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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Third Session

Geneva, April 24 and 25, 1979

UPOV MODEL FORM FOR THE DESIGNATION OF THE
SAMPLE OF THE VARIETYDocument prepared by the Office of the Union

1. At the second session of the Administrative and Legal Committee, the Delegation of the Netherlands suggested that a UPOV model form be established in which the applicant for protection of a variety in one member State would designate as the sample of the variety for the purposes of that application the sample submitted for an examination of the variety in another member State. That designation would enable the authority in the first-mentioned member State to take over the results of the examination performed in the other member State on the basis of the sample submitted there.
2. Whereas several national laws expressly empower the authorities to entrust examination of varieties to authorities of other member States, not all authorities are empowered to decide that the sample of a given variety furnished in connection with a prior application in another member State shall also constitute the sample of that variety for the purposes of the application filed with them. If an authority has not that power, the applicant may claim the right to deliver a separate sample of the variety for the application filed with that authority and may insist on a separate examination of the variety being made for that application, meaning that the results of an examination already performed for another application could not be taken over.
3. In order to allow examination results to be taken over in the absence of a specific provision in national law and to avoid any contestation, it is proposed that the applicant be asked to sign a declaration, drawn up by the national authority wishing to take over the examination results on the basis of a UPOV Model Form, a draft of which appears in Annex I to this document. If the applicant does not sign the declaration, the variety will have to be examined anew on the basis of the new sample and the applicant will not enjoy the benefit of any adjustment of the fees as a result of cooperation in examination.
4. For ease of discussion of this matter, Annex II contains a compilation of the provisions of the national laws of member States relating to cooperation in examination.

[Annexes follow]

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UPOV MODEL FORM FOR THE DESIGNATION OF THE SAMPLE OF THE VARIETY

prepared by the Office of the Union on the basis of information
received from the Delegation of the Netherlands

1. Model Accompanying Letter¹

According to our information, the DUS examination of the variety mentioned in the attached form

has already been performed

is being performed

is to be performed

on the basis of an earlier application filed in [other State]

It is our intention to decide on the application for protection/inclusion in the national list on the basis of the said DUS examination and of the identity sample submitted for that purpose and we would appreciate your assistance in returning the attached form duly signed

by [date]

Failure to return the attached form by that date will mean that the variety will be the subject of a separate examination, for which the normal examination fee will be charged.

2. Form²

Application for protection

inclusion in the national list

Application Number:

Filing Date:

Denomination/Breeder's Reference:

Species:

DESIGNATION OF IDENTITY SAMPLE

I/We have taken note that the decision on the above-mentioned application will be based on the DUS examination performed by the authority of [State] on the basis of the application No. of [date]

for protection

inclusion in the national list

filed in [State]

I/We designate the sample already submitted in connection with that application as the sample to be submitted in connection with the above-mentioned application.

..... [Place] [Date]

.....
[Signature]

Name and Address of Signatories:

[Annex II follows]

¹ To be sent to the person to whom all correspondence is to be sent (mentioned in item 2 of the UPOV Model Form for the Application for Plant Breeders' Rights).

² To be filled in by the competent authority and to be signed by the applicant or by the person authorized by the applicant.

COMPILATION OF THE MAIN LEGAL PROVISIONS IN UPOV MEMBER STATES
BEARING ON COOPERATION IN EXAMINATION

established by the Office of the Union on the basis of
the information available to it

1. Belgium

- Article 20 of the Law on the Protection of New Plant Varieties (of May 20, 1975):

"20.- The King shall have power to conclude agreements with foreign scientific institutions with a view to the examination of new plant varieties and to take all such executive measures as are required to that end."

- Articles 21(2) and 22(1) of the Royal Decree on the Protection of New Plant Varieties (of July 22, 1977), as amended by the Royal Decree of October 18, 1978:

"21.- (2) Where Belgian or foreign documentation in the possession of the Service shows that an examination has already been made and where the information contained in such documents appears adequate to the Service to enable a decision to be taken, the Service may decide not to carry out an examination of the variety.

"22.- (1) By making his application, the applicant undertakes to make available, at the request of the Service, free of charge, within the required period of time, at the stipulated place and in the required quantity, the reproductive or vegetative propagating material needed to examine the variety. The Service may stipulate specific requirements in relation to the required reproductive or propagating material and its packaging."

2. Denmark

Section 9(4) of the Plant Variety Breeders' (Protection of Rights) Law (of June 16, 1962), as amended for the last time by the Law of March 29, 1974:

"9.- (4) The Plant Variety Board can, without preliminary examination in Denmark, approve a new plant variety, if a novelty test has been carried out by an institute recognized under the International Convention for the Protection of New Varieties of Plants (UPOV) and in accordance with rules approved by UPOV. If, in other cases, the new plant variety has been tested by domestic or foreign testing stations, the Board can decide to shorten the test period."

3. France

- Section 5 of the Law on the Protection of New Plant Varieties (of June 11, 1970):

"5.- No certificate shall be issued unless, after a preliminary examination, the variety to which the application relates is found to be a new plant variety within the meaning of Section 1.

"The Committee may dispense with a preliminary examination if such examination has already been effected with sufficient references in another country party to the Paris Convention of December 2, 1961. The Committee may also be assisted by foreign experts."

- Section 21 of the Decree Concerning New Plant Variety Certificates and the Issue and Renewal Thereof (of September 9, 1971):

"21.- On being duly referred to under the conditions specified above, the Committee shall make an initial examination of the application for a new plant variety certificate, and of any observations relating thereto.

"The Committee shall fix its own examination procedure.

"Pursuant to Section 5 of the Law of June 11, 1970, mentioned above, the Committee may decide not to make an initial examination if French or foreign documents in its possession show that such an examination has already been made and the information contained in those documents appears sufficient for it to be able to take a decision.

"Where the Committee decides to order an examination of a variety, it shall lay down the duration and the details of such examination. Examination shall relate to novelty, homogeneity and stability with the exclusion of an evaluation of the variety's usefulness in cultivation; it shall not be made before proof of payment of the fee has been given."

4. Germany (Federal Republic of)

Article 36(1), (2) and (3) of the Law on the Protection of Plant Varieties (consolidated version of January 4, 1977):

"36.-(1) The Federal Office of Plant Varieties shall examine whether the conditions for the grant of protection are met. It may waive examination if it already has earlier examination findings in its possession.

"(2) For the purposes of examination the Federal Office of Plant Varieties shall grow the variety. It may entrust to other technically qualified services the task of growing the variety or such further tests as may be necessary, or base its own examination on the results of test growings or further tests carried out by such services. However, results of test growings and tests from services outside the territory where this Law is in force may only be used as a basis for the examination if the services concerned are included in a notification by the Federal Office of Plant Varieties.

"(3) The Federal Office of Plant Varieties shall require the applicant to furnish it or any service which it may indicate, by a given date, with the propagating material necessary for the examination of the variety subject of the application and all information necessary for the evaluation of the variety, and also to allow such information to be checked (...)"

5. Italy

Article 8 of the Standards for the Protection of New Plant Varieties (Decree of August 12, 1975):

"8.- Application for a patent in respect of a new plant variety shall be examined to ascertain:

"(a) that the application and documents appended thereto are in order;

"(b) that the denomination submitted for the new variety is in conformity with the provisions of this Decree;

"(c) the presence of elements liable to impede the grant of a patent within the meaning of Section 1 above.

"The Ministry of Agriculture and Forestry may decide to dispense with such examination, wholly or in part, under (b) and (c) above, if such procedures have been previously and effectively carried out in Italy or in another State of the Paris Union for the Protection of New Varieties of Plants. In that case, the applicant shall be required to submit documentary evidence to that effect."

6. Netherlands

- Section 18(3) of the Seeds and Planting Materials Act (of October 6, 1966):

"18.- (3) The Board shall enter the variety in the Register by recording the characteristics determined by the Board and its denomination."

- Section 35(3) of the Seeds and Planting Materials Act:

"35.- (3) When the application is made, enough propagating material of the variety to which the application relates shall be made available to the Board for examination."

- Section 21(1) and (2) of the Decree Implementing Sections 4(2), 15(2), 18(2), 27, 39, 47 and 57 of the Seeds and Planting Material Act (Regulations of the Board for Plant Breeders' Rights):

"21.- (1) The Board may appoint one or more experts when defining the scope of the examination; the applicant shall be informed thereof.

"(2) The Board is entitled to appoint permanent experts or panels of experts, defining at the same time their tasks."

7. South Africa

Section 19(2), (3), (4) and (6) of the Plant Breeders' Rights Act, 1976:

"19.- (2) The registrar shall undertake such tests and trials as he may deem necessary with a variety in respect of which an application is being considered under subsection (1) or have such tests and trials undertaken in terms of subsection (6), in order to enable him to determine whether such a variety is a new variety.

"(3) The person whose application is being considered shall, for the purposes of such tests and trials and at such a time and place as the registrar may determine -

"(a) (...)

"(b) furnish the registrar -

"(i) with the propagating material which he may require;

"(ii) with such specimens of plants of the variety or of parts of such plants as he may require; and

"(iii) with such information in connection with the variety as he may require.

"(4) (a) Notwithstanding the provisions of subsection (2), the registrar may, if he can obtain acceptable results of tests and trials with the variety in question from the appropriate authority in a convention country or an agreement country, in his discretion decide not to undertake any tests or trials with a variety in respect of which an application is being considered under subsection (1).

"(b) (...)

"(5) (...)

"(6) The registrar may submit propagating material of a variety in respect of which application for a plant breeder's right has been made to him, to the appropriate authority in a convention country or an agreement country in order to have the necessary tests and trials undertaken therewith, and the registrar shall accept the results of any such tests or trials which such authority may furnish to him."

8. Sweden

- Section 16 of the Plant Breeders' Protection Act (of May 27, 1971):

"16.- The national Plant Variety Board shall make arrangements for trials with material of the plant variety, unless for special reasons this is considered unnecessary. A prescribed fee shall be paid for the trials."

- Section 50 of the Plant Breeders' Protection Act:

"50.- The King in Council may decree that a plant variety for which registration is sought may be examined by an authority in another State or by an international institution, and that an applicant for registration of a variety who has previously sought registration for the same variety in another State shall report information given to him by the authority in that State concerning the examination of the registration requirements."

9. Switzerland

Article 24 of the Federal Law on the Protection of New Plant Varieties (of March 20, 1975):

"24.-(1) It shall be the responsibility of federal agricultural research stations to investigate whether a variety is new and sufficiently homogeneous and stable. In the case of varieties developed by the stations themselves, the Office shall entrust the task to some other authority fulfilling the required conditions. International agreements made pursuant to Article 30(2) of the Convention shall apply notwithstanding anything to the contrary herein.

"(2) The authority responsible for the examination may, with the approval of the Office, call on the assistance of third parties and take into consideration the findings of examinations conducted abroad."

10. United Kingdom

- Section 9(5) (a) and (b) of the Plant Varieties and Seeds Act 1964:

"9.-(1) Regulations may be made under this section by the Ministers as respects the manner in which the Controller is to discharge his functions under this Part of this Act, and in particular as respects: (...)"

"9.-(5) Regulations under this section may in particular:

"(a) prescribe the information and facilities to be afforded by an applicant and the reproductive material and other plant material to be submitted at the time of the application or subsequently,

"(b) prescribe the tests, trials, examinations and other steps to be taken by the applicant or the Controller before any application is granted, and the time within which any such steps are to be taken. (...)"

- Section 11(4) of the Plant Varieties and Seeds Act 1964:

"11.-(4) Without prejudice to the Controller's general discretion as to the manner in which he performs his duties under this Act, and subject to subsection (2) of this section, the Controller:

"(a) in carrying out the tests and trials which he considers expedient for the purposes of this Part of this Act, and in assessing the results of any tests and trials (whether carried out by him or not) which he considers relevant for those purposes, may use the services of persons who are not officers or servants appointed under this section and may pay to such persons in respect of their services fees in accordance with such a scale as he may with the approval of the Treasury determine, and

"(b) may establish and maintain reference collections of plant material, and

"(c) may by means of grants of such amounts as he may with the approval of the Treasury determine defray or contribute towards the expense incurred by any other person in maintaining any reference collection of plant material."

- Section 12(1) and (2) of the Plant Breeders' Rights Regulations 1978:

"12.- (1) Any person making an application under any of the provisions of Part I of the Act shall -

"(i) give to the Controller such information and evidence and produce or deliver to him such documents, records and illustrations as he may require;

"(ii) where the application is for a grant of plant breeders' rights, deliver to the Controller or produce to him for examination, as may be required, the reproductive and other plant material of the plant variety to which the application relates in the quantity and of the description and quality specified, and packed and in the condition also specified, in the part of Schedule 3 to these regulations appropriate to the plant variety, and also such further reproductive and other plant material in such quantity and of such description and quality as shall appear to the Controller to be required to replace any such material already delivered as may have been damaged in transit or damaged or lost in the course of tests and trials or which is, or has in the course of tests and trials been shown to be, unhealthy or otherwise unsuitable;

"(iii) where the application is other than one for a grant of plant breeders' rights, deliver to the Controller such reproductive and other plant material in such quantity and of such description and quality as he may require;

"(iv) afford to the Controller at all reasonable times such facilities for the inspection or examination of plants, plant material, trial grounds or other land or premises,

to or at such place, within such period or at such time or times and in such manner as the Controller may from time to time require, being information, evidence, documents, records, illustrations, material and facilities as are relevant to the application and in the possession, control or power of the applicant.

"(2) The Controller may from time to time require a person making an application under any of the provisions of Part I of the Act to undertake before the application is granted such tests and trials in connection with the plant variety which is the subject of the application at such place, within such time and in such manner as the Controller may also require."

[End of document]