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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Thirteenth Session
Geneva, April 4 and 5, 1984

FEES TO BE PAID IN RELATION TO COOPERATION IN EXAMINATION

Document prepared by the Office of the Union

1. The Delegation from the Federal Republic of Germany has asked that the question of fees to be paid in relation to cooperation in examination be included in the agenda of the current session. It also asked that information be gathered on the following two questions:

1. Are there member States which, outside the framework of bilateral agreements for cooperation in examination, base their decisions on the grant of protection on the result of the examinations conducted by other member States?

2. (If an affirmative reply is given to the previous question) Do the States concerned consider applying the UPOV Recommendation on Fees in Relation to Cooperation in Examination?

2. These questions were supplemented by the following explanations:

"According to Article (1)(a) of the Recommendation, an authority which takes over the examination report drawn up by the authority of another member States pays to the latter a fixed consideration equivalent to about 350 Swiss francs.

"The Recommendation is implemented by the majority of member States.

"In particular in the member States which protect new plant varieties by means of patents, in accordance with the provisions of Article 2(1) of the Convention, it would be conceivable that, pursuant to established practice in the field of patents for inventions, the applicant is requested to supply at the same time as the documents constituting the application the result of the examination made by another member State (for example the decision on the grant of protection and the official description of the variety). In that case, the Authority that has carried out the examination would be unaware of the use made of its results by another authority, and it would not have any basis for ensuring the implementation of the Recommendation mentioned above."

3. At the date of this document, the Office of the Union has received replies from the delegations from the following States: Belgium, France, Ireland, Japan, New Zealand, Spain, Sweden, Switzerland, United Kingdom, United States of America. The replies of interest to this document are as follows:

(i) United States of America.- "[The] questions... do not apply to the examination systems in either of our Offices. Each Office independently examines applications for protection or for a plant patent. Examination results from other Offices are not relied upon, although information coming from foreign or external sources (e.g., information contained in a priority document) would be considered."

(ii) New Zealand.- "Although New Zealand has not entered into any formal bilateral agreements for cooperation in examination, some decisions on grants of protection in New Zealand have been based upon the result of examinations conducted by other member States. (In reaching such decisions we always also carry out some check on plants of the variety growing in this country.) If we required a report from the authority in another UPOV country or if we were requested to supply a New Zealand report to another UPOV country we believe it would be reasonable for payment to be made according to the UPOV Recommendation on Fees in Relation to Cooperation in Examination."

4. In summary, the other delegations have replied that they implemented the UPOV Recommendation (Belgium, France, Ireland, Sweden and United Kingdom--but in the case of the latter in the other sense that the consideration provided by the Recommendation was requested from a member State which has not (yet) concluded a bilateral agreement with the United Kingdom) or that they did not rely on cooperation in examination (Japan and Spain), or again that the questions were not relevant to them (Switzerland).

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