

**Technical Committee**

**TC/56/INF/7**

**Fifty-Sixth Session  
Geneva, October 26 and 27, 2020**

**Original:** English  
**Date:** October 12, 2020

**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 revision of document UPOV/INF/12 “Explanatory Notes on Variety Denominations under the UPOV Convention”, the possible development of a UPOV similarity search tool for variety denomination purposes, expansion of the content of the PLUTO database and developments concerning the Working Group on Variety Denominations (WG-DEN ).

2. The following abbreviations are used in this document:

- CAJ: Administrative and Legal Committee
- TC: Technical Committee
- TWP(s): Technical Working Party(ies)
- WG-DEN: Working Group on Variety Denominations

3. The structure of this document is as follows:

EXECUTIVE SUMMARY .....	1
POSSIBLE REVISION OF DOCUMENT UPOV/INF/12 “EXPLANATORY NOTES ON VARIETY DENOMINATIONS UNDER THE UPOV CONVENTION” .....	1
Working Group on Variety Denominations .....	1
Administrative and Legal Committee .....	2
POSSIBLE DEVELOPMENT OF A UPOV SIMILARITY SEARCH TOOL FOR VARIETY DENOMINATION PURPOSES.....	3
Background .....	3
Recent developments .....	3
EXPANSION OF THE CONTENT OF THE PLUTO DATABASE .....	4
Working Group on Variety Denominations in 2019 .....	4
Administrative and Legal Committee in 2019 .....	5
WORKING GROUP ON VARIETY DENOMINATIONS .....	5

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

4. Matters requiring consideration by the Technical Committee on the revision of document UPOV/INF/12 “Explanatory notes on variety denominations under the UPOV Convention” are reported in document TC/56/4 Rev “Development of guidance and information materials – Matters for adoption by the Council in 2020.” The following matters are reported for information purposes.

Working Group on Variety Denominations

5. The Working Group on Variety Denominations (WG-DEN), at its sixth meeting, held in Geneva, on October 29, 2019, considered documents UPOV/WG-DEN/6/2 “Revision of Document UPOV/INF/12/5 ‘Explanatory Notes On Variety Denominations under the UPOV Convention’” and UPOV/EXN/DEN/1 Draft 2

“Explanatory Notes on Variety Denominations under the UPOV Convention” and agreed with the text proposed in document UPOV/EXN/DEN/1 Draft 2, subject to the following:

Section 2.3.1 (d): to delete the following example of a suitable denomination:

“*Prunus* ‘Sato-zakura’ (‘Zakura’ is the Japanese word for flowering cherries, rather than a name for the whole genus);”

Section 2.3.3 (a): to read as follows:

“A difference of only one letter or one number may be considered to be liable to mislead or cause confusion concerning the identity of the variety. However, the following cases are examples of only one letter or one number difference that may be considered not to be liable to mislead or cause confusion: [...]”;

Section 2.3.4 (b): to read as follows:

“A word format, pattern or combination may become associated with a breeder by custom and practice. However, to become associated with a breeder, it would be necessary to include a common word, prefix or suffix. In such cases, the authority may consider that the use of that word format, pattern or combination for denominations of varieties by another breeder may mislead or cause confusion concerning the identity of the breeder;

“*Examples of unsuitable denominations:* ‘ABC red’ proposed by a breeder (Breeder 2) when ‘ABC velvet’, ‘ABC star’ and ‘ABC green’ are registered by another breeder (Breeder 1).”

Section 5.3 (a): to clarify the following wording:

“it does not conform to the provisions in paragraphs (2) (for example, the proposed denomination is not different from the denomination of an existing variety of the same plant species or of a closely related species in its territory) and (4) (for example, the proposed denomination is identical to a trademark registered for identical goods);” .

6. The WG-DEN agreed that a draft of document UPOV/EXN/DEN/1 should be submitted to the Administrative and Legal Committee (CAJ) on the above basis.

#### Administrative and Legal Committee

7. The CAJ, at its seventy-sixth session considered documents CAJ/76/6 “Variety Denominations” and CAJ/76/6 Add. The CAJ noted that document CAJ/76/6 Add. contained the conclusions at the sixth meeting of the WG-DEN (see document CAJ/76/9 “Report”, paragraphs 35 to 39).

8. The CAJ noted the revisions of document UPOV/INF/12/5, as presented in document UPOV/EXN/DEN/1 Draft 2 with the amendments proposed by the WG-DEN.

9. The CAJ noted that the WG-DEN had requested the Office of the Union to clarify the following wording:

“Section 5.3 (a):

“it does not conform to the provisions in paragraphs (2) (for example, the proposed denomination is not different from the denomination of an existing variety of the same plant species or of a closely related species in its territory) and (4) (for example, the proposed denomination is identical to a trademark registered for identical goods);”

10. The CAJ noted the request of the Delegation of the European Union to consider a change in Section 2.3.3.(a) (i) of the “visual and phonetic” to “visual or phonetic” and to introduce an additional component for “concept”. The Office of the Union reported that those proposals had been considered by the WG-DEN and had not been retained and that the proposals would result in inconsistencies without other amendments.

11. The CAJ agreed that the Office of the Union should invite members and observers to make written comments by correspondence on document UPOV/EXN/DEN “Explanatory Notes on Variety Denominations under the UPOV Convention” concerning the matters in paragraphs 17 and 18. The Office of the Union, based on the written comments received by correspondence, would prepare a draft of document UPOV/EXN/DEN “Explanatory Notes on Variety Denominations under the UPOV Convention” for consideration at the seventy-seventh session of the CAJ, to be held on October 28, 2020.

12. The CAJ at its seventy-seventh session, to be held on October 28, 2020, will be invited to consider document UPOV/EXN/DEN/1 Draft 4.

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

### Background

13. The CAJ, at its seventieth session, held in Geneva, on October 13, 2014, noted that the Working Group for the Development of a UPOV Denomination Similarity Search Tool (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 (see document CAJ/70/10 "Report on the Conclusions", paragraph 27).

14. The Working Group on Variety Denominations (WG-DEN), at its fifth meeting, held in Geneva, on October 30, 2018, agreed that the Office of the Union should restart its work to explore possibilities to improve the UPOV Denomination Similarity Search Tool in conjunction with the Community Plant Variety Office of the European Union (CPVO) (see document UPOV/WG-DEN/5/3 "Report", paragraph 28).

15. The CPVO algorithm is a rule-based algorithm that has provided efficient results. Nevertheless, CPVO reported to the Office of the Union that there might be some possibilities to improve the results of the algorithm.

16. The Office of the Union consulted WIPO machine-learning experts in order to explore the possibility of using machine-learning techniques in conjunction with the CPVO algorithm to maximize the efficiency of UPOV denomination similarity tool.

17. The use of machine-learning techniques requires the following:

- large number of real cases where the denomination has been rejected. Data from the PLUTO database can be used but will not be sufficient;
- reasons why a denomination is rejected should be structured in the form of checkboxes;
- problem to be solved needs to be clearly identified.

18. The CPVO agreed to share information on denomination rejections with the reasons why denominations were rejected, in a structured format, in order to enhance the machine-learning approach.

19. The WG-DEN, at its sixth meeting, held in Geneva, on October 29, 2019, considered document UPOV/WG-DEN/6/3 "UPOV denomination similarity search tool" and received a presentation on developments concerning a UPOV denomination similarity search tool by the Office of the Union.

20. The WG-DEN noted the plans for the development of a UPOV denomination similarity search tool and agreed that the developments on this matter should be reported to the CAJ for consideration in conjunction with the discussion on draft of document UPOV/EXN/DEN for the possible inclusion of reference to a UPOV denomination similarity search tool (see document UPOV/WG-DEN/6/5 "Report", paragraphs 6 and 7).

21. The CAJ, at its seventy-sixth session, held in Geneva on October 30, 2019, noted the developments reported in document CAJ/76/6 Add. concerning the possible development of a UPOV denomination similarity search tool (see document CAJ/76/9 "Report", paragraph 40).

### Recent developments

22. At a workshop organized with the CPVO and the Office of the Union, held on November 21, 2019, it was concluded that the CPVO algorithm was performing well and that, for the time being, it would not be a suitable use of resources to seek improvements to the algorithm for the purposes of checking the similarity of variety denominations. However, it was agreed that it would be useful to explore possibilities for the variety denomination search tool to consider aspects other than similarity, particularly with regard to checking for characteristics of the variety.

23. Document UPOV/INF/12 “Explanatory notes on variety denominations under the UPOV Convention” states as follows:

“2.3.1 Characteristics of the variety

The denomination should not:

“(a) convey the impression that the variety has particular characteristics which, in reality, it does not have;

*Example:* a variety denomination “dwarf” for a variety which is of normal height, when a dwarfness trait exists within the species, but is not possessed by the variety.

“(b) refer to specific characteristics of the variety in such a way that the impression is created that only the variety possesses them, whereas in fact other varieties of the species in question also have or may have the same characteristics; for example where the denomination consists solely of descriptive words that describe attributes of the variety that other varieties in the species may also possess.

*Example 1:* “Sweet” for a fruit variety;

*Example 2:* “Large white” for a variety of chrysanthemum.

“(c) convey the impression that the variety is derived from, or related to, another variety when that is not, in fact, the case;

*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.

“2.3.2 Value of the variety

The denomination should not consist of, or contain, comparative or superlative designations.

*Example:* a denomination which includes terms such as “Best”, “Superior”, “Sweeter”.”

24. In the case of checking for denominations, the denomination should not “convey the impression that the variety has particular characteristics which, in reality, it does not have”. The purpose of a feature in the variety denomination search tool would not be to make a judgement on the suitability of a denomination but to alert the examiner to the presence of a characteristic in the denomination that might need to be considered.

25. The TG Template contains a database of characteristics included in UPOV Test Guidelines and, in the case of members of the Union participating in UPOV PRISMA, characteristics included in the individual authorities’ test guidelines. These characteristics are available in English, French, German and Spanish, and the UPOV PRISMA navigating and output languages (if provided by UPOV PRISMA participating members of the Union). On that basis, the characteristics in the TG Template would provide a good basis for checking for denominations containing characteristics.

26. It is recalled that the CAJ, at its seventy-seventh session, will be invited to consider a draft of document UPOV/EXN/DEN/1 “Explanatory Notes on Variety Denominations under the UPOV Convention”. Any work on a tool for checking for characteristics would need to reflect the guidance in document UPOV/EXN/DEN/1, once adopted.

## EXPANSION OF THE CONTENT OF THE PLUTO DATABASE

### Working Group on Variety Denominations in 2019

27. The background to this matter is provided in document TC/55/INF/7, paragraphs 11 to 17.

28. The WG-DEN, at its sixth meeting, received a presentation on the possible introduction of a unique identifier for variety records in the PLUTO database.

29. The WG-DEN noted the plans for the introduction of a unique identifier for variety records in the PLUTO database.

30. The WG-DEN considered the proposals on additional data to be included in the PLUTO database and agreed with the proposal to add common names in other languages to the PLUTO database, as far as resources allowed.

31. The WG-DEN noted that the TC was considering how to address matters concerning variety types for DUS testing purposes and agreed that developments in the TC should be reported to the CAJ.

#### Administrative and Legal Committee in 2019

32. The CAJ, at its seventy-sixth session, noted the developments reported in document CAJ/76/6 Add. concerning "Expansion of the content of the PLUTO database", and plans for the introduction of a unique identifier for variety records in the PLUTO database (see document CAJ/76/9 "Report", paragraphs 40 to 42).

33. With regard to the inclusion of other varieties (new data) in the PLUTO database, the CAJ noted the proposals for additional data to be included in the PLUTO database and agreed with the proposal to add common names in other languages to the PLUTO database.

34. The CAJ noted that the TC was considering how to address matters concerning variety types for DUS testing purposes and agreed that developments in the TC should be reported to the CAJ.

#### WORKING GROUP ON VARIETY DENOMINATIONS

35. The WG-DEN, at its sixth meeting, agreed that it had completed the work mandated by the CAJ and agreed that it would not be necessary to hold a further meeting.

36. The CAJ, at its seventy-sixth session, noted that there was no need for further meetings of the WG-DEN (see document CAJ/76/9 "Report", paragraph 43).

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