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**INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS**

Geneva

**CONSULTATIVE COMMITTEE****Eighty-Eighth Session  
Geneva, October 15, 2014**

## INTERNATIONAL FILING SYSTEM, QUALITY ASSURANCE AND VARIETY DENOMINATION SEARCH

*Document prepared by the Office of the Union**Disclaimer: this document does not represent UPOV policies or guidance*

1. This document presents an explanation by the International Seed Federation (ISF), the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Plants (CIOPORA) and CropLife International of the problems faced with the current situation and possible solutions offered by an international filing system, a UPOV quality assurance program and a central examination system for variety denominations. It also provides information on relevant international systems of the World Intellectual Property Organization (WIPO).

## BACKGROUND

2. The Consultative Committee, at its eighty-seventh session, held in Geneva on April 11, 2014, considered document CC/87/5 "Matters raised by the International Seed Federation (ISF)" (see document CC/87/10 "Report on the Conclusions", paragraphs 30 to 32).

3. The Consultative Committee agreed to invite ISF, CIOPORA and CropLife International to elaborate the problems faced with the current situation and possible solutions offered by an international filing system, a UPOV quality assurance program and a central examination system for variety denominations, for consideration by the Consultative Committee at its eighty-eighth session in October 2014. It further agreed to invite ISF, CIOPORA and CropLife International to be present, at the relevant part of the eighty-eighth session, in order to provide further information in response to questions from the Consultative Committee.

4. The Consultative Committee also requested the Office of the Union to provide relevant information on the international systems of WIPO at its eighty-eighth session.

## INTERNATIONAL SYSTEMS OF WIPO

5. Annex I to this document provides a summary of the following WIPO systems, developed in conjunction with colleagues from WIPO PCT Business Development Division, WIPO Madrid Registry and WIPO Hague Registry:

- International Patent System: Patent Cooperation Treaty (PCT)
- International Trademark System: Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement (Madrid)
- International Design System: Hague Agreement Concerning the International Registration of Industrial Designs (Hague).

## CONTRIBUTIONS BY ISF, CIOPORA AND CROPLIFE INTERNATIONAL

6. In response to the request of the Consultative Committee, ISF, CIOPORA and CropLife International provided a joint written contribution, which is provided as Annex II to the document. In accordance with the request of the Consultative Committee at its eighty-seventh session, ISF, CIOPORA and CropLife International will be present at the relevant part of the eighty-eighth session, in order to provide further information in response to questions from the Consultative Committee.

7. *The Consultative Committee is invited to:*

*(a) note the information provided on the WIPO International Patent System (PCT), International Trademark System (Madrid) and International Design System (Hague) in Annex I to this document; and*

*(b) consider the written contribution by ISF, CIOPORA and CropLife International, provided in Annex II to this document, in conjunction with their presentations at the eighty-eighth session of the Consultative Committee.*

[Annex I follows]

	PATENT COOPERATION TREATY (PCT)	MADRID – THE INTERNATIONAL TRADEMARK SYSTEM	THE HAGUE AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS
<b>Legal basis</b>	<p>The PCT is an international treaty, administered by the World Intellectual Property Organization (WIPO), between Paris Convention countries.</p>	<p>The Madrid Agreement Concerning the International Registration of Marks (the Agreement) and the Protocol Relating to the Madrid Agreement (the Protocol).</p> <p>The Agreement and the Protocol are independent treaties.</p> <p>Any State which is a party to the Paris Convention may become a party to the Agreement or the Protocol or both. In addition, an intergovernmental organization may become a party to the Protocol (but not the Agreement) where the following conditions are fulfilled:</p> <ul style="list-style-type: none"> <li>- at least one of the Member States of the organization is a party to the Paris Convention; and,</li> <li>- the organization maintains a regional office for the purposes of registering marks with effect in the territory of the organization.</li> </ul> <p>States and intergovernmental organizations which are party to the Agreement or the Protocol, referred to as Contracting Parties, constitute a Special Union for the International Registration of Marks which has an Assembly dealing with all matters concerning the maintenance and development of the Special Union.</p>	<p>The Hague Agreement is constituted by three international treaties:</p> <ul style="list-style-type: none"> <li>• The Geneva Act of July 2, 1999 (the “1999 Act”);</li> <li>• The Hague Act of November 28, 1960 (the “1960 Act”);</li> <li>• The London Act of June 2, 1934 (the “1934 Act”).</li> </ul> <p>However, the application of the 1934 Act is frozen since January 1, 2010, so that no new designation under that Act may be recorded in the International Register.</p> <p>The 1999 and the 1960 Acts of the Hague Agreement are parallel but independent treaties so that a State may decide to become party to only one or to both Acts. International intergovernmental organizations may become party to only the 1999 Act.</p> <p>All the recent accessions are to the 1999 Act, and the ultimate goal is to achieve a single-treaty system, based on the 1999 Act. To become a Contracting Party to the 1999 Act, a State must be a member of the WIPO Convention. As regards an intergovernmental organization, at least one of its member States has to be a member of WIPO and the organization has to maintain an office through which protection may be obtained with effect in the whole territory of the organization.</p> <p>States and intergovernmental organizations which are party to the different Acts of the Hague Agreement, referred to as Contracting Parties, constitute a Special Union for the International Deposit of Industrial Designs (Hague Union) which has an Assembly dealing with all matters concerning the maintenance and development of the Special Union.</p>
<b>The effect of filing an application (PCT) and of the</b>	<p>In general terms, your international patent application, provided that it complies with the minimum requirements for obtaining an international filing date (see PCT Article 11), has the effect of a national patent application (and</p>	<p>A mark may be the subject of an application for international registration (an international application) only if it has already been registered (Agreement and Protocol) or if registration has been applied for (Protocol)</p>	<p>An international application does not require any prior national application or registration. An industrial design can therefore be protected for the first time at the international level through the Hague Agreement. From</p>

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<p><b>international registration (under the Madrid or Hague systems) in the designated Contracting Parties</b></p>	<p>certain regional patent applications) in all PCT Contracting States. An international patent application must be prepared in accordance with certain formal requirements set out in the Treaty and Regulations, which have become international standards effective in all of the PCT Contracting States. If you comply with these requirements, subsequent adaptation to varying national (or regional) formal requirements (and the cost associated therewith) will not be necessary.</p> <p>The PCT does not extend to grant of a patent. The international process consists primarily of:</p> <p>(a) a formalities examination;</p> <p>(b) an international search and preparation of a written opinion aimed at assisting applicants, third parties and national Offices to determine the extent to which the international application is likely to meet national patentability requirements;</p> <p>(c) optionally, further international preliminary examination, with the option to make amendments to the international application; and</p> <p>(d) international publication of the application as filed, optionally with amended claims (which are not searched or examined unless the applicant demands the optional international preliminary examination).</p> <p>To obtain a granted patent, the applicant needs to enter the national phase before the relevant Offices and complete the national processing there. This may involve payment of fees, submission of translations, national search and examination, and amendments to meet substantive requirements of the relevant national laws. The deadline for entering the national phase is normally at least 30 months. This therefore provides more time for the applicant to decide on which countries to seek patent protection than the 12 month period provided under the Paris Convention.</p>	<p>only) in the Trademark Office of the Contracting Party with which the applicant has the necessary connection. This Office is referred to as the Office of origin.</p> <p>From the date of the international registration [...], the protection of the mark in each of the designated Contracting Parties is the same as if the mark had been the subject of an application for registration filed direct with the Office of that Contracting Party.</p> <p>If either a statement granting protection to the mark is sent to the International Bureau or no provisional refusal is notified to the International Bureau within the relevant time limit, or if any such refusal is subsequently withdrawn, the protection of the mark in each designated Contracting Party is the same as if it had been registered by the Office of that Contracting Party.</p> <p>An international registration is therefore equivalent to a bundle of national registrations. Although it is a single registration, protection may be either granted or refused by some of the designated Contracting Parties, or the protection may be limited or renounced with respect to only some of the designated Contracting Parties. An international registration may also be invalidated (for example, for non-use) with respect to one or more of the designated Contracting Parties. Moreover, any action for infringement of an international registration must be brought separately in each of the Contracting Parties concerned.</p> <p>The effects of an international registration can be extended to a Contracting Party not covered by the international application by filing a subsequent designation, with effect as from the date of the recording of this subsequent designation. Thus the holder of an international registration can expand the geographical scope of the protection of his mark in line with his business needs. Moreover, a subsequent designation may be made in order to extend the protection of the mark to a Contracting Party which was not a party to the</p>	<p>the date of the international registration, the international registration has at least the same effect in each designated Contracting Party as a regularly-filed application for the grant of protection under the law of that Contracting Party.</p> <p>If no refusal is notified by a given designated Contracting Party within the prescribed time limit (or if such refusal has subsequently been withdrawn), the international registration has the effect as a grant of protection in that Contracting Party, under the law of that Contracting Party. The refusal period (either 6 or 12 months) starts for all the designated Contracting Parties from the date of publication of the international registration in the International Designs Bulletin. The Bulletin is an electronic publication only available on the WIPO web site at <a href="http://www.wipo.int/hague/en/bulletin/">www.wipo.int/hague/en/bulletin/</a>. The Offices may download the data published in the Bulletin from a public repository available on the WIPO web site at: <a href="ftp://ftpird.wipo.int/wipo/hague/">ftp://ftpird.wipo.int/wipo/hague/</a>.</p> <p>This implies that in order to assess the scope of protection of an industrial design in a given designated Contracting Party, as well as to establish the competent authorities or the relevant sanctions in case of alleged infringement, the applicable law is that of the Contracting Party where protection has been obtained. For example, if an international registration designates Contracting Parties A, B and C (and no refusal of protection has been issued by these Contracting Parties), the protection of the industrial designs concerned is governed in Contracting Party A by the law of Contracting Party A, in Contracting Party B by the law of Contracting Party B, and so on.</p> <p>Protection can be obtained only in those Contracting Parties which are party to the same Act as the Contracting Party through which the applicant has the necessary entitlement (i.e., nationality, domicile, habitual residence or establishment). For example, if an applicant has claimed entitlement through a Contracting Party</p>

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		<p>Agreement or Protocol at the time of the international application. [...]</p> <p>The registration of a mark at the International Bureau is effected for ten years, with the possibility of renewal for similar periods.</p> <p><u>Dependence on the Basic Mark</u></p> <p>For a period of five years from the date of its registration, an international registration remains dependent on the mark registered or applied for in the Office of origin. If, and to the extent that, the basic registration ceases to have effect, whether through cancellation following a decision of the Office of origin or a court, through voluntary cancellation or through non-renewal, within this five-year period, the protection resulting from the international registration may no longer be invoked.</p> <p>Similarly, where the international registration was based on an application in the Office of origin, the protection resulting from an international registration may no longer be invoked to the extent that the application is refused or withdrawn within the five-year period, or if, and to the extent that, the registration resulting from that application ceases to have effect within that period.</p> <p>After the expiry of the period of five years mentioned [above][...], the international registration becomes independent of the basic registration or basic application.</p>	<p>bound exclusively by the 1999 Act, he may request protection in those Contracting Parties which are bound by the 1999 Act (whether or not they are also bound by the 1960 Act). On the other hand, such applicant is not entitled to request protection in respect of Contracting Parties bound only by the 1960 Act.</p> <p>Likewise, if an applicant has claimed entitlement through a Contracting Party bound by both the 1999 Act and the 1960 Act, he may obtain protection in all the Contracting Parties bound by the 1960 Act and/or the 1999 Act.</p> <p>The Hague system cannot be used to protect an industrial design in a country which is not party to the Hague Agreement, or which is not a member State of an intergovernmental organization party to the Hague Agreement. In order to protect a design in such a country, the applicant has no choice but to file a national (or regional) application.</p> <p>If protection is sought in the territory of an intergovernmental organization, the international registration has a unitary effect in the territories of all its member States.</p> <p>The initial term of protection under the Hague system is five years and, subject to renewal, the duration of protection in each Contracting Party shall be at least 15 years.</p>
<b>International elements</b>	<p><u>Filing:</u> You file an international application, complying with the PCT formality requirements, in one language, and you pay one set of fees.</p> <p><u>International Search:</u> An "International Searching Authority (ISA)" (one of the world's major patent Offices) identifies the published documents which may have an influence on whether</p>	<p>The international application must be filed in English, French or Spanish (depending on the choice by the Office of origin), using the official form provided by the International Bureau of WIPO (available on the WIPO web site). An international application must be presented to the International Bureau through the Office of origin.</p>	<p><u>Filing the international application</u></p> <p>The international application must be filed in English, French or Spanish (at the applicant's option) on the official form provided by the International Bureau of WIPO (available on the WIPO web site). The application may also be filed electronically through the electronic filing interface (E-filing) available on the WIPO web site</p>

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	<p>your invention is patentable and establishes an opinion on your invention's potential patentability.</p> <p>The availability of a particular ISA to the nationals or residents of a country is determined by the receiving Office where the international application was filed. Some receiving Offices provide a choice of more than one competent ISA. If your receiving Office is one of those, you can choose any one of them, taking into account differing requirements relating to language, fees, etc.</p> <p><u>International Publication</u></p> <p>As soon as possible after the expiration of 18 months from the earliest filing date, the content of your international application is disclosed to the world.</p>	<p>The international application must contain, inter alia, a reproduction of the mark (which must be identical with that in the basic registration or basic application) and a list of the goods and services for which protection is sought (which must be covered by the list of goods and services in the basic registration or application), classified in accordance with the International Classification of Goods and Services (Nice Classification).</p> <p>An international application must designate the Contracting Parties in which the mark is to be protected:</p> <ul style="list-style-type: none"> <li>- Where the Contracting Party whose Office is the Office of origin is a party to the Agreement but not the Protocol, only other States which are also party to the Agreement may be designated.</li> <li>- Where the Contracting Party whose Office is the Office of origin is a party to the Protocol but not the Agreement, only other Contracting Parties which are also party to the Protocol may be designated.</li> <li>- Where the Contracting Party whose Office is the Office of origin is a party to both the Agreement and the Protocol, any other Contracting Party may be designated.</li> </ul> <p>The Contracting Party whose Office is the Office of origin cannot be designated in an international application; nor can it be designated subsequently.</p> <p>The designation of a given Contracting Party is governed by that treaty (Agreement or Protocol) which is common to the designated Contracting Party and the Contracting Party whose Office is the Office of origin. Where both Contracting Parties are party to both treaties, it is the Protocol which governs the designation.</p> <p>There are therefore three kinds of international application:</p>	<p>(<a href="http://www.wipo.int/hague/en">www.wipo.int/hague/en</a>). In 2013, around 86% of the international applications were filed through E-filing interface, in the first semester of 2014 around 90% of the applications have been filed electronically.</p> <p>An international application may be filed directly with the International Bureau (at present 99% of all applications are filed directly with the International Bureau), either on paper or electronically, or indirectly through the Office of a Contracting Party. Any Contracting Party may prohibit the indirect filing. At present, 10 Contracting Parties do not allow indirect filing, including European Union and African Intellectual Property Organization.</p> <p>The international application must, in particular, contain a reproduction of the industrial design(s) concerned and indication of the product(s) for which the design is used, together with the designation of the Contracting Parties where protection is sought. Contrary to the Madrid system, also the Contracting Party of the applicant may be designated.</p> <p>An international application may include up to 100 different designs. All designs must, however, belong to the same class of the International Classification of Industrial Designs (the Locarno Classification).</p>

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		<ul style="list-style-type: none"> <li>- an international application governed exclusively by the Agreement; this means that all the designations are governed by the Agreement;</li> <li>- an international application governed exclusively by the Protocol; this means that all the designations are governed by the Protocol;</li> <li>- an international application governed by both the Agreement and the Protocol; this means that some of the designations are governed by the Agreement and some by the Protocol.</li> </ul> <p>Only one Contracting Party remains bound exclusively by the Agreement. As a result, most international applications are now governed exclusively by the Protocol.</p>	
<p><b>Role of the International Bureau</b></p>	<p>International applications are originally filed with the “receiving Office” (RO), which may be either a national Office or the International Bureau of WIPO. The RO conducts a formalities examination, keeps a copy for itself and forwards copies of the international application to the International Bureau and the ISA.</p> <p>For each PCT application filed, the International Bureau is responsible for:</p> <ul style="list-style-type: none"> <li>– storing all application documents;</li> <li>– performing certain checks in addition to the formalities examination conducted by the RO;</li> <li>– publishing the international application on WIPO’s online database PATENTSCOPE;</li> <li>– publishing data about the PCT application as prescribed in the Treaty and Regulations</li> <li>– translating various portions of the PCT application and certain associated documents into English and/or French, where necessary;</li> <li>– communicating documents to Offices and third parties; and</li> <li>– providing advice on request to Offices and users.</li> </ul>	<p>The International Bureau checks that the international application complies with the requirements of the Agreement or Protocol and their Common Regulations, including requirements relating to the indication of goods and services and their classification, and that the required fees have been paid. The Office of origin and the applicant are informed of any irregularities; these must be remedied within three months, otherwise the application will be considered abandoned.</p> <p>Where the international application complies with the applicable requirements, the mark is recorded in the International Register and published in the Gazette. The International Bureau sends a certificate of registration to the holder and notifies each Contracting Party in which protection has been requested.</p> <p>In addition to maintaining the International Register, the International Bureau shall:</p> <ul style="list-style-type: none"> <li>- publish a periodical Gazette, on the basis of the particulars recorded in the International Register;</li> <li>- maintain an electronic database, accessible to Offices of the Contracting Parties and to the public, of data both recorded in the International Register and published in</li> </ul>	<p><u>Examination by the International Bureau:</u></p> <p>Upon receipt of an international application, the International Bureau checks that it complies with the prescribed <i>formal</i> requirements, such as those relating to the quality of the reproductions of the industrial designs and the payment of the required fees. The applicant is informed of any defects, which must be corrected within the prescribed time limit of three months, failing which the international application is considered abandoned.</p> <p>Where an international application complies with the prescribed formal requirements, the International Bureau proceeds with its recording in the International Register and with the publication of the corresponding registration in the International Designs Bulletin, in due course. The applicant may request immediate publication or deferment of publication. In the absence of any request, the publication takes place six months after the registration date. The publication takes place electronically on the WIPO web site and contains all relevant data concerning the international registration, including a reproduction of the industrial design.</p>

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	<p>The International Bureau also:</p> <ul style="list-style-type: none"> <li>– provides overall coordination of the PCT system;</li> <li>– provides assistance to existing, new and potential Contracting States and their Offices;</li> <li>– provides advice on implementing the PCT in the national legislation and on setting up internal procedures in the Contracting States' patent Offices;</li> <li>– publishes the PCT Applicant's Guide and the PCT Newsletter;</li> <li>– creates and disseminates PCT information via the PCT website, webinars, and through telephone and e-mail assistance;</li> <li>– organizes and gives PCT seminars and training courses.</li> </ul>	<p>the Gazette (ROMARIN);</p> <ul style="list-style-type: none"> <li>- issue copies of the entries in the International Register and extracts from the International Register</li> <li>- collect the fees corresponding to the international registration, its renewal and to the various recordings and services rendered;</li> <li>- distribute the fees (supplementary and complementary or individual fees) collected on behalf of the Contracting Parties and, equally among the Contracting Parties, the annual product of the various receipts, after deduction of the required expenses and charges;</li> <li>- prepare the budget of the Union;</li> <li>- undertake all the administrative tasks under the Agreement and the Protocol;</li> <li>- prepare meetings and provide the secretariat of the Assembly and of Committees of Experts or Working Groups established by the Assembly; and,</li> <li>- prepare, in Accordance with the Assembly, for conferences of revision of the treaties.</li> </ul>	<p>After the registration, the International Bureau sends a certificate of registration to the holder of the international registration.</p> <p>It must be stressed that the International Bureau of WIPO does not appraise or concern itself in any way with the novelty of the design and it is therefore not entitled to reject an international application on this, or any other, substantive ground. (Substantive examination falls within the exclusive competence of the Office of each designated Contracting Party.)</p> <p>It is further stressed that the Bulletin is the official publication of the Hague system and the only vehicle through which the Offices of designated Contracting Parties (and third parties) are notified of new international registrations designating their Contracting Parties.</p> <p><u>Other tasks of the International Bureau:</u></p> <p>In addition to maintaining the International Register, the International Bureau shall:</p> <ul style="list-style-type: none"> <li>- publish the weekly Bulletin, based on the particulars recorded in the International Register;</li> <li>- maintain an electronic database of data published in the Bulletin (Hague Express Database);</li> <li>- issue copies of the entries in the International Register and extracts from the International Register</li> <li>- collect the fees corresponding to the international registration, its renewal and to the various recordings and services rendered;</li> <li>- distribute the fees (standard designation fees or individual designation fees) collected on behalf of the Contracting Parties;</li> <li>- prepare the budget of the Union;</li> <li>- undertake all the administrative tasks under the Hague Agreement;</li> <li>- prepare meetings and provide the secretariat of the</li> </ul>

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			<p>Assembly and of Committees of Experts or Working Groups established by the Assembly; and, - prepare, as decided by the Assembly, for conferences of revision of the treaties.</p>
<b>Centralized Management</b>		<p>The International Bureau of WIPO administers the International Register of the Madrid System. Holders of international registrations can manage and maintain their rights, directly with the International Bureau, concerning procedures such as renewal, subsequent designation, recording of change in ownership, limitation, cancellation, renunciation, change in name /address of the holder, etc.</p> <p>An international registration is a single registration having effect in all the designated Contracting Parties. Therefore, the international registration can be renewed with the International Bureau in respect of all the designated Contracting Parties. There is no need to file a separate request for renewal in each designated Contracting Party.</p> <p>In addition, changes to the international registration (such as a change in ownership for all or some of the designated Contracting Parties) and other recordings (such as restrictions) shall also have effect in all of the designated Contracting Parties. There is no need to file a separate request for recording in each designated Contracting Party.</p>	<p>32.] In addition to offering the possibility of obtaining protection for industrial designs in several Contracting Parties, the Hague system also offers centralized management of the international registration. For instance, a change in the name or address of the holder, a change in ownership for only some or all of the designated Contracting Parties or limitation concerning designs in the international registration, can be recorded in the International Register by means of one simple procedural step carried out through the International Bureau of WIPO.</p> <p>On the other hand, any substantive aspect of the protection is entirely a matter for the domestic legislation of each designated Contracting Party.</p> <p>The initial term of protection of an international registration is five years, and the renewals of the international registrations as well as any changes concerning international registrations are made through a single request with the International Bureau. The International Bureau will record the data and publish it in the Bulletin. The recordings in the International Bureau have the effect, at the applicant's option, in some or all the designated Contracting Parties.</p>
<b>National elements</b>	<p><u>National Phase</u></p> <p>After the end of the PCT procedure, you start to pursue the grant of your patents directly before the national (or regional) patent Offices of the countries in which you want to obtain them.</p>	<p><u>Office of origin</u></p> <p>The Office of origin must certify that the applicant/holder is the same as the one in the basic application or basic registration, that the mark is the same as that in the basic registration or basic application, and that the goods and services indicated in the international application are covered by the list of goods and services in the basic registration or basic application.</p>	<p><u>Role of the national/regional Office of a designated Contracting Party:</u></p> <p><u>Substantive Examination by the Office of Each Designated Contracting Party: Possibility of Notifying a Refusal of Protection</u></p> <p>Upon publication of the Bulletin on the WIPO web site, each Office must identify the international registrations in which it has been designated, in order to proceed with the substantive examination provided by its domestic</p>

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		<p>The Office of origin must also certify the date on which it received the request to present the international application. This date is important; provided the application is received by the International Bureau within two months of that date (and provided that certain crucial elements are not missing), it is that date that will be the date of the international registration.</p> <p><u>Offices of designated Contracting Party</u></p> <p>The Office of a designated Contracting Party examines the international registration in exactly the same way as an application filed directly. If grounds for objection are found during the <i>ex officio</i> examination, or if an opposition is filed, the Office has the right to declare that protection cannot be granted to the mark in that Contracting Party.</p> <p>Any provisional refusal must be notified to the International Bureau by the Office of the designated Contracting Party concerned within the time limit specified in the Agreement or Protocol. [...]</p> <p>The time limit to notify a provisional refusal is 12 months. Under the Protocol, a Contracting Party may extend this time limit to 18 months or more, in case of opposition.</p> <p>Where, before the expiry of the refusal period, all the procedures before the Office have concluded and there is no ground for that Office to refuse protection, the Office shall send to the International Bureau, as soon as possible, a statement to the effect that protection is granted to the mark.</p> <p>Where the Office of a designated Contracting Party does not notify a provisional refusal, or does so after the expiry of the applicable time limit specified in the Agreement or the Protocol, the protection of the mark in the Contracting Party concerned shall be, as from the date of the international registration or request for</p>	<p>legislation, if any. In fact, one of the main features of the Hague system lies in the possibility for the Office of each designated Contracting Party to refuse protection, in its territory, of an industrial design which does not fulfil the substantive conditions of protection provided for by its domestic legislation. Such refusal, however, may not be issued on the grounds of non compliance with formal requirements, since such requirements are to be considered as already been satisfied following the examination carried out by the International Bureau.</p> <p>The designated Office has to notify the refusal to the International Bureau within the prescribed time limit counted from the publication date of the international registration. The International Bureau will record the refusal in the International Register, publish it in the Bulletin and notify the holder of the international registration accordingly. The holder has the same remedies as he would have had if he had filed the design in question directly with the Office which has issued the refusal. The ensuing procedure takes place solely at the national level; an appeal against a refusal must be submitted by the holder to the competent authority of the country concerned, within the time-limit and in accordance with the conditions set out in the corresponding domestic legislation. The International Bureau of WIPO is not to any extent involved in such procedure.</p> <p>A refusal may be withdrawn, totally or partially. Such a withdrawal may also take the form of a statement to the effect that protection is granted to the industrial designs, or some of the industrial designs, that are the subject of the international registration.</p> <p>On the other hand, where an Office finds no grounds for refusing protection, it may, before the expiry of the applicable refusal period, issue a statement of grant of protection. However, this is not mandatory since if an Office has not communicated any refusal within the</p>

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		<p>territorial extension, the same as if the mark had been registered by the Office of that Contracting Party.</p> <p>The holder of an international registration may, in accordance with the laws of the designated Contracting Party concerned, respond, request a review or file an appeal against a provisional refusal. The Office shall inform the International Bureau of its final decision and of any further decision affecting the protection of the mark in that Contracting Party.</p>	<p>applicable refusal period, the international registration has the same effect as a grant of protection under the national law.</p> <p><u>Role of the national/regional Office as the Office of indirect filing:</u></p> <p>A national/regional Office may prohibit indirect filing. In the case of indirect filing, the role of the Office is to transmit the international application within the prescribed time limit (one month from receipt by the Office) to the International Bureau and to confirm the filing date of the international application.</p>
<b>Priority</b>	<p>Generally, patent applicants who wish to protect their invention in more than one country first file a national or regional patent application with their national or regional patent Office, and within 12 months from the filing date of that first application (a time limit set in the Paris Convention for the Protection of Industrial Property), they file their international application under the PCT. Thus, in an international patent application, you may claim the priority, under the Paris Convention – and to a certain extent within the framework of the World Trade Organization –, of one or more earlier patent applications for the same invention, whether they were national, regional or international applications, for up to 12 months after the filing of the earliest of those applications. If you do not claim priority of an earlier application, the priority date for the purposes of the PCT procedure will be the international filing date of the international application. During the PCT procedure, priority claims may be added and corrected, within certain time limits.</p>	<p>An international application may claim priority under Article 4 of the Paris Convention, whether from the application with the Office of origin or from a prior application filed with the Office of another country party to the Paris Convention or with the Office of a Member of the World Trade Organization.</p>	<p>The international application may contain a declaration claiming, under Article 4 of the Paris Convention, the priority of one or more earlier applications filed in or for any country party to that Convention or any Member of the World Trade Organization. The international application may also serve as basis for claiming priority in a subsequent application.</p>
<b>Who can file</b>	<p>You are entitled to file an international patent application if you are a national or resident of one of the PCT Contracting States. If there are several applicants named in the international application, only one of them needs to comply with this requirement.</p> <p>The PCT has a provision to allow this right to be</p>	<p>An international application may be filed only by a natural person or a legal entity which has a real and effective industrial or commercial establishment in, or is domiciled in, or is a national of the Contracting Party of the Office of origin, or who has such an establishment in, or is domiciled in, the territory of the intergovernmental organization whose Office is the</p>	<p>[...] To be entitled to file such an application, an applicant must satisfy one, at least, of the following conditions:</p> <p>(a) be a national of a Contracting Party or a member State of an intergovernmental organization which is a Contracting Party, such as the European Union or the African Intellectual Property Organization, or</p>

	<b>PATENT COOPERATION TREATY (PCT)</b>	<b>MADRID – THE INTERNATIONAL TRADEMARK SYSTEM</b>	<b>THE HAGUE AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS</b>
	extended to the nationals or residents of any member State of the Paris Convention, but this option has never been activated.	Office of origin, or is a national of a Member State of such an organization.	(b) have a domicile in the territory of a Contracting Party, or (c) have a real and effective industrial or commercial establishment in the territory of a Contracting Party. In addition, but only under the 1999 Act, an international application may be filed on the basis of habitual residence in a Contracting Party.
<b>Languages</b>	In general, an international patent application can be filed in any language which the receiving Office accepts. If you file your application in a language which is not accepted by the International Searching Authority that is to carry out the international search, you will be required to furnish a translation of the application for the purposes of international search. Receiving Offices are, however, obliged to accept filings in at least one language which is both a language accepted by the competent International Searching Authority that is to carry out the international search and a “publication language”, that is, one of the languages in which international patent applications are published (Arabic, Chinese, English, French, German, Japanese, Korean, Portuguese, Russian and Spanish). You therefore always have the option of filing your international patent application in at least one language from which no translation is required for either PCT international search or publication purposes.	An international application can be filed in any one of the three languages of the Madrid System, namely, English, French or Spanish. The Office of origin may, however, restrict the applicant’s choice to only one language, or to two languages, or may permit the applicant to choose between any of the three languages.	The international application must be filed in English, French or Spanish (at the applicant’s option). However, if the international application is filed indirectly through a national office, that office may restrict the applicant’s choice to only one language, or to two languages.
<b>Where to file</b>	You can file an international patent application, in most cases, with your national patent Office, or directly with the International Bureau of WIPO if permitted by the national security provisions in your national law. Both of those Offices act as PCT “receiving Offices”. If you are a national or resident of a country which is party to the ARIPO Harare Protocol, the OAPI Bangui Agreement, the Eurasian Patent Convention or the European Patent Convention, you may alternatively file your international patent application with the regional patent Office concerned, if permitted by the applicable national law.	An international application must be presented on the official form to the International Bureau through the Office of origin. An international application which is presented directly to the International Bureau by the applicant will not be considered as such and will be returned to the sender.  Subsequent designations, renewals or requests for recordings in respect of an international registration may be presented by the holder of that registration directly with the International Bureau.	The international application is normally sent directly to the International Bureau of WIPO by the applicant or his representative.

	PATENT COOPERATION TREATY (PCT)	MADRID – THE INTERNATIONAL TRADEMARK SYSTEM	THE HAGUE AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS
<b>Other information</b>	<p>(a) Around 90% of international applications are filed electronically.</p> <p>(b) About 5% of international applications are filed directly to the International Bureau – the remainder are filed with national or regional Offices in their role as receiving Office.</p> <p>(c) The choices between distributed local service and centralized consistency are not as clear as they were when the PCT was adopted in 1970. The International Bureau is developing a system (ePCT) for use by both applicants and national Offices, aiming to (i) ensure that applicants can file electronically irrespective of whether they choose to go to the International Bureau, an Office which can maintain its own IT systems or a small Office which only receives a few international applications a year; (ii) give greater consistency in processing between different receiving Offices; and (iii) ensure that all applicants and Offices with roles to play have secure access to up to date information concerning the processing at all times.</p>		
<b>Further information</b>	<p>General:  <a href="http://www.wipo.int/pct/en/">http://www.wipo.int/pct/en/</a>            FAQs  <a href="http://www.wipo.int/pct/en/faqs/faqs.html">http://www.wipo.int/pct/en/faqs/faqs.html</a></p>	<p>General:  <a href="http://www.wipo.int/madrid/en/general/">http://www.wipo.int/madrid/en/general/</a></p>	<p>General:  <a href="http://www.wipo.int/hague/en/">http://www.wipo.int/hague/en/</a>            Main features and design:  <a href="http://www.wipo.int/export/sites/www/freepublications/en/designs/911/wipo_pub_911.pdf">http://www.wipo.int/export/sites/www/freepublications/en/designs/911/wipo_pub_911.pdf</a></p>

[Annex II follows]



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Mr. Peter Button  
Vice Secretary-General  
UPOV  
34, Chemin des Colombettes  
CH-1211 Geneva 20  
Switzerland

Dear Mr. Button,

Members of CIOFORA, CLI, and the ISF extend their thanks to the Consultative Committee of UPOV for its invitation during the eighty-seventh session (April 11, 2014) to “elaborate the problems faced with the current situation and possible solutions offered by an international filing system, a UPOV quality assurance program and a central examination system for variety denominations”, as noted by UPOV in document CC/87/5. As duly requested by the Consultative Committee, we provide the attached documents in response for consideration during the eighty-eighth session. We focus on elaborating the outlines and advantages of an international filing system which we describe as an International System of Cooperation (ISC). We consider that this approach will provide the firm basis for solutions to current limitations and will promote increased use of UPOV by plant breeders within existing UPOV members and also by attracting increased UPOV membership.

Please find attached a word document and pdf file that describe the outline and benefits of an International System of Cooperation (ISC). We provide these documents as a first step in responding to the invitation extended by the Consultative Committee at the eighty-seventh session. We remain at your disposal to discuss this subject in greater detail.

Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edgar Krieger'.

Edgar Krieger  
Secretary General  
CIOFORA

A handwritten signature in black ink, appearing to read 'Howard Minigh'.

Howard Minigh  
CEO  
CropLife International

A handwritten signature in black ink, appearing to read 'Michael Keller'.

Michael Keller  
Secretary General  
ISF

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## Introduction

The International Association of Breeders of Vegetatively Reproduced Ornamental and Fruit Varieties (CIOPORA), CropLife International (CLI), and the International Seed Federation (ISF), the latter of which comprises the previously known International Association of Plant Breeders (ASSINSEL), collectively represent the global plant breeding industry. Members of each organization recognize the imperative need for an effective global intellectual property regime to stimulate innovation in plant breeding as a prerequisite for global food security. The essential need for plant breeders to contribute to improved productivity on farms and nurseries will continue to increase. There is increasing dependence upon private expenditures in research and development as public expenditures have plateaued or declined. The plant breeding industry has become truly global. It is, therefore, imperative that the International Union for the Protection of New Varieties of Plants (UPOV) continue its well-established practice of adaptation to ensure an optimum plant breeders' rights system for this changed environment and therefore contribute further to achieve global food security. We are grateful to UPOV for allowing us this opportunity to provide our ideas for changes that will help support and facilitate more effective and increased use of the UPOV system by plant breeders.

The economic value of the global seed trade alone has increased tenfold since 1970. In addition, ornamental and fruit species represent more than 60% of all plant breeders' rights titles and plant patents granted worldwide. The success of plant breeding and development of global markets in seed, vegetatively propagated tissues, and harvested produce are in large measure due to the success of Plant Breeders' Rights (PBRs) in providing intellectual property protection according to UPOV. UPOV facilitates the introduction of relatively harmonized procedures in all member countries through "national treatment," "right of priority," and "reciprocity" provisions. However, the UPOV Convention prescribes *de minimis* norms, therefore, significant differences occur among UPOV members with respect to filing and many other important provisions. For example, PBRs as prescribed under UPOV only provide protection to the plant breeder in the territory of application. Consequently, prior to the inception of a European Union (EU) wide protection regime, less than 3% of PBRs (across key crops including wheat, maize, and soybean) were protected in three or more countries.

Multi-country protection entails higher transaction costs for application, testing, and renewal of protection in each country where protection of seed, other reproductive propagules, and harvested material is sought. Successive additions of multi-country transaction costs reduce incentives for breeders to disseminate plant varieties beyond the country of breeding and to develop varieties that are suitable for cultivation in several national markets. For example, tomato seed can be transported across five countries including three continents before it is sold. In circumstances where the protection system has not kept up with the global potential capacity of breeding and trade, farmers and consumers will be lacking improved products that could otherwise be available and misappropriation of existing products becomes more likely.

Plant breeders, officials, and staff at national and regional PBR offices situated in the European Union (EU) have the benefit of years of experience gained during the implementation of a more harmonized and facilitated approach to UPOV protection that was made operational *via* the Community Plant Variety Rights (CPVR) system in 1995. The system does not replace but rather complements national PBR protection. UPOV members were not fully harmonized when the system was established. Experience by all stakeholders since the inception of the CPVR has demonstrated the advantages of adopting a uniform and more harmonized approach to the deployment of PBR *via* UPOV. The CPVR approach has stimulated breeding and development and improved the protection of new varieties. Annual numbers of applications and grants of PBRs have more than doubled since 1995. With clear definition, such a system does not compete with but rather augments and complements other systems, and *vice versa*. Most importantly, such a system addresses the needs of breeders, farmers, growers, and consumers. The system helps promote a more global market that encourages innovation and helps balance environmental, economic, and social sustainability.

As requested by the Consultative Committee of UPOV, we (CIOPORA, CLI, and ISF) as representatives of the global plant breeding sector, present the outline of an approach that we believe will further facilitate and make more effective the internationally harmonized implementation of PBRs *via* UPOV. A primary reason the CPVR system could be created was because the EU represents a strong economic and political union. However, the EU is unique in this regard. Other regions have much looser, if any, cooperation agreements among countries and thus among UPOV members. UPOV, therefore, has a much more important role to play globally in developing and implementing a more harmonized system that will encourage new membership and also be more widely used by plant breeders.

**Elements of an international system of cooperation in processing of applications for plant breeders' rights:**

1. Filing and processing, not granting

An international system of cooperation (ISC) in processing of applications for plant breeders' rights (PBRs) should be designed to systematize the filing and initial processing of applications while reserving to UPOV members the final decisions on grant and term of the right.

2. Available to breeders worldwide

Breeders using the ISC should be able to file an application in any receiving UPOV member office around the world, regardless of the breeder's nationality or residence and regardless of the locus of the breeding activity, or through an Electronic Application System. The applicant would identify UPOV members in which PBRs are sought. The ISC receiving and processing offices should arrange for the distribution of the processed application to UPOV members designated by the breeder without further effort on the part of the breeder.

3. One application, any language, one time application payment

The ISC should permit breeders to apply for PBRs in any number of UPOV members using a single application form of consistent content prepared by the breeder in their language of choice with payment of an application fee determined from a universally applicable fee schedule. A language tool will allow for instant translation to the language of any UPOV member country.

4. One centralized international phase for all UPOV members

The accepted PBR application form should enter an internationally organized and distributed system for handling all non-DUS matters.

5. Centralized review and preliminary evaluation

The ISC should consistently route PBR applications through international phase examination conducted by leading examination office(s) having competence and experience in the species concerned to ensure uniformity of examination for the relevant genus and species. Review should include all formal (i.e., non-DUS testing) matters, such as completeness of the application, payment of the fee, searching, and evaluation of the proposed denomination for uniqueness and appropriateness, including determination of novelty, etc. The ISC international phase process should include indexing the information in the application in a manner consistent with international documentation standards, preparing the application's content for publication, and inserting the relevant information about the application in a centralized application database. The ISC international phase could include a search for relevant varieties of common knowledge against which the application variety may be compared but ultimate choice of varieties of common knowledge for comparison will be made by examiners in the country or region who have most expertise.

6. National/regional examination phase

The ISC should forward PBR applications that pass its preliminary review, along with the international search report to the destination UPOV members designated by the breeder for DUS testing. The ISC

would not be directly involved in conducting DUS examinations, but could make available a knowledge resource of DUS stations including DUS capacities and crop expertise. The requirement of the 1991 Act of the UPOV Convention to make protection available for all genera and species, coupled with extension of protection to propagating material, harvested material and (optionally) products directly obtained from harvested material means that applications may be filed in UPOV members that lack the capacity to perform the DUS examination. An ISC facilitates UPOV membership and further encourages coordination among UPOV members in the conduct of DUS examinations. UPOV members should share DUS testing responsibilities and centers of excellence should be developed to facilitate take-over of test reports.

The ISC could institute an accreditation system to ensure the availability of high quality DUS examination and adequacy of the deposit of propagating material. It would be the responsibility of breeders to maintain seed, vegetatively propagated materials, and live samples of annual plants and to provide those as required for DUS examination. Applicants would send plant material directly to the testing station of their choice.

7. Final examination and grant limited to countries designated by breeder

Applicants could receive an interim report directly from the country or regional DUS testing station and send DUS fees to the testing station. The ISC need not have a role in the DUS examination, but should coordinate and monitor the DUS examination process.

ISC shall send the DUS test report, plus any other required fees, to all destination countries for which the breeder has applied. On the basis of the DUS report, the countries shall grant the title.

The ISC should receive a report from each destination UPOV member as to the final decision to grant or not to grant PBRs for the subject variety, the date of the grant, the term of the grant, and any changes in the status of the granted rights, such as lapse, forfeiture, invalidation or expiration of the rights, and the disposition of the propagating material received by each UPOV member examining authority. Objections against proper conduct of the DUS report should be filed with the ISC.

8. Centralized information storage and publication

The ISC should maintain and publish all relevant "bibliographic" information concerning applications it receives, including name, nationality and address of the breeder, ownership of the subject variety, dates of application, grant and expiration or other disposition, and variety genus, species and denomination. The ISC should also maintain and publish a database containing the substantive contents of each application, including standard UPOV variety description, varieties tested against for DUS examination, and status and disposition of any propagating material provided by the breeder. Information provided by the applicant relating to pedigree and parental lines of hybrids will be maintained as confidential.

9. Rule of law and contract throughout the system

The ISC should bind UPOV members by contract to implement and apply the system's procedures and standards uniformly and consistently, to accord full faith and credit to the administrative actions of the other participants in the system (including receiving offices, reviewing offices and examining authorities), to maintain confidentiality of application information prior to publication, and to appropriately safeguard the security of propagating material provided by breeders in connection with applications.

**Perceived benefits of an international system of cooperation in processing of applications for plant breeders' rights:**

1. Foster more innovation in the development of plant varieties for all breeders and to the benefit of consumers

An ISC for filing, processing and reviewing applications reduces transaction costs and encourages more grants of high-quality PBRs in more countries and thus stimulates more research and plant breeding resulting in higher quality products for the benefit of consumers worldwide. An ISC encourages the development and dissemination of plant variety innovations beyond countries of development to international markets. Impacts of the ISC are anticipated to be positive on small, medium-sized and large plant breeders while the greatest relative positive effects are expected to be on small and medium-sized breeders.

2. A means for international cooperation

The ISC coexists effectively with national plant variety rights regimes while creating further opportunities for cross-training, sharing of best practices, harmonization, and the assurance of high quality standards in the testing and granting of PBRs.

3. A "common corridor" for improvement of the process of receiving, processing and examining applications

An ISC implementing the process for receiving, processing and examining PBR applications creates a single, broad, common test-bed for evaluation of new ideas and implementation of improvements without the need to coordinate across many individual systems operating in parallel.

4. A centralized source of information on plant breeders' rights applications & grants

The ISC would provide a single gathering point for complete PBR applications that facilitates both the harvesting and the uniform, consistent publication of "bibliographic" and substantive information about applications and protected varieties.

5. Facilitated access to information on plant breeders' rights applications & grants

A single ISC spreads the financial burden of obtaining information, maintaining databases, and publishing information about applications and protected varieties. It eliminates the cost of duplicative and incomplete versions of these activities at the national level, and makes it easier and more economical for breeders and the public to obtain this information.

6. A simplified process for receiving and processing applications for plant breeders' rights

A single ISC avoids duplication and inconsistencies at the non-outcome-determinative stages of the process for obtaining PBRs, reducing steps and confusion for the breeder as well as overall time and costs in preparing and pursuing the applications.

7. Eliminate filing problems related to novelty barriers

Making applications for several UPOV members at one time will eliminate problems encountered from loss of novelty due to inability to individually file in many countries in a sufficiently timely manner.

8. A broadly accessible application process

An ISC for receiving and processing applications makes it easier for breeders and the public to learn about and understand the application process itself and how it works, to file international applications locally, and to file in their own language.

9. Consistency between the elements

Examining authorities receiving international applications through an ISC can tailor their examination process to the forms and information as received through the template imposed by the ISC's formal requirements. Likewise, examining authorities start their evaluation from the consistent starting

point of a harmonized international search report from the ISC on varieties of common knowledge that are relevant to the evaluation of distinctness.

10. Transparency of the process

A single, documented ISC that is bound by contract and the rule of law fosters confidence in breeders and the public that the system is open, understandable, fair and secure.

11. International standards

An ISC can readily adopt and enforce UPOV standards and guidelines at the non-substantive stages of application processing.

12. Predictability of the system

Consensus standards and guidelines consistently applied by an ISC will improve predictability of the system in terms of timelines, timeliness, and outcomes. A single, uniformly applied fee schedule, makes budgeting of application costs easier for breeders.

13. Established timeline

An ISC can adopt and implement a timeline that is rational both in terms of the needs of breeders and the needs of examining authorities.

14. Increased possibility of additional countries or regions becoming UPOV members

Simplification of the process and other benefits flowing from introduction of an ISC may encourage countries or regions that are not currently UPOV members to become UPOV members

15. More PBR applications by more breeders in more crops, countries, and regions

It will be much easier for breeders to file applications, so more applications can be expected by the PBR offices in countries where previously there have been very few applications.

16. More incentives to invest in breeding, more applications for PBRs

With a more harmonized and robust system PBR applications, the inherent value of each PBR certificate increases, encouraging breeders and their companies/organizations to invest more in innovation, the development of more varieties, and consequently the filing of more PBR applications for grants of IP in more countries.

17. Higher quality standards, stronger protection

More streamlined and better understood system, fewer problems for PBR offices as breeders will be more familiar with the system worldwide. Reduced waste of resources due to fewer errors and reduced time in exchanges between PBR offices and applicants.

18. Increased opportunities for training and development of excellence for all countries, relatively more so for smaller or less well-resourced countries

A harmonized global system enhances training possibilities for PBR staff in countries that are less well-resourced or otherwise less familiar with the application process and DUS examination.

19. Increased understanding by examiners and applicants globally due to translation using one document style

With the use of single document styles and translation from country language (in pipeline in Electronic Application Project), there will be less errors due to confusion stemming from poor translation. This will lead to fewer problems for PBR offices and for breeders as they more easily become familiar with the system worldwide. Fewer mistakes will lead to less waste of time and resources in correcting unnecessary errors.

20. Higher quality standards and increased employment opportunities

Not all UPOV members will be able to provide DUS examination for each and every crop. Global or regional cooperation agreements (where one or a few countries take on the DUS examination globally or for a whole region) will result in 'centers of excellence' in certain crop(s) with the potential of additional employment possibilities.

21. Improved abilities to research and disseminate new knowledge among PBR offices

Development of centers of excellence and greater global networking among PBR staff enhances opportunities for keeping up to date with the development and testing of new approaches in DUS and information management (IM). Use of the same system on a global basis facilitates the possibilities of calibration among PBR offices, e.g., through global or regional ring tests where examiners compare notes and align their scoring leading to higher and more consistent quality standards and thus improved protection.

## International UPOV System – Elements and Benefits

August 4, 2014



