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ICE / V/2

007

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COMMITTEE OF EXPERTS ON INTERNATIONAL COOPERATION IN EXAMINATION

HARMONIZED APPLICATION FORM

prepared by the Office of the Union

1. Pursuant to the decisions taken by the Committee of Experts on International Cooperation in Examination (see document ICE/IV/4, paragraph 10), the Office of the Union prepared a new draft of the application form on the basis of the outcome of the discussions at the fourth session of that Committee and sent it to the members of the Committee for comments (Circular No. 258).

2. The Office of the Union has so far received comments from France, Germany (Federal Republic of), the Netherlands, Sweden and the United Kingdom. A recapitulation of these comments appears in Annex I to this document. On the basis of those comments which arrived in time and could be presumed to meet with the approval of the other members, the Office of the Union--again following the decision of the Committee of Experts--prepared a new draft, which was sent to the international non-governmental organizations in the field of plant breeding and the seed trade. That draft is attached as Annex II to this document.

[Annexes follow]

SUMMARY OF THE COMMENTS OF THE DELEGATIONS OF MEMBER STATES

General Comments

France: Concentrating the form on one page would appear to have several disadvantages. The space allowed for the use of the applicants and the authorities is insufficient. A form on a double sheet, like that of France, could be used, which would serve as a folder for possible annexes. The explanatory notes should form a separate document.

Layout

France: The indication of the species and of the variety denomination should appear at the top of the form since this is the most important information for the authority which receives the application. The file is handled according to the species and not according to the name of the applicant.

Specific CommentsAd item 1

Germany (Federal Republic of): All applicants must be named under item 1 since the law of the Federal Republic of Germany requires full details. The Federal Office of Varieties (Bundessortenamt) utilizes an application form in which the space, comparable to that provided for in the draft application form, allowed up to now the indication of the names and addresses of several applicants. As no difficulties have yet arisen, it is considered that the indication of all applicants in the relevant item would be appropriate.

United Kingdom: The nationality of the applicant is immaterial so far as the United Kingdom legislation is concerned and the applicants in the United Kingdom are not likely to take kindly to the necessity for providing and entering.

Ad item 2

Germany (Federal Republic of): It should be indicated in the explanatory note that only a natural person can be appointed as agent or proxy.

Sweden: Non-national applicants must appoint a natural person as proxy. The Swedish authority corresponds with the proxy only. A proxy must be appointed for the whole period of protection.

United Kingdom: The United Kingdom legislation requires either an agent or an address for service. The draft does not cover the "address for service".*

There seems little difference between an agent and a proxy (both, according to the dictionary, require written authorization).*

Ad item 3

United Kingdom: It seems somewhat hard to require both the Latin and the common names. It is proposed that "and/or" should be inserted.*

* Following these comments, changes were made in the draft submitted to the professional organizations (see Annex II).

Ad item 4

Sweden: With regard to a separate form for submission of a variety denomination and its approval, the Swedish legislation (Article 7) provides that this is an integrated part of the application itself. The denomination is approved simultaneously and the approval is a prerequisite for the grant of protection.

United Kingdom: It is proposed that the word "denomination" (too "pompous") should be replaced by "name."

Ad item 5

Netherlands: It is proposed that "(other: specify)" should be replaced by "(other means: specify)."

Sweden: It is proposed that the name(s) and address(es) of the other person(s) who have bred or discovered the variety should be requested.

United Kingdom: The United Kingdom legislation requires the applicant to be the breeder, discoverer of the variety, or his successor in title, and varieties transferred to the applicant by contract cannot be accepted.*

It is proposed that the text should read: "The variety was bred or discovered" (instead of "has been").*

Ad item 7

Netherlands and Sweden: It is proposed that the registration number (application number) of the application in respect of which priority is claimed should be requested.

Ad item 8

Netherlands: To avoid a possible misunderstanding as to which State of application is meant (see item 7 and 8), it is proposed that the expressions "this State of application" or "the State of application referring to this application" should be used instead of "the State of application."

United Kingdom: It is proposed that the text should read: "was offered for sale or sold for the first time on...(date) in...(State) under the name...".*

Ad item 9

Germany (Federal Republic of): The authorization must be given without reservation for the formula of the hybrid variety. In the Federal Republic of Germany, it is only possible to keep secret the formula under the Seed Trade Law (Saatgutverkehrsgesetz) and this is not possible under the Plant Varieties Protection Law.

Sweden: It is proposed that the words "when the formula of hybrid varieties has been given as confidential information" should be deleted.

* Following these comments, changes were made in the draft submitted to the professional organizations (see Annex II).

Ad item 10

France: Having regard to the condensed character of the form, more space should be provided for under item 10: "Documents and annexes" in order to allow States wishing to avail themselves of the opportunity to ask for additional information and the breeders to indicate the documents which they consider it would be useful to attach.

Sweden: It is proposed that boxes should be added for the power of attorney, the breeder's assignment (the proof of transfer of the variety) and the novelty declaration.

It is also proposed that the explanatory note should be reworded as follows: "Application and other relevant forms are available at the national authority competent for variety protection."

United Kingdom: It is not desirable to have a special application form for the variety denomination.

Ad item 11

Germany (Federal Republic of): The following words should be added to the first sentence: "in the variety described in the annex (technical questionnaire)", since the application must be accompanied by the description of the variety.

Sweden: It is proposed that the final declaration should be reworded as follows: "I/we hereby declare on my/our honor and conscience that...."

Questions Not Included in the Draft

France: It is proposed that information concerning the deposit of trademarks should be requested in the application form.

It is also proposed that, as in the draft form contained in the Annex to document ICE/III/10, items 11.1 and 11.3, the following indications should be asked for:

"(11.1) If the variety requires the repeated use of other protected varieties for its reproduction, indicate these varieties.

.....

Authorization to use these varieties for the reproduction of the variety is given by the owner of these varieties.

"(11.3) The applicant(s) hereby declare(s) that, to the best of his (their) knowledge, the variety is newly bred and distinct from other varieties."

Sweden: It is desirable to provide for a novelty declaration signed by the applicant.

United Kingdom: An application for a protective direction which must be submitted simultaneously with the application for plant breeders' rights is needed.

[Annex II follows]

State of application

Registration number (Date/File number)

Examining State and station(s) and other parties concerned

Note: Only part inside the frame to be filled in by the applicant.

Form A APPLICATION FOR PLANT BREEDERS' RIGHTS

<p>1. Applicant: name and address</p> <p style="text-align: right;">nationality</p> <p><input type="checkbox"/> further applicants named on separate page</p>	<p>2. Address to which correspondence has to be mailed (if different from 1.)</p> <p>This is the address of</p> <p><input type="checkbox"/> (one of) the applicant(s)</p> <p><input type="checkbox"/> the agent <input type="checkbox"/> other</p>			
<p>3. Botanical unit to which the variety belongs (Latin and/or common names)</p> <p>.....</p>				
<p>4. Proposed denomination or breeder's reference</p> <p>.....</p>				
<p>5. The original breeder(s) or discoverer(s) is/are</p> <p><input type="checkbox"/> the applicant</p> <p><input type="checkbox"/> the following person(s).....</p> <p>No person(s) other than the above-mentioned participated in the breeding or discovery of the variety.</p> <p>The variety has been transferred to the applicant(s) by</p> <p><input type="checkbox"/> contract <input type="checkbox"/> succession <input type="checkbox"/> (other: specify)</p> <p>The variety was bred or discovered in (State(s))</p>				
<p>6. Prior applications</p>	<p>Filing (State - date)</p>	<p>Registration number</p>	<p>Stage reached - date</p>	<p>Denomination or breeder's reference</p>
<p>Plant breeders' rights</p>				
<p>Official variety list</p>				
<p>7. Priority is claimed in respect of the application filed on (date) in (State)</p>				
<p>8. The variety has not been offered for sale or marketed in the State of application and</p> <p><input type="checkbox"/> has not been offered for sale or marketed in any other State</p> <p><input type="checkbox"/> was offered for sale or marketed for the first time in (State) on (date)</p> <p>under the denomination</p>				
<p>9. Authorization is hereby given to the Plant Breeders' Rights Office to exchange with the competent authorities of any State, party or not to the UPOV Convention, any useful information and material related to the variety, provided that the rights of the applicant are safeguarded when the formula of hybrid varieties has been given as confidential information.</p>				
<p>10. Documents and annexes attached</p> <p><input type="checkbox"/> Technical questionnaire <input type="checkbox"/> Application for variety denomination</p> <p>Number of other annexes</p>				
<p>11. I/we hereby apply for the grant of plant breeders' rights. I/we hereby declare that to my/our knowledge/ the above information is correct and no relevant information has been omitted</p>				
<p>Place / Date</p> <p style="text-align: right;">Signature(s)</p>				

EXPLANATORY NOTES

General

Dates are to be indicated as follows: day/month/year (example: 14/01/76).

States are to be indicated by the car registration code (exception: United Kingdom: UK)

State of application means the State with which this application is filed.

Sections

Ad 1. The full name and address of the natural person or firm, including the country, should be indicated. Where correspondence is to be sent to another address, that address should be given under 2.

Where several persons are applying, one co-applicant should be named on this form and the other(s) on a separate paper. The allotment of rights should also be indicated.

The nationality should be indicated only in the case of natural persons and need not be filled in for applications in the United Kingdom.

Ad 2. This address must be in the State of application and must be sufficiently complete to ensure delivery by the postal services. Indication of telephone and telex numbers would be appreciated. Where an agent or a proxy has been named or a co-applicant has been authorized to act for other co-applicants, a power of attorney specifying his entitlement must be attached.

Ad 3. The indication of the botanical (Latin) name and/or the common name (in the language of the State of application) of the botanical unit (genus, species etc.) to which the variety belongs should allow the Plant Breeders' Rights Office to check whether the variety is eligible for protection under the national law of the State of application.

Ad 4. Either a proposed denomination or a breeder's reference should be indicated. Where a denomination is proposed, it should be underlined. In any case, the formal submission of a denomination should be made by using the special form for application for a variety denomination.

Ad 5. Only natural persons are to be indicated here.

If the variety has been transferred to the applicant, the proof of the transfer should be attached. In case of applications in the United Kingdom, the variety must not have been transferred by contract.

Ad 6. "Official variety list" means any list of varieties whose commercialization is authorized by the authorities competent in this matter.

All prior applications without exception must be indicated in chronological order, including those filed in States which are not members of the International Union for the Protection of New Varieties of Plants (UPOV).

In column "Stage reached - date" the following abbreviations should be used:

A = application pending (no date to be indicated in that case)

B = application rejected (example: B-14/01/76)

C = application withdrawn

D = plant breeders' rights granted or variety entered in official variety list.

Where a denomination has been approved by an authority, it should be underlined in the last column.

Ad 7. A copy of the documents which constitute the application in respect of which priority is claimed, certified to be a true copy by the authority which received it, should be forwarded to the authority of the State of application within three months from the date of filing of that application. As to the entitlement to claim the priority of an application filed in another member State of the International Union for the Protection of New Varieties of Plants (UPOV), see Article 12(1) of the UPOV Convention.

Ad 10. Application forms for a variety denomination and special technical questionnaires for each species are available at the national authority competent for variety protection.