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# INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

Geneva

## CONSULTATIVE COMMITTEE

### Eighty-Sixth Session Geneva, October 23, 2013

MATTERS RAISED BY THE INTERNATIONAL SEED FEDERATION (ISF)

*Document prepared by the Office of the Union*

*Disclaimer: this document does not represent UPOV policies or guidance*

1. The purpose of this document is to assist the Consultative Committee in its consideration of the letter of the International Seed Federation (ISF) of January 21, 2013, on the subject "Application, examination and granting aspects of PBR applications".
2. This document contains a section "Analysis of matters raised by ISF", followed by a section "Possible approach for consideration of ISF recommendations", which suggests how the recommendations might be considered.

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## BACKGROUND

3. At its eighty-fifth session, held in Geneva on March 22, 2013, the Consultative Committee agreed to include an item “Matters raised by the International Seed Federation” in the program for its eighty-sixth session, to be held in Geneva on October 23, 2013, in order to discuss the letter of the International Seed Federation (ISF) of January 21, 2013, on the subject “Application, examination and granting aspects of PBR applications” and to invite ISF to present its views at the relevant part of that item (see document CC/85/10 “Report on the Conclusions”, paragraph 58). A copy of the ISF letter of January 21, 2013, is provided in Annex I to this document.

## ANALYSIS OF MATTERS FOR CONSIDERATION

4. In relation to the matters raised, the recommendations by ISF can be grouped into matters where information material might be developed for members of the Union and matters where other types of initiatives would be required.

5. With regard to information material, it is recalled that the Administrative and Legal Committee (CAJ), at its fifty-second session, held in Geneva on October 24, 2005, agreed an approach for the preparation of information materials concerning the UPOV Convention, which stated as follows:

“8. The term ‘information materials’ should be understood to cover different forms of information, such as those used in relation to frequently asked questions, model forms, explanatory notes, distance learning materials, guidance documents or position papers.”

6. In order to assist the Consultative Committee in its consideration, this section suggests matters that might be considered in relation to information material, including information on existing UPOV information material, and those that would entail other types of initiatives. The suggestions are indicated in the following table, with an indication of the UPOV body that might be most appropriate, in the first instance, to consider the recommendations.

<u>ISF Header/sub-header</u>	<u>Approach</u>	<u>UPOV body</u>
APPLICATION PROCESS		
Application slot	Information material for members of the Union (No existing information material)	CAJ
Photographs	Information material for members of the Union (Existing information material: <ul style="list-style-type: none"> <li>• TGP/9 “Examining Distinctness”, Section 2.5 “Photographs”</li> <li>• TGP/7 “Development of Test Guidelines” The TC has agreed to the new Additional Standard Wording (ASW) and Guidance Note (GN) for “providing photographs with the Technical Questionnaire”, on the basis of the Annex to document TC/49/20, for inclusion in a future revision of document TGP/7. The TC has also agreed that the “Guidance for Providing Photographs with the Technical Questionnaire” should be provided to members of the Union by means of a link to the relevant part of the UPOV website. (see document TC/49/41 “Report on the Conclusions”, paragraphs 45 to 47))</li> </ul>	Technical Committee (TC)
Pedigree information	Information material for members of the Union (Existing information material: <ul style="list-style-type: none"> <li>• TGP/7 “Development of Test Guidelines”, Annex 1: TG Template, Section 4 “Information on the breeding scheme and propagation of the variety” (footnote))</li> </ul>	CAJ

ISF Header/sub-header	Approach	UPOV body
Electronic application	Information material for members of the Union (No existing information material) (see also document CAJ/68/8 “Electronic application systems”)	CAJ
Correspondence	Information material for members of the Union (No existing information material)	CAJ
<b>MATERIAL REQUIREMENTS</b>		
Confidentiality of the material	Information material for members of the Union (Existing information material: <ul style="list-style-type: none"> <li>• TGP/4 “Constitution and Maintenance of Variety Collections”, Section 3.1.2 “Living plant material”</li> <li>• TGP/5 “Experience and Cooperation in DUS Testing”, Section 1 “Model Administrative Agreement for International Cooperation in the Testing of Varieties”, Article 4</li> <li>• TGP/5 “Experience and Cooperation in DUS Testing”, Section 11 “Examples of Policies and Contracts for Material Submitted by the Breeder”</li> <li>• Discussions in the CAJ (2002 to 2005) – <ul style="list-style-type: none"> <li>○ document CAJ/51/6 “Report”, paragraphs 67 to 86 concerning “Guidance concerning information, documents or material furnished by the breeder for examination purposes and for verifying the maintenance of varieties”</li> <li>○ document CAJ/49/5 “Report”, paragraph 69, concerning “Recommendations to Ensure the Independence of those DUS Examination Centers Which Have, or Have Links to, Breeding Activities”)</li> </ul> </li> </ul>	CAJ
Minimum sample size	Information material for members of the Union (Existing information material: <ul style="list-style-type: none"> <li>• TGP/7, Section 4 “Development of Individual Authorities’ Test Guidelines”)</li> </ul>	TC
Rules for exchange of material	Information material for members of the Union (Existing information material: <ul style="list-style-type: none"> <li>• TGP/4 “Constitution and Maintenance of Variety Collections”, Section 3.2 “Cooperation in the maintenance of variety collections”</li> <li>• TGP/5 “Experience and Cooperation in DUS Testing”, Section 1 “Model Administrative Agreement for International Cooperation in the Testing of Varieties”, Article 4</li> <li>• TGP/5 “Experience and Cooperation in DUS Testing”, Section 11 “Examples of Policies and Contracts for Material Submitted by the Breeder”)</li> </ul>	CAJ
Availability of the material	Discussions in the CAJ (2002 to 2005) – see document CAJ/51/6 “Report”, paragraphs 67 to 86)	CAJ

ISF Header/sub-header	Approach	UPOV body
EXAMINATION PROCESS		
Reference collections	<p>(a) Information material for members of the Union (Existing information material:</p> <ul style="list-style-type: none"> <li>• TG/1/3 “General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants” and TGP documents</li> <li>• Future information material: Distance Learning Course DL305)</li> </ul> <p>and/or</p>	TC
	(b) New initiative for audited quality assurance program	Consultative Committee
Length of examination	<p>(a) Information material for members of the Union (Existing information material:</p> <ul style="list-style-type: none"> <li>• TGP/5 “Experience and Cooperation in DUS Testing”, Introduction</li> <li>• TGP/7 “Development of Test Guidelines”, Annex 1: TG Template, Chapter 3.1 “Number of Growing Cycles”</li> <li>• TGP/8 “Trial Design and Techniques Used in the Examination of Distinctness, Uniformity and Stability”, Part I: 1. DUS Trial Design, Section 1.3.1.1 (a) “Minimizing the overall testing period”)</li> </ul> <p>and/or</p>	TC
	(b) New initiative for an international filing system, similar to the World Intellectual Property Organization (WIPO) Patent Cooperation Treaty (PCT) system (see Annex II to this document)	Consultative Committee
Updating frequency, Scope of the database	<p>(a) Information material for members of the Union (No existing information material)</p> <p>and/or</p>	CAJ
	(b) Program for Improvements to the Plant Variety Database (see document CAJ/68/6 “UPOV information databases”)	
VARIETY DESCRIPTIONS		
Variety description of most similar variety	<p>Information material for members of the Union (Existing information material:</p> <ul style="list-style-type: none"> <li>• TGP/7, Section 4 “Development of Individual Authorities’ Test Guidelines”</li> <li>• TGP/7 “Development of Test Guidelines”, Section 2 “Procedure for the Introduction and Revision of UPOV Test Guidelines”)</li> </ul>	TC
Variety description by applicant	<p>Information material for members of the Union (Existing information material:</p> <ul style="list-style-type: none"> <li>• TGP/6 “Arrangements for DUS Testing”, Section 3 “Declaration on the Conditions for the Examination of a Variety Based Upon Trials Carried out by or on Behalf of the Breeder”)</li> </ul>	TC

<u>ISF Header/sub-header</u>	<u>Approach</u>	<u>UPOV body</u>
Variety description database	See previous initiative on publication of variety descriptions, as summarized in Annex III to this document.	Consultative Committee
DENOMINATION		
Differences in denomination rules	(a) Information material for members of the Union (UPOV/INF/12/4 “Explanatory notes on variety denominations under the UPOV Convention”)  and/or	CAJ
	(b) New initiative for a central approval system for variety denominations	Consultative Committee
LEGISLATION	The advice of the UPOV Council on the conformity of laws (Article 34(3) of the 1991 Act) is not applicable for laws of members of the Union.  Article 30(2) of the 1991 Act (see also Article 30(3) of the 1978 Act) provides:  “(2) [Conformity of laws] It shall be understood that, on depositing its instrument of ratification, acceptance, approval or accession, as the case may be, each State or intergovernmental organization must be in a position, under its laws, to give effect to the provisions of this Convention.”	Not applicable

#### POSSIBLE APPROACH FOR CONSIDERATION OF ISF RECOMMENDATIONS

7. Without prejudice to the acceptability or otherwise of the ISF recommendations, this section sets out a possible approach to consider the recommendations on the basis of information material and other types of initiatives, as proposed in the previous section.

8. As indicated in the table in paragraph 6 (above), it is not proposed to consider further the ISF recommendation with regard to the analysis of conformity of the plant breeders’ rights laws of members of the Union.

#### Information material

9. It is apparent from the table in paragraph 6 (above), that UPOV has already developed information material that is relevant for certain of the ISF recommendations and which could be reviewed in relation to the ISF recommendations. A proposal for reviewing individual information materials in relation to the ISF recommendations is set out later in this section. However, the ISF recommendations may also indicate that it could be helpful to develop an “umbrella” document that would identify key elements for the operation of a plant variety protection system and which would provide links to detailed information material, as appropriate. In a broad sense, such an approach would be similar to the role of document TG/1/3 “General Introduction to the Examination of Distinctness, Uniformity and Stability and the Development of Harmonized Descriptions of New Varieties of Plants” (General Introduction) in relation to the TGP documents.

#### *Umbrella document*

10. Document UPOV/INF/15 “Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation” could provide a starting point for such an umbrella document. An umbrella document would need to provide an overview of administrative, legal and technical aspects. In that regard, the General Introduction and associated TGP documents already provides a coherent component with regard to the DUS examination, or technical aspects. Therefore, the majority of new elements would relate to administrative and legal aspects.

11. The Consultative Committee may wish to invite the CAJ to consider the further development of document UPOV/INF/15 into an umbrella document that would identify key issues for the operation of a plant variety protection system and which would provide links to detailed information materials.

*Individual information materials*

12. In parallel with the development of document UPOV/INF/15 into an umbrella document, the Consultative Committee may wish to invite the CAJ and TC to consider the ISF recommendations in relation to existing and possible future information materials, as indicated in the table in paragraph 6 of this document.

Other initiatives

13. The ISF letter contains recommendations in relation to the following matters that would require new or modified initiatives by UPOV:

- I. Updating frequency, scope of the database: regular provision of information to PLUTO Plant Variety Database;
- II. Variety description database: variety description database including Technical Questionnaire (TQ) information;
- III. Length of examination: development of an international filing system, similar to the WIPO PCT system;
- IV. Reference collections: UPOV to develop quality assurance program; and
- V. Differences in denomination rules: central approval system for variety denominations.

14. The Consultative Committee may wish to consider the following possible approaches with regard to the ISF recommendations.

*I. Regular provision of information to PLUTO Plant Variety Database*

15. The Program for Improvements to the PLUTO Plant Variety Database (see document CAJ/68/6 "UPOV information databases", Annex I) states as follows:

*"2. Provision of assistance to contributors*

"2.1 The Office will continue to contact all members of the Union and contributors to the Plant Variety Database that do not provide data for the Plant Variety Database, do not provide data on a regular basis, or do not provide data with UPOV codes. In each case, they will be invited to explain the type of assistance that would enable them to provide regular and complete data for the Plant Variety Database.

"2.2 In response to the needs identified by members of the Union and contributors to the Plant Variety Database in 2.1, the designated World Intellectual Property Organization (WIPO) staff, in conjunction with the Office, will seek to develop solutions for each of the Plant Variety Database contributors.

"2.3 An annual report on the situation will be made to the Administrative and Legal Committee (CAJ) and Technical Committee (TC)."

16. In a further measure to encourage members of the Union to contribute data to the PLUTO database, the following section has been included in document UPOV/INF/15 "Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation", which was adopted by the Council at its thirtieth extraordinary session, held in Geneva on March 22, 2013.

"Variety Denominations (PLUTO database)

"21. The contribution of data by members of the Union to the PLUTO Plant Variety Database provides support in particular for the examination of variety denominations.

"22. Members of the Union are invited to contribute data for each new update of the PLUTO Plant Variety Database [currently 6 updates per annum]."

17. The CAJ, at its sixty-eighth session, to be held in Geneva on October 21, 2013, will consider document CAJ/68/6 "UPOV Information Databases", which contains a proposal to increase the frequency of updating of the PLUTO database.

*II. Variety description database including Technical Questionnaire (TQ) information*

18. At its thirty-eighth session, held in Geneva from April 15 to 17, 2002, the TC considered a project to consider the publication of variety descriptions, the aim of which was (see document TC/38/10, Annex):

(a) to increase the availability of variety description information to interested parties (i.e. DUS examiners, breeders and maintainers of varieties of common knowledge) and thereby to maximize the effectiveness of the examination of distinctness; and

(b) to use appropriate elements of the variety description, in the process of examining distinctness, to eliminate varieties which do not require further comparison and to identify those varieties against which a further comparison is required.

19. In its consideration of the project to consider the publication of variety descriptions, the TC expressed particular concern with regard to lack of harmonization of variety descriptions and, on that basis, included the following criteria for the use of descriptions obtained from different locations and sources (see document TC/45/9):

"[...]"

"(d) to specify for each characteristic the degree of harmonization already achieved or aimed at (in the latter case, to specify if actions should be planned in order to improve the level of harmonization: ring tests, revision of the description of the way of observation in the guideline, ...);

"(e) to study the pertinence of a "regional approach", rather than an "international approach" (to consider groups of countries and to compare descriptions within those groups only);

"(f) to propose minimum distances when making comparisons of data, for the relevant characteristics;

"(g) to list the countries which would contribute to the publication;

"(h) to consider the type of access (free or restricted to the contributors); [...]"

20. The Consultative Committee may wish to invite ISF to express its views with regard to criteria identified by the TC for the publication of variety descriptions.

*III. Development of an international filing system*

*IV. UPOV quality assurance program*

*V. Central approval system for variety denominations*

21. On the basis that the ISF recommendations concerning an international filing system, a UPOV quality assurance program and a central approval system for variety denominations would all imply a new role for UPOV, those matters are not considered in detail in this document. It is also recognized that there would be some commonality between these recommendations on the basis that some form of quality assurance would be required in relation to examination for an international filing system and that it would be logical to include the examination of variety denominations as a part of the consideration of an international filing system.

22. In order to consider the recommendations further, the Consultative Committee may wish to invite ISF to elaborate on these recommendations in particular, at the eighty-sixth session of the Consultative Committee (see paragraph 3, above).

23. *The Consultative Committee is invited to:*

(a) *invite the CAJ to consider the development of document UPOV/INF/15 into an umbrella document that would identify key issues for the operation of a plant variety protection system and which would provide links to detailed information materials;*

(b) *invite the CAJ and TC to consider the ISF recommendations in relation to existing and possible future information materials, as indicated in the table in paragraph 6, in parallel with the development of document UPOV/INF/15 into an umbrella document;*

(c) *note with regard to the ISF recommendation for regular provision of information to PLUTO Plant Variety Database:*

(i) *the Program for Improvements to the PLUTO Plant Variety Database (see document CAJ/68/6 “UPOV information databases”);*

(ii) *the report on data contributed to the plant variety database by members of the Union and other contributors and assistance that has been provided for data contribution;*

(iii) *that the CAJ, at its sixty-eighth session, to be held in Geneva on October 21, 2013, will consider document CAJ/68/6 “UPOV Information Databases”, which contains a proposal to increase the frequency of updating of the PLUTO database; and*

(iv) *the inclusion of the section “Variety Denominations (PLUTO database)” in document UPOV/INF/15;*

(d) *invite ISF to express its views with regard to criteria identified by the TC for the publication of variety descriptions, as set out in document TC/45/9 “Publication of Variety Descriptions” (as reproduced in Annex III to this document) at the eighty-sixth session of the Consultative Committee; and*

(e) *invite ISF to elaborate its ideas concerning an international filing system, a UPOV quality assurance program and a central approval system for variety denominations at the eighty-sixth session of the Consultative Committee.*

[Annexes follow]



LETTER OF THE INTERNATIONAL SEED FEDERATION (ISF) OF JANUARY 21, 2013



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## **International Seed Federation**

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CH-1211 Genève 20  
Switzerland

Nyon, 21 January 2013

### **Subject: Application, examination and granting aspects of PBR applications**

Dear Mr. Button,

ISF recently sent a questionnaire to its members asking them about problems they have encountered with the application, examination and granting aspects of their applications for plant breeder's rights (PBR). After thorough discussion of the replies by the ISF Intellectual Property Committee and the ISF Breeders Committee, we wish to share the results with UPOV. Several of the ISF concerns and recommendations have already been captured in the recently adopted ISF View on IP, which is publicly available on our website: [www.worldseed.org](http://www.worldseed.org). Other points can be found in the paragraphs below. We consider that it would be advantageous to UPOV and its members if these concerns and recommendations are shared broadly with UPOV members.

ISF members are clearly of the opinion that all countries should adopt UPOV 1991 as soon as possible. Furthermore, ISF members strongly feel that PBR regulations need to be harmonized across the globe as much as possible.

In the paragraphs below you will find our recommendations on several additional specific items.

#### **APPLICATION PROCESS**

Application slot: In certain countries the period during which an application can be filed is limited. E.g. an application for a certain crop can only be filed during a specific period of 1 or 2 months per year. ISF members feel that such specificity and limited duration of a time slot is problematic, especially when the time slot for variety registration differs from the time slot for PBR applications. When requesting priority for the application, a good timing is essential, and a time slot can hamper such possibilities. It should be possible to file applications all year round, however, in the case that a time slot is set; it should be sensible, and realistic.

Photograph: In certain countries examination office require a detailed photograph, in some other countries the comparison varieties need to be in the picture as well, and in yet other countries photographs are required and made in the country itself. This is a problem when the time of the PBR application is not during the growing season of the variety, thereby precluding obtaining the photograph. Therefore, having to provide pictures can delay the application. Also it should be

stated that different environments can lead to different morphologies and so the resultant photographs can be misleading. In general photographs should not be necessary for agricultural, forage or cross-pollinating species. In other crops photographs should only be necessary where it is considered relevant, in other words: where they add something useful to information that is already provided in the Technical Questionnaire (TQ). In addition, it should not be necessary to provide a photograph of the comparative variety.

Pedigree information: ISF members feel that pedigree information should not be requested, and if countries did decide to request such information then such pedigree information should not become public. In addition a breeder should be able to indicate whether certain information provided in the application should be considered confidential.

Electronic application: In certain countries or regions the application can be sent electronically, e.g. by e-mail whereas in other countries an application can only be made as a paper hard copy. ISF members indicate their preference for the possibility of filing an application by email or otherwise electronically and that such a system should be enabled in all UPOV member countries.

Correspondence: In certain countries the PBR office will only send correspondence to the local agent, and not to the applicant, who can be in another country. This can cause unwanted and risky delays when a response is needed by the applicant before a certain deadline. ISF members feel that such correspondence should be sent to the address as indicated by the applicant, and preferably by email. In addition, it is often difficult to find a local agent who is knowledgeable of local PBR laws. In any event, both the local agent as well as the applicant should be informed. In countries where English is not the national language, then the ability to correspond in English should be available.

#### **MATERIAL REQUIREMENTS**

Confidentiality of the material: In certain countries when filing a PBR application for a hybrid, the authorities require the applicant to provide seeds (or where applicable vegetatively propagated material) of the parent lines as well, although often the material is not used for the examination of the variety. ISF members are emphatic that there should be no obligation whatsoever to provide parental lines for hybrid applications.

In certain countries confidentiality of the information or the seed that is provided is not guaranteed by PBR authorities. Under such circumstances there is a heightened risk that parent lines could become publicly available. A request to provide seeds of parent lines is a major reason why seed companies may choose not to file an application in those countries.

According to TGP/4/1, PBR authorities shall take all necessary steps to safeguard the rights of the applicant. According to ISF, this responsibility includes handling the material with utmost confidentiality and use of a material transfer agreement between the PBR office and the applicant which should then guarantee confidential treatment of such material. Once confidentiality is guaranteed, then the requested seed sample size should still be reasonable. In countries where the requested seed sample size is too high, then this again becomes a reason for seed companies to consider not filing an application.

In those cases where organizations which are in charge of the PBR examination process, are also themselves breeding varieties of the same species as those of other applicants, then clear and strict measures should be implemented to secure confidentiality of the applicant's material.

Minimum sample size: In most countries there is a minimum seed sample size or number of plants required. However, in some countries the requested sample sizes can be exceptionally high. It is

especially the case for parent-lines where high requirements can be problematic. Seed quantities should be reasonable, and optimally as low as possible. PBR authorities are encouraged to only request what seed that is actually needed and those amounts should be harmonized worldwide. In general it is better to request seeds by the criterion of number rather than by weight.

Rules for exchange of material: In many countries there are no formal rules or guidelines for the exchange of plant or seed material between examination offices. ISF members consider that good traceability is very important. Often breeders are not aware of what happens to their material after the application is complete. As a minimum the breeder should be notified and ideally required to grant authorization before material of his variety is sent to other authorities. These rules of exchange are especially crucial for parental lines. Clear and harmonized rules linked to a prior agreement would be helpful in maintaining integrity and security of plant or seed materials. Having no formal rules for the exchange of material undermines for some companies their desire to file for PBR in that country.

Availability of the material: Certain countries require the applicant to make material of the protected variety publicly available. This may pose a problem in the case of parent lines, where a competitor could request material from the protected parent line. According to the survey seed companies are very reluctant or would not honor a request to provide their parent line material to others. Material should not become publicly available without the breeders consent. Nowhere in the UPOV convention is it stated that protected material has to be made publicly available. For some companies this requirement is a reason not to file for PBR in that country.

The material which is publicly available has to be restricted to the material which is made commercially available.

## **EXAMINATION PROCESS**

Reference collections: In certain countries it is known that the examining office is not using the proper comparison varieties, and this is often due to an incomplete reference collection.

ISF members feel that an insufficient reference collection weakens protection as varieties which are too similar receive protection. The reference collection needs to be as complete as possible.

Another problem is that in several countries the applicant has to provide seeds of the most similar comparison varieties even if these are of a competitor variety.

Luckily the above problems are recognized by PBR offices in several countries and they are working with the seed industry to overcome these problems.

As a general point ISF would like the quality of examinations to be brought to a higher level, and in this respect would like to propose UPOV to consider a quality assurance program for PBR offices with an audit system, similar to those performed by the ISTA. ISF would be happy to further discuss the possible benefits of this proposal. Alternatively, UPOV could consider providing guidelines to PBR examination offices on best practices for conducting their examinations. The UPOV Distance Learning Course on DUS testing and calibration books are already excellent examples of good progress in this area. The seed industry has a keen interest in having good quality variety descriptions and consequently, a high quality PBR certificate.

Length of examination: Differences in efficiency between examination offices are large. Whereas in one country a PBR grant is provided in two growing seasons, in another country the granting process can easily take four years, and there are extreme examples of countries where examination took 10 to 12 years. ISF would like to submit that, as enforcement of pending applications is more difficult and sometimes only possible after granting, the examination process for regular applications should be as fast as possible and harmonized; a maximum period of two years should be prescribed. In some countries the examination process is completed in one year, with two cycles per year, which is very efficient.

In the case of difficult to score characteristics, (e.g. disease or insect resistance) multilateral cooperative agreements could be considered where certain countries carry out tests for other countries.

Also, take-over of the DUS reports from another country should be stimulated as much as possible, but only if examinations are based on quality and a system of quality assurance is in place.

In cases where DUS examination has been paid for national listing, there should be no further examination costs for a PBR application of the same variety.

It would be beneficial to establish a PCT-like system for PBR. Having a uniform application form is already a good first step in this direction, but more changes are necessary for the beneficial effects of such improvements to reach all stakeholders. ISF would be happy to discuss with UPOV how such a system could be achieved and the steps that would need to be taken to achieve a PCT-like system.

Updating frequency: In certain countries the national website with PBR related information is updated infrequently, sometimes only every 2 years or less. ISF members believe it should be mandatory that each PBR office maintain a continuously updated website. In a similar manner the UPOV office should receive updates on a regular basis and regularly revise their informational databases (at least every 2 months). It would be highly beneficial if PBR offices, in addition to their national language, also placed PBR related information in English on their websites.

Scope of database: In certain countries the national websites only list the granted PBR's and ignore those that are pending. ISF members feel that it would be useful to also place information on pending applications on the official websites. Such notification would provide for a more complete and adequate level of information allowing companies to check their own and competitors pending PBR applications. Such information is helpful for follow-up in the application process and facilitates respecting IP rights.

## **VARIETY DESCRIPTION**

Variety description of most similar variety: In some countries the applicant is requested to provide the full variety description of the most similar variety(ies), whereas in the spirit of UPOV only the differences between the candidate variety and the most similar variety need to be provided. ISF members in general feel that providing a full description of the candidate and the comparison varieties is overly burdensome for the applicant. It is time consuming and causes delays in the application process. In most cases a special observational trial has to be set up to make such variety descriptions. In case of a priority claim this can be a big disadvantage for the applicant. Providing a full variety description of the most similar varieties is an even larger problem if these are competitor varieties.

The applicant should only be requested to provide the differences between the candidate and the most similar varieties. In other words only the TQ as set up by UPOV should have to be filled out.

Breeding techniques change fast and so do varieties. New characteristics are being added to the current list all the time. So there is a need for timely introduction of new characteristics into TQ's and variety descriptions, to ensure enough distinguishing power between varieties.

Variety description by applicant: In certain countries varieties are described entirely by the applicant. This means that the same variety as a result of different influential factors (sowing period, growth environment and applicant-examiner) may be described entirely differently. In those cases where the applicant makes the variety description there need to be more harmonized rules and supervision by the PBR authorities. Proper calibration according to UPOV standards is a way to overcome the problems. As a general rule it can be stated that having a central testing office

allows for a better and more complete reference collection and provides for a better examination of the candidate varieties.

Creating a variety description including statistical data is a heavy burden on the applicant which is a reason for seed companies not to apply for PBR in that country. Example: the same corn varieties have been described in so many different ways that a number of characteristics can no longer be used to distinguish the varieties.

Variety description database: A variety description database including the TQ information should be available to all interested parties. This would improve the management of reference collections and would allow for a better basis of selection of the comparison varieties.

## DENOMINATION

Differences in denomination rules: Name-giving rules differ within and between different countries. It is a known fact that name conflicts arise frequently due to the fact that several countries have inconsistent internal naming rules. For example a name which is accepted in a country or region XYZ for national listing, can at a later date be refused for national or region-wide PBR. At the minimum there should be consistency in the naming rules for national listing and for PBR in the same country.

In general it is felt that more harmonization is needed, in other words, naming rules should be standardized across the globe, and where possible there should be a central approval system.

Where global rules are not possible, e.g. because of different fonts, then regional regulations might be considered.

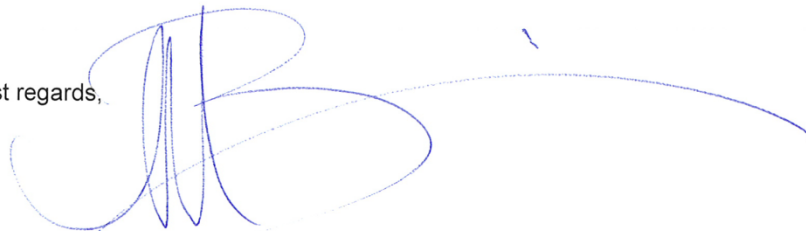
## LEGISLATION

Currently ISF members are experiencing diverging national implementations of the UPOV Convention in different UPOV member states. Examples are the variations of wording of the articles on EDV or on propagation material.

Unfortunately there is no system in place to check compliance with UPOV when revision of a national PBR law of a UPOV member state is being approved nationally. Therefore ISF would propose consideration of a mechanism whereby national PBR laws would be reviewed by the UPOV office every x years to make sure these are still in compliance with the UPOV Convention. Alternatively, it might be necessary for countries to have their PBR law revisions analyzed by the UPOV office. In case the PBR laws deviate too far from the UPOV Convention, measures to remedy this should be available.

Please do not hesitate to contact ISF if you have any questions. We would be happy to provide you with more information if needed.

With the highest regards,



Dr. ir. Marcel B. M. Bruins  
Secretary-General of the International Seed Federation

## PATENT COOPERATION TREATY (PCT)

A copy of the Patent Cooperation Treaty (PCT) is available at:  
[http://www.wipo.int/treaties/en/text.jsp?file\\_id=288637](http://www.wipo.int/treaties/en/text.jsp?file_id=288637).

The following summary of the PCT has been provided by WIPO at:  
[http://www.wipo.int/treaties/en/registration/pct/summary\\_pct.html](http://www.wipo.int/treaties/en/registration/pct/summary_pct.html)

## SUMMARY OF THE PATENT COOPERATION TREATY (PCT) (1970)

The [Patent Cooperation Treaty](#) makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an "international" patent application. Such an application may be filed by anyone who is a national or resident of a PCT contracting State. It may generally be filed with the national patent office of the contracting State of which the applicant is a national or resident or, at the applicant's option, with the International Bureau of WIPO in Geneva.

If the applicant is a national or resident of a contracting State which is party to the European Patent Convention, the Harare Protocol on Patents and Industrial Designs (Harare Protocol), the Bangui Agreement, or the Eurasian Patent Convention, the international application may also be filed with the European Patent Office (EPO), the African Regional Industrial Property Organization (ARIPO), The African Intellectual Property Organization (OAPI) or the Eurasian Patent Office (EAPO), respectively.

The Treaty regulates in detail the formal requirements with which any international application must comply.

The filing of a PCT application automatically has the effect of the designation of all PCT contracting States. The effect of the international application in each designated State is the same as if a national patent application had been filed with the national patent office of that State.

The international application is subjected to what is called an "international search." That search is carried out by one of the major patent offices<sup>1</sup> and results in an "international search report," that is, a listing of the citations of published documents that might affect the patentability of the invention claimed in the international application. In addition, a preliminary and non-binding, written opinion on whether the invention appears to meet the patentability criteria in light of the search report results is also issued.

The international search report and the written opinion are communicated to the applicant who, after evaluating their content, may decide to withdraw his application, in particular where the content of the report and opinion suggest that the granting of patents is unlikely, or he may decide to amend the claims in the application.

If the international application is not withdrawn, it is, together with the international search report, published by the International Bureau. The written opinion is not published at this time.

If the applicant decides to continue with the international application with a view to obtaining national (or regional) patents, he can, in relation to most contracting States, wait until the end of the thirtieth month from the priority date to commence the national procedure before each designated Office by furnishing a translation (where necessary) of the application into the official language of that Office, paying to it the necessary fees and acquiring the services of local patent agents.

If the applicant wishes to make amendments to the application, for example, in order to overcome documents identified in the search report and conclusions made in the written opinion, and to have the potential patentability of the "as-amended" application reviewed, the optional international preliminary examination may be used. The result of the preliminary examination is an international preliminary report on patentability (IPRP Chapter II) which is prepared by one of the major patent offices<sup>2</sup> and which contains, once again, a preliminary and non-binding opinion on the patentability of the claimed invention. It provides the applicant with an even stronger basis on which to evaluate his chances of obtaining patents, and, if the report is favorable, a stronger basis on which to continue with his application before the national and regional patent Offices.

<sup>1</sup> The Patent Offices of Australia, Austria, Canada, China, Finland, Japan, the Republic of Korea, the Russian Federation, Spain, Sweden, the United States of America, and the European Patent Office act as International Searching Authorities under the PCT (situation on November 1, 2005).

<sup>2</sup> The Patent Offices of Australia, Austria, Canada, China, Finland, Japan, the Republic of Korea, the Russian Federation, Sweden, the United States of America, and the European Patent Office act as International Preliminary Examining Authorities under the PCT (situation on November 1, 2005).

The procedure under the PCT has great advantages for the applicant, the patent offices and the general public:

- (i) applicants have up to 18 months more than if they had not used the PCT to reflect on the desirability of seeking protection in foreign countries, to appoint local patent agents in each foreign country, to prepare the necessary translations and to pay the national fees;
- (ii) applicants can rest assured that, if their international application is in the form prescribed by the PCT, it cannot be rejected on formal grounds by any PCT contracting State patent Office during the national phase of the processing of the application;
- (iii) on the basis of the international search report and the written opinion, applicants can evaluate with reasonable probability the chances of their invention being patented;
- (iv) applicants have the possibility during the optional international preliminary examination to amend the international application and thus put it in order before processing by the various patent Offices;
- (v) the search and examination work of patent Offices can be considerably reduced or eliminated thanks to the international search report, the written opinion and, where applicable, the international preliminary report on patentability which are communicated to the national and regional Offices together with the international application;
- (vi) since each international application is published together with an international search report, third parties are in a better position to formulate a well-founded opinion about the potential patentability of the claimed invention; and
- (vii) for applicants, international publication puts the world on notice of their applications, which can be an effective means of advertising and looking for potential licensees.

Ultimately, the PCT:

- brings the world within reach;
- postpones the major costs associated with international patent protection;
- provides a strong basis for patenting decisions; and
- is used by the world's major corporations, research institutions and universities when they seek international patent protection.

The PCT created a Union, which has an Assembly. Every State party to the PCT is a member of the Assembly.

The Assembly of the PCT Union has established a special measure to the benefit of (1) natural persons who are nationals of and reside in States whose per capita national income is below US\$ 3,000, and (2) applicants, whether a natural person or not, who are nationals of and reside in States which are classed as least developed countries by the United Nations. That benefit consists of a reduction of 75 percent of certain fees under the Treaty.

Details concerning the PCT can be obtained by consulting the [PCT website](#) as well as the [PCT Applicant's Guide](#), published by WIPO in English and French (there are also Chinese, German and Japanese editions, which are not published by WIPO) and the [PCT Newsletter](#), published by WIPO in English.

The PCT was concluded in 1970, amended in 1979 and modified in 1984 and in 2001.

It is open to States party to the [Paris Convention for the Protection of Industrial Property \(1883\)](#). Instruments of ratification or accession must be deposited with the Director General of WIPO.

[Annex III follows]

EXTRACT FROM DOCUMENT TC/45/9 "PUBLICATION OF VARIETY DESCRIPTIONS"

"1. It is recalled that the aim of the project to consider the publication of variety descriptions (see document TC/38/10, Annex) was:

(a) to increase the availability of variety description information to interested parties (i.e. DUS examiners, breeders and maintainers of varieties of common knowledge) and thereby to maximize the effectiveness of the examination of distinctness; and

(b) to use appropriate elements of the variety description, in the process of examining distinctness, to eliminate varieties which do not require further comparison and to identify those varieties against which a further comparison is required,

"2. At its meeting in Geneva, on March 31, 2004, the *Ad hoc* Working Group on the Publication of Variety Descriptions (WG-PVD) clarified that, with respect to the UPOV Plant Variety Database, the intention was not to develop an "on-line" DUS examination.

"3. At its forty-third session, held in Geneva, from March 26 to 28, 2007, the Technical Committee (TC) agreed the list of criteria for consideration by the Technical Working Parties (TWPs) for the use of descriptions obtained from different locations and sources as follows:

- (a) to consider the species for which they see a real interest in creating an international database with variety descriptions;
- (b) to specify the aim and benefits expected;
- (c) to select the characteristics for which descriptions should be published;
- (d) to specify for each characteristic the degree of harmonization already achieved or aimed at (in the latter case, to specify if actions should be planned in order to improve the level of harmonization: ring tests, revision of the description of the way of observation in the guideline, ...);
- (e) to study the pertinence of a "regional approach", rather than an "international approach" (to consider groups of countries and to compare descriptions within those groups only);
- (f) to propose minimum distances when making comparisons of data, for the relevant characteristics;
- (g) to list the countries which would contribute to the publication;
- (h) to consider the type of access (free or restricted to the contributors); and
- (i) to consider the cost of any project.

"4. The TC agreed that no further meeting of the WG-PVD should be arranged unless or until specific proposals were developed for the consideration of the WG-PVD by the TC or by a TWP.

[...]"

[End of Annex III and of document]