



TWA/30/9 Add.1

ORIGINAL: English

DATE: August 21, 2001

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
GENEVA

**TECHNICAL WORKING PARTY
FOR
AGRICULTURAL CROPS**

**Thirtieth Session
Texcoco, Mexico, September 3 to 7, 2001**

PROCESS FOR ESTABLISHING DISTINCTNESS

Document prepared by experts from Australia

**PROCESS FOR ESTABLISHING DISTINCTNESS
UNDER THE IMPLEMENTATION OF AUSTRALIAN BREEDER'S
TESTING SYSTEM**

In granting of Plant Breeder's Rights (PBR), an examination process is essential in confirming that a new variety meets the technical criteria of Distinctness, Uniformity and Stability (DUS). In most UPOV member states, DUS testing is predominantly done by the relevant official testing authorities at some centralised testing facilities. However, Article 7(1) of the 1978 revision of the UPOV Convention (UPOV 78) and the Article 12 of the 1991 revision of the UPOV Convention (UPOV 91) do not strictly require that the testing should be conducted by the official testing authorities but anticipate that other testing methods could be used.

One such method is the so-called "breeder testing" system where the breeder (or applicant or contractor to the breeder) becomes involved in or undertakes the DUS trial. The level of involvement of the breeder in a breeder testing system varies depending on national circumstances.

The process of establishing distinctness under the implementation of Australian breeder testing system is outlined in the following table:

Process for Establishing Distinctness under the implementation of Australian Breeder Testing System

MAIN STEPS	DESCRIPTION	OBJECTIVES AND ACTION
<p><u>Examination of the Part 1 Application</u></p>	<p>A brief description and a photograph of the variety is supplied.</p> <p>Claim of the main difference (s) of the new variety from the other most similar varieties of common knowledge.</p> <p>Full information on the origin and breeding of the variety is outlined.</p> <p>Indication of the main difference (s) from the parental material if the parents are varieties of common knowledge.</p>	<p>To establish a preliminary (<i>prima facie</i>) case that the variety is distinct from all other varieties of common knowledge.</p> <p>PBR offices reviews the Part 1 application. Check the claims against existing data/information.</p> <p>Once the <i>prima facie</i> case is established the application is accepted in the PBR scheme and the variety is protected under provisional protection for 12 months.</p> <p>The applicant nominates whether they wish to have the examination based on a comparative trial in Australia or on data provided by another contracting party. In both cases the data has to be verified by a PBR accredited Qualified Person (QP).</p> <p><i>Prima facie</i> case not established → Application refused.</p>

MAIN STEPS	DESCRIPTION	OBJECTIVES AND ACTION
<p data-bbox="94 228 450 319">Comparative Growing Trial in Australia</p> <p data-bbox="94 539 450 614">Applicant obtains UPOV Test Report</p> <p data-bbox="94 767 450 805">Provisional Protection</p>	<p data-bbox="450 228 1070 343">The location of the trial could be in a breeder's or applicant's field or in a PBR accredited Centralised Testing Centre (CTC).</p> <p data-bbox="450 371 1070 443">The QP to plan and supervise the comparative growing trial.</p> <p data-bbox="450 491 1070 643">For application based on overseas UPOV test reports, the QP is advised on the need to verify the variety description under local conditions.</p> <p data-bbox="450 746 1070 970">Upon request and at discretion of the Registrar the 12 months provisional protection period is extendable to allow the establishment of the comparative trial and record observations or to obtain the test report.</p>	<p data-bbox="1070 228 2154 308">The QP reviews the Part 1 application and the UPOV Technical Guideline for the species (if available).</p> <p data-bbox="1070 331 2154 403">By elimination process, The QP selects the most similar varieties of common knowledge for the comparative trial based on the following factors:</p> <ol data-bbox="1070 435 2154 699" style="list-style-type: none"> 1) UPOV grouping characteristics. 2) List of PBR varieties. 3) List of other existing varieties. 4) Suggestions from the PBR office. 5) Parental/source material. 6) Personal experience with the species. 7) From other published information. <p data-bbox="1070 722 2154 794">The QP conducts the comparative growing trial using scientific methodologies. Record data and assessment methods.</p> <p data-bbox="1070 818 2154 890">Confirm the relevant characteristics of the candidate and the comparator varieties with their states of expression.</p> <p data-bbox="1070 914 2154 1098">The QP is encouraged to use morphological characteristics; especially those least affected by environmental factors are preferred. Other characteristics, e.g. Phenological, physiological or biochemical are also acceptable if these characteristics meet the requirements of TG/1/3. DNA data is not accepted for establishing distinctness.</p> <p data-bbox="1070 1121 2154 1193">Quantitative differences are established based on statistical methods. Qualitative differences are established based on visual observation.</p> <p data-bbox="1070 1217 2154 1289">Comparative photograph is taken to show the differences between the varieties in distinctive characteristics.</p> <p data-bbox="1070 1313 2154 1393">On the basis of comparative trial, data and photograph, the QP submits the detailed description of the variety for publication in Part 2 application form.</p>

MAIN STEPS	DESCRIPTION	OBJECTIVES AND ACTION
<p data-bbox="143 234 338 339">Examination of the Part 2 Application</p> <p data-bbox="105 568 371 635">Examination of the Comparative trial</p>	<p data-bbox="501 234 958 485">The QP certifies the authenticity of the data and the scientific methodologies used in conducting the trial. There are severe penalties under the PBR Act for falsifying information or submitting misleading data.</p> <p data-bbox="463 531 1059 703">PBR office examines the Part 2 application and determines the need to independently examine the trial . If necessary, an independent examination is carried out by the PBR examiner.</p> <p data-bbox="463 863 1059 1075">If the PBR office does not examine a trial then the decision is made from information provided that the candidate variety is clearly distinct from other varieties of common knowledge that no further examination is warranted.</p>	<p data-bbox="1081 234 2136 376"><u>Where necessary, an independent examination of the comparative trial by the PBR examiner at a time when the distinctive characteristics are visible. This ensures that the technical rigour is maintained in the trial and the QP's data is consistent and repeatable.</u></p> <p data-bbox="1120 421 2033 523">PBR Examiner also checks the trial details and scientific methodologies and reserves the right to order another trial growing by an independent institution.</p> <p data-bbox="1120 568 2033 670">PBR Examiner determines the distinctness from own observations in the form of a Field Examination Report. The Examiner's report and the Part 2 data must be consistent for a positive decision on distinctness.</p> <p data-bbox="1120 715 2033 817">If the examiner's report is positive on the decision of distinctness but not consistent with QP's data, then further examination is necessary, or additional data is supplied by the QP.</p> <p data-bbox="1120 861 2033 963">Where the examiner's report is negative the QP is advised and if appropriate, a further trial is conducted , otherwise the applicant is advised to withdraw the application</p> <p data-bbox="1120 1008 2033 1075">The PBR examiner's decision, whether positive or negative, is reviewed by the Registrar.</p> <p data-bbox="1120 1120 2033 1187">Distinctness (or U or S) not confirmed → Possible re-trial or withdrawal of the application</p>

MAIN STEPS	DESCRIPTION	OBJECTIVES AND ACTION
<p>Publication of the detailed description of the variety for public review</p> <p><u>Public review process</u></p>	<p>A public notice is published in the <i>Plant Varieties Journal</i>, which includes a detailed description of the variety including its distinctive features along with photograph showing the comparative differences.</p> <p>There is a six-month waiting period after the publication of the detailed description in the <i>Plant Varieties Journal</i> to allow reasonable time for the public or industry to comment or object against a published description.</p>	<p>The 6-month public and peer review process is mandatory.</p> <p>When there is no objection or comments received within this public exposure period then the variety will proceed to a final examination for the grant of PBR. This public and peer review and transparency ensures the rigour of the breeder testing system.</p> <p>If an objection or comment on Distinctness (or U or S) is received within this public exposure period, the PBR office will review the objection and will give opportunity to the applicant to rebut the objection. If the issues are not resolved then a re-trial may be necessary including to re-publish (where necessary) the detailed description of the variety</p> <p>Where an objection is upheld and no further evidence in support of Distinctness (or U or S) is supplied → Rejection of Application.</p>
<p>Deposition of propagating material in a Genetic Resource Centre (GRC)</p>	<p>The applicant must deposit a sufficient quantity of the propagating material of the variety to an approved GRC.</p>	<p>Lodgement of the propagating material in GRC ensure the easy availability of the variety for any future comparative testing purposes and also the reasonable public access of the variety for any other reasons.</p>
<p>Final Grant Examination</p>	<p>Final examination checks that all the formal and technical requirements have been met, including DUS has been established and all objections have been resolved.</p>	<p>DUS is established → Final Grant of PBR</p> <p>DUS not established → Rejection of PBR</p>