

Technical Committee

TC/54/12

**Fifty-Fourth Session
Geneva, October 29 and 30, 2018**

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VARIETY DENOMINATIONS

Document prepared by the Office of the Union

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EXECUTIVE SUMMARY

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 the possible revision of document UPOV/INF/12 “Explanatory Notes on Variety Denominations under the UPOV Convention”.

2. The TC is invited to note:

(a) developments concerning a possible revision of document UPOV/INF/12 “Explanatory Notes on Variety Denominations under the UPOV Convention”, as set out in paragraphs 6 to 10 of this document;

(b) developments concerning a UPOV similarity search tool for variety denomination purposes, as set out in paragraph 12 of this document;

(c) developments concerning the possible expansion of the content of the PLUTO Database, as set out in paragraph 14 of this document;

(d) developments concerning non-acceptable terms, as set out in paragraph 16 of this document;

(e) that the fifth meeting of the WG-DEN will be held in Geneva, on October 30, 2018; and

(f) the draft agenda of the fifth meeting of the WG-DEN, as set out in paragraph 18 of this document.

3. The following abbreviations are used in this document:

TC: Technical Committee
WG-DEN: Working Group on Variety Denominations

4. The structure of this document is as follows:

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

Background

5. The background to this matter is provided in document TC/53/12 "Variety Denominations", paragraphs 6 to 11.

Developments by the WG-DEN, at its third meeting

6. The WG-DEN, at its third meeting, held in Geneva, on March 21, 2017, considered document UPOV/INF/12/6 Draft 3 and agreed the following with regard to a possible revision of document UPOV/INF/12/5:

(a) Section 2.3, conceptual criteria in the UPOV guidance might not be suitable due to the difficulties for the harmonized implementation of the conceptual aspect at the international level; and

(b) Section 2.4, the term "variety" related to the definition of variety as defined in Article 1(vi) of the 1991 Act of the UPOV Convention and, in particular the term "variety" was wider than protectable variety.

7. The WG-DEN agreed to consider the following items at its fourth meeting:

(a) The WG-DEN agreed to issue a circular in order to explore the frequency that UPOV members were faced with existing denominations that did not meet their own criteria and the frequency that synonyms were created as a result. In addition, the WG-DEN agreed to issue a circular to users on whether the current practices created problems;

(b) Section 2.3.3 (c), the WG-DEN concluded that, at that time, there was no agreement to change the current wording of Section 2.3.3(c), but before finally concluding on that matter the WG-DEN requested members of the WG-DEN to provide examples/guidance in the implementation of the following element of Section 2.3.3(c) "In some limited cases an exception may be acceptable, for example a variety which was never commercialized, or was only commercialized in a limited way for a very short time" and the WG-DEN agreed to send a circular for that purpose;

(c) Section 2.3.4 "Identity of the breeder", the WG-DEN agreed to reflect further on whether PVP Offices should seek to have a role in recognizing breeders practices in naming varieties (e.g. prefixes, themes) or whether that should be left to other mechanisms (e.g. trademarks). It was also agreed that the Office of the Union should send a circular inviting comments on that matter;

(d) Section 2.5 "Variety denomination classes: a variety denomination should not be used more than once in the same class", the WG-DEN noted that, for some UPOV members, the acceptability of similar denominations varied according to class. For example, in the case of a class following the general rule (one genus/one class) a similar denomination might be accepted for a different species within the same genus. The WG-DEN agreed that UPOV members should be invited to provide information on such approaches by means of the circular to be issued; and

(e) Paragraph 4 [Prior rights of third persons], the WG-DEN agreed to propose additional text to explain that, if an authority allows a denomination to be registered when the breeder of the variety is also the holder of a trademark that is identical to the variety denomination, the authority should inform the breeder of the obligation to allow the use of the denomination in connection with the variety, even after the expiration of the breeder's right. This matter will be considered under Section 1.2.

8. UPOV Circular E-17/135 and UPOV Circular E-17/136, both of July 26, 2017, were issued to members and observers of the WG-DEN, respectively, on the above basis.

Developments by the WG-DEN, at its fourth meeting

9. The WG-DEN, at its fourth meeting, held in Geneva, on October 27, 2017, considered documents UPOV/WG-DEN/4/2 "Revision of Document UPOV/INF/12/5 'Explanatory Notes On Variety Denominations under the UPOV Convention'" and UPOV/INF/12/6 Draft 4 "Explanatory Notes on Variety Denominations under the UPOV Convention (Revision)", which incorporates the proposals that had been agreed by the WG-DEN or had been agreed to be considered further.

10. The WG-DEN agreed that the Office of the Union should prepare, for its fifth meeting, a new draft of document "Explanatory Notes on Variety Denominations under the UPOV Convention", incorporating the proposals that had been agreed by the WG-DEN or had been agreed to be considered further (see document UPOV/WG-DEN/4/3 "Report", paragraph 26).

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

11. The background to this matter is provided in document TC/53/12 "Variety Denominations", paragraphs 13 to 18.

12. The WG-DEN, at its fourth meeting, agreed that agenda item 4 "UPOV Denomination Similarity Search Tool" would be considered at a later meeting on the basis of the document presented at the second meeting. It was agreed that the Office of the Union should propose how to progress the discussion on these matters at the fifth meeting of the WG-DEN.

EXPANSION OF THE CONTENT OF THE PLUTO DATABASE

13. The background to this matter is provided in document TC/53/12 "Variety Denominations", paragraphs 19 to 23.

14. The WG-DEN, at its fourth meeting, agreed that agenda item 5 "Expansion of the content of the PLUTO database" would be considered at a later meeting on the basis of the document presented at the second meeting. It was agreed that the Office of the Union should propose how to progress the discussion on these matters at the fifth meeting of the WG-DEN.

NON-ACCEPTABLE TERMS

15. The background to this matter is provided in document TC/53/12 "Variety Denominations", paragraphs 24 to 28.

16. The WG-DEN, at its fourth meeting, agreed that agenda item 6 "Non-acceptable terms" would be considered at a later meeting on the basis of the document presented at the second meeting. It was agreed that the Office of the Union should propose how to progress the discussion on these matters at the fifth meeting of the WG-DEN.

DATE AND PROGRAM OF THE NEXT MEETING OF THE WG-DEN

17. The WG-DEN, at its fourth meeting, agreed that the fifth meeting of the WG-DEN should be held in Geneva, in the morning of October 30, 2018.

18. The following program was agreed for the fifth meeting of the WG-DEN:
1. Opening of the meeting
 2. Adoption of the agenda
 3. Revision of document UPOV/INF/12/5 "Explanatory Notes on Variety Denominations under the UPOV Convention"
 4. UPOV denomination similarity search tool
 5. Expansion of the content of the PLUTO database
 6. Non-acceptable terms
 7. Date, place and program of the next meeting

19. *The TC is invited to note:*

(a) developments concerning a possible revision of document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention", as set out in paragraphs 6 to 10 of this document;

(b) developments concerning a UPOV similarity search tool for variety denomination purposes, as set out in paragraph 12 of this document;

(c) developments concerning the possible expansion of the content of the PLUTO Database, as set out in paragraph 14 of this document;

(d) developments concerning non acceptable terms, as set out in paragraph 16 of this document;

(e) that the fifth meeting of the WG-DEN will be held in Geneva, on October 30, 2018; and

(f) the draft agenda of the fifth meeting of the WG-DEN, as set out in paragraph 18 of this document.

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