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ICE / VI/2 065

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COMMITTEE OF EXPERTS ON INTERNATIONAL COOPERATION IN EXAMINATION

Sixth Session

Geneva, November 16 and 17, 1976

UPOV MODEL FORMS

Document prepared by the Office of the Union

1. Pursuant to the decisions taken by the Committee of Experts on International Cooperation in Examination at its fifth session (see document ICE/V/4, paragraph 13), the Office of the Union has prepared a draft of the UPOV Model Form for the Application for Plant Breeders' Rights and a draft of the UPOV Model Form for the Application for a Variety Denomination. They are reproduced in Annex I and Annex II respectively.
2. These drafts have been sent to the members of the Committee and to international non-governmental organizations in the field of plant breeding and the seed trade for comment. The Office of the Union has so far received comments from Denmark, France, Germany (Federal Republic of), Sweden, Switzerland, the United Kingdom and ASSINSEL.
3. Annex III to this document contains a summary of these comments, and in one case a comment by the Office of the Union. Proposals for linguistic improvements to only one of the three versions (English, French, German) of the forms have not been included in this summary.
4. On the basis of those of the comments and proposals that are expected to be agreed to by the other experts, revised drafts have been prepared which appear in Annex IV (revised draft Model Form for the Application for Plant Breeders' Rights) and in Annex V (revised draft Model Form for the Application for a Variety Denomination).

[Annexes follow]

State of application Application number (Date/File number) Examining State and station(s) Other parties concerned

Note: Fill in only part inside the frame. Consult first the instructions

APPLICATION FOR PLANT BREEDERS' RIGHTS

ICE/VI/2
ANNEX I

<p>1. Applicant(s): name and address</p> <p style="text-align: right;">nationality</p>	<p>2. Address to which correspondence has to be mailed</p> <p style="text-align: center;">This is the address</p> <p style="text-align: center;"><input type="checkbox"/> of one of the applicants</p> <p style="text-align: center;"><input type="checkbox"/> of the agent/proxy</p> <p style="text-align: center;"><input type="checkbox"/> for service</p>
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3. Species

4. Breeder's reference

Proposed denomination (in block letters) _____

5. The original breeder(s) or discoverer(s) is (are)

the (all) applicant(s) the following persons:

No other person participated in the breeding or discovery.
The variety was transferred to the applicant(s) by:

contract succession other (specify)

The variety was bred or discovered in (State(s))

6. Prior applications	Filing (State - date)	Application number	Stage reached - date	Denomination or breeder's reference
Plant breeders' rights				
Official variety list				

7. Priority is claimed in respect of the application filed in (State) on (date)

8. The variety has not been offered for sale or marketed in the State of application and

has not been offered for sale or marketed in any other State

was offered for sale or marketed for the first time in (State) on (date) under the denomination

9. Authorization is hereby given to the Plant Breeders' Rights Office to exchange with the competent authorities of any UPOV member State any useful information and material related to the variety, provided that the rights of the applicant are safeguarded.

10. Other forms and documents attached

1 2 3 4 5 a b c d e

11. I (we) hereby apply for the grant of plant breeders' rights.
I (we) hereby declare that, to my (our) knowledge, the information given in this form and in the annexes is correct and no relevant information has been omitted.

Place, Date

Signature(s)

INSTRUCTIONS FOR COMPLETING THE FORM

General Instructions

- 0.1 Dates are to be indicated as follows: day/month/year (example: 14/01/76).
- 0.2 States are to be indicated by their car registration code (exception: United Kingdom = UK).
- 0.3 "State of application" means the State with which this application is filed.
- 0.4 "Plant Breeders' Rights Office" means the office competent for the granting of plant breeders' rights of the State of application.

Items

Ad 1

- 1.1 Indicate the full name and address, including the country, of the applicant (natural person or firm). Where more than one person apply, give the names and addresses of all applicants; if the space under 1 is not sufficient for indicating all necessary details, give only the names under item 1 and indicate the addresses on a separate page attached to this form.
- 1.2 Where the applicant wishes the correspondence to be sent to himself, his address must be sufficiently complete to ensure delivery by the postal services. Indication of telephone and telex numbers would be appreciated.
- 1.3 Indicate the nationality only in the case of natural persons.
- 1.4 Federal Republic of Germany: where several persons or firms are applying, indicate also the allotment of rights.
- 1.5 United Kingdom: the nationality need not be indicated.

Ad 2

- 2.1 This address must be in the State of application and must be sufficiently complete to ensure delivery by postal services. Indication of telephone and telex numbers would be appreciated.
- 2.2 Where one co-applicant has been authorized to act for the other co-applicants or an agent or proxy has been named, attach a power of attorney specifying his entitlements.
- 2.3 Federal Republic of Germany and Sweden: only natural persons can be named as agent or proxy.

Ad 3

- 3.1 The name of the species (or genus, subspecies, etc.) must be the same as that appearing in the legislation of the State of application.

Ad 4

- 4.1 Either a breeders' reference or a proposed variety denominations should be indicated.

Ad 5

- 5.1 If the applicant, or all applicants, has bred or discovered the variety, mark the first box with a cross. If only one or several of the applicants bred or discovered the variety, mark the second box with a cross and indicate his (their) name(s). If a third person has bred or discovered the variety, mark the second box with a cross and indicate his name and address.
- 5.2 If the variety was transferred to the applicant(s), attach the proof of transfer.
- 5.3 Federal Republic of Germany and Sweden: Only a natural person can be indicated as breeder or discoverer. For applications in Sweden, indicate also the nationality of the breeder or discoverer.

Ad 6

6.1 "Plant Breeders' Rights" means plant patents as well as special titles of protection.

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

6.3 Indicate all prior applications without exception 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).

6.4 In column "Stage reached - date" use the following abbreviations:

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.

6.5 Where a variety denomination has been approved by an authority, underline it in the last column.

Ad 7

7.1 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, must be forwarded to the Plant Breeders' Rights Office within three months from the date of filing of the present 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 8

8.1 Denmark: if the variety was offered for sale or marketed in other States, indicate the following details on a separate form to be attached: States in which the variety has been offered for sale or marketed; date of first offering for sale or marketing in each State; names under which the variety has been offered for sale or marketed in each State.

Ad 9

9.1 Sweden: attention is drawn to the fact that in Sweden all written information received by an authority is public and cannot be treated confidentially.

Ad 10

10.1 Application forms and other relevant forms are available at the Plant Breeders' Rights Office.

10.2 The following forms and documents are mandatory for inclusion:

(i) in the case where one co-applicant has been authorized to act for the other co-applicants or an agent or proxy has been named, a power of attorney specifying his entitlements (if attached, mark box 1 with a cross);

(ii) in the case where the variety has been transferred to the applicant(s), the proof of the transfer (if attached mark box 2 with a cross);

(iii) in the case where the priority of the first application is claimed, the copy of the documents which constitute that application must be forwarded to the Plant Breeders' Rights Office within three months from the date of filing of the present application; if that copy is attached, mark box 3 with a cross;

(iv)* the description of the variety on the special Technical Questionnaire for the species to which the variety belongs (mark box 4 with a cross);

(v) the proof of payment of the fees (mark box 5 with a cross);

* Special forms must be completed.

10.3 The following forms and documents must be attached in the case of applications in certain UPOV member States only namely in:

(i)* Denmark: the separate form in which the details on the offering for sale and marketing have to be given (see note Ad 8. above; if attached, mark box a with a cross);

(ii) France: if the reproduction of the variety requires the repeated use of protected varieties, the authorization of their owners to use them for the reproduction of this variety (if attached, mark box b with a cross);

(iii)* France and Sweden: a declaration of novelty (mark box c with a cross);

(iv) United Kingdom: if a protective direction is sought, the application for a protective direction (if attached, mark box d with a cross);

(v)* France: the form for an application of a variety denomination (denomination and trademarks form) (mark box e with a cross).

[Annex II follows]

* Special forms must be completed.

State of application Application number (Date/file number) Examining State and station(s) Other parties concerned

Note: Fill in only part inside the frame. Consult first the instructions.

APPLICATION FOR A VARIETY DENOMINATION

1. This application refers to the variety filed under application number initially proposed denomination or breeder's reference

ICE/VI/2 ANNEX II

2. Applicant(s)

3. Species

4. Proposed denomination (in block letters)

5. Denominations submitted or registered in other member States

Table with 3 columns: State, Stage reached - date, Denomination (if different from 4 above)

6. [] The proposed denomination has been filed by or registered for the applicant(s) as a trademark in the State of application, in a UPOV member State or with the International Bureau of the World Intellectual Property Organization (WIPO) in respect of products which are identical or similar within the meaning of trademark law.

Table with 4 columns: State(s) and/or WIPO, Date of application, Date of registration, Registration number

7. The applicant(s) hereby renounce(s), as from the registration of the denomination to the extent prescribed by the legislation of the State of application, his rights to trademark(s) which is (are) identical or similar to, or can be confused with, the proposed denomination.

8. Application in the Federal Republic of Germany only: The priority of the trademark filed or registered in the Federal Republic of Germany mentioned under item 6 is claimed. The proof of the application or registration certified by the Patent Office [] is attached [] will be forwarded to the Federal Office of Varieties within three months.

Done at (place)on (date)

(Signature(s))

INSTRUCTIONS FOR COMPLETING THE FORM

General Instructions

- 0.1 Dates are to be indicated as follows: day/month/year (example: 14/01/76).
- 0.2 States are to be indicated by the car registration code (exception: United Kingdom = UK).
- 0.3 "State of application" means the State with which this application is filed.

Sections

Ad 1

The application number appears on top of the application form for the grant of plant breeders' rights. Where both forms are filed simultaneously no application number should be given.

Ad 3

The name of the species (genus or subspecies ...) must be the same as that appearing in the legislation of the State of application.

Ad 4

Concerning the requirements which the proposed variety denomination has to fulfill, see the guide furnished by the Plant Breeders' Rights Office.

Ad 5

5.1 All prior denominations without exception must be indicated in chronological order.

5.2 In column "Stage reached - date" use the following abbreviations:

- A = application pending (date to be indicated in that case: filing date of application)
- B = denomination rejected (example: B-20/12/76)
- C = denomination withdrawn
- D = denomination approved

Ad 7

The extent of the renouncement is as follows:

(a) Denmark, Sweden and United Kingdom

the applicant must renounce the registration or withdraw the application for registration of such trademarks which are similar or can be confused with the proposed denomination, in respect of:

- (i) Denmark
plants of the same species and of related species.
- (ii) Sweden
material of a plant variety or goods of a similar kind.
- (iii) United Kingdom
any goods which consist of, or include:
- reproductive material
 - produce or products of the variety which is the subject of the application, or of plants of a variety of the same class for naming purposes, namely:
 - agricultural, horticultural and forest produce (not being reproductive material)
 - manufactured or processed products derived from such produce.

(b) France, Germany (Federal Republic of) and Netherlands

The applicant must renounce making use, from the date of grant of the plant breeder's right, for the variety and for any other variety of the same or related species, of the rights provided by such trademarks which are similar or can be confused with the denomination. This renouncement applies to the State of application and

- (i) France and Germany (Federal Republic of)
to the other member States of the International Union for the Protection of New Varieties of Plants (UPOV) in which the species to which the variety belongs is eligible for protection.
- (ii) Netherlands
to all other UPOV member States.

SUMMARY OF COMMENTS ON THE DRAFT MODEL FORMS

1. Remarks on the Draft Model Form for the Application for Plant Breeders' RightsGeneral

Switzerland: Both forms are very useful, since they can be used as a basis for the elaboration of the Swiss national forms.

ASSINSEL: The Belgian and Dutch Sections of ASSINSEL have no comments to submit on either of the forms.

Item 4

France: It is proposed that "or" be inserted between "Breeder's reference" and "Proposed denomination."

Item 5

France: It is proposed that the word "discoverer" be deleted since discoveries cannot be the subject of protection according to the UPOV Convention. Reference is made to Section II of the annotated Recommendations adopted by the Committee of Experts in its session from April 22 to 25, 1958, and published on page 35 of the "Actes des Conférences."¹ [In the revised draft model form in Annex IV, all references to a discoverer are placed between square brackets since some member States, in particular the Federal Republic of Germany, use this expression in their laws and ask for an indication of the discoverer in their national forms.]

ASSINSEL: The National Seed Development Organisation (NSDO) of the United Kingdom remarks that, as far as the need for a natural person to be indicated as the breeder is concerned, this practice cannot be followed in the case of the United Kingdom breeding institutes, when it is invariably the case that the "breeder" is the institution and not an individual.

Item 8

- * Office of the Union: The first part of the sentence should be reworded in a way that is similar to the second part in order to take into account the possibility of the variety having been commercialized in the State of application in cases where the priority of a prior application is claimed.

Item 10

France: Since a variety description has to be attached, in each case, it is proposed that the title of the item be drafted as follows: "Other forms and documents attached: variety description and, where appropriate:".

¹ The cited section reads as follows:

"II.

"Origin of the New Variety

"It is the fact of having undertaken creative selection work (sélection créative) which entails for the breeder the right to the protection, whatever may be the origin (natural or artificial) of the initial variation from which the new variety finally resulted.

"Comment: This provision allows the breeder to use as the basis of his creative selection work an incidental hybrid or a natural or artificial mutation. It does not allow the protection of the result of the mere choice of a genotype among those contained in a protected variety."

- * Comments marked with an asterisk have already led to changes in the new draft model forms appearing in Annexes IV and V. As to comments not marked with an asterisk, the Office of the Union did not feel entitled to amend the draft forms accordingly prior to discussion in the Committee of Experts.

Item 11

- * France: In the second sentence, "relevant" should be replaced by "necessary for the examination of the application."
- * Germany (Federal Republic of): It is proposed that the second sentence be drafted as follows: "I (we) declare that, to my (our) knowledge, the information (...) is complete and correct."

2. Remarks on the Explanatory Notes of the Draft Model Form for the Application for Plant Breeders' Rights

Ad 1

- * Sweden: It is proposed that the following note be added: "Sweden: Juridical persons must attach an official document indicating who is authorized to sign for such persons."
- * United Kingdom: It is suggested that the second sentence of the note Ad 1.1 start as follows: "Where there is more than one applicant," in order to eliminate the word "person," which could exclude firms as applicants.

Ad 2

- Denmark: It is proposed that the following note be added: "Denmark: in the case of a foreign applicant, indicate only the address of the Danish representative."
- * Sweden: It is proposed that the reference to Sweden be deleted in note 2.3, since the practice is now more flexible in that country.
- * United Kingdom: It is preferred to have "an authority completed by the person on whose behalf the co-applicant or agent is authorized to act" in note 2.2.

Ad 4

- * France: It is proposed that the following remark be added in the notes: "Where the breeder does not immediately submit the variety denomination, he will have to submit it at the request of the competent authority when the latter thinks it necessary and within prescribed time limits. He will also be charged a publication fee. If the breeder does not observe the time limits, his application will be rejected."
- * United Kingdom: As worded the note provides for only a breeder's reference or a proposed variety denomination, whereas provision should be made for either or both.

Ad 5

- * Germany (Federal Republic of): The following wording is proposed for note 5.1: "Mark the first box with a cross if the applicant/all applicants is/are the breeder(s) or discoverer(s) of the variety. Mark the second box with a cross if not all applicants are the breeders or discoverers of the variety. Indicate the name(s) and address(es) of the breeder(s) or discoverer(s)."
- * United Kingdom: The Plant Varieties and Seeds Act of the United Kingdom refers to "successor in title" and it is wished to include the following text in the national United Kingdom form: "Where the application is made by a person claiming to be the successor in title of the breeder, it must be accompanied by an assignment, probate, letters of administration or confirmation² or such other documentary evidence as is sufficient to establish the title of the applicant." This could be included against a side heading "United Kingdom."

² The single kinds of documents used as evidence have not been entered in the new draft model form in Annex IV.

Ad 6

- * Switzerland: The use of the letter "A" in column "State reached - date" provides no information on whether the pending application is duly filed or not. Such information is, however, necessary to determine the entitlement of the applicant to claim the priority of a pending prior application. It would be worthwhile to provide for both possibilities by extending the range of letters used.

Ad 10

- * Germany (Federal Republic of): It is proposed that the order adopted in note 10.2 should be (iv), (i), (ii) and (iii), and that (v) be transferred to 10.3. The reasons are that an application without a variety description is not valid and that not all UPOV member States ask for proof of the payment of the fee.
- * Sweden: As a consequence of the addition of a note ad item 1, it is proposed that a new note be added under 10.3 according to which an official document must be produced which proves the writer's entitlement to sign the application, the novelty declaration, the power of attorney and other documents.
- * Sweden: It is proposed that it be indicated under 10.3(iii) that the declaration of novelty requested in Sweden must be given "on my honor and conscience."
- * United Kingdom: In the case of 10.2(iii), there may be delay in submitting the documents and it is appropriate to ask for the box to be marked if the documents are attached. This is not so, however, in the case of the documents required under 10.2(i) and (ii), which should be attached for the application to be valid. Therefore the approach should be positive and, as an example, 10.2(i) should be worded as follows: "If a co-applicant has been authorized to act for the other co-applicants or an agent or proxy has been named, attach the authorization referred to at Ad 2.2 and mark box 1 with a cross."
- * United Kingdom: Under the United Kingdom Act, the application must be accompanied by the appropriate fee. In order to meet this requirement, the reference to "forms and documents" in the preamble to 10.3 might be deleted and "the appropriate fee" could be inserted under United Kingdom.
- * United Kingdom: It is recalled that Section 1(1) of Schedule 1 to the Plant Varieties and Seeds Act states: "An applicant for the grant of plant breeders' rights shall in his application state whether he is also applying for a direction" Therefore, the application form of the United Kingdom will contain a special item 12 in order to cover this point. Note 10.3(iv) is thus not necessary.

ASSINSEL: The National Seed Development Organisation (NSDO) assumes that the standard practice of applying jointly for rights would remain practicable without any additional legal complications as may be implied by paragraph 10.1.

3. Proposal for Adding a New Item

France: It is recalled that there was no unanimous decision at the fifth session of the Committee of Experts on International Cooperation in Examination on the necessity for a special variety denomination form and that some States, among them France, prefer that the information now requested in the special form be given in the application form. In order to take account of this divergence, while maintaining the uniformity of numbering, it is proposed that an additional item be included between items 4 and 5. This new item 5 would be entitled "Information concerning the denomination." In the application forms of States using special variety denomination forms, there would be the following remark: "See special form." The forms of the other States would contain items 5, 6 and 7 of the special form, these items being referred to in both forms by letters instead of figures.

4. Remarks on the Draft Model Form for the Application for a Variety Denomination

Item 4

ASSINSEL: The National Seed Development Organisation (NSDO) proposed that the applicant be allowed to submit a number of names with preferences indicated, since there are persistent problems in obtaining wide acceptance of names. This might save the time of both the applicants and the registration authorities.

Item 5

ASSINSEL: The National Seed Development Organisation (NSDO) hopes that item 5 will not encourage the development of international synonyms.

Item 7

United Kingdom: This item reflects Article 13(3) of the Convention but it seems that it is the Trade Marks Authority rather than the Plant Breeders' Rights Office that should be advised of the renouncement. In the United Kingdom, the practice is to check all names with the Trade Marks Authority. Moreover, it is understood by the delegates of that State that a trademark remains in existence in the United Kingdom for one year following renouncement.

Item 8

- * Germany (Federal Republic of): It is proposed that "trademark" be replaced by "trademark/mark" (Warenzeichen/Marke).
- * Germany (Federal Republic of): It is also proposed that the question be considered whether "(Bundessortenamt)" should be added after "the Federal Office of Varieties" in the English version and after "Office fédéral des variétés" in the French version.

5. Remarks on the Explanatory Notes of the Draft Model Form for the Application for a Variety Denomination

Ad 1

- * United Kingdom: The application number on the application forms for plant breeders' rights is inserted by the Plant Breeders' Rights Office. If that form and the form for the application for a variety denomination are filed simultaneously, the applicant is just not able to indicate the application number. The second sentence of Ad 1 should thus be modified.

Ad 7

- * Germany (Federal Republic of): It is proposed that "(Federal Republic of Germany: botanical)" be added after "any variety of the same" in the preamble to note Ad 7(b).

Ad 8

- * Germany (Federal Republic of): It is proposed that the following note be added: "If the priority mentioned overleaf under 8 is claimed, the proof to be certified by the Patent Office must, if not already attached, be produced within three months of the filing of this form. Failure to produce the proof by the prescribed date, cancellation of the mark or withdrawal or rejection of the application for the mark before the grant of protection entail forfeiture of the priority claim for the variety denomination."

UPOV MODEL FORM

State of application Application number (Date/File number) Examining State and station (s) Other parties concerned

Note : **Fill in only part inside the frame. Consult first the instructions.**

APPLICATION FOR PLANT BREEDERS' RIGHTS

ICE/VI/2
ANNEX IV

<p>1. Applicant (s) : name and address</p> <p style="text-align: right;">nationality _____</p>	<p>2. Address to which correspondence has to be mailed</p> <p style="text-align: center;">This is the address <input type="checkbox"/> of one of the applicants <input type="checkbox"/> of the agent/proxy <input type="checkbox"/> for service</p>
---	---

3. Species _____

4. Breeders' reference _____
 Proposed denomination (in block letters) _____

5. The original breeder (s) [or discoverer (s)] is (are) the (all) applicant (s) the following person(s) :

No other person participated in the breeding [or discovery].
 The variety was transferred to the applicant (s) by : contract succession other (specify) _____

The variety was bred [or discovered] in (State (s)) _____

6. Prior applications	Filing (State - date)	Application number	Stage reached - date	Denomination or breeder's reference
Plant breeders' rights				
Official variety list				

7. Priority is claimed in respect of the application filed in (State) _____ on (date) _____

8. The variety has not been was offered for sale or marketed for the first time in the State of application on (date) _____
 has not been was offered for sale or marketed for the first time in (other State) _____ on (date) _____

9. Authorization is hereby given to the Plant Breeders' Rights Office to exchange with the competent authorities of any UPOV member State any useful information and material related to the variety, provided that the rights of the applicant are safeguarded.

10. Other forms and documents attached : 1 2 3 4 a b c d e f

11. I (we) hereby apply for the grant of plant breeders' rights.
 I (we) hereby declare that, to my (our) knowledge, the information necessary for the examination of the application and given in this form and in the annexes is complete and correct.

Place _____, date _____

Signature (s)

INSTRUCTIONS FOR COMPLETING THE FORM

General Instructions

- 0.1 Dates are to be indicated as follows: day/month/year (example: 14/01/76).
- 0.2 States are to be indicated by their car registration code (exception: United Kingdom = UK).
- 0.3 "State of application" means the State with which this application is filed.
- 0.4 "Plant Breeders' Rights Office" means the office competent for the granting of plant breeders' rights of the State of application.

Items

Ad 1

- 1.1 Indicate the full name and address, including the country, of the applicant (natural person or firm). Where there is more than one applicant, give the names and addresses of all of them; if the space under 1 is not sufficient for indicating all necessary details, give only the names under item 1 and indicate the addresses on a separate page attached to this form.
- 1.2 Where the applicant wishes the correspondence to be sent to himself, his address must be sufficiently complete to ensure delivery by the postal services. Indication of telephone and telex numbers would be appreciated.
- 1.3 Indicate the nationality only in the case of natural persons.
- 1.4 Federal Republic of Germany: where several persons or firms are applying, indicate also the allocation of rights.
- 1.5 Sweden: in the case of a juridical person, attach an official document indicating who is entitled to sign for it.
- 1.6 United Kingdom: the nationality need not be indicated.

Ad 2

- 2.1 This address must be in the State of application and must be sufficiently complete to ensure delivery by postal services. Indication of telephone and telex numbers would be appreciated.
- 2.2 Where one co-applicant has been authorized to act for the other co-applicants or an agent or proxy has been named, attach an authority specifying his entitlements completed by the applicant(s) on whose behalf the co-applicant or agent is authorized to act.
- 2.3 Federal Republic of Germany: only natural persons can be named as agent or proxy.

Ad 3

- 3.1 The name of the species (or genus, subspecies, etc.) must be the same as that appearing in the legislation of the State of application.

Ad 4

- 4.1 Either a breeder's reference or a proposed variety denomination should be indicated.

4.2 Where the applicant does not propose a denomination in this form, he will be requested to do so by a prescribed date by the Plant Breeders' Rights Office. Failure to propose a denomination by the prescribed date entails rejection of the application.

4.3 France: Where the denomination is proposed under the terms of 4.3 above, the applicant is charged a publication fee.

4.5 United Kingdom: Both a breeder's reference or a proposed variety denomination can be indicated.

Ad 5

5.1 Mark the first box with a cross if (all) the applicant(s) is (are) the breeder(s) [or discoverer(s)] of the variety.

Mark the second box with a cross if not all applicants are the breeders [or discoverers] of the variety and/or if (a) third person(s) is (are) the breeder(s) [or discoverer(s)] of the variety. Indicate the name(s), and the address(es) (if not indicated under 1), of the breeder(s) [or discoverer(s)].

5.2 Where the applicant claims to be the successor in title of the breeder [or discoverer] of the variety, attach such documentary evidence as is sufficient to establish the title of the applicant.

5.3 Federal Republic of Germany and Sweden: Only a natural person can be indicated as breeder or discoverer. For applications in Sweden, indicate also the nationality of the breeder or discoverer.

Ad 6

6.1 "Plant Breeders' Rights" means plant patents as well as special titles of protection.

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

6.3 Indicate all prior applications without exception 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).

6.4 In column "Stage reached - date" use the following abbreviations:

A = application not filed and pending (no date to be indicated in that case)

B = application duly filed and pending (no date to be indicated in that case)

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

D = application withdrawn

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

6.5 Where a variety denomination has been approved by an authority, underline it in the last column.

Ad 7

7.1 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, must be forwarded to the Plant Breeders' Rights Office within three months from the date of filing of the present 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 8

8.1 Denmark: If the variety was offered for sale or marketed in other States, indicate the following details on a separate form to be attached: States in which the variety has been offered for sale or marketed; date of first offering for sale or marketing in each State; names under which the variety has been offered for sale or marketed in each State.

Ad 9

9.1 Sweden: Attention is drawn to the fact that in Sweden all written information received by an authority is public and cannot be treated confidentially.

Ad 10

10.1 Application forms and other relevant forms are available at the Plant Breeders' Rights Office.

10.2 For the application to be valid, the following forms and documents are mandatory for production to the Plant Breeders' Rights Office:

(i) *Attach the description of the variety on the special Technical Questionnaire for the species to which the variety belongs and mark box 1 with a cross;

(ii) If one co-applicant has been authorized to act for the other co-applicants or an agent or proxy has been named, attach the authorization referred to in 2.2 and mark box 2 with a cross;

(iii) If the applicant claims to be the successor in title of the breeder [or discoverer] of the variety, attach the documentary evidence referred to in 5.2 and mark box 3 with a cross;

(iv) If the priority of the first application is claimed, the certified copy of the documents which constitute that application must be forwarded to the Plant Breeders' Rights Office within three months from the date of filing of the present application; if that copy is attached, mark box 4 with a cross.

10.3 The following must be attached to this form in the case of applications in certain UPOV member States only, namely:

(i) Sweden: If the applicant is a juridical person, attach the document referred to in note 1.5 and mark box a with a cross;

(ii) *Denmark: Attach the separate form in which the details on the offering for sale and marketing have to be given (see note 8.1 above) and mark box b with a cross;

(iii) France: If the reproduction of the variety requires the repeated use of protected varieties, attach the authorization of their owners to use them for the reproduction of this variety and mark box c with a cross;

(iv) *France and Sweden: Attach the declaration of novelty and mark box d with a cross. In Sweden, the declaration must be given on the honor and conscience of the undersigned;

(v) *France.....: Attach the form for an application for a variety denomination (denomination and trademark form) and mark box e with a cross;

(vi) United Kingdom.....: Attach the appropriate fee and mark box f with a cross.

[Annex V follows]

State of application

Application number
(Date/file number)

Examining State and station (s)

Other parties concerned

Note : Fill in only part
inside the frame.
Consult first the
instructions.

APPLICATION FOR A VARIETY DENOMINATION

1. This application refers to the variety filed under application number _____
initially proposed denomination or breeder's reference _____

2. Applicant (s)

3. Species

4. Proposed denomination (in block letters) _____

5. Denomination submitted or registered in other member States

State	Stage reached - date	Denomination (if different from 4 above)

6. The proposed denomination has been filed by or registered for the applicant (s) as a trademark in the State of application, in a UPOV Member State or with the International Bureau of the World Intellectual Property Organization (WIPO) in respect of products which are identical or similar within the meaning of trademark law.

State and/or WIPO	Date of application	Date of registration	Registration number

7. The applicant (s) hereby renounce (s), as from the registration of the denomination to the extent prescribed by the legislation of the State of application, his rights to trademark (s) which is (are) identical or similar to, or can be confused with, the proposed denomination.

8. Application in the Federal Republic of Germany only :

The priority of the trademark /mark filed or registered in the Federal Republic of Germany mentioned under item 6 is claimed.

The proof of the application or registration certified by the Patent Office

is attached

will be forwarded to the Federal Office of Varieties (Bundessortenamt) within three months.

Done at (place) _____, on (date) _____

Signature (s)

ICE/VI/2
ANNEX V

INSTRUCTIONS FOR COMPLETING THE FORM

General Instructions

- 0.1 Dates are to be indicated as follows: day/month/year (example: 14/01/76).
- 0.2 States are to be indicated by the car registration code (exception: United Kingdom = UK).
- 0.3 "State of application" means the State with which this application is filed.

Sections

Ad 1

Where this form is filed simultaneously with the form for the application for plant breeders' rights, nothing is to be indicated in item 1. Where this form is filed at a later stage, the application number to be indicated is that appearing on top of the form for the application for plant breeders' rights.

Ad 3

The name of the species (genus or subspecies ...) must be the same as that appearing in the legislation of the State of application.

Ad 4

Concerning the requirements which the proposed variety denomination has to fulfill, see the guide furnished by the Plant Breeders' Rights Office.

Ad 5

5.1 Indicate all prior denominations without exception in chronological order

5.2 In column "Stage reached - date" use the following abbreviations:

A = application pending (date to be indicated in that case: filing date of application)

B = denomination rejected (example: B-20/12/76)

C = denomination withdrawn

D = denomination approved

Ad 7

The extent of the renouncement is as follows:

(a) Denmark, Sweden and United Kingdom

The applicant must renounce the registration or withdraw the application for registration of such trademarks which are similar or can be confused with the proposed denomination, in respect of:

- (i) Denmark
plants of the same species and of related species.
- (ii) Sweden
material of a plant variety or goods of a similar kind.
- (iii) United Kingdom
any goods which consist of, or include:
- reproductive material
 - produce or products of the variety which is the subject of the application, or of plants of a variety of the same class for naming purposes, namely:
 - agricultural, horticultural and forest produce (not being reproductive material)
 - manufactured or processed products derived from such produce.

(b) France, Germany (Federal Republic of) and Netherlands

The applicant must renounce making use, from the date of grant of the plant breeders' right, for the variety and for any other variety of the same (Federal Republic of Germany: botanical) or related species, of the rights provided by such trademarks which are similar or can be confused with the denomination. This renouncement applies to the State of application and

- (i) France and Germany (Federal Republic of)
to the other member States of the International Union for the Protection of New Varieties of Plants (UPOV) in which the species to which the variety belongs is eligible for protection.
- (ii) Netherlands
to all other UPOV member States.

Ad 8

If the priority mentioned under 8 is claimed, the proof certified by the German Patent Office must, if not attached, be produced within three months of the filing of this form. Failure to produce the proof by the prescribed date, cancellation of the trademark or withdrawal or rejection of the application for the trademark before the grant of protection entail forfeiture of the priority claim for the variety denomination.

[End of document]