



UPOV/WG-DEN/1/6

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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

WORKING GROUP ON VARIETY DENOMINATIONS**First Meeting
Geneva, March 18, 2016**

REPORT

*adopted by the Working Group on Variety Denominations**Disclaimer: this document does not represent UPOV policies or guidance*

OPENING OF THE MEETING

1. The Working Group on Variety Denominations (WG-DEN) held its first meeting in Geneva on March 18, 2016, under the chairmanship of the Vice Secretary-General of UPOV. The list of participants is reproduced in the Annex to this report.
2. The meeting was opened by the Chair, who welcomed the participants.

ADOPTION OF THE AGENDA

3. The WG-DEN adopted the draft agenda as reproduced in document UPOV/WG-DEN/1/1.

REVISION OF DOCUMENT UPOV/INF/12/5 "EXPLANATORY NOTES ON VARIETY DENOMINATIONS"

4. The WG-DEN considered documents UPOV/WG-DEN/1/2 and UPOV/INF/12/6 Draft 1.
5. The WG-DEN noted the developments reported in documents UPOV/WG-DEN/1/2 and UPOV/INF/12/6 Draft 1.

Section 2 "Characteristics of the denomination"

6. The WG-DEN noted the explanation of "fancy name" and "code" as used by the Community Plant Variety Office of the European Union (CPVO). The WG-DEN also noted that the CPVO provided more detailed guidance on variety denominations than was provided in Section 2 of the document UPOV/INF/12. However, the WG-DEN also noted that the CPVO was in the process of reviewing its guidance and was not in a position to make detailed comments in advance of that review, but would provide further comments for consideration at the second meeting of the WG-DEN.
7. The WG-DEN agreed that there were four categories of denominations: pronounceable words; letters only (not in the form of pronounceable words); letters and figures; and figures only.

Section 2.1 "Identification"

8. With regard to the comments made by New Zealand, the WG-DEN noted that the use of a part of a botanical name to identify a breeder would be discussed in Section 2.3.4.

Section 2.2 "Solely of figures"

9. The WG-DEN agreed with the proposal of WG-DST to add "genera" in the text of Section 2.2.2 (b) as follows:

"(b) accepted market practices for particular variety types (e.g. hybrids) and particular genera/species (e.g. Medicago, Helianthus)."

10. The WG-DEN agreed to add a new paragraph (c) in Section 2.2.2, as proposed by the CAJ-AG at its ninth session, held in Geneva, on October 14 and 17, 2014, as follows:

"(c) 'established practice' is determined to be when registration has been accepted for one species or group, so that it can be used in other species which have not yet registered any variety whose denomination consists solely of figures."

Section 2.3 "Liable to mislead or to cause confusion"

11. The WG-DEN noted that the CPVO considered three aspects in the examination of variety denominations: visual; phonetic; and conceptual, which were also the aspects considered in the examination of trade marks by the Office for Harmonization in the Internal Market (OHIM) (now European Union Intellectual Property Office (EUIPO)). The WG-DEN agreed that further elaboration on the "conceptual" element would be needed and invited the CPVO to provide clarification at the second meeting of the WG-DEN.

12. The WG-DEN noted that the use of "first names" was being considered by the CPVO, and agreed to await developments in the CPVO on that matter, for further consideration at the second meeting of the WG-DEN.

Section 2.3.1 "Characteristics of the variety"*Section 2.3.1 (b)*

13. The WG-DEN agreed that a variety name that consisted solely of descriptive terms that misled or caused confusion concerning the characteristics, value or identity of the variety or the identity of the breeder should be avoided. However, the WG-DEN agreed that examples for acceptable cases should also be provided.

14. The WG-DEN agreed to invite members of the WG-DEN to provide examples for acceptable cases of variety denominations that consisted solely of descriptive terms, by May 20, 2016.
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Section 2.3.1 (c)

15. The WG-DEN agreed to propose to delete Section 2.3.1 (c) from document UPOV/INF/12 because it was not feasible to assess the situation and noted that certain related issues were covered by Section 2.3.4 "Identity of the breeder".

Section 2.3.1 (d) (new)

16. The WG-DEN considered the comments of the WG-DST, made at its second meeting, concerning the CAJ-AG proposal, as follows (see document UPOV/WG-DST/2/6 "Report", paragraphs 23 to 25):

"The WG-DST agreed with the addition of new Section 2.3.1 (d) to document UPOV/INF/12.

'(d) [The denomination should not] contain the botanical or common name of the genus to which that variety belongs. The identity of the denomination and that of the genus to which it belongs could become unclear and confusing'

Example: Carex variety 'Sedge'. This could possibly be referred to as 'Sedge' *Carex* and without the use of italics or single quotes the identity of the denomination and the genus may not be clear.

"The WG-DST agreed to add an explanation in Section 2.3.1 (d) that *Carex* is the botanical name of the genus, for which the common name is sedge.

"The WG-DST agreed that the use of the botanical or common name of a genus to which a variety does not belong should be avoided, unless the botanical name or common name had a wider meaning, e.g 'Rose', 'Cosmos', 'Lilac', 'Veronica' and 'Bianca'."

17. The WG-DEN agreed to consider the following issues with regard to confusion concerning the use of botanical and common names in relation to denominations at the second meeting of the WG-DEN:

(i) to consider the guidance of the International Code for the Nomenclature of Cultivated Plants (ICNCP) of the International Commission for the Nomenclature of Cultivated Plants of the International Union for Biological Sciences (IUBS Commission) on the use of botanical and common names with a view to exploring greater harmonization;

(ii) whether to refuse the use of all botanical names and only accept certain common names that had a wider meaning;

(iii) whether to broaden the guidance proposed by the WG-DST in new paragraph (d) to cover the use of any genus/species name that was covered by the same variety denomination class or was in the same crop category;

(iv) whether to provide guidance on the use of part of the genus/species name or a slightly changed version of the genus/species name in a variety denomination; and

(v) whether to consider all languages of UPOV members in relation to common names of the genus to which a variety belongs.

Section 2.3.2 "Value of the variety"

18. The WG-DEN agreed that superlatives and comparatives should only be unacceptable if they misled or caused confusion concerning the characteristics of the variety.

19. The WG-DEN agreed that examples of acceptable and unacceptable use of superlatives and comparatives should be provided in document UPOV/INF/12.

20. The WG-DEN agreed to invite members of the WG-DEN to submit examples of acceptable and unacceptable use of superlatives and comparatives, by May 20, 2016.

21. The WG-DEN agreed to invite the CPVO to provide information on its guidance and experience on the use of color terms when examining variety denominations for consideration at the second meeting of the WG-DEN.

Section 2.3.3 "Identity of the variety"

Section 2.3.3 (a)

22. The WG-DEN agreed to propose to:

(i) delete the example of "Lion" and "Raion";

(ii) add "Helena" and "Elena" as an example of a clear visual difference that may not provide a clear phonetic difference in a language other than English (in Spanish); and

(iii) consider the example of "Bow" and "Bough" at the second meeting of the WG-DEN.

23. The WG-DEN considered the following proposal made by the WG-DST (see document UPOV/WG-DST/2/6 "Report", paragraph 26):

“The WG-DST agreed the need to differentiate between letters in the form of words and other cases, and agreed on the following:

(i) in the case of denominations consisting of letters not in the form of words, a difference of a single letter should be regarded as a clear difference, with examples to be provided;

(ii) in the case of denominations consisting of figures, a difference of a single figure should be regarded as a clear difference, with examples to be provided; and

(iii) in the case of denominations consisting of figures and letters, not in the form of words, one letter or figure difference should be regarded as clear difference, with examples to be provided.”

24. The WG-DEN agreed to consider, at its second meeting, the proposal made by New Zealand that, for all categories of denominations including pronounceable words, a difference of one letter or one figure should not be considered to be liable to mislead and cause confusion concerning the identity of the variety.

25. The WG-DEN noted the three categories of denomination proposed by the WG-DST (letters not in the form of words, solely of figures and combination of letters and figures) and noted that denominations in the form of pronounceable words had not been included in the categories proposed by the WG-DST.

26. The WG-DEN agreed to consider the WG-DST proposal further at its second meeting, while noting that Argentina would not accept a difference of one letter with the same number in the case of variety denomination category (iii) “Letters and figures”.

Section 2.3.3 (c)

27. The WG-DEN noted the proposals on the re-use of a denomination and agreed:

(a) to clarify that the guidance only concerned the re-use of denominations in the same denomination class;

(b) to consider, at its second meeting, whether a time period of 10 years after the variety was no longer commercialized was appropriate for international guidance, given:

(i) the difficulty of obtaining information on commercialization in different territories,

(ii) the presence of varieties in genebanks, and

(iii) that farmers would probably remember varieties over a considerably longer time than 10 years.

Section 2.3.4 “Identity of the breeder”

28. The WG-DEN recalled the obligation in Article 20(5) of the 1991 Act that “a variety must be submitted to all Contracting Parties under the same denomination. The authority of each Contracting Party shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory. In the latter case, it shall require the breeder to submit another denomination”.

29. With regard to the possibility to amend a denomination in order to indicate the name of a licensor, the WG-DEN noted the requirement in paragraph 7.2(c) of the document UPOV/INF/12, which states that “in general, [...], it would not be appropriate for the authority to change a registered denomination following a request by the breeder”.

30. The WG-DEN agreed to consider, at its second meeting, the use of prefixes to identify the breeder and issues that could arise, on the basis of information to be provided by the members of the WG-DEN.

31. The WG-DEN agreed to invite members of the WG-DEN to provide examples and information on the use of prefixes to identify the breeder and issues that could arise, by May 20, 2016.

Section 2.4 “Different from an existing variety of the same plant species or of a closely related species”

32. The WG-DEN agreed to clarify that the term “variety” related to the definition of variety as defined in Article 1 (vi) of the 1991 Act of the UPOV Convention.

Section 2.5. “Variety denomination classes: a variety denomination should not be used more than once in the same class”

Section 2.5.1

33. The WG-DEN agreed that guidance concerning denominations belonging to the same denomination class should be the same, irrespective of whether the denomination class followed the general rule or was one of the exceptional classes.

34. The WG-DEN agreed that the list of denomination classes in document UPOV/INF/12 Annex I “List of Classes” might be need to be reviewed to better reflect current practices of members of the Union.

35. The WG-DEN agreed to invite members of the WG-DEN to make proposals concerning a possible revision of the variety denomination classes, by May 20, 2016.

Section 2.5.3

36. The WG-DEN agreed that the term “UPOV-ROM” should be replaced by “PLUTO database”.

Section 3 “Registration of the denomination”

37. The WG-DEN agreed to propose not to change the current text of the explanatory note.

Section 4 “Prior rights of third persons”

38. The WG-DEN noted that there were some variations in practices among members of the Union in relation to searches and measures concerning prior rights, and agreed to consider the CAJ-AG proposal to amend Section 4(a) at the second meeting of the WG-DEN.

39. The WG-DEN agreed to invite members of the WG-DEN to submit comments/proposals on Section 4(a), in relation to their practices concerning searches and measures concerning prior rights, by May 20, 2016.

40. The WG-DEN agreed to propose a modification of the last sentence of Section 4(e)(i) as proposed by CAJ-AG, as follows:

“In cases of mere similarity or small likelihood of ~~association~~ confusion by users, waivers granted to breeders by prior trademark right holders could be a suitable solution.”

Section 5 “Same denomination in all members of the Union”

41. The WG-DEN noted the comment by New Zealand that there were cases in which the denomination accepted in the first application was not the denomination used by other authorities when a different denomination was accepted by a second authority.

42. The WG-DEN recalled the importance of document UPOV/INF/12, Section 5.2(b), for avoiding synonyms, as reproduced below:

“(b) The essential obligation under paragraph (5) is that authorities should accept the denomination that was submitted and registered with the first application, unless such denomination is unsuitable in their territory (see section 5.3). On that basis, although certain provisions on variety denominations allow for authorities to develop individual guidance concerning best practices, the obligation under paragraph (5) should be given priority, unless there is direct conflict with the provisions of the UPOV Convention. In that respect, it is also recommended to avoid any narrow interpretation of the provisions of the UPOV

Convention and related guidance or best practices, which could lead to the unnecessary refusal of variety denominations and, consequently, the unnecessary creation of synonyms for a variety”.

43. The WG-DEN invited New Zealand and other members of the WG-DEN to provide information of cases in which the denomination accepted in the first application was not the denomination used by other authorities when a different denomination was accepted by a second authority, by May 20, 2016.

44. The WG-DEN agreed to consider this matter further at the second meeting of the WG-DEN.

Section 6 “Information among the authorities of members of the Union”

45. The WG-DEN agreed that document UPOV/INF/12 should be amended to encourage members of the Union to contribute data to the PLUTO database in accordance with the guidance provided in document UPOV/INF/15 “Guidance for Members of UPOV”.

Section 8 “Indications used in association with denominations”

46. The WG-DEN noted that there were cases where trademarks and trade names were used as the designation of the variety for commercial purposes instead of the variety denomination.

47. The WG-DEN agreed to invite WG-DEN members to investigate the reasons that breeders used names other than variety denominations with a view to considering whether a change to document UPOV/INF/12 could reduce such practices.

48. The WG-DEN agreed to consider this matter further at the second meeting of the WG-DEN.

49. The WG-DEN agreed to request the Office of the Union to prepare a new draft of document UPOV/INF/12 (document UPOV/INF/12/6 Draft 2), for consideration at its second meeting, reflecting the conclusions of the WG-DEN, at its first meeting, and the comments received in relation to the matters identified for further comments by the WG-DEN at its first meeting.

UPOV DENOMINATION SIMILARITY SEARCH TOOL

50. The WG-DEN considered document UPOV/WG-DEN/1/3.

51. The WG-DEN noted the developments in the Working Group for the Development of a UPOV Denomination Similarity Search Tool (WG-DST).

52. The WG-DEN noted that a web page to compare the search results of the refined algorithm and the existing search tools in the PLUTO database was planned to be created by the end of March 2016. A circular would be issued to the WG-DEN, inviting experts to evaluate the refined algorithm and to provide feedback by the end of June 2016.

53. The WG-DEN agreed that the second meeting of the WG-DEN should consider the results of the evaluation and feedback received and should consider whether it would be appropriate to seek expert customization of the refined algorithm to improve the performance.

EXPANSION OF THE CONTENT OF THE PLUTO DATABASE

54. The WG-DEN considered document UPOV/WG-DEN/1/4.

55. The WG-DEN agreed to defer the consideration of the matters in document UPOV/WG-DEN/1/4 until its second, or a subsequent, meeting.

NON-ACCEPTABLE TERMS

56. The WG-DEN considered document UPOV/WG-DEN/1/5 and noted the developments reported in that document.

57. The WG-DEN agreed to defer consideration of a possible survey of members of the Union with regard to botanical and common names of genera that had a wider meaning until its second, or a subsequent, meeting.

58. The WG-DEN agreed to defer investigating a list of common comparatives/superlatives until its second, or a subsequent, meeting.

DATE AND PROGRAM OF THE NEXT MEETING

59. The WG-DEN agreed that the second meeting of the WG-DEN should be held in Geneva, in the evening of October 24, 2016.

60. The following program was agreed for the second meeting of the WG-DEN:

1. Opening of the session
2. Adoption of the agenda
3. Revision of document UPOV/INF/12/5 "Explanatory Notes on Variety Denominations under the UPOV Convention"
4. UPOV denomination similarity search tool
5. Expansion of the content of the PLUTO database
6. Non-acceptable terms
7. Date, place and program of the next meeting

61. *This report was adopted by correspondence.*

[Annex follows]

ANNEX

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