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Sent: lundi, 29. octobre 2012 13:33
To: mail, Upov
Cc: Button, Peter
Subject: Additional Remarks as Reply to ESA Comments concerning topics of CAJ-AG session 2012

Attachments: 29.10.2012_RU_Add_Remarks_CAJ_AG 2012.doc



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Subject: Additional Remarks as Reply to ESA Comments concerning topics of CAJ-AG
session 2012

Please, find enclosed file "29.10.2012_RU_Add_Remarks_CAJ_AG 2012.doc".

Sincerely yours,

V. Shmal, Chairman

Y. Rogovskiy,
Deputy Chairman

STATE COMMISSION OF THE RUSSIAN FEDERATION
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October 29, 2012.

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Attention: Mr. Peter Button, Vice Secretary-General and CAJ-AG members

Subj.: Remarks of the Russian Federation as Reply to ESA Comments
concerning topics of CAJ-AG session 2012

Dear Mr. Button,

As the Russian Federation representatives will not be able to attend CAJ – AG session 2012, please, take our remarks have been made after reading comments of CIOPORA, ISF an ESA, particularly, concerning topics of the CAJ-AG session. We also ask you to bring them to CAJ-AG members’ notice and thank you in advance.

1. In respect of the Definition of Breeder

Indeed, under Act 1978. (Article 6) PBR is granted for a breeder who bred a new plant variety, or for his successor in title. Employer of the breeder or a person has commissioned this work has not such a right under Act 1978.

However, the term “breeder” is clearly worded in document UPOV/EXN/BRD Draft 5 in accordance with Act 1991. We do not find ESA suggestion concerning the definition of breeder advisable. Member states continuing to follow Act 1978 can make a decision to accede to the 1991 Act and to adjust their national law in accordance with the provisions of the last Act. By this reason it is also not appropriate to change edition in respect of “entity”.

2. In respect of Harvested Material

We consider it is inadmissible in any Explanatory notes to provide with every the Union member to determine “reasonable opportunity” for breeder to exercise “his right”. The UPOV Convention provision concerning enforcement of PBR only in the territory where it has been granted should not be revised in Explanatory notes.

According to the UPOV Convention it is a norm - if the breeder did not apply and had not protection for his variety, he has no “his right on acts in respect of propagating material and consequently has no right on acts in respect of harvested material grown in the territory in question and on acts in respect of material exported from the territory to a protection country.

3. In respect of EDV

We support a suggestion of ESA that a special EDV examination is necessary in accordance with applicable DUS testing rules and regulations.

We do not support a wording in paragraph 17 of document UPOV/EXN/EDV/2 Draft 2 “*With regard to establishing whether a variety is an essentially derived variety, a common view expressed by members of the UPOV is that the existence of a relationship of essential derivation between protected varieties is a matter for the holders of plant breeders’ rights in the varieties concerned.*” Decision concerning the relationship existence of EDV breeding is a matter of authority but not of PBR owners. An applicant must provide a breeding method of his variety applied in Technical Questionnaire what obligates the authority to carry out comparison EDV variety and initial variety concerned when DUS testing to make a decision if the variety applied is EDV.

We suppose it should be considered in the Explanatory notes such matters as:

- relationship between PBRs enforcement territory for initial variety and EDV;
- how to certify extension of PBR for initial variety to EDV;
- how to inform a public about existence of PBR for initial variety to EDV;
- how to make a license for acts in respect of EDV propagating material;
- how to collect duties for PBR granting for EDV and its annually maintenance.

(Similar Explanatory notes concerning authority action algorithm would be desirable on provisions Article 14 (5) (ii) and (iii)).

Yours sincerely,

V. V. Shmal,
Chairman,

Y. Rogovskiy,
Deputy Chairman