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TECHNICAL COMMITTEE

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VARIETY DENOMINATIONS

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1. The purpose of this document is to report on work concerning the possible development of a UPOV similarity search tool for variety denomination purposes and to consider the possible revision of document UPOV/INF/12/4 “Explanatory Notes on Variety Denominations under the UPOV Convention”.

2. The following abbreviations are used in this document:

CAJ: Administrative and Legal Committee
 CAJ-AG: Administrative and Legal Committee Advisory Group
 TC: Technical Committee
 WG-DST: Working Group for the Development of a UPOV Denomination Similarity Search Tool

3. The structure of this document is as follows:

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POSSIBLE DEVELOPMENT OF A UPOV SIMILARITY SEARCH TOOL FOR VARIETY DENOMINATION PURPOSES

4. The background to this matter is provided in document TC/50/14 “Variety denominations”.

5. The TC, at its fiftieth session, held in Geneva, April 7 to April 9, 2014, noted the report concerning the possible development of a UPOV similarity search tool for variety denomination purposes provided in document TC/50/14, Section II.

6. The TC welcomed the establishment of a working group for the development of a UPOV similarity search tool (WG-DST) and invited experts to contribute to its work.
7. The TC agreed that there were some challenges concerning linguistic and alphabet aspects which should be considered by the working group when defining the objectives of its work (see document TC/50/36, "Report on the Conclusions", paragraphs 90 to 92).
8. The CAJ, at its sixty-ninth session, held in Geneva, April 10, 2014 noted that a report concerning the possible development of a UPOV similarity search tool for variety denomination purposes was contained in document CAJ/69/9 "Possible development of a UPOV similarity search tool for variety denomination purposes" (see document CAJ/69/13, "Report on the Conclusions", paragraph 24).
9. The CAJ, at its seventieth session, held in Geneva, October 13, 2014, received a report from the Vice Secretary-General on the first meeting of the WG-DST, which was held in Geneva on September 3, 2014. The report of the WG-DST is provided in document UPOV/WG-DST/1/4 "Report" (see http://www.upov.int/meetings/en/details.jsp?meeting_id=34462). The CAJ noted that presentations had been made on the search tools available on the PLUTO database and that the WG-DST members had agreed to share their search tools and procedures with the WG-DST.
10. The CAJ noted that the WG-DST had agreed that the function of a UPOV similarity search tool would be to identify those denominations that were similar to existing denominations to the extent that they would require further, individual consideration before deciding if the denomination was (sufficiently) different from existing denominations. In that regard, the WG-DST had agreed to organize a test study to develop an effective denomination search tool, an overview of which was presented to the CAJ.
11. The CAJ agreed that the WG-DST should agree the details of the test study before participants were invited to start the study.
12. The CAJ agreed that the possibility to participate in the test study to develop an effective denomination search tool should be offered to all members of the Union (see document CAJ/70/10 "Report on the Conclusions", paragraphs 26 to 29).
13. The members of the WG-DST were invited to submit comments on the details of the test study by February 27, 2015 (see paragraph 11 above). Subject to agreement by the members of the WG-DST, a circular to invite all UPOV members to participate in the study will be issued on March 6, 2015, with a deadline of submitting lists of similar denominations by April 27, 2015. The second meeting of the WG-DST is proposed to be held on June 9, 2015, at which a report of the study will be made.

14. The study is planned to be carried out in the following steps:

Step 1: Select test denominations to cover a broad range of denominations

Test denominations were proposed by members of the WG-DST and 20 were selected for the study.¹

Step 2: Provide lists of similar denominations

For each of the test denominations, participants will be invited to provide lists of denominations that they consider similar to the extent that further, individual consideration would be required.

Step 3: Development of an effective search tool

A denomination search tool contains two elements: pre-processing of the denominations (e.g. treating double letters, such as "ll", as a single letter); and an algorithm to provide rank of similarity.

Different settings of pre-processing (e.g. treat "ll" as one or two letters) and algorithms (e.g. different combinations of algorithms) will create a broad range of pre-processing/algorithm sets (PPA sets). It is intended to find a PPA set that will provide an improved ranking of denominations compared to PPA sets in existing tools.

¹ See UPOV Circular E-15/018 of February 6, 2015.

The most effective search tool will be identified by repeated testing of different settings of pre-processing and algorithms from the PLUTO database (e.g. Similarity factor [CPVO search tool], Fuzzy, Phonetic, Contains, Starts, Ends), the Global Brand Database and possibly other sources.

The PPA sets will be evaluated by two aspects: precision and recall. "Precision" is the proportion of the correct results (i.e. those considered similar by the participants) in relation to all the returned results, and "recall" is the proportion of the correct results it returns in relation to all the correct results (i.e. including the correct results it did not return).

15. The result of the test study will be reported to the second meeting of the WG-DST. The most effective search tool according to precision and recall will be described and documented.

REVISION OF DOCUMENT UPOV/INF/12 "EXPLANATORY NOTES ON VARIETY DENOMINATIONS UNDER THE UPOV CONVENTION"

16. The TC, at its fiftieth session, noted the ongoing work of the CAJ-AG concerning the development of guidance on variety denominations, as set out in paragraphs 3 to 6 of document TC/50/14 "Variety Denominations".

17. The CAJ, at its sixty-ninth session, held on April 10, 2014, approved the work program for the development of information materials for the ninth session of the CAJ-AG, held on October 14 and 17, 2014, and agreed that a draft revision of the Explanatory Notes on Variety Denominations under the UPOV Convention be provided to the CAJ-AG members by May 9, 2014, and also agreed to invite comments from CAJ members and observers on the draft (see document CAJ/69/12 "Report on the Conclusions", paragraph 27). The draft was circulated as document UPOV/INF/12/5 Draft 1 and comments on the document were received from Argentina, New Zealand, the Association for Plant Breeding for the Benefit of Society (APBEBES) and the European Seed Association (ESA) (see CAJ-AG/13 section under "Consideration by Correspondence": http://www.upov.int/meetings/en/details.jsp?meeting_id=29783).

18. On the basis of the comments received, a new draft of the Explanatory Notes on Variety Denominations under the UPOV Convention (document UPOV/INF/12/5 Draft 2) was posted on the CAJ-AG webpage on September 10, 2014, for consideration by the CAJ-AG at its ninth session (see document CAJ/69/12 "Report on the Conclusions", paragraph 28).

19. The CAJ-AG, at its ninth session, considered document UPOV/INF/12/5 Draft 2 and the views expressed by APBEBES and ESA.

Proposed guidance on the change of registered variety denominations for consideration by the CAJ at its seventy-first session

20. The CAJ-AG, at its eighth session, held in Geneva on October 21 and 25, 2013, agreed to the development of guidance in document UPOV/INF/12 in relation to a request from a breeder to change a registered variety denomination (see document CAJ-AG/13/8/10 "Report on the Conclusions", paragraphs 70 and 71). In that regard, the following guidance was agreed by the CAJ-AG at its ninth session, held in Geneva, on October 14 and 17, 2014 (see document CAJ-AG/14/9/6 "Report on the Conclusions", paragraph 16):

"7.2 The following items provide guidance in relation to changes of registered variety denominations:

(a) The UPOV Convention requires a change of the registered denomination where the denomination of the variety is cancelled after the grant of the right. The competent authority should cancel a variety denomination if:

(i) by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it (see paragraph (4) "Prior rights of third persons");

(ii) the denomination is unsuitable because it is contrary to the provisions in paragraph (2) "Characteristics of the denomination";

(b) In cases where the registered denomination is subsequently refused in another member of the Union because it is unsuitable in that territory (e.g. prior right), at the request of the breeder, the authority may consider it appropriate to change the denomination to the denomination registered in the said other member of the Union (see provisions in paragraph (5) “Same denomination in all Contracting Parties”); and

(c) In general, subject to (a) and (b) above, it would not be appropriate for the authority to change a registered denomination following a request by the breeder.”

21. Subject to the agreement by the CAJ, at its seventy-first session, to be held in Geneva, on March 26, 2015, it is proposed to revise document UPOV/INF/12 to incorporate the guidance on changes of registered variety denominations, as set out in paragraph 20 above, and to present that guidance for adoption by the Council, at its forty-ninth ordinary session, to be held on October 28, 2015.

Proposals for revision of document UPOV/INF/12/4 in which the CAJ-AG made an initial consideration

22. When document UPOV/INF/12/5 Draft 1, incorporating the key elements of the guidance in relation to changes of registered variety denomination agreed by the CAJ-AG at its eighth session, was circulated by correspondence to the CAJ, new comments and proposals were received and incorporated in document UPOV/INF/12/5 Draft 2.

23. The CAJ-AG agreed, at its ninth session, to make an initial consideration of proposals presented in document UPOV/INF/12/5 Draft 2.

24. The following comments were made by the CAJ-AG on document UPOV/INF/12/5 Draft 2 (see document CAJ-AG/14/9/6 “Report on the Conclusions”, paragraph 18):

2.2.2 (b)	To clarify the terminology in 2.2.2 (b). In particular, to consider changing the examples or replacing “species” by “genera” or “taxa” in the following sentence: “(b) accepted market practices for particular variety types (e.g. hybrids) and particular species (e.g. Medicago, Helianthus).”
2.2.2 (c)	To add 2.2.2 (c) as follows: “(c) ‘established practice’ is determined to be when registration has been accepted for one species or group, so that it can be used in other species which have not yet registered any variety whose denomination consists solely of figures.”
2.3.1 (c)	To develop further guidance on 2.3.1 (c) and to provide other, more appropriate examples “(c) convey the impression that the variety is derived from, or related to, another variety when that is not, in fact, the case; <i>Example:</i> a denomination which is similar to that of another variety of the same species or closely related species, e.g. “Southern cross 1”; “Southern cross 2”; etc., giving the impression that these varieties are a series of related varieties with similar characteristics, when, in fact, this is not the case.”
2.3.1.(d)	To add 2.3.1.(d) as follows: “(d) contain the botanical or common name of the genus to which that variety belongs. The identity of the denomination and that of the genus to which it belongs could become unclear and confusing.” To clarify the following example: <i>Example:</i> <i>Carex</i> variety ‘Sedge’. This could possibly be referred to as ‘Sedge’ <i>Carex</i> and without the use of italics or single quotes the identity of the denomination and the genus may not be clear. To develop guidance on possible confusion of the use of the botanical or common name of a genus to which that variety does <u>not</u> belong – case by case

2.3.3.	To consider proposals in 2.3.3 of document UPOV/INF/12/5 Draft 2 as an initial step to develop further guidance and appropriate examples in conjunction with the development of an effective UPOV similarity search tool
4(a)	<p>To modify 4(a) as follows:</p> <p>“(a) An authority should not accept a variety denomination if a <u>there is an existing prior right, the exercise of which may prevent the use of the proposed denomination, has already been granted to a third party under plant breeder’s right law, trademark law or any other intellectual property legislation. It is the responsibility of the title holder of a prior right to assert his rights through the available objection or court procedures. However, authorities are encouraged to make prior searches in relevant publications (e.g. official gazettes) and databases (e.g. UPOV Plant Variety Database (PLUTO) http://www.upov.int/pluto/en/) to identify prior rights for variety denominations. They may also make searches in other registers, such as trademark registers, before accepting a variety denomination.”</u></p>
4(e)(i)	<p>To modify last sentence of 4(e)(i) as follows:</p> <p>“In cases of mere similarity or small likelihood of association <u>confusion</u> by users, waivers granted to breeders by prior trademark right holders could be a suitable solution.”</p>

Proposed approach concerning the work of the WG-DST

25. The CAJ-AG, at its ninth session, suggested “to consider proposals in 2.3.3 of document UPOV/INF/12/5 Draft 2 as an initial step to develop further guidance and appropriate examples in conjunction with the development of an effective UPOV similarity search tool” (see document CAJ AG/14/9/6 “Report on the Conclusions”, paragraph 18).

26. In that regard, the CAJ, at its seventy-first session, will consider whether to invite the WG-DST to consider the following comments by the CAJ-AG, at its ninth session, on the proposals in document UPOV/INF/12/5 Draft 2 concerning Sections 2.2.2 (b), 2.3.1 (c) and (d), and 2.3.3, in conjunction with the development of an effective UPOV similarity search tool, and any conclusions by the WG-DST to revise document UPOV/INF/12, if appropriate.

2.2.2 (b)	<p>To clarify the terminology in 2.2.2 (b). In particular, to consider changing the examples or replacing “species” by “genera” or “taxa” in the following sentence:</p> <p>“(b) accepted market practices for particular variety types (e.g. hybrids) and particular species (e.g. Medicago, Helianthus).</p>
2.3.1 (c)	<p>To develop further guidance on 2.3.1 (c) and to provide other, more appropriate examples</p> <p>“(c) convey the impression that the variety is derived from, or related to, another variety when that is not, in fact, the case;</p> <p>Example: a denomination which is similar to that of another variety of the same species or closely related species, e.g. “Southern cross 1”; “Southern cross 2”; etc., giving the impression that these varieties are a series of related varieties with similar characteristics, when, in fact, this is not the case.”</p>

2.3.1 (d)	<p>To add 2.3.1 (d) as follows:</p> <p>“(d) contain the botanical or common name of the genus to which that variety belongs. The identity of the denomination and that of the genus to which it belongs could become unclear and confusing.”</p> <p>To clarify the following example:</p> <p>“Example: Carex variety ‘Sedge’. This could possibly be referred to as ‘Sedge’ Carex and without the use of italics or single quotes the identity of the denomination and the genus may not be clear.”</p> <p>To develop guidance on possible confusion of the use of the botanical or common name of a genus to which that variety does not belong – case by case</p>
2.3.3	<p>To consider proposals in 2.3.3 of document UPOV/INF/12/5 Draft 2 as an initial step to develop further guidance and appropriate examples in conjunction with the development of an effective UPOV similarity search tool</p>

Proposed guidance for consideration by the CAJ at its seventy-second session

27. The CAJ, at its seventy-first session, will consider if the following proposals relating to sections 2.2.2 (c), 4(a) and 4(e)(i) should be considered by the CAJ at its seventy-second session, to be held in Geneva on October 26 and 27, 2015.

2.2.2 (c)	<p>To add 2.2.2 (c) as follows:</p> <p>“(c) ‘established practice’ is determined to be when registration has been accepted for one species or group, so that it can be used in other species which have not yet registered any variety whose denomination consists solely of figures.”</p>
4(a)	<p>To modify 4(a) as follows:</p> <p>“(a) An authority should not accept a variety denomination if a <u>there is an existing</u> prior right, the exercise of which may prevent the use of the proposed denomination, has already been granted to a third party under plant breeder’s right law, trademark law or any other intellectual property legislation. It is the responsibility of the title holder of a prior right to assert his rights through the available objection or court procedures. However, authorities are encouraged to make prior searches in relevant publications (e.g. official gazettes) and databases (e.g. UPOV Plant Variety Database (PLUTO) http://www.upov.int/pluto/en/) to identify prior rights for variety denominations. They may also make searches in other registers, such as trademark registers, before accepting a variety denomination.”</p>
4(e)(i)	<p>To modify last sentence of 4(e)(i) as follows:</p> <p>“In cases of mere similarity or small likelihood of association <u>confusion</u> by users, waivers granted to breeders by prior trademark right holders could be a suitable solution.”</p>

28. *The TC is invited to:*

(a) *note the work on the possible development of a UPOV similarity search tool for variety denomination purposes by the WG-DST, including the test study, as set out in paragraphs 4 to 15 of this document;*

(b) *note the proposed revision of document UPOV/INF/12 in relation to changes of registered variety denominations, as set out in paragraph 20, and that, subject to agreement by the CAJ, that revision will be proposed for adoption by the Council at its forty-ninth ordinary session, to be held on October 28, 2015;*

(c) note that the CAJ, at its seventy-first session, may invite the WG-DST to consider the comments by the CAJ-AG, at its ninth session, on the proposals in document UPOV/INF/12/5 Draft 2 concerning Sections 2.2.2 (b), 2.3.1 (c) and (d), and 2.3.3, as set out in paragraph 26 above; and

(d) note that the CAJ, at its seventy-first session, may suggest that the proposals of the CAJ-AG under Sections 2.2.2 (c), 4(a) and 4(e)(i) be considered by the CAJ, at its seventy-second session, as set out in paragraph 27 above.

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