

UPOV/EXN/DEN/1 Draft 1^a**Original:** English**Date:** September 26, 2018**DRAFT
(REVISION)****EXPLANATORY NOTES ON VARIETY DENOMINATIONS UNDER THE UPOV CONVENTION***Document prepared by the Office of the Union**to be considered by the Working Group on Variety Denominations (WG-DEN)
at its fifth meeting, to be held in Geneva on October 30, 2018**Disclaimer: this document does not represent UPOV policies or guidance*Note for Draft version**Footnotes** will be retained in published document.**Endnotes** and **highlighted boxes** are background information when considering this draft and will not appear in the final, published document.**Strikethrough (highlighted in grey)** indicates deletion from the text of document UPOV/INF/12/5.**Underlining (highlighted in grey)** indicates insertion to the text of document UPOV/INF/12/5.

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EXPLANATORY NOTES ON VARIETY DENOMINATIONS UNDER THE UPOV CONVENTION

Preamble

1. The Council of the International Union for the Protection of New Varieties of Plants (UPOV) refers to the International Convention for the Protection of New Varieties of Plants (UPOV Convention), and in particular to Articles 5(2) and 20 of the 1991 Act, and Articles 6(1)(e) and 13 of the 1978 Act and the 1961 Convention, which provides that a variety must be given a suitable denomination which will be registered at the same time as the breeder's right is granted.

2. The Council recalls that, according to the relevant provisions of the UPOV Convention, a variety denomination must be suitable as a generic designation and must enable the variety to be identified; it must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder.

3. The Council emphasizes that the main purpose of these Explanatory Notes is to ensure that, as far as possible, protected varieties are designated in all members of the Union¹ by the same variety denomination, that the approved variety denominations establish themselves as the generic designations and that they are used in the offering for sale or marketing of propagating material of the variety, even after the expiration of the breeder's right.

4. The Council recalls the definition of "variety" in Article 1 (iv) of the 1991 Act of the UPOV Convention:

"variety" means a plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be
- defined by the expression of the characteristics resulting from a given genotype or combination of genotypes,
- distinguished from any other plant grouping by the expression of at least one of the said characteristics and
- considered as a unit with regard to its suitability for being propagated unchanged [;].^b

5. Whilst noting that the only binding obligations for members of the Union are those contained in the UPOV Convention itself, the Council considers that the aim set out in paragraph 3 can only be achieved if the broadly worded provisions on variety denominations under the UPOV Convention are uniformly interpreted and applied by the members of the Union, and that the adoption of appropriate explanatory notes is therefore advisable. Those Explanatory Notes should not be interpreted in a way that is inconsistent with the UPOV Convention.

65. The Council considers that the adoption of such Explanatory Notes for the uniform interpretation and application of the provisions on variety denominations will be of assistance not only to the authorities² of members of the Union but also to breeders in their selection of variety denominations.

76. The Council, having regard to the UPOV Convention (Article 26(5)(x) of the 1991 Act and Article 21(h) of the 1978 Act and the 1961 Convention), under which it has the task of taking all necessary decisions to ensure the efficient functioning of the Union, and in the light of the experience acquired by members of the Union in connection with variety denominations, recommends that the authorities of the members of the Union,

(i) base their decisions on the suitability of proposed variety denominations on these Explanatory Notes;

(ii) take into account the guidance in these Explanatory Notes concerning the procedure for assessing the suitability of proposed variety denominations and the exchange of information;

(iii) provide comprehensive information concerning these Explanatory Notes, to assist breeders when selecting variety denominations.

Prior guidance on this matter, provided by the "Explanatory Notes on Variety Denominations under the UPOV Convention" (document UPOV/INF/12/3), is superseded by these Explanatory Notes.

¹ "Member of the Union" means a State party to the 1961 Convention/1972 Act, the 1978 Act or a State or intergovernmental organization party to the 1991 Act (Article 1(xi) of the 1991 Act).

² The "authority" means the authority entrusted with the task of granting breeders' rights (Article 30(1)(ii) of the 1991 Act and Article 30(1)(b) of the 1978 Act and 1961 Convention).

**EXPLANATORY NOTES ON VARIETY DENOMINATIONS
UNDER THE UPOV CONVENTION**

*The Explanatory Notes below correspond to the paragraph numbers
within Article 20 of the 1991 Act and Article 13 of the 1978 Act and 1961 Convention,
unless indicated otherwise.*

Paragraph 1

(Paragraphs 1 and 3 of Article 13 of the 1961 Convention)

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

The variety shall be designated by a denomination which will be its generic designation. Each member of the Union shall ensure that, subject to paragraph (4), no rights in the designation registered as the denomination of the variety shall hamper the free use of the denomination in connection with the variety, even after the expiration of the breeder's right.

Explanatory Notes – Paragraph (1)

1.1 Article 5(2) of the 1991 Act and Article 6(1)(e) of the 1978 Act and the 1961 Convention require that the variety is designated by a denomination. Paragraph (1) provides for the denomination to be the generic designation of the variety, and subject to prior rights, no rights in the designation shall hamper the free use of the denomination of the variety, even after the expiration of the breeder's right. The obligation under paragraph (1) should be considered together with the obligation to use the variety denomination in respect of the offering for sale or marketing of propagating material of the variety (see paragraph (7)).

1.2 The obligation under paragraph (1) to allow for the use of the denomination in connection with the variety, even after the expiration of the breeder's right, is of relevance if the breeder of the variety is also the holder of a trademark which is identical to the variety denomination. It should be noted that where a name is registered as a trademark by a trademark authority, the use of the name as a variety denomination may transform the trademark into a generic name. In such cases, the trademark may become liable for cancellation³. In order to provide clarity and certainty in relation to variety denominations, authorities should refuse a variety denomination which is the same as a trademark in which the breeder has a right. The breeder may choose to renounce the trademark right prior to the submission of a proposed denomination in order to avoid its refusal.

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.^c

³ WIPO Publication No 489 "WIPO Intellectual Property Handbook

Proper Use of Trademarks

"2.397 Non-use can lead to the loss of trademark rights. Improper use can have the same result, however. A mark may become liable for removal from the Register if the registered owner has provoked or tolerated its transformation into a generic name for one or more of the goods or services in respect of which the mark is registered, so that, in trade circles and in the eyes of the appropriate consumers and of the public in general, its significance as a mark has been lost.

2.398 Basically, two things can cause genericness: namely, improper use by the owner, provoking transformation of the mark into a generic term, and improper use by third parties that is tolerated by the owner. [...]

2.400 The basic rule is that the trademark should not be used as, or instead of, the product designation. [...]

2.404 However, it is not enough just to follow these rules: the trademark owner must also ensure that third parties and the public do not misuse his mark. It is specifically important that the trademark should not be used as or instead of the product description in dictionaries, official publications, journals, etc."

Paragraph 2***[Characteristics of the denomination]***

The denomination must enable the variety to be identified. It may not consist solely of figures except where this is an established practice for designating varieties. It must not be liable to mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in the territory of any member of the Union, an existing variety of the same plant species or of a closely related species.

Explanatory Notes – Paragraph (2)*2.1 Identification*

Provisions under paragraph (2) emphasize the “identification” role of the denomination. Bearing in mind that the main objective of the denomination is to identify the variety, sufficient flexibility should be given to incorporate evolving practices in designating varieties.

2.2. Solely of figures

2.2.1 Paragraph (2) states that the denomination may not consist “solely of figures” except where this is an “established practice” for designating varieties. The expression “solely of figures” refers to variety denominations consisting of numbers only (e.g. 91150). Thus, denominations containing both letters and figures are not subject to the “established practice” requirement (e.g. AX350).

2.2.2 In the case of denominations consisting “solely of figures,” the following non-exhaustive elements may assist the authorities to understand what might be considered to be “established practice”:

(a) for varieties used within a limited circle of specialists, the established practice should reflect that specialist circle (e.g. inbred lines);

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

(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.

2.3. Liable to mislead or to cause confusion

Paragraph (2) states that the denomination must not be liable to “mislead or to cause confusion concerning the characteristics, value or identity of the variety or the identity of the breeder.” These aspects are considered below:

2.3.1 Characteristics of the variety

The denomination should not:

(a) convey the impression that the variety has particular characteristics which, in reality, it does not have;

Example: a variety denomination “dwarf” for a variety which is of normal height, when a dwarfness trait exists within the species, but is not possessed by the variety.

(b) refer to specific characteristics of the variety in such a way that the impression is created that only the variety possesses them, whereas in fact other varieties of the species in question also have or may have

the same characteristics; for example where the denomination consists solely of descriptive words that describe attributes of the variety that other varieties in the species may also possess.

Example 1: “Sweet” for a fruit variety;

Example 2: “Large white” for a variety of chrysanthemum.

~~[(c) convey the impression that the variety has particular characteristics, which in reality it does not have, by similarity or association with another variety denomination derived from, or related to that is not, in fact, the case.]~~

Examples of unsuitable denomination: “Son of Russet Burbank”, where “Russet Burbank” potato variety was not used in the breeding of “Son of Russet Burbank”.

Examples of suitable denominations: “Koshihikari Niigata BL 1 go” and “Koshihikari Niigata BL 2 go”, both of which introduced resistance against rice blight by Niigata prefectural government into “Koshihikari”.

~~*Example:* a denomination which is similar to that of another variety of the same species or closely related species, e.g. “Southern cross 1”; “Southern cross 2”; etc., giving the impression that these varieties are a series of related varieties with similar characteristics, when, in fact, this is not the case.]~~

~~(d) contain the botanical or common name of the genus to which that variety belongs.~~

Example of unsuitable denominations:

Carex variety “Sedge”. (Carex is the botanical name of the genus, for which the common name is sedge.)

Castanea “Pale Chestnut”. (Castanea is the botanical name of the genus, for which the common name is Chestnut.)^e

Gladiolus “Pink Gladiolus”.

Narcissus “Davis Daff”. (Narcissus is the botanical name of the genus, for which the common name is Daffodil.)

Narcissus “Granny’s Daffodil”.

Paeonia “Sussex Peony”. (Paeonia is the botanical name of the genus, for which the common name is Peony.)

Phlox “Phlox of Sheep”.

Rhododendron “Rhododendron Mad”.

Example of suitable denominations:

Dianthus “Rupert’s Pink”. (“Pink” is not the common name for all plants in the genus Dianthus.)

Prunus “Sato-zakura”. (“Zakura” is the Japanese word for flowering cherries, rather than a name for the whole genus.)

Pyrus bretschneideri “Ya Li”. (While the word “li” is the Chinese common name for the genus Pyrus, “li” is inseparable from “ya” according to Chinese linguistic custom, and its inclusion in the variety denomination is therefore necessary and acceptable.)

2.3.2 Value of the variety

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”.^f

2.3.3 Identity of the variety

(a) For denominations consisting solely of letters,⁹ as a general recommendation, a difference of only one letter ~~or one number~~ may be considered to be liable to mislead or cause confusion concerning the identity of the variety, except where the:

(i) ~~—~~ difference of one letter provides for a clear visual or phonetic difference, e.g. if it concerns a letter at the beginning of a word:

Example 1: ~~in the English language, ‘Harry’ and ‘Larry’ [, ‘Meagan’ and ‘Reagan’, ‘Kinky’ and ‘Binky’ and ‘Hagar’ and ‘Magar’] ^h would not cause confusion; However, ‘Bough’ and ‘Bow’ might cause confusion (in phonetic terms); ⁱ~~

Example 2: ~~in the Japanese and Korean languages there is no difference between “L” and “R” sounds, thus “Lion” and “Raion” are exactly the same although these are distinguishable for English mother tongue speakers;~~

Example 2: ~~“Helena” and “Elena” [, “Zophia” and “Sophia”, “Viki” and “Wiki”, and “Jozephine” and “Josefin”] ^j [, “Paqou”, “Pacou” and “Pakou”, “Philip” and “Filip”, and “Poge” and “Poje”] ^{xxii} could cause confusion phonetically but not visually; ^j~~

Examples from the CPVO

Legend: × not suitable ✓ suitable		
Denomination	Suitability*	Comments
‘Meagan’ <> ‘Reagan’	✓	The denominations are phonetically dissimilar.
‘Kinky’ <> ‘Binky’	✓	
‘Hagar’ <> ‘Magar’	✓	
‘Zophia’ <> ‘Sofia’	×	The denominations are phonetically similar.
‘Viki’ <> ‘Wicki’	×	
‘Jozephine’ <> ‘Josefin’	×	

Examples from France

C, Q, K. => Paqou/Pacou/Pakou. Visually different but 100% identical on their pronunciation.

PH, F => Philip/ Filip

GE, JE => Poge/Poje

Silent letter such as H => Helena, Elena

(ii)(b) For denominations consisting of a combination of letters and figures; and

(iii) ~~—~~ denominations consisting “solely of figures”, as a general recommendation, a difference of only one letter or one number may be considered not to be liable to mislead or cause confusion concerning the identity of the variety.

Guidance from Brazil

In order to analyze whether a denomination would be misleading in relation to the identity of the variety, the following should be considered:

- (i) Denominations containing only words: [pro domo: these are example for 2.3.3.(a)?]
The difference in only one letter (or sound of a letter) must be considered as liable to cause confusion.
Example (1): Denominations "Manuela" and "Manuele", should be considered liable to cause confusion, as they contain only 1 phonetic and written difference.
Example (2): Denominations "Manuela" and "Emanuele" should not be considered as liable to cause confusion, as they contain more than 1 phonetic and written difference.
Example (3): Denominations "Manuela" and "Mannuelle", should be considered liable to cause confusion, because they contain only 1 phonetic difference.
- (ii) Denominations in the form of letters, without forming words:
The difference in only one letter should not be considered as liable to cause confusion.
Example: Designations "ABCDEF" and "ABCDEE" should not be considered as liable to cause confusion.
- (iii) Denominations in the form of numbers:
The difference in only one number should not be considered as liable to cause confusion.
Example: Denominations "12345" and "12346" are not to be considered liable to cause confusion.
OBS: Remember that this is an exceptional situation (as in the case of inbred lines), since, in general, denominations are not accepted only in the form of numbers.
- (iv) Alphanumeric denominations:
The difference in only one letter or only one number should not be considered as liable to cause confusion.
Example (1): Denominations "XY123Z4" and "XY123W4" should not be considered liable to cause confusion.
Example (2): Denominations "XY123Z4" and "XY123Z5" should not be considered liable to cause confusion.
- (v) Denominations containing Prefixes or Suffixes:
- a. Prefix + word(s) or Word(s) + suffix:
Differences only in the word(s), might be treated as in (i) (Example: "ABC Manuela" and "ABC Manuele", should be considered liable to cause confusion; Denominations "ABC Manuela" and "ABC Emanuele" should not be considered as liable to cause confusion).
Differences only in the suffix or prefix, should be considered liable to cause confusion (Example: "ABC Manuela" and "XYZ Manuela", should be considered liable to cause confusion).
Differences in both, only one letter different in the word should not be considered as liable to cause confusion (Example: Denominations "ABC Manuela" and "XYZ Manuele", should not be considered liable to cause confusion);
- b. Prefix + numbers or numbers + suffix:
Denominations with 1 difference, whether in the prefix/suffix or in the number should not be considered as liable to cause confusion.
Example (1): Denominations "ABC1" and "ABC2" should not be considered as liable to cause confusion.
Example (2): Denominations "ABZ1" and "ABZ2" should not be considered as liable to cause confusion;
- c. Prefix + letters or Letters + suffix:
Denominations with 1 difference, whether in the prefix/suffix or in the letter should not be considered as liable to cause confusion.
Example (1): Denominations "ABC XYZ" and "ABC YZW" should not be considered as liable to cause confusion.
Example (2): Denominations "NA33 ASF" and "NA30 ASF" should not be considered as liable to cause confusion.

~~(b)~~(c) The use of a denomination which is similar to that used for a variety of another species or genera in the same denomination class (see section 2.5) may cause confusion.

~~(e)~~(d) In order to provide clarity and certainty in relation to variety denominations, the re-use of denominations is, in general, discouraged, since the re-use of a denomination, even where that relates to a variety which no longer exists (see section 2.4.2) may, nevertheless, cause confusion. In some limited cases an exception may be acceptable, for example a variety which

(i) was never commercialized, or was only commercialized in a limited way for a very short time; or
[(ii) is no longer in cultivation, and has ceased to exist as breeding material, and cannot be found in a gene or seed bank, and is not a known component in the pedigree of other variety, and the name has rarely been used in publications, and re-use is unlikely to cause confusion].

In those cases, a suitable period of time after discontinued commercialization of the variety would be required before the re-use of the denomination in order to avoid causing confusion in relation to the identity and/or the characteristics of the variety.

2.3.4 Identity of the breeder















The variety denomination should not mislead or cause confusion concerning the identity of the breeder.

Breeders may choose a theme to identify their varieties. However, “themes” without a common word, prefix or suffix, could mislead or cause confusion concerning the identity of the breeder. In cases where a breeder uses a theme, the authority may consider that the use of that theme for variety denominations by other breeders may mislead or cause confusion concerning the identity of the breeder.

Guidance and practices from the CPVO

In assessing similarity, company abbreviations, series identifiers, descriptive characteristics or numbers are removed as a first step. The reason is that their addition to an identical or very similar denomination will be considered to make an unfair use of the existing denomination. That unfair use is not relevant if it is an addition to the same denomination by the same breeder, if there is a biological relationship between the varieties or if there already exist more denominations including the same word from different breeders.

Examples: Denomination proposal **'Red Impact'** from the applicant **ABC seeds**.

Legend:		 not suitable	 suitable	  suitable with conditions
'Red Impact' vs		Comments		
Impact	 	The proposal is suitable if it is the same breeder, there is a biologic relationship between the varieties or if the word Impact is generic (common to other denominations of varieties of the same species and from different breeders).		
KWS Impact		KWS is the company acronym of Klein Wanzlebener Saatzucht.		
Codiimpact		'Codi' is the identifier of a series of the company Caussade Semences.		
Impact CL	 	The proposal is suitable if it is the same breeder, if there is a biologic relationship between the varieties or if the word Impact is generic (common to other denominations of varieties of the same species and from different breeders).		
Yellow Impact		The proposal is suitable if it is the same breeder, there is a biologic relationship between the varieties or there already exist more denominations including Impact from different breeders.		
Impakt		The word 'Impakt' is visually and phonetically too close to 'Impact'. Despite the additional colour characteristic 'Red' in the initial variety denomination, the use of 'Impakt' could be considered as an unfair use of an existing variety denomination.		
Red Impakt		The proposal is visually and phonetically too close to 'Red Impact'.		
Klein Impacty		There is a medium level of visual and phonetic similarity between 'Impacty' and 'Impact' but the addition of 'Klein' produces a sufficient visual and phonetic difference and avoid confusions between the two denominations.		

Guidance and practices from the CPVO (cont.)

A variety denomination shall be considered to mislead or to cause confusion if, by dint of its similarity to a well-known trading name other than a registered trademark or variety denomination, it suggests that the variety is another variety, or if it conveys a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety, or the breeder.

Examples: A denomination proposal '**Cherry Reagan**' where a series '*Cream Reagan*', '*Sweet Reagan*', '*Yellow Reagan*' already exists.

Legend:	not suitable	suitable	suitable with conditions
'Cherry Reagan' vs existing series 'Cream Reagan', 'Sweet Reagan', 'Yellow Reagan'		Same breeder	Different breeder
Biolink			 Suitable unless the original breeder refuses
No biolink			

A variety denomination shall be considered to mislead or to cause confusion if it contains the name of a natural or legal person, or a reference thereto, so as to convey a false impression concerning the identity of the applicant, the person responsible for the maintenance of the variety, or the breeder;

Companies might use an abbreviation for their identification in variety denominations. It should be noted that the abbreviation established to identify company A cannot be used by company B for the denominations of varieties not bred by company A. If several companies were involved in the breeding of a variety, the established abbreviation of any of these companies in the denomination would be suitable.

Example:

A variety '**ABC Ambition**' is registered with **DEF** as the Breeder and titleholder. **ABC** is the name of the company, which bought the license for the marketing and acts also as a procedural representative for PBR. ABC is not suitable in the denomination because this company is not the breeder nor its successor in title.

Guidance and practices from France

Practices of breeders:

- i) a **prefix** allowing the identification of the identity of the breeder.
Example : KWS-..., RGT-..., BAR-...,
- ii) a **part of word** to identify a series.
- iii) A **topic**
Example : topic bird, topic musician, ...

Guidance and practices from Japan

In the case of Japan, we had been implemented the practices to the identity of the breeder at the examination of the denomination in order to avoid misleading or confusion for the user of the variety based on the '2.3.4 Identity of the breeder', INF/12/5. 'The variety denomination should not mislead or cause confusion concerning the identity of the breeder'.

It is considered preferable to exclude the denomination which make cause misleading or confusion to the other breeder as much as possible if their prefix have sufficient distinguishability and several varieties registered by the denomination with the same prefix.

Guidance and practices from New Zealand

The breeders practice of identifying themselves using a prefix, suffix or code as part of a denomination is well established. There are many existing examples.

Rose `Dicgrow` Dickson Roses
 Alstroemeria `Zantrice` Van Zanten Plants
 Strawberry `Drisstrawsixteen` Driscolls Inc.
 Potato `Crop34` NZ Institute for Plant and Food Research Ltd.

The above practice generally consists of understandable or pronounceable words. In recent years there has been a change with the increasing frequency of letter and number combinations.

Apple `MINNB42` University of Minnesota
 Blueberry `ZF06-179` Conrad Pyle Company
 Blackberry `APF-45` University of Arkansas
 Cocksfoot `LE12-90` INIA

The above varieties identify the breeder/owner but in a different way to previous denominations of this type. A denomination of the letter and number combination type is often similar to other denominations. Providing such a recognisable series is clearly from the same breeder, similar denominations can be acceptable.

2.4. *Different from an existing variety of the same plant species or of a closely related species*

2.4.1 Paragraph (2) states that the denomination must be “different” from an existing variety of the same plant species or a closely related species⁴.

2.4.2 The following explanation is for the purposes of variety denominations and without prejudice to the meaning of a “variety whose existence is a matter of common knowledge” in Article 7 of the 1991 Act and in Article 6(1)(a) of the 1978 Act and the 1961 Convention. In general, the re-use of denominations is discouraged but, under exceptional circumstances (see section 2.3.3(c)), the denomination of an old variety could, in principle, be registered for a new variety.

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

2.5.1 For the purposes of providing guidance on the third (see section 2.3.3(b)) and fourth sentences of paragraph 2 of Article 20 of the 1991 Act and of Article 13 of the 1978 Act and the 1961 Convention, variety denomination classes have been developed. A variety denomination should not be used more than once in the same class. The classes have been developed such that the botanical taxa within the same class are considered to be closely related and/or liable to mislead or to cause confusion concerning the identity of the variety.

2.5.2 The variety denomination classes are as follows:

(a) General Rule (one genus / one class): for genera and species not covered by the List of Classes in Annex I, a genus is considered to be a class;

(b) Exceptions to the General Rule (list of classes):

(i) classes within a genus: List of classes in Annex I: Part I;

(ii) classes encompassing more than one genus: List of classes in Annex I: Part II.

⁴ Article 20(2) of the 1991 Act refers to “plant species” and Article 13(2) of the 1978 Act and 1961 Convention refers to “botanical species”; the divergence in terminology does not contain any difference in substance.

Results of circular E-18/064 to members of the Union to share examples and proposals on possible need to review or create new denomination classes

Proposals and practices from the CPVO

The web based CPVO Variety Finder assists in the process of checking whether the proposed denomination is identical or similar to denominations of existing varieties of the same genus or, if appropriate, UPOV class.

While identical denominations for varieties of the same UPOV class are systematically refused, similar denominations for varieties of different species in the same UPOV Class might be accepted when the risk of confusion is very limited, in particular in the professional circles.

This is the case for instance for *Brassica* in the UPOV class 1.2, *Chicorium* and *Lactuca* in the UPOV class 205, *Agrostis*, *Dactylis*, *Festuca*, *Festulolium*, *Lolium*, *Phalaris*, *Phleum* and *Poa* in the UPOV Class 203, *Lotus*, *Medicago*, *Ornithopus*, *Onobrychis*, *Trifolium* in the UPOV class 204, *Prunus* L., *Secale*, *Triticale*, *Triticum* in the UPOV class 201.

Examples of accepted denomination proposals

- 'Oregon' *Brassica rapa* L. var. *rapa* (L.) Thell. <> 'Ortegon' *Brassica napus* L.
- 'Bekana' *Brassica rapa* L. <> 'Belana' *Brassica napus* L.
- 'Dixie' *Cichorium endivia* L. <> 'Dexie' *Lactuca sativa* L.
- 'Camilie' *Lactuca sativa* L. <> 'Camila' *Cichorium endivia* L.
- 'Prolana' *Dactylis glomerata* L. <> 'Polana' *Agrostis capillaris* L.
- 'Rodio' *Lolium multiflorum* Lam. <> 'Rocio' *Festuca arundinacea* Schreb.
- 'Varta' *Medicago sativa* L. <> 'Varte' *Trifolium pratense* L.
- 'Lotte' *Prunus armeniaca* L. <> 'Lotta' *Prunus avium* L.
- 'Flamengo' *Prunus armeniaca* L. <> 'Flamingo' *Prunus persica* (L.) Batsch
- 'Aventinus' *Triticum aestivum* L. subsp. *aestivum* <> 'Aventino' *Secale cereale* L.
- 'SY Leonardo' *Triticum durum* Desf. <> 'Leonhard' *Triticum aestivum* L.

However, it is important to note that such situations are always considered individually, using a case-by-case approach. The difference in species should be considered as additional criteria, after the visual, phonetic and conceptual evaluation.

Proposals from France

1. We are in favour to bring some modification regarding **class 205**. We propose to **split** the current class 205 (*Cichorium* and *Lactuca*) into two new classes :

- Classe : *Lactuca* – *Cichorium endivia* (frisée et scarole), *Cichorium intybus* var. *foliosum* (endive/witloof et les chicorées italiennes)
- Classe : *C. intybus* var. *sativum* (chicorée industrielle)

We propose a segmentation regarding the use of these species. One class includes salad-use species; the second class is dedicated to root usage.

Proposals from New Zealand

Varieties of fungal endophytes belonging to the genus *Epichloe* (formerly *Neotyphodium*) with UPOV Codes EPICH and NEOTY can only exist in a host grass species. Commercial sale of these varieties also require the sale of the host grass seed, which could be of a protected variety. For this reason it is not desirable for the denomination of a fungal endophyte variety to be the same or very similar to the denomination of a possible host variety.

We propose that EPICH and NEOTY be added to Class 203 (*Agrostis*, *Dactylis*, *Festuca*, *Festulolium*, *Lolium*, *Phalaris*, *Phleum* and *Poa*.)

2.5.3 It is recommended that the UPOV Plant Variety Database (“~~PLUTO database~~UPOV-ROM”) used in the process to check if, in the territory of any member of the Union, the proposed denomination is different from denominations of existing varieties of the same genus or, if appropriate, variety denomination class (see Annex I). Attention is drawn to the “General Notice and Disclaimer” of the ~~UPOV-ROM-PLUTO database~~ to ensure that the information contained in the ~~UPOV-ROM-PLUTO database~~ is considered in an appropriate way.

2.6 UPOV denomination similarity search tool

Results of circular E-18/064 to members of the Union on their views on possible ways to use the denomination similarity search tool

Views from the CPVO

The CPVO is systematically using the Variety Finder, which is a first step to check the similarity criteria. The algorithm selects a set of potentially similar denominations based on the visual similarity, consisting in a minimum number of letters in common between the denomination tested and the denominations selected. The selection also integrates few basic phonetic features that allow selecting denominations that are visually not highly similar but are phonetically identical or could be considered as phonetically too close.

The accuracy of analysis is dependent upon the reliability of the information and the level of details of data linked to varieties appearing in the Variety Finder. It involves therefore a proactive approach in the data collection, a systematic quality control of data collected, a good cooperation with the contributors to the database and does not prevent examiners to check other registers in order to further investigate or to contact the relevant national authorities in case of doubt or need for additional information.

It should be borne in mind that the use of a similarity search tool is a preliminary step in the process of the overall assessment, which is left up to the examiner.

Results of circular E-18/065 to users on their views on possible ways to use the denomination similarity search tool

Views from the ESA/ISF

1. The first column 'relevance' is very much appreciated. If 0.00 is scored, then the name is 100 % similar. It would be however very helpful if this could be further fine-tuned, by making conclusions. This could improve harmonization. If the score is 0.00, the conclusion to be displayed would then obviously be "rejected" or "too similar". Other scores could be mentioning clearly "approved" or "sufficiently distinct". For the in-between or less clear situations there could be a conclusion such as "doubtful". We think that this could be useful, unless the group "doubtful" is too large - because even then harmonization is still difficult. The criteria will be based on the outcome of the Explanatory Notes.

(Screenshot of the test results currently displayed by the PLUTO database)

The screenshot shows a search interface with the following details:

- Search type: similarity (Denomination)
- Text tested: raiša
- Denomination class: (CLASS 205)
- Denominations Compared: 22390
- Total Displayed: 220

Relevance	Denomination	Botanical Name	UPOV Code	Breeder's Ref.	App. No	App. Date	Country	Type	Var. denom. class
0.00	RAISA	Lactuca sativa L.			005542	1997-12-02	AR	NLI	CLASS 205
0.00	Raiša	Lactuca sativa L.			9100003	1990-10-02	US	PBR	CLASS 205

2. It would be very efficient to add the following columns to the view of the test results (so to the screen above):

- Status & date of application ('end type' & 'end date' already exist in the PLUTO database, but we would like them to be shown on the front page of the test results. Now one only sees them when one clicks on the result in the view, see screenshot below)

The Record Detail view shows the following information:

- country code: US
- record type: PBR
- species latin name: Lactuca sativa L.
- species common name: LETTUCE
- species UPOV code: LACTU_SAT
- grant number: 9100003
- grant publication date: 1992-10-30
- grant start date: 1992-09-30
- end type: EXP
- end date: 2010-09-30
- variety identifier: 9100003
- variety denomination class: CLASS 205
- application number: 9100003
- application date: 1990-10-02
- application publication date: 1991-04-02

Denominations

- 1990-10-02: Raiša: proposed
- 1991-04-02: Raiša: published
- 1992-09-30: Raiša: approved

- Status denomination (could be that the denomination has been withdrawn and replaced, so never used) - we are not sure whether they are part of the PLUTO database yet, but could be taken over from the CPVO database, at least from EU. In the screenshot above, there is a special chapter Denominations, but it looks like open text fields.
- For us, these columns are more relevant than UPOV Code, Var. Den. class. We would like to keep 'Botanical name', because of the discussion on re-use of names.
- When results have a common breeder's reference, show one and have a drop-down menu to show the rest, if needed - this shortens the list considerably, which makes it easier to evaluate.

Paragraph 3

(Paragraph 4 of Article 13 of the 1961 Convention)

[Registration of the denomination]

The denomination of the variety shall be submitted by the breeder to the authority. If it is found that the denomination does not satisfy the requirements of paragraph (2), the authority shall refuse to register it and shall require the breeder to propose another denomination within a prescribed period. The denomination shall be registered by the authority at the same time as the breeder's right is granted.

Explanatory Notes – Paragraph (3)

3.1 If the authority has found no grounds for refusal under paragraph (2), and knows of no grounds for refusal under paragraph (4), the proposed denomination shall be registered, published and communicated to the authorities of the other members of the Union.

3.2 In the event of prior rights (paragraph (4)) or other grounds for refusal, any interested person may file an objection to the registration. The authorities of the other members of the Union may submit observations (see Explanatory Notes of paragraph (6)).

3.3 Relevant objections and observations should be communicated to the applicant. The applicant should be given the opportunity to reply to the observations. If the authority considers the denomination unsuitable within its territory, it will require the breeder to submit another denomination. Failure to submit a proposal within the prescribed period should entail the rejection of the application.

3.4 The examination of the proposed denomination and of the other conditions for the protection of the variety are procedures which should be undertaken in parallel in order to ensure that the denomination can be registered at the time the breeder's right is granted.

Paragraph 4

(Paragraph 10 of Article 13 of the 1961 Convention)

[Prior rights of third persons]

Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the authority shall require the breeder to submit another denomination for the variety.

Explanatory Notes – Paragraph (4)

4. In deciding on the suitability of the proposed denomination and examining objections and observations in relation to prior rights of third persons, the following are intended to assist authorities.

(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.~~^k 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.

(b) The notion of prior rights should include those rights which are in force, in the territory concerned, at the time of publication of the proposed denomination. For rights whose duration starts at the filing date of the application, the filing dates are those relevant for prior right considerations, provided those applications lead to the granting of rights.

(c) In the case of two conflicting proposed variety denominations (see paragraph (2)) in the same or different territories, the one with an earlier publication date should be retained and the relevant authority should request the breeder, whose proposed denomination was or might have been published at a later date, to submit another denomination.

(d) If, after the granting of a breeder's right, it is discovered that there was a prior right concerning the denomination which would have resulted in the rejection of the denomination, the denomination should be cancelled and the breeder should propose another suitable denomination for the variety. Article 22(1)(b)(iii) of the 1991 Act states that, if the breeder does not propose another suitable denomination, the authority may cancel the breeder's right.

(e) The following items provide some guidance on what might constitute a "prior right", the exercise of which may prevent the use of the proposed denomination:

(i) A trademark may be considered as a prior right when the proposed denomination is identical to a trademark registered for an identical good. For all practical purposes, such identity of goods is most likely to occur in respect of trademarks registered for goods under Class 31 of the Nice Classification⁵, although it is recalled that, in certain countries, trademarks may also be protected on the basis of use and without registration. If the trademark and proposed denomination are not identical, but similar, the trademark, in some cases, may constitute a prior right, the exercise of which may prevent the use of the proposed denomination, and the breeder may be required to propose another denomination. If, in spite of the similarity between the proposed denomination and the trademark, the exercise of the latter will not prevent the use of the proposed denomination, the denomination may be accepted; rejections of denominations by the authority on the basis of similarity to a trademark will, in general, result from oppositions of trademark holders, observations of authorities responsible for trademark registration, or judgments from a competent court. In cases of mere similarity or small likelihood of association confusion¹ by users, waivers granted to breeders by prior trademark right holders could be a suitable solution;

(ii) If the proposed denomination is identical with or similar to a well-known mark, it may be unsuitable, even if the well-known mark applies to goods other than those appearing in Class 31 of the Nice Classification;⁶

(iii) Prior rights might also concern trade names⁷ and names of famous persons;

(iv) Names and abbreviations of intergovernmental organizations, which are excluded by international conventions from use as trademarks or parts of trademarks, are not suitable as variety denominations;⁸

(v) Prior rights concerning appellations of origin and geographical indications (e.g. "Scotch") may exist under national legislation on grounds of common law or registration;⁹

(vi) In certain cases, prior rights in geographical names (e.g. names of cities or States) may exist; however, there is no general rule on these cases and assessment should be based on the probatory material presented on a case-by-case basis.

⁵ Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as revised in Stockholm on July 14, 1967, and Geneva on May 13, 1977, and amended on September 28, 1979.

⁶ Well-known marks are protected by the Paris Convention for the Protection of Industrial Property (Article 6*bis*) and the Agreement on Trade-Related Aspects on Intellectual Property Rights (Article 16.2 and 3 of the TRIPS Agreement). See also the 1999 WIPO Joint Recommendation Concerning Provisions on the Protection of Well-known Marks.

⁷ Article 8 of the Paris Convention.

⁸ This recommendation includes names and abbreviations notified pursuant to Article 6*ter* of the Paris Convention.

⁹ Articles 22 to 24 of the TRIPS Agreement provide for an obligation for WTO Members to protect geographical indications; the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration sets up international registration procedures for appellations of origin in the States party to that Agreement.

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

A variety must be submitted to all members of the Union under the same denomination. The authority of each member of the Union 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.

Explanatory Notes – Paragraph (5)

5.1 This provision reflects the importance of a single variety denomination for the effective operation of the UPOV system.

5.2 *Paragraph (5)* provides clear directions both for breeders and authorities:

(a) In relation to subsequent applications of the same variety, the breeder must submit in all members of the Union the denomination that was submitted with the first application. An exception to the above obligation might be appropriate when the proposed denomination is refused by one authority before the denomination is registered by any of the other members of the Union, in which case the breeder is encouraged to submit a new denomination to all authorities in order to obtain a single denomination in all territories.

(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;

The WG-DEN, at its fourth meeting^m

With regard to Section 5.2 (b), 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.

Proposal from the Office of the Union

The WG-DEN is invited to consider if any guidance is needed beyond that provided in (section 5.3 (see proposed amendment of section 5.3 (a)))

Noted by the WG-DEN, at its fourth meetingⁿ

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.

Guidance from New Zealand**Background**

Article 20(5) of the UPOV Convention provides for the same denomination in all Contracting Parties, a primary principle for international harmonization. Two denominations for a single variety should be very much the exception and not the rule, but unfortunately this is not the case. Examples have been provided in earlier submissions. The reasons for not having a single denomination are many and varied and it is not the purpose of this proposal to begin discussion on this. The objective for this proposal is to provide guidance for when a territory receives an application for a variety that already has more than one denomination and to aim for the majority of protecting territories to have a common denomination. It should be recognised that any guidance provided for varieties with more than one denomination goes against the overall principle of Article 20(5).

Guidance from New Zealand (cont.)

Options

1. Follow the guidance in Paragraph 5 of the UPOV Recommendations for Variety Denominations where the denomination approved in the first protecting territory is approved by all subsequent protecting territories. This option has an element of consistency with Article 20(5) and maintains the essence of a single denomination per variety. The protecting territory which considered the denomination to be unsuitable will be the only exception to the overall principle and all other protecting territories give priority to the obligation under Paragraph 5.

2. A protecting territory may be required to give consideration to regional harmonisation and the denomination used in neighbouring states. For this reason it may not be possible to approve the denomination in the first protecting territory and the second denomination approved by a neighbouring state may require approval. This situation leads to the second denomination having the greatest usage. Such an approach is not consistent with Article 20(5), however it does provide to restrict the number of denominations to two and does achieve a type of harmonisation where the majority of protecting territories have the same denomination.

Summary

For varieties with more than a single denomination the following applies:

- I. The first variety denomination approved should be given priority by subsequent protecting territories in accordance with Option 1.
- II. Where Option 1 is not possible, Option 2 provides the possibility of the second denomination approved to be used by the majority of protecting territories.

(c) Due to different alphabetic scripts or systems of writing, it may be necessary to transliterate or transcribe the submitted denomination to enable its registration in another territory. In such cases, both the variety denomination submitted in the application and its transliteration or transcription are regarded as the same denomination. However, a translation would not be considered as the same denomination.

5.3 Whilst a degree of flexibility is appropriate, the following non-exhaustive list may assist the authorities in deciding what is unsuitable. A proposed denomination may be refused by an authority of a member if it transpires that, despite best endeavors (see section 5.5), in its territory

(a) it does not conform to the provisions in paragraphs (2) [(for example, the proposed denomination is not different from an existing variety of the same plant species or of a closely related species in its territory)] and (4) [(for example, the proposed denomination is identical to a trademark registered for identical goods)]; or

(b) it is contrary to public policy.

5.4 In order to permit the correct identification of a variety registered with different denominations due to exceptional cases (see section 5.3 above), in different territories, a regional or international synonym register may be developed by UPOV and/or by some members of the Union.

5.5 To reduce the risk of a variety denomination being considered to be unsuitable within a territory in which protection is to be sought, members of the Union are encouraged to make available to other authorities and breeders, the criteria, guidance and best practices which they apply for variety denominations. In particular, authorities are encouraged to make available any electronic search functions which they use in the examination of denominations in a form which would allow the on-line checking of a proposed variety denomination, against databases of relevant varieties and, in particular, the UPOV Plant Variety PLUTO Database. Members of the Union may also choose to provide customized variety denomination checking services. Members of the Union are encouraged to use the UPOV website to provide information on, and links to, such resources.

[Information among the authorities of members of the Union]

The authority of a member of the Union shall ensure that the authorities of all the other members of the Union are informed of matters concerning variety denominations, in particular the submission, registration and cancellation of denominations. Any authority may address its observations, if any, on the registration of a denomination to the authority which communicated that denomination.

Explanatory Notes – Paragraph (6)

6.1 Provisions of paragraph (6) indicate the importance of cooperation and exchange of information among authorities.

6.2 The obligation to inform other members of the Union of matters concerning variety denominations relies on the exchange of official gazettes and other means of publication. It is recommended that the layout of the official gazette be based on the UPOV Model Plant Breeder's Right Gazette (document UPOV/INF/5), in particular, the chapters containing information on variety denominations, should be appropriately identified in the table of contents. However, the ~~UPOV Plant Variety~~ PLUTO Database is an important mechanism by which to maximize the availability of information for members of the Union concerning variety denominations in a practical form.

6.3 Paragraph (6) provides for the possibility for a member of the Union to make observations if it considers that a proposed denomination in another member of the Union is unsuitable. In particular with respect to the provisions of paragraph (5), the authority should take into account all observations made by the authorities of other members when deciding on the suitability of a proposed denomination. If the observations refer to an obstacle for approval which, according to the provisions on variety denominations under the UPOV Convention, applies to all members, then the proposed denomination should be refused. If the observation refers to an obstacle to approval only in the member of the Union which has transmitted the observation (e.g. prior trademark right within that territory), the applicant should be informed accordingly. If it is envisaged that protection will be applied for, or if it can be expected that reproductive or propagating material of the variety will be marketed in the territory of the member of the Union which has transmitted the observation, the authority examining the proposed denomination should request the applicant to propose another denomination.

6.4 The authorities making observations and the authority conducting the examination should, as far as possible, endeavor to reach an agreement on the acceptability of a variety denomination.

6.5 It is recommended that a communication of the final decision be addressed to any authority which has transmitted an observation.

6.6 Authorities are encouraged to send information on variety denominations to authorities dealing with the protection of other rights (e.g. authorities responsible for registering trademarks).

6.7 A model form for observations on proposed denominations submitted in another member of the Union can be seen in Annex II. A model form for a reply to observations can be seen in Annex III. Copies of these communications should be sent at the same time to the authorities of the other members of the Union.

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.°

Paragraph 7***[Obligation to use the denomination]***

Any person who, within the territory of one of the members of the Union, offers for sale or markets propagating material of a variety protected within the said territory shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety, except where, in accordance with the provisions of paragraph (4), prior rights prevent such use.

Explanatory Note – Paragraph (7)

7.1 If it is found that prior rights of a third party prevent the use of the registered variety denomination, the authority shall require the breeder to submit another denomination. Article 22(1)(b)(iii) of the 1991 Act provides that the breeder's right may be cancelled if "the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination."

7.2 The following items provide guidance in relation to changes of registered variety denominations:

(a) The UPOV Convention requires a change of the registered denomination where the denomination of the variety is cancelled after the grant of the right. The competent authority should cancel a variety denomination if:

- (i) by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it (see paragraph (4) "Prior rights of third persons");
- (ii) the denomination is unsuitable because it is contrary to the provisions in paragraph (2) "Characteristics of the denomination";

(b) In cases where the registered denomination is subsequently refused in another member of the Union because it is unsuitable in that territory (e.g. prior right), at the request of the breeder, the authority may consider it appropriate to change the denomination to the denomination registered in the said other member of the Union (see provisions in paragraph (5) "Same denomination in all Contracting Parties"); and

(c) In general, subject to (a) and (b) above, it would not be appropriate for the authority to change a registered denomination following a request by the breeder.

Paragraph 8***[Indications used in association with denominations]***

When a variety is offered for sale or marketed, it shall be permitted to associate a trademark, trade name or other similar indication with a registered variety denomination. If such an indication is so associated, the denomination must nevertheless be easily recognizable.

This provision is self-explanatory.

[Annexes follow]

ANNEX I

UPOV Variety Denomination Classes:
A Variety Denomination Should not be Used More than Once in the Same Class

For the purposes of providing guidance on the third and fourth sentences of paragraph 2 of Article 20 of the 1991 Act and of Article 13 of the 1978 Act and the 1961 Convention, variety denomination classes have been developed. A variety denomination should not be used more than once in the same class. The classes have been developed such that the botanical taxa within the same class are considered to be closely related and/or liable to mislead or to cause confusion concerning the identity of the variety.

The variety denomination classes are as follows:

- (a) General Rule (one genus / one class): for genera and species not covered by the List of Classes in this Annex, a genus is considered to be a class;
- (b) Exceptions to the General Rule (list of classes):
- (i) classes within a genus: List of classes in this Annex: Part I;
 - (ii) classes encompassing more than one genus: List of classes in this Annex: Part II.

LIST OF CLASSES

Part I*Classes within a genus*

	<u>Botanical names</u>	<u>UPOV codes</u>
Class 1.1	Brassica oleracea	BRASS_OLE
Class 1.2	Brassica other than Brassica oleracea	other than BRASS_OLE
Class 2.1	Beta vulgaris L. var. alba DC., Beta vulgaris L. var. altissima	BETAA_VUL_GVA; BETAA_VUL_GVS
Class 2.2	Beta vulgaris ssp. vulgaris var. conditiva Alef. (syn.: B. vulgaris L. var. rubra L.), B. vulgaris L. var. cicla L., B. vulgaris L. ssp. vulgaris var. vulgaris	BETAA_VUL_GVC; BETAA_VUL_GVF
Class 2.3	Beta other than classes 2.1 and 2.2.	other than classes 2.1 and 2.2
Class 3.1	Cucumis sativus	CUCUM_SAT
Class 3.2	Cucumis melo	CUCUM_MEL
Class 3.3	Cucumis other than classes 3.1 and 3.2	other than classes 3.1 and 3.2
Class 4.1	Solanum tuberosum L.	SOLAN_TUB
Class 4.2	Tomato & Tomato rootstocks	
	Solanum lycopersicum L. (synonym: Lycopersicon esculentum Mill.)	SOLAN_LYC
	Solanum cheesmaniae (L. Ridley) Fosberg (Lycopersicon cheesmaniae L. Riley)	SOLAN_CHE
	Solanum chilense (Dunal) Reiche (Lycopersicon chilense Dunal)	SOLAN_CHI
	Solanum chmielewskii (C.M. Rick et al.) D.M. Spooner et al. (Lycopersicon chmielewskii C. M. Rick et al.)	SOLAN_CHM

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	<u>Botanical names</u>	<u>UPOV codes</u>
	Solanum galapagense S.C. Darwin & Peralta (Lycopersicon cheesmaniae f. minor (Hook. f.) C. H. Müll.) (Lycopersicon cheesmaniae var. minor (Hook. f.) D. M. Porter)	SOLAN_GAL
	Solanum habrochaites S. Knapp & D.M. Spooner (Lycopersicon agrimoniifolium Dunal) (Lycopersicon hirsutum Dunal) (Lycopersicon hirsutum f. glabratum C. H. Müll.)	SOLAN_HAB
	Solanum pennellii Correll (Lycopersicon pennellii (Correll) D'Arcy)	SOLAN_PEN
	Solanum peruvianum L. (Lycopersicon dentatum Dunal) (Lycopersicon peruvianum (L.) Mill.)	SOLAN_PER
	Solanum pimpinellifolium L. (Lycopersicon pimpinellifolium (L.) Mill.) (Lycopersicon racemigerum Lange)	SOLAN_PIM
	and hybrids between those species	
Class 4.3	Solanum melongena L.	SOLAN_MEL
Class 4.4	Solanum other than classes 4.1, 4.2 and 4.3	other than classes 4.1, 4.2 and 4.3

LIST OF CLASSES (Continuation)

Part II

Classes encompassing more than one genus

	<u>Botanical names</u>	<u>UPOV codes</u>
Class 201	Secale, Triticale, Triticum	SECAL; TRITL; TRITI
Class 202	Megathyrus, Panicum, Setaria, Steinchisma	MEGAT; PANIC; SETAR; STEIN
Class 203*	Agrostis, Dactylis, Festuca, Festulolium, Lolium, Phalaris, Phleum and Poa [<u>Neotyphodium, Epichloe</u>] ^P	AGROS; DCTLS; FESTU; FESTL; LOLIU; PHALR; PHLEU; POAAA [; EPICH ; NEOTY] ^P
Class 204*	Lotus, Medicago, Ornithopus, Onobrychis, Trifolium	LOTUS; MEDIC; ORNTP; ONOBR; TRFOL
Class 205	Cichorium, Lactuca	CICHO; LACTU
[Class 205A] ^q	[Cichorium endivia L., Cichorium intybus L. var. foliosum, Lactuca] ^q	[CICHO_END; CICHO_INT_FOL; LACTU] ^q
[Class 205B] ^q	[Cichorium intybus L. var. sativum] ^q	[CICHO_INT_SAT] ^q
Class 206	Petunia and Calibrachoa	PETUN; CALIB
Class 207	Chrysanthemum and Ajanía	CHRYC; AJANI
Class 208	(Statice) Goniolimon, Limonium, Psylliostachys	GONIO; LIMON; PSYLL
Class 209	(Waxflower) Chamelaucium, Verticordia	CHMLC; VERTI; VECHM
Class 210	Jamesbrittania and Sutera	JAMES; SUTER
Class 211	(Mushrooms) Agaricus Agrocybe Auricularia Dictyophora Flammulina Ganoderma Grifola Heridium Hypsizygus Lentinula Lepista Lyophyllum Meripilus Mycoleptodonoides Naematoloma Panellus Pholiota Pleurotus Polyporus Sparassis Tricholoma	AGARI AGROC AURIC DICTP FLAMM GANOD GRIFO HERIC HYPSE LENTI LEPIS LYOPH MERIP MYCOL NAEMA PANEL PHLIO PLEUR POLYO SPARA MACRO
Class 212	Verbena L. and Glandularia J. F. Gmel.	VERBE; GLAND
Class 213	Eupatorium L.	EUPAT

* Classes 203 and 204 are not solely established on the basis of closely related species.

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	<u>Botanical names</u>	<u>UPOV codes</u>
	Acanthostyles R. M. King & H. Rob. Ageratina Spach Asplundianthus R. M. King & H. Rob. Bartlettina R. M. King & H. Rob. Campuloclinium DC. Chromolaena DC. Conoclinium DC. Cronquistianthus R. M. King & H. Rob. Eutrochium Raf. Fleischmannia Sch. Bip. Praxelis Cass. Viereckia R. M. King & H. Rob.	- AGERT - - - - - - - - EUTRO - - -

[Annex II follows]

ANNEX II

Model Form for Observations on Proposed Variety Denominations Submitted to Another Member of the Union

From:

_____ Your ref.

_____ Our ref.

Observations on a Submitted Variety Denomination

To:

Submitted Variety Denomination: _____

Genus/Species (Botanical name): _____ UPOV Code: _____

Gazette: _____
(number/year)

Applicant: _____

Observations:

If the observations refer to a trademark or another right, name and address of the holder thereof (if possible):

Copies sent to the authorities of the other members of the Union

Date:

Signature: _____

Model Reply to Observations on Proposed Variety Denominations
Submitted to Another Member of the Union

From:

Your ref.

Our ref.

Reply to Observations on a Submitted Variety Denomination

To:

In reply to your objection to the denomination [.....] for the variety of [Botanical name/UPOV code], we wish to inform you that:

1. In our opinion there is sufficient difference between the names and both in writing and pronunciation. Therefore the [authority] sees no reason to reject the denomination.
2. The [authority] accepted this denomination and no objections were received during the prescribed period after publishing.
3. This variety has been registered under this name on
4. First publication as proposed denomination in
5. The applicant has been requested for another denomination.
6. This is the same variety.
7. Application on the variety has been withdrawn/rejected.
8. The applicant has withdrawn the proposed denomination for the variety.
9. Other

Copies sent to the authorities of the other members of the Union

Date: _____

Signature: _____

[Endnotes follow]

ENDNOTES

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- ^a See document UPOV/WG-DEN/4/3 “Report”, paragraph 6.
- ^b See document UPOV/WG-DEN/4/3 “Report”, paragraph 7.
- ^c See document UPOV/WG-DEN/4/3 “Report”, paragraph 8.
- ^d See document [UPOV/WG-DEN/1/6](#) “Report”, paragraph 9.
- ^e See document UPOV/WG-DEN/4/3 “Report”, paragraph 12.
- ^f See document UPOV/WG-DEN/4/3 “Report”, paragraph 13.
- ^g See document [UPOV/WG-DEN/1/6](#) “Report”, paragraph 6.
- ^h Proposal by CPVO in the reply to UPOV Circular E-18/064 of June 13, 2018.
- ⁱ See document [UPOV/WG-DEN/1/6](#) “Report”, paragraph 22.
- ^j See document [UPOV/WG-DEN/1/6](#) “Report”, paragraph 22.
- ^k See document UPOV/WG-DEN/4/3 “Report”, paragraph 22.
- ^l Proposal by CAJ-AG based on an initial proposal by ESA of June 25, 2014 and submitted by ESA in the reply to UPOV Circular E-15/276 of December 3, 2015 (see document CAJ/72/9 “Report”, paragraph 23(d))
- ^m See document UPOV/WG-DEN/4/3 “Report”, paragraphs 23 and 24.
- ⁿ See document UPOV/WG-DEN/4/3 “Report”, paragraphs 23 and 24.
- ^o See document UPOV/WG-DEN/4/3 “Report”, paragraph 25.
- ^p Proposal by New Zealand in the reply to UPOV Circular E-18/064 of June 13, 2018.
- ^q Proposal by France in the reply to UPOV Circular E-18/064 of June 13, 2018.

[End of document]