



TGP/5: Section 11/1 Draft 3

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

DRAFT

Associated Document
to the
General Introduction to the Examination
of Distinctness, Uniformity and Stability and the
Development of Harmonized Descriptions of New Varieties of Plants (document TG/1/3)

DOCUMENT TGP/5

“EXPERIENCE AND COOPERATION IN DUS TESTING”

Section 11:

Examples of Policies and Contracts for Material Submitted by the Breeder

*Document prepared by the Office of the Union to be considered by the
Technical Committee at its forty-fourth session,
to be held in Geneva, from April 7 to 9, 2008*

*Administrative and Legal Committee at its fifty-seventh session,
to be held in Geneva, on April 10, 2008*

Note for Draft version

Strikethrough indicates deletion from the draft 1 text, proposed by the Administrative and Legal Committee (CAJ), at its fifty-sixth session, held in Geneva on October 22 and 23, 2007

Underlining indicates insertion to the draft 1 text, proposed by the CAJ, at its fifty-sixth session

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1. BACKGROUND

1.1 Document TGP/4/1 Draft 10 “Constitution and Maintenance of Variety Collections”, Section 3.1.2.2.2, explains that “[f]or the purposes of the examination of DUS, UPOV encourages cooperation between variety collectors (see Section 3.2) including, in particular, the exchange of information and living plant material for the examination of distinctness. However, in the particular case of parent lines submitted as a part of the examination of a candidate hybrid variety, living plant material should only be made available to other variety collectors in such a way that the legitimate interests of the breeder would be safeguarded. Examples of ~~policies and contracts for material submitted by the breeder~~ ~~contracts/~~ ~~agreements between authorities and breeders~~¹ are provided in document TGP/5 ‘Experience and Cooperation in DUS Testing’ (document TGP/5).”

1.2 Furthermore, the UPOV “Model Administrative Agreement for International Cooperation in the Testing of Varieties” (document TGP/5 “Experience and Cooperation in DUS Testing”, Section 1) states that:

“Article 4

“(1) The Authorities shall take all necessary steps to safeguard the rights of the applicant.

“(2) Except with the specific authorization of the Receiving Authority and the applicant, the Executing Authority shall refrain from passing on to a third person any material of the varieties for which testing has been requested.

“(3) Access to the documents and the test plots shall be given only to:

“(i) the Receiving Authority, the applicant and any duly authorized person;

“(ii) the necessary staff of the institution that carries out the testing and special experts called in who are bound to secrecy in public service. Those special experts shall have access to the formulae of hybrid varieties only if it is strictly necessary and if the applicant does not object.

“This paragraph does not exclude general access to test plots by visitors, provided due regard is had to paragraph (1) above.

“(4) If another authority is a Receiving Authority under a similar agreement, access may be granted in accordance with the rules applicable under that agreement.”

1.3 This document provides some examples of the policies of authorities to ensure that the legitimate interests of the breeder are safeguarded.

¹ Any change to the title of TGP/5: Section 11/1 should be reflected in the adopted version of document TGP/4/1.

2. EXAMPLES OF POLICIES AND CONTRACTS FOR MATERIAL SUBMITTED BY THE BREEDER

2.1 Australia

Annex I to this document presents an example of a contract between *Seminis Vegetable Seeds, Inc.* and *IP Australia*.

2.2 European Community

Annex II to this document presents the policy of the Community Plant Variety Office (CPVO) of the European Community with regard to the status of plant material submitted for DUS testing in the framework of applications for Community Plant Variety Rights.

[Annexes follow]

ANNEX I

EXAMPLE CONTRACT BETWEEN
SEMINIS VEGETABLE SEEDS, INC. AND IP AUSTRALIA

CONDITIONS ON PROVISION OF PLANT MATERIAL

The applicant *Seminis Vegetable Seeds, Inc.* has attached the following conditions to the filing of the underlying application for Australian Plant Breeders Rights of a proprietary parental line of the applicant.

It concerns the application of:

Species :

Variety denomination or breeder's reference :

1. The applicant does not agree that any material of the parent line has to be released as a result of Section 19 of the Australian PBR law (1994) and hereby invokes the exemption under subsection 19(11) in which is stated that no material of the variety has to be released if the variety has no direct use as a consumer product.

The candidate line is a parent line which is only used for the production of other (hybrid) varieties. The applicant herewith certifies that the candidate line will NOT be sold AS SUCH on the market and that the line will NOT be used in any other way as a consumer product.

2. The applicant does not agree that any material of the candidate parent line is tested by a Qualified Person (QP) or other party with an interest in vegetable breeding, unless agreed upon by the applicant.

Material of the parent lines can only be tested by a QP who is not involved in any way in vegetable breeding. Prior to the testing of the candidate line, the applicant needs to be informed of the identity of the QP, and will be requested to give his consent.

3. In the course of the examination, or after granting the PBR certificate, the applicant does not agree that any material of the parent line is exchanged between examining authorities and/or QP's without the applicants authorization.

4. In case the applicants parent line appears to be (one of) the most similar variety(ies) of a newer application of a third party, the applicant can only agree to the provision of material of applicants parent line if conditions no. 2 and no. 3 are met.

5. Upon expiry or withdrawal of the PBR certificate, or in case the application is withdrawn or rejected, all material of applicants parent line should be destroyed or sent back to the applicant.

These conditions have been discussed on several occasions with Mr. Doug Waterhouse, Registrar of the Australian PBR Office.

We herewith request the Australian PBR office to acknowledge in writing the acceptance of these conditions.

Signature:

Date:

[Annex II follows]

ANNEX II

CPVO POLICY ON THE STATUS OF PLANT MATERIAL USED FOR DUS TESTING PURPOSES

The aim of this document is to make transparent the policy of the CPVO concerning material sent for DUS testing in the framework of Community Plant Variety Right applications. It will also contribute to a coherent practise by all examination offices in the CPVO. This will permit breeders to make an informed decision before sending material for testing. It is not the competence of the CPVO to decide what examination offices may do in relation to material submitted in the framework of a national pvr application or for national listing purposes. Accordingly, the CPVO cannot assure breeders that the below policy has been applied when the CPVO takes over reports from tests which has been carried out or is in the process of being carried out. The CPVO would nevertheless urge examination offices to follow the same principles when testing varieties for purposes other than in the framework of Community Plant Variety Right applications.

The policy does not apply to any other examination offices other than examination offices entrusted by the Administrative Council of the CPVO for a certain species (hereinafter “EU Network Offices”). Accordingly, when the below mentioned policy refers to a transfer of material between two EU Network Offices, this relates only to material of species that the receiving EU Network Office is entrusted to test by the Administrative Council of the CPVO.

1. What should an EU Network Office do with plant material if the application is withdrawn or if it is rejected?

- 1.1 The EU Network Office should either destroy or send back the material to the applicant.
- 1.2 If the variety is of common knowledge, the EU Network Office may keep the material in its reference collection.

2. May an EU Network Office send material

2.1 To an EU Network Office

- 2.1.1 On request the EU Network Office should send material to another EU Network Office entrusted for the same species.
- 2.1.2 If the sample consists of parent lines or would disclose information on hybrid formulas, the EU Network Office should inform the person entitled that the material has been sent to another EU Network Office.
- 2.1.3 The EU Network Office shall not use sub-samples received from another EU Network Office for any other purposes than for DUS tests. The provisions on confidentiality and conflicts of interest in the Designation Agreement between the CPVO and the EU Network Office shall apply

2.2 To an Other Examination Office

- 2.2.1 The EU Network Office may send material to an Other Examination Office only if consent has been obtained from the person entitled. However, if the variety is being sold on the market, consent from the person entitled is not required.

3. What may the EU Examination Office do with material after the variety has been granted a Community pvr?

3.1 If the EU Network Office does not keep a living reference collection the material shall be destroyed or sent back to the applicant.

3.2 If the EU Network Office keeps a living reference collection the material should be kept by the EU Network Office.

3.3 If the material is kept, the EU Network Office may, on request, transfer material to another EU Network Office or to an Other Examination Office on the same conditions as provided for in Section 2 above.

4. After the Community Plant Variety Expires

4.1 Material kept in a reference collection should be kept upon expiry of a Community plant variety right.

DECLARATION BY THE CPVO WHEN RECEIVING APPLICATIONS
WHEREBY PARENTAL LINES WILL BE SUBJECT TO A DUS TEST

1. For the purpose of this declaration, “sample” means the seed or other propagating material of parental lines transferred to the examination office as well as any progeny derived there from and any material in the form of plant, plant part or component of a sample.
2. The CPVO hereby acknowledges receipt of the application. The CPVO will appoint an examination office within the CPVO network for the technical assessment of the variety that is the object of this application. The CPVO will ask you to provide samples to be sent for testing to the mentioned examination office.
3. You will be informed if the material sent by you is further transferred to another examination office within the CPVO network. The material will not be sent to an examination office outside the CPVO network without your written consent.
4. The CPVO only allows samples to be used by examination offices for DUS testing.
5. The CPVO only allows examination offices to undertake the DUS test at the examination office’s own premises or premises authorised by the CPVO.
6. The CPVO only allows examination office personnel directly involved in performing the DUS test shall have access to samples and evaluation data.

[End of Annex II and of document]