



CAJ-AG/13/8/6

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

Geneva

**ADMINISTRATIVE AND LEGAL COMMITTEE ADVISORY GROUP****Eighth Session  
Geneva, October 25, 2013****MATTERS CONCERNING VARIETY DENOMINATIONS***Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. The Administrative and Legal Committee Advisory Group (CAJ-AG), at its seventh session, held in Geneva, on October 29 and 30, 2012, considered that it would be appropriate to develop further guidance in a separate document for the matters covered in document CAJ-AG/11/6/4 "Matters Arising after the Grant of a Breeder's Right" concerning variety denominations (see document CAJ-AG/12/7/7 "Report", paragraph 90).

**BACKGROUND**

2. Guidance on variety denominations is currently provided in document UPOV/INF/12/4 "Explanatory notes on variety denominations under the UPOV Convention".

**MATTERS FOR CONSIDERATION**Overview

3. The CAJ-AG, at its seventh session, considered that it would be appropriate to develop further guidance in a separate document for the matters covered in document CAJ-AG/11/6/4 "Matters Arising after the Grant of a Breeder's Right" concerning variety denominations (see CAJ-AG/12/7/7 "Report", paragraph 90).

4. Matters with regard to cancellation were presented in the following parts of document CAJ-AG/11/6/4:

(a) Annex I, Appendix 1 (Contribution from Argentina), Section C (reproduced as Annex I to this document);

(b) Annex I, Appendix 6 (Contribution from South Africa), Section 2 (reproduced as Annex II to this document); and

(c) Annex II (Contribution from South Africa) (reproduced as Annex III to this document).

5. The matters above are considered in the following paragraphs.

Changes to a Registered Variety Denomination

6. The examples provided by Argentina in Annex I to this document and by South Africa in Annexes II and III to this document, concern situations in which the breeder makes a request to change a variety denomination after the grant of the breeder's right.

7. With regard to changes to a registered variety denomination, document UPOV/INF/12/4 "Explanatory Notes on Variety Denominations under the UPOV Convention" states the following:

**Paragraph 7**

**[Obligation to use the denomination] Any person who, within the territory of one of the members of the Union, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.**

*Explanatory Note – Paragraph (7)*

7. If it is found that prior rights of a third party prevent the use of the registered variety denomination, the authority shall require the breeder to submit another denomination. Article 22(1)(b)(iii) of the 1991 Act provides that the breeder's right may be cancelled if "the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination."

8. Document UPOV/INF/12/1 "Explanatory notes on variety denominations under the UPOV Convention" does not anticipate a request from a breeder to change a registered variety denomination.

9. The CAJ-AG may wish to consider the development of guidance in relation to a request from a breeder to change a registered variety denomination in cases other than where the denomination of the variety is cancelled after the grant of the right.

*10. The CAJ-AG is invited to consider the development of guidance in relation to a request from a breeder to change a registered variety denomination in cases other than where the denomination of the variety is cancelled after the grant of the right.*

[Annexes follow]

CONTRIBUTION FROM ARGENTINA



Ministry of Agriculture, Livestock and Fisheries  
National Seed Institute

*2010 – YEAR OF THE BICENTENARY OF THE MAY REVOLUTION”*

This document explains a few cases relating to events which occurred subsequent to the granting of breeder’s rights in Argentina that were settled by the National Seed Institute (INASE).

[...]

*(C) CHANGE OF DENOMINATION*

The following involves a person granted a license by the breeder who requested a change of denomination for varieties entered in the National Registry of Cultivar Property, basing his request on the fact that the plant varieties were transferred by means of a licensing contract containing denominations different from the ones used by the company that created the variety.

In this case, it was noted that “once a variety has been entered in the National Registry of Cultivar Property, only grounds of exceptional gravity can justify a change of denomination.

Likewise, both the UPOV Convention approved by Article 13(8) of National Law No. 24.376, in Article 13(8), and Article 20 of Decree 2183/91 provide, in such cases, for the possibility of associating a factory or trade mark, a trade name or a similar indication with a cultivar denomination, provided that the said association does not in any way impede the easy recognition of the denomination that is intended to be its generic designation.

For the reasons set out, it is not appropriate to make the change requested, given that the reason for licensing the variety adduced by the applicant does not constitute exceptional grounds that would justify the change of denomination.

Without prejudice to the foregoing and in accordance with what was explained above, a mark or trade name may be added to the registered denomination, without the former altering the latter.”

(File S01:0109527/2004)

Signed: Dr. Carmen Amelia Margarita Gianni  
Coordinator  
Coordination of Intellectual Property and Phytogenetic Resources  
NATIONAL SEED INSTITUTE  
ARGENTINA

[Annex II follows]

ANNEX II

CONTRIBUTION FROM SOUTH AFRICA

EXAMPLES ON MATTERS ARISING AFTER THE GRANT OF  
THE BREEDER'S RIGHT

[...]

2. VARIETY DENOMINATION

Increasingly applicants request an alteration of denomination after the right is granted. The explanation we have received so far is that farmers sometimes prefer varieties from a particular company. For an example; A farmer prefers varieties from Company A over those from Company B. Company A will obtain rights for their varieties and licence these to Company B. Company A will then apply for an alteration of denomination so that Company B can use denominations that farmers cannot associate with Company A.

We are currently amending our act and will in future allow denomination alterations only before the grant of a plant breeder's right (exceptional circumstances will be considered on case by case basis).

[Annex III follows]

CONTRIBUTION FROM SOUTH AFRICA

MATTERS ARISING AFTER THE GRANT OF A PLANT BREEDER'S RIGHT

REF: CAJ-AG/10/5/6

CONTRIBUTION FROM SOUTH AFRICA received on December 20, 2010

[...]

VARIETY DENOMINATION

It is our view that guidance in relation to the alteration of approved variety denominations is not sufficiently dealt with in document *UPOV/INF/12/2*. It would help our office to have guidance from the UPOV Office regarding this matter, as applicants would always argue that other member countries would allow applicants to change variety denominations even after the grant of a plant breeder's right.

[End of Annex III and of document]