UPOV

International Union for the Protection of New Varieties of Plants

E

Working Group on Variety Denominations

Fourth Meeting
Geneva, October 27, 2017

UPOV/WG-DEN/4/3

Original: English
Date: September 3, 2018

REPORT

adopted by the Working Group on Variety Denominations

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OPENING OF THE MEETING

1. The Working Group on Variety Denominations (WG-DEN) held its fourth meeting in Geneva on October 27, 2017, under the chairmanship of the Vice Secretary-General of UPOV.

2. The meeting was opened by the Chair, who welcomed the participants. The list of participants is reproduced in Annex I to this report.

ADOPTION OF THE AGENDA

3. The WG-DEN adopted the draft agenda as reproduced in document UPOV/WG-DEN/4/1.

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

4. The WG-DEN considered documents UPOV/WG-DEN/4/2 and UPOV/INF/12/6 Draft 4.

5. The WG-DEN noted the matters agreed by the WG-DEN at its third meeting, as reported in document UPOV/WG-DEN/4/2, paragraph 6.

6. 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".

Preamble

7. The WG-DEN agreed to add a note that the term "variety" refers to the definition of variety in Article 1 (vi) of the 1991 Act of the UPOV Convention.

Paragraph 1 [Designation of varieties by denominations; use of the denomination]

8. The WG-DEN agreed to add a new Section 1.3 to read as follows:

> "1.3 If an authority allows a denomination to be registered when the breeder of the variety is also the holder of a trademark that is identical to the variety denomination, the authority should inform the breeder of the obligation to allow the use of the denomination in connection with the variety, even after the expiration of the breeder's right."

Paragraph 2 [Characteristics of the denomination]

9. The WG-DEN welcomed the presentation made by the Delegation of Argentina on the Resolution on Variety Denominations in Argentina. The presentation by the Delegation of Argentina is reproduced in Annex II to this report.

Section 2.3.1 "Characteristics of the variety"

10. The WG-DEN agreed to maintain Section 2.3.1 (b) unchanged.

11. The WG-DEN agreed that the Office of the Union should prepare options to amend Section 2.3.1 (c) in order to reflect the different practices of authorities regarding the acceptance or rejection of denominations in relation to characteristics of the variety. The WG-DEN noted that one authority could accept a denomination for a variety which was similar to the denomination of another variety, even though the two varieties were unrelated and had different characteristics, if the varieties were from the same breeder; another authority in the above scenario would reject the denomination which was similar to that of another variety if the varieties had different characteristics and were not related.

12. The WG-DEN agreed to include the examples of paragraph 21.20 of the Ninth Edition of the International Code of Nomenclature for Cultivated Plants (ICNCP), as follows:

"21.20. Except where linguistic custom demands, a name is not established if on or after 1 January 1996 its cultivar epithet contains the Latin or common name(s) of the genus to which it is assigned.

Ex. 33. Castanea 'Pale Chestnut', Gladiolus 'Pink Gladiolus', Narcissus 'Davis Daff', Narcissus 'Granny's Daffodil', Paeonia 'Sussex Peony', Phlox 'Phlox of Sheep', and Rhododendron 'Rhododendron Mad' may not be established.

Ex. 34. Dianthus 'Rupert's Pink' is established; "pink" is not the common name for all plants in the genus Dianthus.

Ex. 35. Prunus 'Sato-zakura' is established; "zakura" is the Japanese word for flowering cherries, rather than a name for the whole genus.

*Ex. 36. Pyrus bretschneideri 'Ya Li' contains the word "li", which is the Chinese common name for the genus Pyrus. According to Chinese linguistic custom, "li" is inseparable from "ya", and its inclusion in the cultivar epithet is therefore necess*ary and acceptable. "

Section 2.3.2 "Value of the variety"

13. The WG-DEN agreed to amend Section 2.3.2 to read as follows:

"The denomination should not consist of, or contain, comparative or superlative designations that are liable to mislead or to cause confusion concerning the characteristics or value of the variety.

Example of unsuitable denominations: ~~a denomination which includes terms such as~~ "Best performer", "Superior taste", "Sweeter than the rest".

Examples of suitable denominations: "Lake Superior", "Best wishes"."

Section 2.3.3 "Identity of the variety"

14. The WG-DEN agreed to amend the draft of the example 2 of the Section 2.3.3 (a) (i) to reflect the practices of the authorities. The WG-DEN requested the Office of the Union to issue a circular to invite the authorities to provide their guidance on the cases which could cause confusion phonetically but not visually.

15. The WG-DEN agreed to amend the draft of the new Section 2.3.3 (b) (currently, Section 2.3.3 (a) (ii) and (iii)). It agreed that Brazil should provide its guidance on that matter, which would be used as a basis to develop a proposal for a revision to be considered at the fifth meeting of the WG-DEN.

16. With regard to the re-use of denominations in Section 2.3.3 (c), the WG-DEN agreed to include the guidance from Article 30.2 of the Ninth Edition of the ICNCP, for further discussion at the fifth meeting of the WG-DEN, as reproduced below:

"30.2. An International Cultivar Registration Authority may only accept re-use of a cultivar, Group or grex epithet if that authority is satisfied that the original cultivar, Group, or grex (a) is no longer in cultivation, and (b) has ceased to exist as breeding material, and (c) may not be found in a gene or seed bank, and (d) is not a known component in the pedigree of other cultivars, Groups, or grexes, and (e) the name has rarely been used in publications, and (f) re-use is unlikely to cause confusion."

Section 2.3.4 "Identity of the breeder"

17. The WG-DEN received a presentation by Ms. Marina Foschi, Legal Officer, Policy and Legislative Advice Section, WIPO, entitled "Trademarks: General Overview". The presentation by Ms. Foschi is reproduced in Annex III to this report.

18. The WG-DEN agreed that themes without a common word, prefix nor suffix, should not be an acceptable practice.

19. The WG-DEN requested the Office of the Union to issue a circular to invite the authorities to provide their guidance on prefixes, suffixes and common word to identify the breeder or other practices by the breeder.

Section 2.5 "Variety denomination classes"

20. The WG-DEN requested the Office of the Union to issue a circular to invite the authorities to share examples and proposals on possible need to review or create new denomination classes.

21. With regard to a new Section 2.6 on UPOV denomination similarity search tool, the WG-DEN requested the Office of the Union to issue a circular to invite the authorities and users to provide their views on possible ways to use the denomination similarity search tool.

Paragraph 4 [Prior rights of third persons]

22. The WG-DEN agreed to amend Section 4 (a) to read as follows:

"(a) An authority should not accept a variety denomination if a there is an existing prior right, the exercise of which may prevent the use of the proposed denomination~~, has already been granted to a third party under plant breeder's right law, trademark law or any other intellectual property legislation~~. It is the responsibility of the title holder of a prior right to assert his rights through the available objection or court procedures. However, authorities are encouraged to make prior searches in relevant publications (e.g. official gazettes) and databases (e.g. UPOV Plant Variety Database (PLUTO) http://www.upov.int/pluto/en/) to identify prior rights for variety denominations. They may also make searches in other registers, such as trademark registers, before accepting a variety denomination."

Paragraph 5 [Same denomination in all members of the Union]

23. With regard to Section 5.2 (b), the WG-DEN agreed that the Office of the Union should prepare a proposal for the fifth meeting of the WG-DEN, in order to achieve more realistic guidance reflecting good practices by authorities.

24. The WG-DEN noted the proposal from New Zealand to provide guidance for a possible way forward where several denominations for the same variety existed and agreed that New Zealand should prepare a proposal for the fifth meeting of the WG DEN, to address the above situation.

Paragraph 6 [Information among the authorities of members of the Union]

25. The WG-DEN agreed to add a new Section 6.8 to read as follows:

"6.8 The contribution of data by members of the Union to the PLUTO database provides support for the examination of variety denominations. Members of the Union are encouraged to provide data as soon as practical after it is published by the authority(ies) concerned. The PLUTO database will be updated with new data as quickly as possible after receipt, in accordance with the uploading procedure. The PLUTO database can, as necessary, be updated with corrected data, in accordance with the uploading procedure."

26. The WG-DEN agreed that the Office of the Union should prepare, for its fifth meeting, a new draft of document "Explanatory Notes on Variety Denominations under the UPOV Convention", incorporating the proposals that had been agreed by the WG-DEN or had been agreed to be considered further.

27. The WG-DEN agreed to consider this matter at the fifth meeting of the WG-DEN.

UPOV DENOMINATION SIMILARITY SEARCH TOOL

28. The WG-DEN agreed that matters under agenda item 4 "UPOV Denomination Similarity Search Tool" would be considered at a later meeting on the basis of the document presented at the second meeting. It was agreed that the Office of the Union should propose how to progress the discussion on these matters at the fifth meeting of the WG-DEN.

EXPANSION OF THE CONTENT OF THE PLUTO DATABASE

29. The WG-DEN agreed that matters under agenda item 5 "Expansion of the content of the PLUTO database" would be considered at a later meeting on the basis of the document presented at the second meeting. It was agreed that the Office of the Union should propose how to progress the discussion on these matters at the fifth meeting of the WG-DEN.

NON-ACCEPTABLE TERMS

30. The WG-DEN agreed that matters under agenda item 6 "Non-acceptable terms" would be considered at a later meeting on the basis of the document presented at the second meeting. It was agreed that the Office of the Union should propose how to progress the discussion on these matters at the fifth meeting of the WG-DEN.

DATE, PLACE AND PROGRAM OF THE NEXT MEETING

31. The WG-DEN agreed to hold its fifth meeting in Geneva, in the evening of October 30, 2018.

32. The following program was agreed for the fifth meeting of the WG-DEN:

1. Opening of the meeting
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

33. This report was adopted by correspondence.

[Annexes follow]

ANNEX I

LIST OF PARTICIPANTS

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[Annex II follows]

"Variety Denominations Resolution"

National Institute of Seeds

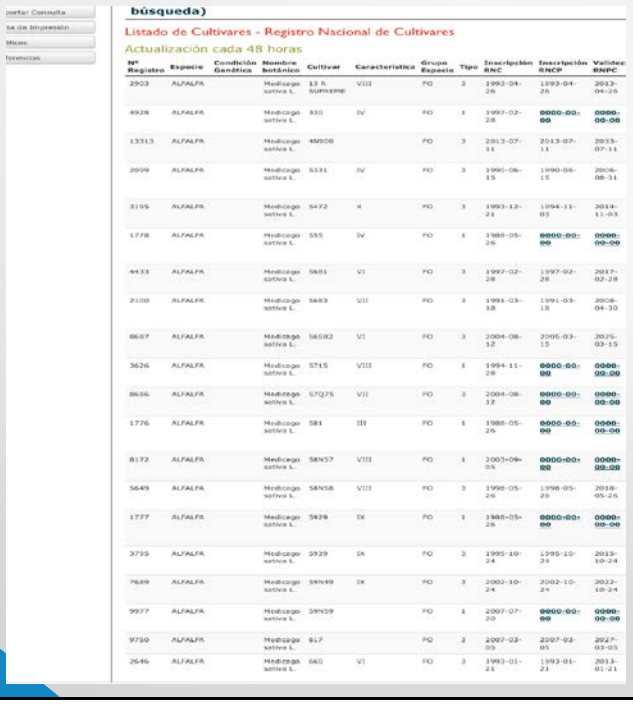
Argentina

Similar denomination: does not present a clear phonetic and visual difference. In the case of fantasy names the difference of a letter must have a clear phonetic difference. In the case of acronyms or numbers a single difference could be considered sufficient to differentiate it from other denominations.

Prefix or Suffix: letters or numbers or the combination of them that forms part of the denomination and is placed before or after it.

Compound denomination: is formed of two or more terms, even those denominations that contain suffixes and / or prefixes.

-the terms will be analyzed independently, and all terms must be distinguished separately.
Exception to this rule are varieties that are registered by the same applicant or that one of the terms refers to the technology incorporated in the material to be registered



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Listado de Cultivares - Registro Nacional de Cultivares

Actualización cada 48 horas

Nº Registro	Especie	Condición Genética	Nombre botánico	Cultivar	Característica	Grupo Especie	Tipo	Inscripción RNC	Inscripción RNCP	Validez RNPC
2903	ALFALFA		Medicago sativa L.	13 R SUPREME	VIII	FO	3	1993-04-26	1993-04-26	2013-04-26
4928	ALFALFA		Medicago sativa L.	330	IV	FO	1	1997-02-28	0000-00-00	0000-00-00
13313	ALFALFA		Medicago sativa L.	4M90		FO	3	2013-07-11	2013-07-11	2033-07-11
2099	ALFALFA		Medicago sativa L.	5331	IV	FO	3	1990-06-15	1990-06-15	2006-08-31
3195	ALFALFA		Medicago sativa L.	5472	4	FO	3	1993-12-21	1994-11-03	2014-11-03
1778	ALFALFA		Medicago sativa L.	555	IV	FO	1	1988-05-26	0000-00-00	0000-00-00
4433	ALFALFA		Medicago sativa L.	5681	VI	FO	3	1997-02-28	1997-02-28	2017-02-28
2100	ALFALFA		Medicago sativa L.	5683	VII	FO	3	1991-03-18	1991-03-18	2008-04-30
8697	ALFALFA		Medicago sativa L.	5682	VI	FO	3	2004-08-12	2005-03-15	2025-03-15
3626	ALFALFA		Medicago sativa L.	5715	VIII	FO	1	1994-11-28	0000-00-00	0000-00-00
8686	ALFALFA		Medicago sativa L.	57Q75	VII	FO	3	2004-08-12	0000-00-00	0000-00-00
1776	ALFALFA		Medicago sativa L.	581	III	FO	1	1988-05-26	0000-00-00	0000-00-00
8172	ALFALFA		Medicago sativa L.	58N57	VIII	FO	1	2003-09-05	0000-00-00	0000-00-00
5649	ALFALFA		Medicago sativa L.	58N58	VIII	FO	3	1998-05-26	1998-05-26	2018-05-26
1777	ALFALFA		Medicago sativa L.	5929	IX	FO	1	1988-05-26	0000-00-00	0000-00-00
3795	ALFALFA		Medicago sativa L.	5929	IX	FO	3	1995-10-24	1995-10-24	2015-10-24
7689	ALFALFA		Medicago sativa L.	59N49	IX	FO	3	2002-10-24	2002-10-24	2022-10-24
9977	ALFALFA		Medicago sativa L.	59N59		FO	1	2007-07-20	0000-00-00	0000-00-00
9750	ALFALFA		Medicago sativa L.	617		FO	2	2007-03-05	2007-03-05	2027-03-05
2646	ALFALFA		Medicago sativa L.	660	VI	FO	3	1993-01-21	1993-01-21	2013-01-21

Mostrar/Ocultar Búsqueda (seleccionar para definir filt
búsqueda)

Listado de Cultivares - Registro Nacional de Cultivares

Actualización cada 48 horas

Nº Registro	Especie	Condición Genética	Nombre botánico	Cultivar	Caracteristica	Grupo Especie	Tipo	Inscripció RNC
13340	SORGO SILERO		Sorghum bicolor	ARGENSIL 165 BIO		FO	1	2011-10-27
14678	SORGO SILERO		Sorghum bicolor	GREE INFINIT BMR		FO	1	2013-08-02
14679	SORGO SILERO		Sorghum bicolor	GREEN SNACK		FO	1	2013-07-11
16449	SORGO SILERO		Sorghum bicolor	HS HIMBA		FO	1	2016-10-12
13182	SORGO SILERO		Sorghum bicolor	JOKER		FO	1	2011-07-14
17417	SORGO SILERO		Sorghum bicolor	NUSIL 484		FO	1	2017-08-30
17293	SORGO SILERO		Sorghum bicolor	NUSIL 500 BMR		FO	1	2017-05-19
17290	SORGO SILERO		Sorghum bicolor	NUSIL 600 BMR		FO	1	2017-05-19
13883	SORGO SILERO		Sorghum bicolor	PREMIUM 7010		FO	1	2012-10-01
16553	SORGO SILERO		Sorghum bicolor	QUIMASIL 275 BIO		FO	1	2016-08-19
14773	SORGO SILERO		Sorghum bicolor	SEMASIL 220 BIO		FO	1	2013-08-28
16725	SORGO SILERO		Sorghum bicolor	SG-7858 BIO		FO	1	2016-10-31

Pagina 1 de 1, 12 registro de un total de 12. Registros: inicial

The criteria will apply to the registrations of all species and variety type, both in the National Register of Variety Protection and in the National List.

The change of a denomination is an exception to the rule and wont be changed if variety has already been commercialized , though there can be particular exceptions.

Can´t be used as a denomination

a) the names of the species or their usual designations.

b) the names that have been registered previously for another variety, even if they have been desist or canceled.

c) specific characters of the species, crop, type of crop and / or variety.

d) names that are contrary to morality and good manners.

The use of numbers only in denominations will be accepted for all species. The same number will not be accepted for a variety even if the prefix and or suffix is different.

Association of a trademark or trade name or fantasy name

it is mandatory to use the denomination.
it will be accepted to associate to the denomination a trademark or trade name or fantasy name provided that the denomination is well identified, the other name should be same or smaller size with same characteristics.
The denomination must be easily recognizable
The trademark or trade name or fantasy name will not be subject to analysis of differentiation by the National Institute of Seeds and will not be on the official basis of denominations.

If the requirements are not met the applicant will be informed of the rejection of the proposed denomination, and the Applicant may propose a new denomination within the thirty (30) calendar days of the rejection

[Annex III follows]

ANNEX III

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UPOV Working Group on Variety Denominations (WG-DEN)

Geneva
27 October
2017

Trademarks: General Overview

Marina Foschi, Legal Officer, Policy and Legislative Advice Section

JUST DO IT

PUMA

SUNSILK

EASYJET

Letters/Numbers

BMW X3

BMW X4

BMW X5

Words

DANONE
ONE PLANET. ONE HEALTH

DANONINO

DANETTE

DANIO

DANACOL

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Geographical names

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Link with the UPOV Convention

- Article 20(8)

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Variety denomination / Trademark

VARIETY DENOMINATION	TRADEMARK
● **Basic function**:	● **Basic functions**:
- It designates the *variety*	- It distinguishes *goods/services* of one company from those of other companies - It identifies the *goods/services* as originating from a particular company
➔ *Generic* designation	➔ *Distinctive* sign

Variety denomination / Trademark

VARIETY DENOMINATION	TRADEMARK
● **Obligation to use** the variety denomination to offer for sale or market *propagating material* of the variety, *even after the expiration of the breeder's right*	● **Exclusive rights to prevent third parties** (not having the owner's consent) from using, in the course of trade, - an identical / similar sign - for identical / similar goods or services - likelihood of confusion

Variety denomination / Trademark

VARIETY DENOMINATION	TRADEMARK
● **The variety denomination must be the same** in all UPOV Members: a variety must be submitted to all CP under the same denomination	● **ONE** product/service may be commercialized under **different trademarks**  

Variety denomination / Trademark

VARIETY DENOMINATION	TRADEMARK
● **The variety denomination must be the same** in all UPOV Members: a variety must be submitted to all CP under the same denomination	● **ONE trademark** may designate *different* products/services 

Variety denomination / Trademark

- Breeders
- Seeds multipliers
- Farmers
- Producers
- Distributors
- Consumers

Variety Denomi-nation

Trademark / Other similar indication

Variety denomination / Trademark

ORIGAMI® Meimozahiq

HOME » PVP DATA & STATISTICS
PLUTO: Plant Variety Database

EUIPO
EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE

MEIMOZAHIQ

Variety denomination class: ROSAA
Application date: 26 May 2016
Country Code: AU
Applicant: **Meilland International SA**

ORIGAMI

EUTM No. 013981659
Filing date: 24 April 2015
Owner: **Meilland International SA**
Class 31 (roses and rose bushes and their propagating material, namely cuttings, grafts, shield buds)

How is a trademark protected?

- **Trademark rights are territorial** ➔ Protected where registered
- **Registration** ➔ Formalities + fees
- **Examination** by the IP Office
- **Opposition / Invalidation** (third parties)

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May all signs be registered as a trademark?

- **Answer**: No
- **Grounds for refusal** (Art. 6*quinquies* B Paris Convention)

➔ **NOT all signs are registrable**

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May all signs be registered as a trademark?

- **Non-distinctive sign**

- **Descriptive sign** **“BIOMILD”**
- **Deceptive sign** **“LACTOFREE”**
- **Customary designation in the current language (generic)** **“BRAVO”**

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Duration of the protection

- Registration:
  - Initial duration
  - **Indefinitely renewable** ➔ potentially unlimited
- Requirement of use (in certain jurisdictions)

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Conclusion

- Article 20(8) UPOV Convention

- **Variety denomination** # **Trademark**

Generic designation of the variety | *Distinctive sign for goods/services*

- **Not all signs** can be registered as a trademark

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[End of Annex III and of document]