

Novelty Guidelines

1

Background

- Article 10 of Council Regulation 2100/94 defines the novelty breaking acts as
 - variety constituents/harvested material of the variety have not been sold or otherwise disposed of
- When a commercial transaction takes place it is not always clear what should be the novelty breaking event.
- Should it be when a contract is signed or when there is a physical disposal of a variety

2

Current Office practise

- During the substantial examination of applications the Office relies on the information provided by the Applicant regarding novelty, however the following two scenarios may occur:
 - ✓ If the information provided casts doubts, the Office may conduct investigations of its own motion,
 - ✓ The applicant may request to change the date of first disposal.



UPOV-WG on international system of cooperation

3

Change of the date of first disposal

- The applicant bears the burden of proof to justify the request with the Office,
- The physical disposal of the plant material is relevant in order to assess the novelty and it will be that date that will determine the first date of exploitation under Article 10 BR,
- However, all supporting documentation shall be assessed by the Office



UPOV-WG on international system of cooperation

4

Thank you for your attention!



UPOV-WG on international system of cooperation