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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

COMMITTEE OF EXPERTS ON THE INTERPRETATION AND REVISION OF THE CONVENTION

Third Session

Geneva, February 17 - 20, 1976

COMMENTS OF PARTICIPANTS

Proposal of AIPPI

The International Association for the Protection of Industrial Property (AIPPI) transmitted on January 23, 1976, the letter and the proposal for discussion that are attached as Annex to this document, in preparation for the third session of the Committee of Experts on the Interpretation and Revision of the Convention.

[Annex follows]

AIPPIAssociation Internationale
pour la Protection
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January 23, 1976

Committee of Experts on the Interpretation and Revision of the
Convention (3rd Session: February 17 to 20, 1976)

Mr. Secretary-General,

With reference to your letter of December 15, 1975, in which you have invited us to send you any comments we may have on the items to be discussed during the 3rd Session of the Committee of Experts on the Interpretation and Revision of the Convention, I am sending you a report, which has been prepared by AIPPI's Special Committee on the Protection of New Varieties of Plants, and which includes an additional point which we would like to be submitted to the Third Session of the Committee of Experts.

I apologize for not having been able to send you this report before January 20 but trust that it will nevertheless be possible for you to include it in the Working Documents of the meeting.

With every best wishes for the success of your work.

Yours faithfully,

R.E. Blum,
Secretary-General

COMMITTEE OF EXPERTS ON THE INTERPRETATION AND REVISION OF THE
CONVENTION
(3rd Session: February 17 to 20, 1976)

Additional Point to be Discussed

submitted by the Special Committee of AIPPI for the Protection
of New Varieties of Plants

The Tentative List of items to be discussed, forwarded as an annex to UPOV Circulars No. U-168/08.3, U-169/08.2 and U-170/08.2, contained under Point 9 the proposal to leave it to the national laws of Member States to provide the necessary rules for variety denominations and the relationship between variety denominations and trade marks.

This point is not contained any more in the final agenda of December 15, 1975.

A discussion of this point is important, however.

The international associations emphasized several times that the recommendations of the UPOV Guide Lines for Variety Denominations do not meet the practical requirements as far as the allowed choice of variety denominations (Art. 3) is concerned. The international associations have agreed that words as denominations shall naturally continue to be allowed where this is desired. But they have also outlined that in cases where through a word used as a denomination of variety the use (Convention Article 13, subsection 9) of a trade mark different

from the variety denomination would be blocked combinations of letters and numbers must be allowed, too, to avoid that if trade marks are used two denominations having advertising character exist side by side. There is a number of cases where in the states of the Convention as well as particularly in the numerous states that do not belong to the Convention a trade mark is required for advertising purposes.

The problem being known, no further comments are necessary.

Some states, for instance the Federal Republic of Germany (being a state of the Convention) and some other states (that are about to join the Convention) legally allow denominations in the form of the combinations mentioned. Other states, for instance France, on the other hand follow the recommendations of the UPOV Guide Lines (see order concerning the denominations of plant varieties... of March 14, 1974, La Propriété Industrielle 1975, page 117).

The discrepancy arisen from this must be overcome.

If an applicant uses in his own state of the Convention a legally allowed combination of the type mentioned for denominating a variety to enable him to use a trade mark for advertising purposes, no other state of the Convention is entitled to refuse this combination - as is presently done - by referring to the recommendations of the UPOV Guide Lines. It must rather be ensured that all states of the Convention register those variety denominations that are registered in the country where protection was applied for first.

This way of proceeding, in our opinion, is provided in article 13, subsection 5, sentences 1 and 2 of the Convention. When the necessary revision of Article 3 of the Guide Lines is effected the meaning of Article 13, subsection 5, sentences 1 and 2 should be made clear in the Guide Lines in accordance with the above.

Furthermore, subsection 5 of Article 13 itself should be made clearer by using instead of the words "so submitted" in sentence 2 the words "submitted in the country where protection was applied for first", so that the sentence reads: "The competent authority for the delivery of the title of protection in each Member State shall register the denomination filed in the country where protection was applied for first, unless...".

In the Federal Republic of Germany the pertaining Article 8, paragraph 2 of the Law on the Protection of Plant Varieties reads as follows:

"If the variety has already been filed or registered for variety protection in another Member State, only that variety denomination can be registered which has been filed or registered in the other Member State, unless there are special reasons".

It is suggested to consider this point at the meeting from February 17 to February 20, 1976.

January 19, 1976

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