



Disclaimer: unless otherwise agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

This document has been scanned from a paper copy and may have some discrepancies from the original document.

Avertissement: sauf si le Conseil de l'UPOV en décide autrement, seuls les documents adoptés par le Conseil de l'UPOV n'ayant pas été remplacés peuvent représenter les principes ou les orientations de l'UPOV.

Ce document a été numérisé à partir d'une copie papier et peut contenir des différences avec le document original.

Allgemeiner Haftungsausschluß: Sofern nicht anders vom Rat der UPOV vereinbart, geben nur Dokumente, die vom Rat der UPOV angenommen und nicht ersetzt wurden, Grundsätze oder eine Anleitung der UPOV wieder.

Dieses Dokument wurde von einer Papierkopie gescannt und könnte Abweichungen vom Originaldokument aufweisen.

Descargo de responsabilidad: salvo que el Consejo de la UPOV decida de otro modo, solo se considerarán documentos de políticas u orientaciones de la UPOV los que hayan sido aprobados por el Consejo de la UPOV y no hayan sido reemplazados.

Este documento ha sido escaneado a partir de una copia en papel y puede que existan divergencias en relación con el documento original.

UPOV

CAJ /XV/ 7

ORIGINAL: French

DATE: March 19, 1985

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE

Fifteenth Session
Geneva, March 27 and 28, 1985PREPARATION OF THE SECOND MEETING
WITH INTERNATIONAL ORGANIZATIONS

* * * * *

FURTHER AGENDA ITEMS

Document prepared by the Office of the Union

1. By letter of February 4, 1985, received on March 19, 1985, Mr. J. Van Andel and Mr. R. Royon, President and Secretary-General, respectively, of the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Tree Varieties (CIOPORA), proposed that the following items should be added to the agenda of the second Meeting with International Organizations:

- i) Minimum distances between varieties
 - a) at the preliminary examination stage
 - b) at the official appraisal stage in the case of infringement proceedings;
- ii) Variety denominations;
- iii) Scope of protection;
- iv) Application of the Convention to botanical genera and species.

2. The explanations to those proposals will be found in the above-mentioned letter, which is reproduced in Annex I to this document. Annex II contains the Resolution referred to in the letter.

[Annexes follow]

CAJ/XV/7

ANNEX I

LETTER, DATED FEBRUARY 4, 1985,
FROM THE PRESIDENT AND THE SECRETARY GENERAL OF CIOFORA
TO THE SECRETARY-GENERAL OF UPOV

In reply to your kind invitation of December 14, 1984, we confirm that a CIOFORA delegation will participate in the Meeting organized by UPOV on October 15 and 16 next.

Concerning your proposed agenda, our Organization would like the suggested items to be less general in nature and relate more closely to the very specific problems encountered by breeders in the course of their business in the field of plant variety protection.

Thus, it would seem to us that before turning to new items of discussion, the problems which were rather superficially examined in November 1983 should be considered further in order to enable concrete solutions to be found.

We therefore suggest that the following items should be taken up again:

- Minimum distances between varieties:
 - at the preliminary examination stage
 - at the official appraisal stage in the case of infringement proceedings;
- Nomenclature:

On June 6, 1984, CIOFORA communicated to UPOV the Resolution taken by its General Assembly on June 5. CIOFORA wishes that the ambiguous situation in certain UPOV member States in respect of variety denominations be clarified by an appropriate amendment to the "UPOV Directives," pursuant to the afore-mentioned Resolution.

In addition, our Association wishes to point out that the UPOV Convention has two characteristic "weak points":

- The first is the scope of the protection accorded to the breeder (Article 5): as long as States are able to become a member of UPOV by simply applying the minimum protection provided by Article 5, breeders will not be in a position to exercise their rights in a normal manner.

That item should be placed on the agenda.

- The second relates to the progressive application of the Convention to all botanical genera and species.

Contrary to what happens in the patent field, where any kind of invention may be patented if it meets the basic patentability criteria, the special laws on the protection of new plant varieties are applied to a too limited number of species. The consequence is that many breeders are inequitably treated and deprived of the fruit of their work, when the species on which they work is not protected because it does not yet represent a sufficient market in a given country or because the country does not have the necessary facilities for preliminary examination.

That unjust situation should be rectified:

- by amending the general conception of preliminary examination;
- by facilitating the exchange of examination results between the UPOV member States or by permitting, where relevant, the validation at the international level of a national examination.

Our Association wishes to be able to discuss this issue at the Meeting.

[Annex II follows]

[Original : French]

CAJ/XV/7

ANNEX II

RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY OF CIOPORA JUNE 5, 1984,
ON THE PROPOSAL OF THE EXECUTIVE COMMITTEE

Subject: UPOV Recommendations on Variety Denominations (document IOM/I/5 of May 4, 1983)

RESOLUTION

WHEREAS the UPOV Recommendations of May 4, 1983, basically go no further than to repeat the provisions of the Guidelines for Variety Denominations adopted by the UPOV Council on October 12, 1973; whereas those provisions were unanimously criticized by the professional organizations consulted on December 6, 1972;

WHEREAS Article 13 of the Convention is in itself adequate; whereas the revised 1978 Act amended that Article to give it greater flexibility (for example, even denominations consisting solely of figures are now acceptable if they correspond to an established practice); whereas there is no justification for giving a restrictive interpretation;

CIOPORA

1. INVITES the UPOV Council to reconsider the need and the advisability of "Recommendations" or "Guidelines" in respect of the creation and acceptance of denominations submitted by breeders.

2. REQUESTS that, in any event,

(a) the "Recommendations" should forego any provision that has the purpose or effect

- of limiting the rights (at present recognized by Article 13) of breeders in their choice of denominations or their system of creating them,
- of changing the function of denominations by giving them an advertising and trading role encroaching on an area normally covered by trademarks;

(b) those proposed provisions, in particular, be deleted that require

- that the denomination be easy to remember and to pronounce for the average user (Recommendation No. 2(1)),
- that the denomination should not be composed of more than three syllables without pre-existing meaning (Recommendation No. 2(2)(iv)).

3. INVITES the UPOV Council to give official recognition as an established practice to the system of "coded denominations" (combinations of syllables and numerals) that has been used since 1954 by the breeders (both members and non-members of CIOPORA) of asexually reproduced ornamentals and fruit plants.

[End of document]