will be considered further by the WG-DST, at its third meeting, and any consideration will be reported to the CAJ, at its seventy-second session.

Phonetic issues

22. The WG-DST, at its second meeting, agreed that the consideration of phonetic elements in the UPOV denomination search tool, as set out in paragraphs 13 to 16 above, would be the most effective approach and further measures would not be appropriate.<sup>14</sup>

Linguistic issues

23. The linguistic issues are considered in document CAJ/72/6 "UPOV Information Databases" (agenda item 6(b)).

*24. The CAJ is invited to note the work by the WG-DST concerning the possible development of a UPOV similarity search tool for variety denomination purposes.*

REVISION OF DOCUMENT UPOV/INF/12 "EXPLANATORY NOTES ON VARIETY DENOMINATIONS UNDER THE UPOV CONVENTION"

25. The background to this matter is provided in document CAJ/71/3 "Variety denominations".

26. The CAJ, at its seventy-first session,<sup>15</sup> decided to invite the WG-DST to consider the following comments made by the CAJ-AG, at its ninth session,<sup>16</sup> on the proposals in document UPOV/INF/12/5 Draft 2 concerning Sections 2.2.2 (b), 2.3.1 (c) and (d), and 2.3.3, in conjunction with the development of an effective UPOV similarity search tool, and any conclusions by the WG-DST to revise document UPOV/INF/12, if appropriate.<sup>17</sup>

2.2.2 (b)	To clarify the terminology in 2.2.2 (b). In particular, to consider changing the examples or replacing "species" by "genera" or "taxa" in the following sentence:  "(b) accepted market practices for particular variety types (e.g. hybrids) and particular species (e.g. Medicago, Helianthus).
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<sup>12</sup> See document UPOV/WG-DST/2/6 "Report", paragraph 12.

<sup>13</sup> See document UPOV/WG-DST/2/6 "Report", paragraph 13.

<sup>14</sup> See document UPOV/WG-DST/2/6 "Report", paragraph 15.

<sup>15</sup> Held in Geneva, on March 26, 2015.

<sup>16</sup> Held in Geneva, on October 14 and 17, 2014.

<sup>17</sup> See document CAJ/71/10 "Report on the Conclusions", paragraph 35.

2.3.1 (c)	To develop further guidance on 2.3.1 (c) and to provide other, more appropriate examples  “(c) convey the impression that the variety is derived from, or related to, another variety when that is not, in fact, the case;  <i>Example:</i> a denomination which is similar to that of another variety of the same species or closely related species, e.g. “Southern cross 1”; “Southern cross 2”; etc., giving the impression that these varieties are a series of related varieties with similar characteristics, when, in fact, this is not the case.”
2.3.1.(d)	To add 2.3.1.(d) as follows:  “(d) contain the botanical or common name of the genus to which that variety belongs. The identity of the denomination and that of the genus to which it belongs could become unclear and confusing.”  To clarify the following example:  <i>Example:</i> <i>Carex</i> variety ‘Sedge’. This could possibly be referred to as ‘Sedge’ <i>Carex</i> and without the use of italics or single quotes the identity of the denomination and the genus may not be clear.  To develop guidance on possible confusion of the use of the botanical or common name of a genus to which that variety does <u>not</u> belong – case by case
2.3.3.	To consider proposals in 2.3.3 of document UPOV/INF/12/5 Draft 2 as an initial step to develop further guidance and appropriate examples in conjunction with the development of an effective UPOV similarity search tool

27. At its second meeting<sup>18</sup>, the WG-DST considered the comments made by the CAJ-AG, at its ninth session, on the proposals in document UPOV/INF/12/5 Draft 2 concerning Sections 2.2.2 (b), 2.3.1 (c) and (d), and 2.3.3, as provided in the following paragraphs.

#### Section 2.2.2 (b)

28. The WG-DST agreed to propose to amend the text as follows (underlining indicates insertion to the text):

“(b) accepted market practices for particular variety types (e.g. hybrids) and particular genera/species (e.g. *Medicago*, *Helianthus*).”<sup>19</sup>

#### Section 2.3.1 (c)

29. The WG-DST agreed to propose new examples of denominations that:

- (i) might erroneously imply relation to, or derivation from, other varieties;

Example: “alpha” and “alpha-HT” (in a case where “alpha-HT” differs from “alpha” in characteristics other than herbicide tolerance (HT) and is not closely related to Alpha), and

- (ii) would not imply relation to, or derivation from, other varieties;

Example: “Prince Albert” and “Prince Alexander”, and “Ivory Bells” and “Lilac Bells” where the words “Prince” and “Bells” have been used for unrelated varieties and for varieties bred by different breeders.<sup>20</sup>

<sup>18</sup> Held in Geneva, on June 9, 2015.

<sup>19</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 21.

Section 2.3.1 (d)

30. The WG-DST agreed with the addition of new Section 2.3.1 (d) to document UPOV/INF/12<sup>21</sup>.
31. The WG-DST agreed to add an explanation in Section 2.3.1 (d) that *Carex* is the botanical name of the genus, for which the common name is sedge.<sup>22</sup>
32. The WG-DST agreed that the use of the botanical or common name of a genus to which a variety does not belong should be avoided, unless the botanical name or common name had a wider meaning, e.g. “Rose”, “Cosmos”, “Lilac”, “Veronica” and “Bianca”.<sup>23</sup>

Section 2.3.3 (a)

33. The WG-DST agreed the need to differentiate between letters in the form of words and other cases, and agreed on the followings:
- (i) in the case of denominations consisting of letters not in the form of words, a difference of a single letter should be regarded as a clear difference, with examples to be provided;
  - (ii) in the case of denominations consisting of figures, a difference of a single figure should be regarded as a clear difference, with examples to be provided; and
  - (iii) in the case of denominations consisting of figures and letters, not in the form of words, one letter or figure difference should be regarded as clear difference, with examples to be provided<sup>24</sup>.
34. The WG-DST agreed to consider Section 2.3.3 (a) further at its fourth meeting, on the basis of the conclusions of the CAJ, at its seventy-second session,<sup>25</sup> on the WG-DST proposals.<sup>26</sup>

Section 2.3.3 (b)

35. The WG-DST agreed to propose to add the example of “Helena” and “Elena” as an example of where a clear visual difference may not provide a clear phonetic difference in a language other than English (in Spanish).<sup>27</sup>
36. The WG-DST recalled that acceptability of denominations would be considered in their original alphabet for the territory concerned and transcriptions and/or transliterations would not be considered for similarity purposes. On that basis the WG-DST agreed to propose the deletion of the example “Raion” and “Lion”, because they would not be confused in the Roman alphabet.<sup>28</sup>

Section 2.3.3 (d)

37. The WG-DST agreed to recommend that consideration be given to avoiding re-use of denominations in all cases. However, it clarified that it would be important to consider only denominations of varieties (i.e. plant groupings that meet the definition of variety in Article 1 (vi) of the 1991 Act) and, in addition, to

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<sup>20</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 22.

<sup>21</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 23.

<sup>22</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 24.

<sup>23</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 25.

<sup>24</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 26.

<sup>25</sup> To be held in Geneva, on October 26 and 27, 2015.

<sup>26</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 27.

<sup>27</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 28.

<sup>28</sup> See document UPOV/WG-DST/2/6 “Report”, paragraph 29.

expand the content of PLUTO database to include all varieties, including those that had not been, or were no longer, registered/protected.<sup>29</sup>

38. The proposal of the WG-DST to expand the content of PLUTO database to include all recognized varieties, including those that had not been, or were no longer, registered/protected, is considered in document CAJ/72/6 "UPOV Information Databases".

39. *The CAJ is invited to:*

*(a) make an initial consideration of the proposals of the WG-DST concerning a possible revision of document UPOV/INF/12, in particular, in relation to the following matters:*

*(i) Section 2.2.2 (b), proposal to clarify the terminology concerning accepted market practices in the context of "established practice" (see paragraph 28);*

*(ii) Section 2.3.1 (c), proposed examples that "convey the impression that the variety is derived from, or related to, another variety when that is not, in fact, the case" (see paragraph 29);*

*(iii) new Section 2.3.1 (d), concerning new guidance on possible confusion of the use of the botanical or common name of a genus to which that variety does or does not belong (see paragraphs 30 to 32);*

*(iv) Section 2.3.3 (a), proposed initial guidance and examples on possible confusion concerning "the identity of the variety" and whether it would be appropriate to differentiate between letters in the form of words and other cases (see paragraph 33 (i) to (iii));*

*(v) Section 2.3.3 (b), proposed additional example of "Helena" and "Elena", and the deletion of the example "Raion" and "Lion", to illustrate that a clear visual difference may not provide a clear phonetic difference (see paragraphs 35 and 36); and*

*(vi) Section 2.3.3 (d), proposed recommendation that consideration be given to avoiding re-use of denominations in all cases (see paragraph 37 and the proposal to expand the PLUTO Database, paragraph 38); and*

*(b) consider a possible way forward for the revision of document UPOV/INF/12, taking into consideration the initial comments of the CAJ on the above matters, and in conjunction with the work of the WG-DST for the development of an effective UPOV similarity search tool.*

40. *The CAJ is invited to note the proposal to expand the content of PLUTO database to include all varieties, including those that had not been, or were*

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<sup>29</sup> See document UPOV/WG-DST/2/6 "Report", paragraph 30.

*no longer, registered/protected, will be considered in document CAJ/72/6 "UPOV Information Databases", as set out in paragraph 38.*

CAJ-AG proposals on Section 2.2.2 (c), Section 4(a) and Section 4(e)(i)

41. The CAJ, at its seventy-first session, agreed<sup>30</sup> to consider the following proposals of the CAJ-AG on document UPOV/INF/12/5 Draft 2, Section 2.2.2 (c), Section 4(a) and Section 4(e)(i), at its seventy-second session:

2.2.2 (c)	To add 2.2.2 (c) as follows:  “(c) ‘established practice’ is determined to be when registration has been accepted for one species or group, so that it can be used in other species which have not yet registered any variety whose denomination consists solely of figures.”
4(a)	To modify 4(a) as follows:  “(a) An authority should not accept a variety denomination if <u>a there is an existing</u> prior right, the exercise of which may prevent the use of the proposed denomination, <del>has already been granted to a third party under plant breeder’s right law, trademark law or any other intellectual property legislation.</del> 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) <a href="http://www.upov.int/pluto/en/">http://www.upov.int/pluto/en/</a> ) to identify prior rights for variety denominations. They may also make searches in other registers, such as trademark registers, before accepting a variety denomination.”
4(e)(i)	To modify last sentence of 4(e)(i) as follows:  “In cases of mere similarity or small likelihood of <del>association</del> <u>confusion</u> by users, waivers granted to breeders by prior trademark right holders could be a suitable solution.”

*42. The CAJ is invited to consider the proposals of the CAJ-AG on a revision of document UPOV/INF/12, Section 2.2.2 (c), Section 4(a) and Section 4(e)(i), as set out in paragraph 41.*

[End of document]

<sup>30</sup> See document CAJ/71/10 “Report on the Conclusions”, paragraph 37.