

Technical Working Party for Vegetables

Fifty-Fifth Session

Antalya, Turkey, May 3 to 7, 2021

TWP/5/6.

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Technical Working Party for Ornamental Plants and Forest Trees

Fifty-Third Session

Roelofarendsveen, Netherlands, June 7 to 11, 2021

Technical Working Party for Agricultural Crops

Fiftieth Session

Arusha, United Republic of Tanzania, June 21 to 25, 2021

Technical Working Party for Fruit Crops

Fifty-Second Session

Zhengzhou, China, July 12 to 16, 2021

Technical Working Party on Automation and Computer Programs

Thirty-Ninth Session

Alexandria, United States of America, September 20 to 22, 2021

VARIETY DENOMINATIONS*Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance***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” and the possible development of a UPOV similarity search tool for variety denomination purposes, and to present a proposal to revise the variety denomination Class 201 in document UPOV/INF/12/5.
2. The TWPs are invited to note:
 - (a) the developments concerning a possible revision of document UPOV/INF/12 “Explanatory Notes on Variety Denominations under the UPOV Convention” at the CAJ, at its seventy-sixth session, by correspondence, and at its seventy-seventh session, as set out in paragraphs 9 to 22 of this document; and
 - (b) the developments concerning a possible UPOV similarity search tool for variety denomination purposes, as set out in paragraphs 28 to 36 of this document.
3. The TWA is invited to consider the proposal to revise Class 201 in document UPOV/INF/12/5, to include *xTrititrigia*, as set out paragraph 23 of this document.

4. 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
TWA: Technical Working Party for Agricultural Crops
TWC: Technical Working Party on Automation and Computer Programs
TWF: Technical Working Party for Fruit Crops
TWO: Technical Working Party for Ornamental Plants and Forest Trees
TWP(s): Technical Working Party(ies)
TWV: Technical Working Party for Vegetables

5. 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”

Technical Committee

6. The TC, at its fifty-sixth session, held via electronic means on October 26 and 27, 2020, noted that it had endorsed the request by the TWV, at its fifty-fourth session, not to introduce Class 205B in document UPOV/EXN/DEN/1, as set out in document TC/56/4 Rev. (see document TC/56/23 “Report”, paragraphs 31).

7. The TC noted the report from the Office of the Union that the CAJ had received comments in reply to Circular E-20/120 of August 21, 2020, on document UPOV/EXN/DEN/1 Draft 4 that were not of a straightforward nature and, therefore, document UPOV/EXN/DEN/1 Draft 4 was not included in Circular E-20/160 of September 25, 2020, for approval by correspondence and would be presented for consideration by the CAJ at its virtual session on October 28, 2020, in conjunction with the comments received (see document CAJ/77/9 “Outcome of consideration of documents by correspondence”, paragraph 34).

Administrative and Legal Committee

8. The CAJ, at its seventy-sixth session held in Geneva on October 30, 2019, noted the revisions of document UPOV/INF/12/5, as presented in document UPOV/EXN/DEN/1 Draft 2¹ with the amendments proposed by the WG-DEN at its sixth meeting².

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);”

¹ At its fourth meeting, held in Geneva on October 27, 2017, the WG-DEN agreed to change the reference of the document from the “INF” series to the “EXN” series in accordance with the title and contents of the document “Explanatory Notes on Variety Denominations under the UPOV Convention” (see paragraph 6 of document UPOV/WG-DEN/4/3 “Report”).

² Held in Geneva, on October 29, 2019.

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 the above paragraphs 10 and 11.
12. On April 3, 2020, the Office of the Union issued Circular E-20/017 to the designated persons of the members and observers in the CAJ, inviting them to consider and submit comments on document UPOV/EXN/DEN/1 Draft 3, which included the changes to document UPOV/INF/12/5 that were agreed by the WG-DEN, and the proposals of the Community Plant Variety Office (CPVO) of the European Union to amend section 2.3.3 of document UPOV/EXN/DEN/1 Draft 3, as contained in the Annex to Circular E-20/017.
13. In reply to Circular E-20/017, comments were received from Argentina, Canada, European Union, France and New Zealand.
14. In relation to the proposal to split the current denomination class 205 (*Cichorium* and *Lactuca*) into two classes, as agreed by the TC, at its fifty-fifth session^{Error! Bookmark not defined.}, the Technical Working Party on Vegetables (TWV), at its fifty-fourth session, held from May 11 to 15, 2020, noted that approximately 1,200 varieties with UPOV code CICHO_INT in the PLUTO database could not be allocated with certainty to either one of the Classes (Class 205 or Class 205B) and agreed not to support the proposal to split denomination Class 205 at this stage.
15. In accordance with the request from the CAJ, at its seventy-sixth session, document UPOV/EXN/DEN “Explanatory Notes on Variety Denominations under the UPOV Convention” (document UPOV/EXN/DEN/1 Draft 4) was prepared reflecting the changes to the text of document UPOV/INF/12/5 that were considered by the CAJ by correspondence (Circular E-20/017), the proposals in response to the comments received in reply to Circular E-20/017 and the developments relevant for Draft Class 205B.(see document CAJ/77/3 Rev. “Development of guidance and information materials”, paragraph 26).
16. In reply to Circular E-20/120 of August 21, 2020, comments were received from Brazil; the European Union; Euroseeds and the International Seed Federation (ISF) on document UPOV/EXN/DEN/1 Draft 4 that were not of a straightforward nature and, therefore, document UPOV/EXN/DEN/1 Draft 4 was not included in Circular E-20/160 of September 25, 2020, for approval by correspondence and was presented for consideration by the CAJ at its seventy-seventh session on October 28, 2020, in conjunction with the comments received, which were reproduced in Annex I to document CAJ/77/9 (see document CAJ/77/9 “Outcome of the consideration of documents by correspondence”, paragraph 34).
17. The CAJ considered documents CAJ/77/3 Rev., CAJ/77/9 “Outcome of consideration of documents by correspondence” and document UPOV/EXN/DEN/1 Draft 4.
18. The CAJ noted the replies received from members of the Union in response to Circular E-20/017, reproduced in Annex I to document CAJ/77/3 Rev..
19. The CAJ noted that the TC, at its fifty-fifth session, had endorsed the request by the TWV, at its fifty-fourth session, not to introduce Class 205B in document UPOV/EXN/DEN/1. The CAJ agreed with the request by the TWV, at its fifty-fourth session, not to introduce Class 205B in document UPOV/EXN/DEN/1 (see document CAJ/77/10 “Report”, paragraphs 12 and 21).
20. The CAJ noted the comments received on document UPOV/EXN/DEN/1 Draft 4 in response to Circular E 20/120 of August 21, 2020, as presented in Annex I to document CAJ/77/9.
21. The CAJ, on the basis of the comments in Annex I to document CAJ/77/9 and the expressions of support at its seventy-seventh session, invited the Office of the Union to prepare a draft of document UPOV/EXN/DEN “Explanatory Notes on Variety Denominations under the UPOV Convention” (document UPOV/EXN/DEN/1 Draft 5), for comments by the CAJ by correspondence; and based on the comments received, the Office of the Union to prepare a new draft of document UPOV/EXN/DEN for consideration at the seventy-eighth session of the CAJ, to be held in 2021 (see document CAJ/77/10 “Report”, paragraph 23).

Proposal to revise the denomination Class 201

22. The Office of the Union was informed of the need for UPOV codes for the genus \times *Trititrigia* (TRITT) and certain \times *Trititrigia* species, as provided in Part B of Annex IV to document TWP/5/4 "New UPOV codes or new information". The genus \times *Trititrigia* is the binomial hybrid for *Triticum* \times *Elytrigia* in accordance with GRIN. The TWA is invited to consider the proposal to revise the list of classes in Annex I (Part II: Classes encompassing more than one genus) in document UPOV/INF/12/5 by adding genus \times *Trititrigia* in the variety denomination Class 201, as follows:

LIST OF CLASSES (Part II)

Classes encompassing more than one genus

	Botanical names	UPOV codes
Class 201	<i>Secale</i> , <i>Triticale</i> , <i>Triticum</i> , \times <i>Trititrigia</i>	SECAL; TRITL; TRITI; <u>TRITT</u>

23. In anticipation of consideration of this matter by the Technical Committee, the TWA is invited to provide the TC with its comments on the proposal to revise the Class 201 in document UPOV/INF/12/5, as set out paragraph 23 of this document.

24. The comments of the TWA will be presented to the TC, at its fifty-seventh session.

25. The TWPs are invited to note the developments concerning a possible revision of document UPOV/INF/12 "Explanatory Notes on Variety Denominations under the UPOV Convention" at the CAJ, at its seventy-sixth session, by correspondence, and at its seventy-seventh session, as set out in paragraphs 9 to 22 of this document; and

*26. The TWA is invited to consider the proposal to revise Class 201 in document UPOV/INF/12/5, to include \times *Trititrigia*, as set out paragraph 23 of this document.*

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

Development since the seventy-sixth session of the CAJ

27. 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 (see document CAJ/77/7 "UPOV denomination similarity search tool", paragraphs 12 and document CAJ/77/10 "Report", paragraph 44).

28. 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”.”

29. 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.

30. 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.

31. The CAJ, at its seventy-seventh session, considered document CAJ/77/7 (see document CAJ/77/7 “UPOV denomination similarity search tool”, paragraphs 12 to 17, and document CAJ/77/10 “Report”, paragraph 44).

32. The CAJ noted the conclusion of the CPVO and the Office of the Union that the CPVO similarity algorithm is 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.

33. The CAJ agreed that the Office of the Union explore with the CPVO possibilities for the variety denomination search tool to consider checking denominations for characteristics, as set out in paragraphs 14 to 16 of document CAJ/77/7.

34. The CAJ agreed to report to the CAJ, at its seventy-eighth session, on the outcome of that exploration.

35. The CAJ, at its seventy-seventh session, considered a draft of document UPOV/EXN/DEN/1 “Explanatory Notes on Variety Denominations under the UPOV Convention”. The CAJ noted that any work on a tool for checking for characteristics would need to reflect the guidance in document UPOV/EXN/DEN/1, once adopted.

36. The TWPs are invited to note the developments concerning a possible UPOV similarity search tool for variety denomination purposes, as set out in paragraphs 28 to 36 of this document.

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