

Working Group on Variety Denominations

UPOV/WG-DEN/5/3

**Fifth Meeting
Geneva, October 30, 2018****Original:** English
Date: March 21, 2019**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 fifth meeting in Geneva on October 30, 2018, 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 the Annex to this report.

ADOPTION OF THE AGENDA

3. The WG-DEN adopted the draft agenda as reproduced in document UPOV/WG-DEN/5/1.

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

4. The WG-DEN considered documents UPOV/WG-DEN/5/2 and UPOV/EXN/DEN/1 Draft 1 and agreed the following amendments to document UPOV/EXN/DEN/1 Draft 1:

Preamble

5. The WG-DEN agreed to add a new paragraph as follows:

"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 [;]."

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

6. 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]

7. The WG-DEN agreed to amend Section 2.2.2 (b) to read as follows:

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

8. The WG-DEN agreed to amend Section 2.3.1 (c) to read as follows:

“(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;”

Example 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 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.”

9. The WG-DEN agreed to add a new Section 2.3.1 (d) to read as follows:

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

Examples 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.)

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”.

Examples of suitable denominations:

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

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 acceptable.)

10. 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”.

11. The WG-DEN agreed to amend Section 2.3.3 (a) to read as follows:

“(a) For denominations consisting solely of letters, 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) ~~or~~ 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:

Examples of suitable denominations: in the English language, ‘Harry’ and ‘Larry’, ‘Meagan’ and ‘Reagan’, ‘Kinky’ and ‘Binky’, ‘Hagar’ and ‘Magar’, and ‘Manuela’ and ‘Emanuele’ would not cause confusion; However, ‘Bough’ and ‘Bow’ might cause confusion (in phonetic terms);

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;

Examples of unsuitable denominations: ‘Helena’ and ‘Elena’, ‘Jozephine’ and ‘Josefin’, ‘Manuela’ and ‘Mannuelle’, ‘Paqou’, ‘Pacou’ and ‘Pakou’, ‘Philip’ and ‘Filip’, and ‘Poge’ and ‘Poje’, and ‘Zophia’ and ‘Sophia’ could cause confusion phonetically but not visually;

~~(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.”

12. The WG-DEN agreed that the Office of the Union should develop proposals on the basis of the guidance from Brazil on denominations in the form of letters without forming words.

13. After discussion of the draft text for Section 2.3.3 (b) (denomination consisting of a combination of letters and figures), the WG-DEN agreed that a new proposal should be developed that would be applicable to denominations consisting of letters and/or numbers. The WG-DEN agreed that the Office of the Union should develop a general recommendation that 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, with examples of exceptions.

14. With regard to the re-use of denominations in new Section 2.3.3 (d) (currently, Section 2.3.3 (c)), the WG-DEN agreed to retain the original wording in document UPOV/INF/12/5.

15. With regard to the Section 2.3.4 “Identity of the breeder”, the WG-DEN agreed to reformulate and elaborate the following text to clarify that a theme would not be allocated to a breeder *per se* but a theme could become associated with a breeder by custom and practice:

“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. ”

16. In relation to the denomination classes in document UPOV/INF/12/5, the WG-DEN received the following proposals for changes to the denomination classes and agreed to propose to the Administrative and Legal Committee (CAJ) to transmit those proposals to the Technical Committee (TC) for consideration by the TC, and if applicable, by the relevant Technical Working Parties (TWPs):

- (a) Proposal 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).
- (b) Proposal for genus *Epichloe* (formerly *Neotyphodium*) be added to Class 203 (*Agrostis*, *Dactylis*, *Festuca*, *Festulolium*, *Lolium*, *Phalaris*, *Phleum* and *Poa*.)

17. The WG-DEN agreed to request the Office of the Union to redraft Section 2.6 “UPOV denomination similarity search tool” to reflect the comments reported in document UPOV/WG-DEN/5/2.

Paragraph 4 [Prior rights of third persons]

18. 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. [...]~~”.

19. The WG-DEN agreed to amend Section 4 (e) (i) to read as follows:

“(i) [...] 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;”.

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

20. The WG-DEN agreed that the Office of the Union should develop a proposal to provide guidance that, in the case of synonyms, authorities should accept the denomination that was submitted and registered with the first application, unless that denomination was unsuitable in their territory.

21. The WG-DEN agreed to amend Section 5.3 (a) to read as follows:

“(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).” .

22. The WG-DEN agreed to amend Section 5.5 to read as follows:

“5.5 [...] 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. [...]”.

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

23. The WG-DEN agreed to amend Section 6.2 to read as follows:

“6.2 [...] 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.”

24. 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.”

25. The WG-DEN agreed that a new draft of the relevant sections of document UPOV/EXN/DEN should be circulated for comments by correspondence to the WG-DEN early in 2019.

26. The WG-DEN agreed that document UPOV/EXN/DEN/1 Draft 2 should be prepared on the basis of the comments received by correspondence and that document UPOV/EXN/DEN/1 Draft 2 should be presented to the sixth meeting of the WG-DEN and the seventy-sixth session of the CAJ, to be held on October 30, 2019. The comments of the WG-DEN at its sixth meeting would be reported to the CAJ, at its seventy-sixth session.

UPOV DENOMINATION SIMILARITY SEARCH TOOL

27. The WG-DEN considered document UPOV/WG-DEN/2/3.

28. The WG-DEN agreed that the Office of the Union should restart its work to explore possibilities to improve the UPOV Denomination Similarity Search Tool in conjunction with the Community Plant Variety Office of the European Union (CPVO).

EXPANSION OF THE CONTENT OF THE PLUTO DATABASE

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

30. The WG-DEN agreed:

(a) to accept accents and special characters in denominations in the PLUTO database while noting that the denomination search tool on the PLUTO database would only use the character set ASCII representation, as defined in ISO Standard 646;

- (b) to revise the “Program for Improvements to the Plant Variety Database”, Section 3.1.3 in order to change the acceptable character set to ISO/IEC Standard 8859 1: 1998;
- (c) to invite members of the Union to check whether they have relevant variety data that is no longer included in the PLUTO database but was submitted to the PLUTO database previously;
- (d) that the Office of the Union should explore possibilities to introduce a unique identifier for variety records in the PLUTO database in order that new data submissions would add to the existing data rather than replacing it;
- (e) that additional data should not be included in PLUTO but accessible via a search platform for independent databases; and
- (f) that the Office of the Union to issue a circular to invite members of the Union to propose data that they would wish to include in the PLUTO database or make accessible via a search platform for independent databases.

NON-ACCEPTABLE TERMS

31. The WG-DEN considered document UPOV/WG-DEN/1/5.
32. The WG-DEN agreed not to pursue further the matter in relation to this item “Non-acceptable terms”.

DATE, PLACE AND PROGRAM OF THE NEXT MEETING

33. The WG-DEN agreed to hold its sixth meeting in Geneva, in the evening of October 29, 2019.
34. The following program was agreed for the sixth 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. Date, place and program of the next meeting
35. *This report was adopted by correspondence.*

[The Annex follows]

ANNEX

LIST OF PARTICIPANTS

I. MEMBERS

ARGENTINA

Raimundo LAVIGNOLLE (Sr.), Presidente del Directorio, Instituto Nacional de Semillas (INASE), Instituto Nacional de Semillas (INASE), Ministerio de Producción y Trabajo - Secretaría de Agroindustria (e-mail: rlavignolle@inase.gov.ar)

María Laura VILLAMAYOR (Sra.), Abogada, Unidad Presidencia, Instituto Nacional de Semillas (INASE), Ministerio de Producción y Trabajo - Secretaría de Agroindustria (e-mail: mlvillamayor@inase.gov.ar)

AUSTRALIA

Nik HULSE (Mr.), Chief of Plant Breeders' Rights, Plant Breeder's Rights Office, IP Australia, Woden (e-mail: nik.hulse@ipaaustralia.gov.au)

BRAZIL

Ricardo ZANATTA MACHADO (Sr.), Fiscal Federal Agropecuário, Coordenador do SNPC, Serviço Nacional de Proteção de Cultivares (SNPC), Ministério da Agricultura, Pecuária e Abastecimento, Brasília , D.F. (e-mail: ricardo.machado@agricultura.gov.br)

CANADA

Anthony PARKER (Mr.), Commissioner, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), Ottawa (e-mail: anthony.parker@inspection.gc.ca)

Lisa LEDUC (Ms.), Examiner, Plant Breeders' Rights Office, Canadian Food Inspection Agency (CFIA), Ottawa (e-mail: lisa.leduc@inspection.gc.ca)

CHILE

Manuel Antonio TORO UGALDE (Sr.), Jefe Departamento, Registro de Variedades Protegidas, División Semillas, Servicio Agrícola y Ganadero (SAG), Santiago de Chile (e-mail: manuel.toro@sag.gob.cl)

ESTONIA

Laima PUUR (Ms.), Head, Variety Department, Estonian Agricultural Board, Viljandi (e-mail: laima.puur@pma.agri.ee)

UNITED STATES OF AMERICA

Ruihong GUO (Ms.), Deputy Administrator, AMS, Science & Technology Program, United States Department of Agriculture (USDA), Washington D.C. (e-mail: ruihong.guo@ams.usda.gov)

Jeffery HAYNES (Mr.), Acting Commissioner, Plant Variety Protection Office, USDA, AMS, S&T, Washington D.C. (e-mail: Jeffery.Haynes@ams.usda.gov)

FRANCE

Yvane MERESSE (Mme), Responsable INOV, Groupe d'Étude et de Contrôle des Variétés et des Semences (GEVES), Beaucouzé (e-mail: yvane.meresse@geves.fr)

HUNGARY

Tamás HARANGOZÓ (Mr.), Desk Officer, Ministry of Agriculture, Budapest (e-mail: tamas.harangozo@am.gov.hu)

JAPAN

Manabu OSAKI (Mr.), Senior Examiner, Plant Variety Protection Office, Intellectual Property Division, Food Industry Affairs Bureau, Ministry of Agriculture, Forestry and Fisheries (MAFF), Tokyo
(e-mail: manabu_osaki190@maff.go.jp)

NEW ZEALAND

Christopher J. BARNABY (Mr.), Assistant Commissioner / Principal Examiner for Plant Variety Rights, Plant Variety Rights Office, Intellectual Property Office of New Zealand, Ministry of Economic Development, Christchurch
(e-mail: Chris.Barnaby@pvr.govt.nz)

NETHERLANDS

Bert SCHOLTE (Mr.), Head Department Variety Testing, Naktuinbouw NL, Roelofarendsveen
(e-mail: b.scholte@naktuinbouw.nl)

PERU

Cristobal MELGAR (Mr.), Minister Counsellor, Misión Permanente del Perú ante la Oficina de las Naciones Unidas en Ginebra, Ginebra
(e-mail: cmelgar@onuperu.org)

REPUBLIC OF KOREA

Eunsun CHUNG (Ms.), Deputy Director/Examiner, Plant Variety Protection Division, Korea Seed and Variety Service (KSVS), Gyeongsangbuk-do
(e-mail: eschung@korea.kr)

Eun-Jung HEO (Ms.), Agricultural Researcher, Seobu Branch, Korea Seed and Variety Service (KSVS)
(e-mail: heoej@korea.kr)

DOMINICAN REPUBLIC

Ayalivis GARCÍA (Sra.), Consultora OTCA, Oficina de Tratados comerciales agrícolas, Ministerio de Agricultura, Santo Domingo
(e-mail: ayalivisgarcia@gmail.com)

SLOVAKIA

Bronislava BÁTOROVÁ (Ms.), National Coordinator for the Cooperation of the Slovak Republic with UPOV/ Senior Officer, Department of Variety Testing, Central Controlling and Testing Institute in Agriculture (ÚKSÚP), Nitra
(e-mail: bronislava.batorova@uksup.sk)

EUROPEAN UNION

Jean MAISON (Mr.), Deputy Head, Technical Unit, Community Plant Variety Office (CPVO), Angers
(e-mail: maison@cpvo.europa.eu)

II. ORGANIZATIONSINTERNATIONAL COMMUNITY OF BREEDERS OF ASEXUALLY REPRODUCED ORNAMENTAL AND FRUIT PLANTS (CIOPORA)

Hélène JOURDAN (Mme), Secrétaire générale, AOHE, Responsable COV & Marques, Meilland International S.A., Association des Obtenteurs Horticoles Européens (AOHE), Le Luc en Provence
(e-mail: licprot@meilland.com)

Dominique THÉVENON (Mme), Board member, Treasurer - CIOPORA, AIGN®, International Community of Breeders of Asexually Reproduced Ornamental and Fruit Plants (CIOPORA), Hamburg
(e-mail: t.dominique4@orange.fr)

CROPLIFE INTERNATIONAL

Marcel BRUINS (Mr.), Consultant, CropLife International, Brussels
(e-mail: mbruins1964@gmail.com)

INTERNATIONAL SEED FEDERATION (ISF)

Judith DE ROOS - BLOKLAND (Ms.), Legal Advisor, Regulatory and Legal Affairs, Plantum NL, Gouda
(e-mail: j.deroos@plantum.nl)

Astrid M. SCHENKEVELD (Ms.), Specialist, Variety Registration & Protection, Rijk Zwaan Zaadteelt en
Zaadhandel B.V., KX De Lier
(e-mail: a.schenkeveld@rijkszwaan.nl)

III. OFFICER

Peter BUTTON (Mr.), Chair

IV. OFFICE OF UPOV

Peter BUTTON (Mr.), Vice Secretary-General

Yolanda HUERTA (Ms.), Legal Counsel and Director of Training and Assistance

Tomochika MOTOMURA (Mr.), Technical/Regional Officer (Asia)

Ben RIVOIRE (Mr.), Technical/Regional Officer (Africa, Arab countries)

Leontino TAVEIRA (Mr.), Technical/Regional Officer (Latin America, Caribbean countries)

Hend MADHOUR (Ms.), IT Officer

Ruixi HAN (Mr.), Fellow

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