



European IP Helpdesk

Stay ahead of the innovation game.

The European IP Helpdesk





European IP Helpdesk

- Service initiative of the European Commission
- Addressing **current and potential beneficiaries of EU-funded projects, researchers and EU SMEs**
- Free-of-charge first-line support on intellectual property (IP)
- Hands-on IP and innovation management support
- International pool of IP experts from various thematic fields
- Unique cooperation scheme with the Enterprise Europe Network: 44 ambassadors from 27 EU countries



The EC IP Helpdesks



www.ec.europa.eu/ip-helpdesk



EC IP (SME) Helpdesk Hub – Gateway to Information



- E-learning modules & more
- Guides / Topic, country, sector-specific factsheets / Infographics
- Case studies



European IP Helpdesk Training Calendar

29 OCT 2022	TRAINING AND WORKSHOPS EU - Webinar: IP in Horizon Projects (HORIZON4Europe) 📅 Low-Intensity activity	05 OCT 2022	TRAINING AND WORKSHOPS EU - Webinar: The Importance of IP for SMEs 📅 Low-Intensity activity
06 OCT 2022	TRAINING AND WORKSHOPS EU - Webinar: IP and Artificial Intelligence 📅 Low-Intensity activity	04-07 OCT 2022	CONFERENCE AND EVENTS Patent Knowledge Week 2022 of the EPO 📅 Low-Intensity activity
10 OCT 2022	TRAINING AND WORKSHOPS EU - Webinar CPVO Coop: What's in a name: plant variety denominations and their interface with trademarks and geographical indications 📅 Low-Intensity activity	11 OCT 2022	INFO DAYS Horizon IP Scan - Info Session 📅 Low-Intensity activity
12 OCT 2022	TRAINING AND WORKSHOPS EU - Webinar: IP Commercialisation and Licensing 📅 Low-Intensity activity	13 OCT 2022	TRAINING AND WORKSHOPS EU - Webinar: The new Copyright Directive 📅 Low-Intensity activity
18 OCT 2022	TRAINING AND WORKSHOPS EU - From Lab to Market - Successful Technology Transfer Journeys - Case: Perceus3D 📅 Low-Intensity activity	19 OCT 2022	TRAINING AND WORKSHOPS EU - Webinar: IPR & Software 📅 Low-Intensity activity
20 OCT 2022	TRAINING AND WORKSHOPS EU - Webinar EPO Coop: Patent protection for EU funding beneficiaries - Digital communication 📅 Low-Intensity activity	26 OCT 2022	TRAINING AND WORKSHOPS EU - Webinar: Technology Transfer 📅 Low-Intensity activity
27 OCT 2022	TRAINING AND WORKSHOPS EU - Webinar: Consortium Agreements 📅 Low-Intensity activity	02 NOV 2022	TRAINING AND WORKSHOPS EU - Webinar CIOPORA coop: Enforcement practices for Plant Variety Rights in the EU 📅 Low-Intensity activity



Registration: www.ec.europa.eu/ip-helpdesk

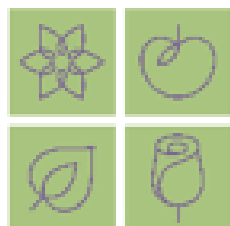


Training cooperation with the Community Plant Variety Office and CIOPORA



CPVO

Community Plant Variety Office



CIOPORA

17 FEB 2022	TRAINING AND WORKSHOPS EU - Webinar & CPVO coop: The essential role of Quality Auditing examination offices for EU Plant Variety Rights <input type="checkbox"/> Live streaming available	12 APR 2022	TRAINING AND WORKSHOPS EU - Webinar CPVO Coop: Constraints and opportunities for edited varieties. Is the GMO legal framework impacting the creation of new plants? <input type="checkbox"/> Live streaming available
21 JUN 2022	TRAINING AND WORKSHOPS EU Webinar - CPVO Coop Webinar: Introduction to Community plant variety rights: creation of new plants and their protection in the EU <input type="checkbox"/> Live streaming available	08 SEP 2022	TRAINING AND WORKSHOPS EU - Webinar CPVO Coop: The interface between plant variety rights and patents <input type="checkbox"/> Live streaming available
28 SEP 2022	TRAINING AND WORKSHOPS EU - Webinar & CIOPORA coop: Growers' Guide to Intellectual Property Protection for Plants <input type="checkbox"/> Live streaming available	10 OCT 2022	TRAINING AND WORKSHOPS EU - Webinar CPVO Coop: What's in a name: plant variety denominations and their interface with trademarks and geographical indications <input type="checkbox"/> Live streaming available
02 NOV 2022	TRAINING AND WORKSHOPS EU - Webinar CIOPORA coop: Enforcement practices for Plant Variety Rights in the EU <input type="checkbox"/> Live streaming available	06 DEC 2022	TRAINING AND WORKSHOPS EU - Webinar CPVO Coop: The impact of protected new plant varieties in the European Union market. <input type="checkbox"/> Live streaming available



Patent Protection for EU funding Beneficiaires

19

JAN

2022

TRAINING AND WORKSHOPS

EU - Webinar EPO Coop: Patent protection for EU funding beneficiaries - Medical Technologies

Live streaming available

16

MAR

2022

TRAINING AND WORKSHOPS

EU - Webinar EPO Coop: Patent protection for EU funding beneficiaries - Artificial Intelligence

Live streaming available

14

JUN

2022

TRAINING AND WORKSHOPS

EU - Webinar EPO Coop: Patent protection for EU funding beneficiaries - Green technologies

Live streaming available

20

OCT

2022

TRAINING AND WORKSHOPS

EU - Webinar EPO Coop: Patent protection for EU funding beneficiaries - Digital communication

Live streaming available

17

NOV

2022

TRAINING AND WORKSHOPS

EU - Webinar EPO Coop: Patent protection for EU funding beneficiaries - Biotechnology

Live streaming available

Patent protection for EU funding beneficiaries

An IP training series offered by the European Patent Office and the European IP Helpdesk



European
IP Helpdesk





From Lab to Market – IP & successful TT Training series

07

JUN

2022

TRAINING AND WORKSHOPS

EU - From Lab to Market - Successful
Technology Transfer Journeys - Case:
OXEON

Live streaming available

12

JUL

2022

TRAINING AND WORKSHOPS

EU - From Lab to Market - Successful
Technology Transfer Journeys - Case:
Dermis Pharma

Live streaming available

18

OCT

2022

TRAINING AND WORKSHOPS

EU - From Lab to Market - Successful
Technology Transfer Journeys - Case:
Perceive3D

Live streaming available

08

DEC

2022

TRAINING AND WORKSHOPS

EU - From Lab to Market - Successful
Technology Transfer Journeys - Case:
Cubicure

Live streaming available

29

JUN

2022

TRAINING AND WORKSHOPS

EU - From Lab to Market - Successful
Technology Transfer Journeys - Case:
Atlantic Therapeutics

Live streaming available

13

SEP

2022

TRAINING AND WORKSHOPS

EU - From Lab to Market - Successful
Technology Transfer Journeys - Case:
Blubrake

Live streaming available

03

NOV

2022

TRAINING AND WORKSHOPS

EU - From Lab to Market - Successful
Technology Transfer Journeys - Case: fos4x

Live streaming available



Registration: www.ec.europa.eu/ip-helpdesk/lab_market



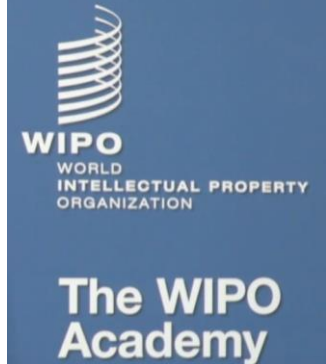
Ambassador Scheme

- **Cooperation scheme** with the Enterprise Europe Network (EEN): 44 ambassadors – 27 countries
- **Building IP capacities** among European SMEs
- **Overcoming language barriers**
- Making the topic **more accessible**
- Exchange and feedback from ambassadors on **needs of SMEs**
- **Local awareness** and **training events**



Further learning opportunities:

1. [European IP Helpdesk Ambassadors and EEN](#)
2. [EUIPO learning portal](#)
3. [EUIPO – Ideas Powered for business website](#)
4. [WIPO Academy / Diagnostics](#)
5. [The Ideas Powered for business SME Fund](#)
6. [IPA4SME](#)
7. [Horizon IP Scan](#)
8. [\(IP Booster\)](#)
9. [Horizon Results Booster](#)
10. [Leadership4SMEs](#)
11. [EPO Academy](#)
12. [4IPCouncil](#)





Horizon IP Scan

IP Support Service for SMEs in Collaborative EU-funded Research Projects



14
JUL
2022

IPPO DAYS
Horizon IP Scan - Info Session
 Live streaming available

14
SEP
2022

IPPO DAYS
Horizon IP Scan - Info Session
 Live streaming available

14
NOV
2022

IPPO DAYS
Horizon IP Scan - Info Session
 Live streaming available

17
AUG
2022

IPPO DAYS
Horizon IP Scan - Info Session
 Live streaming available

11
OCT
2022

IPPO DAYS
Horizon IP Scan - Info Session
 Live streaming available

14
DEC
2022

IPPO DAYS
Horizon IP Scan - Info Session
 Live streaming available



www.horizon-ipscan.eu



Benefits for SMEs in Detail

- Increasing overall **IP awareness and IP management knowledge** – leverage the company's innovation capacity
- Get a **clear picture of existing IP** brought into the collaboration
- **Better understand, define and negotiate appropriate IP clauses** before the start of a collaborative R&I project (i.e. when negotiating Consortium Agreements)
- Identify potential ways to **protect intangible assets**
- Develop a **joint IP management and exploitation strategy** with consortium partners → manage jointly created and jointly owned knowledge



Eligibility Criteria

- The service is open to European start-ups and SMEs (according to the EC's definition) that
 - are about to sign a **Horizon (2020/Europe) Grant Agreement** or
 - have recently signed one (up to six months after signature).
 - SME has been signposted by the **Horizon Results Booster** (maximum until half of the project duration)
 - SMEs that are referred to Horizon IP Scan by the Enterprise Europe Network, in view of a **planned cooperation with other entities on a R&I project**, are eligible for the service up to six months after the beginning of a project, but preferably before any agreement is signed.



CPVO

Community Plant Variety Office

What's in a name: Plant Variety Denominations and their Interface with Trademarks and Geographical Indications

Ángela Martínez - Legal Officer (CPVO)

IPR Helpdesk webinar

10 October 2022



The contents of this presentation are
the sole responsibility of the presenter
They do not necessarily represent the opinions of the
Community Plant Variety Office

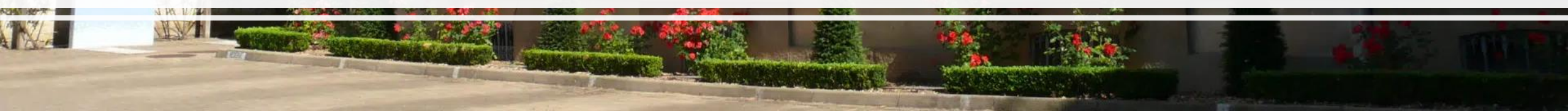
Outline



- I. Introduction to Plant Variety Protection in the EU
- II. Plant Variety Denomination: Definition and Function
- III. Trademark Right: Definition and Function
- IV. Interface between Plant Variety Denominations and Trademarks
- V. Geographical Indication: Definition and Function
- VI. Interface between Plant Variety Denominations and Geographical Indications
- VII. Coexistence between Plant Variety Denominations and Other Designations
- VIII. Relevant Databases
- IX. Final considerations



1. Introduction to Plant Variety Protection in the EU



International Legal Framework for Plant Variety Protection



UPOV

International Union
for the Protection of
new Varieties of
Plants (UPOV)



UPOV: set up in
1961, seat in Geneva
(Switzerland), legal
personality, 78
members



Convention for the
Protection of New
Varieties of Plants
(UPOV Convention):
adopted in 1961,
amended in 1972,
1978 & 1991



The EU became
UPOV member in
2005 + 23 EU Ms
are UPOV members

Legal Framework of the EU PVR system

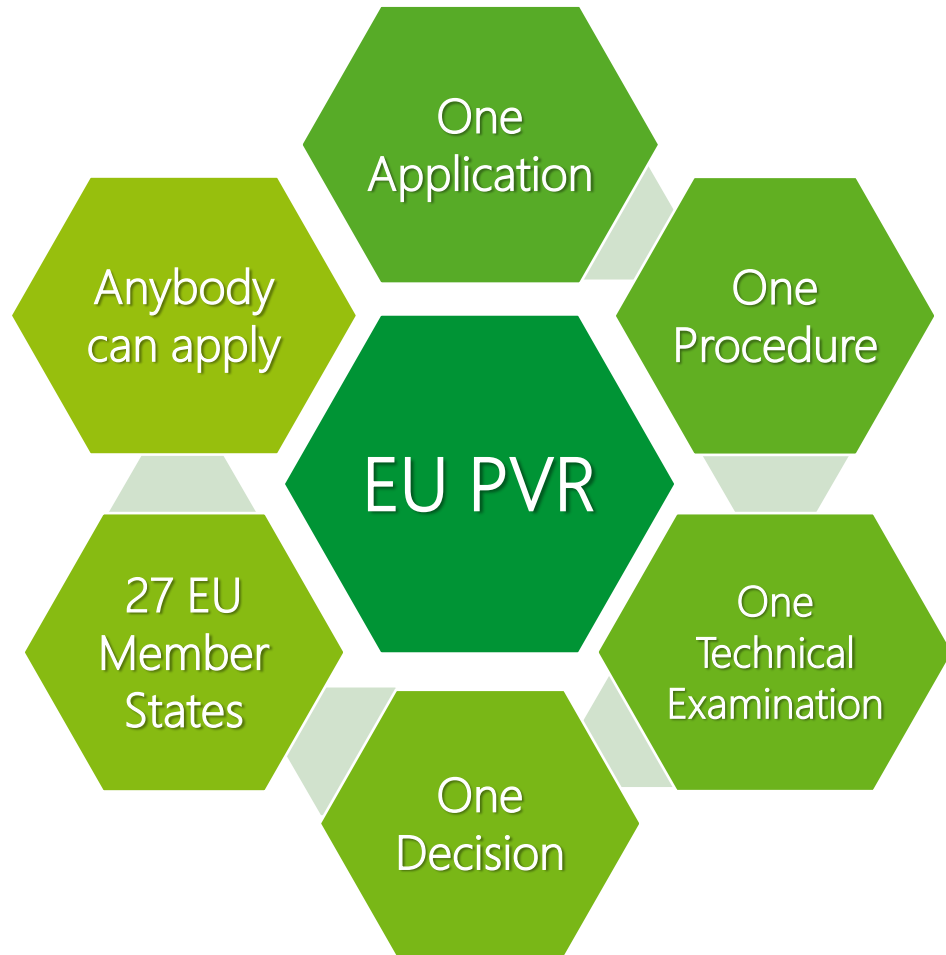


The EU put in place the Community (EU) Plant Variety Rights (EU PVR) system:

- A *sui generis* system for the protection of plant varieties in the EU territory
- Legal basis: Council Regulation No 2100/94 on Community plant variety rights ("Basic Regulation" or "BR")
- The Basic Regulation is modelled on and compliant with UPOV Convention
- The EU PVR system is managed by the Community (EU) Plant Variety Office



Benefits of application procedure for EU PVR



One single application
to cover the territory
of all the EU Member
States.



Less time and money spent
in comparison to individual
application filing in each EU
Member State.



Easier management
of the application and
post-application processes thanks
to a unique contact point.





Uniform EU protection

EU PVP has a uniform effect
throughout the EU territory = 27
EU Member States (Art. 2 BR)

- Grant, Transfer, Termination on a Uniform Basis
- The right lasts for 25 years from grant (30 for some species)

IP Principle of territoriality





What is a Plant Variety?

Article 5(2) of Basic Regulation

Variety =

*Plant grouping within a single botanical taxon
of the lowest known rank, which can be:*

In simpler terms:

"Variety" = the most specific/tangible unit of organisms of the taxonomy of Plant Kingdom

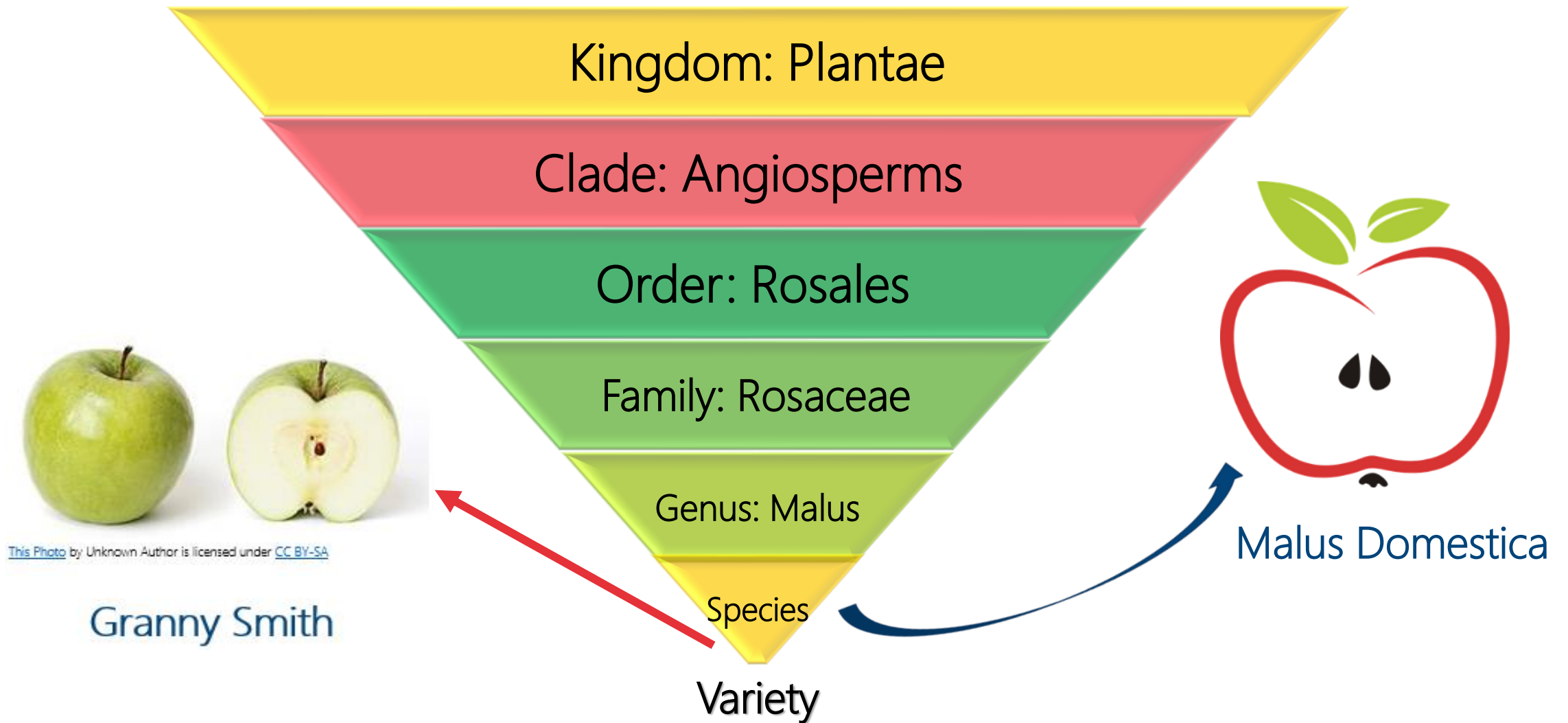
Defined by the
phenotype

Considered as a
unit suitable for
propagating
unchanged

Distinguishable
from others in at
least one
characteristic



Example: Apple Varieties



Which varieties can be protected?

- Varieties of **all botanical genera and species** may be protected
- The CPVO has received so far applications for **~2400 plant species**





Requirements for protection



Distinctness



Uniformity



Stability



Novelty



Variety
Denomination



Scope of the EU Plant Variety Right



Authorization of the holder required for the following acts [Art. 13(2) BR]:



Production
or
reproduction



Conditioning
for the
purpose of
propagation



Offering for
sale, selling
or other
marketing



Exporting
from the EU
or Importing
to the EU



Stocking for
any of the
mentioned
acts





2. Plant Variety Denomination: Definition and Function

Plant Variety Denomination: Legal Framework



Legal Basis

- International level: UPOV Convention (Article 20)
- EU level: Council Regulation 2100/94 (Basic Regulation - Articles 17, 18, 63 & 66)
- [EU system of marketing of plant material!]: Commission Regulation 2021/384

Other Regulatory Instruments (soft law)

- UPOV Explanatory Notes on Denominations (UPOV/EXN/DEN/1)
- CPVO Guidelines with Explanatory Notes on Denominations



Plant Variety Denomination: Legal Nature

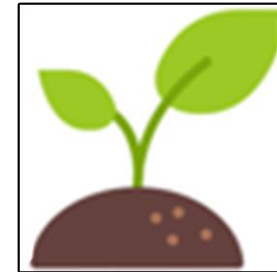
The Denomination:



- Constitutes a condition to the grant of a PVR [Art. 5(2) UPOV Conv., Art. 6 BR]



- Is the unique and generic designation of a specific variety



- Can be regarded as a regulatory element



Plant Variety Denomination: “Universality element”



“A variety must be submitted to all Contracting Parties under the same denomination” [Art. 20(5) UPOV Convention]



“The authority of each Contracting Party shall register the denomination so submitted, unless it considers the denomination unsuitable within its territory”.



Golden Rule: “**1** Variety, **1** Denomination”!



Plant Variety Denomination: Inter-institutional cooperation

The authority of a Contracting Party must ensure that the other authorities are informed of matters concerning denominations (in particular: submission, registration and cancellation of denominations).
[Article 20(6) UPOV Convention]

Any authority can address its observations on a denominations' registration by another authority

Article 87(1)(c) BR: proposals for denomination shall be published



Article 87(2)(a) BR: registered denominations shall be published





Plant Variety Denomination: Function

The Denomination serves a product-identification function: it enables to distinguish a specific variety from others

The use of the Denomination is mandatory for any person who commercialises in the concerned territory propagating material of the protected variety >> this requirement applies even after the expiration of the right in that variety
[Art. 20(7) UPOV Conv.]

The mandatory use of the Denomination contributes to the regulation of the market and the safety of transactions in the agri-food sector, preventing counterfeiting and any potential misleading of the public.

Users (relevant public) of varieties



The main public targeted by varieties designated by Denominations is a professional public



while a more general public covering average/end-consumers may not be disregarded.



Users (relevant public) of varieties



Main public targeted: professional public

- Professionals/experts in sectors concerned with the **production or marketing of plant varieties**.
- **WHO?** Breeders, seed distributors, seed propagators, plant propagators, growers, farmers, brand licensors, merchants, cooperatives, manufacturers, wholesalers and retailers, etc.
- Relatively **high technical knowledge of varieties**.
- Emphasis on product performance and technical specifications.



Users (relevant public) of varieties



Broader public made up of specialized non-professionals and end-consumers:

- *Plant Amateurs* with good technical knowledge of varieties acquiring plant material at nurseries;
 - Consumers purchasing plants/flowers/propagating material in specialist retailers in horticulture/floriculture sectors;
 - Uninformed consumers purchasing plant-derived products in a generalist retailer, often unaware of Denominations
- Specificities of market sector and type of crop! → Fruit-related market: Denominations enjoy greater visibility → End-consumers display an enhanced attention-level to Denominations. E.g.: well-known apples.



Popular Apple Varieties



Popular Apple Varieties



Braeburn



Cameo



Cox



Cripps Pink



Fuji



Gala



Golden
Delicious



Granny Smith



Honey Crisp



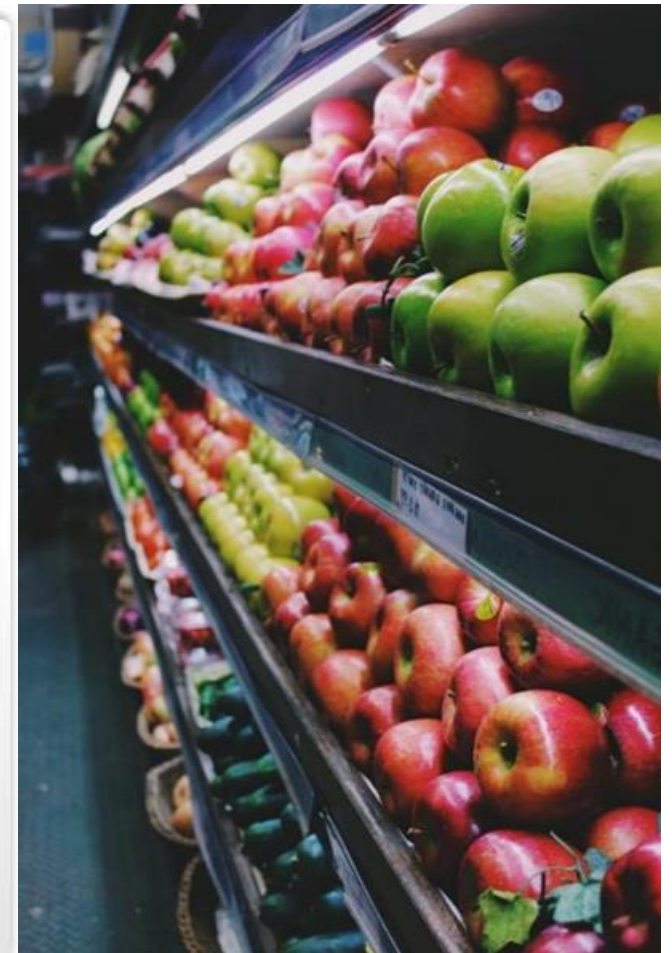
Jazz



Jonagold



Red Delicious



Plant Variety Denomination: from proposal to registration



Art. 20(3) UPOV Conv., Art. 63(1) BR

A denomination proposal must be submitted by the applicant to the authority.

If the denomination does not satisfy the suitability requirements, the authority must refuse to register it and require the applicant to propose another denomination.

The denomination must be registered at the same time as the PVR is granted.



Plant Variety Denomination: Suitability Requirements



The Denomination must enable the variety to be identified.

[Art. 20(2) UPOV Conv.]



It must not be liable to mislead or cause confusion concerning the variety's characteristics, value or identity; or the breeder's identity.



It must be different from every denomination which designates in the concerned territory an existing variety of the same plant species or of a closely related species.



Plant Variety Denomination: when is a proposal unsuitable?

Article 63(3) BR

There is an impediment
for the designation of a
Denomination where:

- its use in the EU territory is precluded by the prior right of a third party;
- it may cause its users difficulties as regards recognition or reproduction;
- it is identical or may be confused with a registered denomination for another variety of the same or of a closely related species OR under which material of another variety has been marketed in an EU MS or in a UPOV Member (unless the other variety no longer remains in existence and its denomination has acquired no special significance);
- it is identical or may be confused with other designations which are commonly used for the marketing of goods or which have to be kept free under other legislation;
- it is liable to give offence in one of the EU MS or is contrary to public policy;
- it is liable to mislead or to cause confusion concerning the variety's characteristics, value or identity, or the breeder's identity.



Plant Variety Denomination: when is a proposal unsuitable?

Article 63(4) BR

There is another impediment where, in the case of a variety which has already been entered:

- in an official PVR/commercial register OR material of the variety has been marketed (in an EU MS or UPOV Member), and the proposed Denomination differs from the Denomination which has been registered or used there (unless there is an impediment to the proposal)



Golden Rule: “**1** Variety, **1** Denomination”!

(exception: synonym)

Plant Variety Denomination: Objection (Art. 59 BR)



Any person can object to the registration of a proposed denomination on the ground that an impediment arises pursuant to Article 63(3) or (4) BR.

The Objection can be lodged within 3 months of the publication of the proposed variety denomination.

If the Objection is upheld by the CPVO, the applicant must propose a new denomination.



Plant Variety Denomination: Amendment of a Registered Denomination



Article 66 BR

The CPVO must amend a Registered Denomination if that Denomination no longer satisfies the conditions in Article 63

and in the event of a conflicting prior right of a third party

The holder must propose an Amended Denomination

Same procedure: CPVO assessment pursuant to Art. 63 BR and publication of the amendment denomination (objection period)

Variety Denomination Committee (VDC)



The CPVO has a Committee dedicated to Denominations: the VDC

Decisions pursuant to Articles 63 and 66 BR are taken by the VDC [Art. 35(2) BR]

VDC is composed of 3 members (2 technical + 1 legally qualified)

VDC is ultimately responsible for the approval and amendment of denominations, leads the review process of the CPVO Guidelines on Denominations, takes decisions on objections, and responds to the consultations of the denomination examiners in monthly meetings and in online consultations

Committee 4

Jean Maison (Chair), Gerhard Schuon and Angela Martinez Lopez

1. Approval of variety denominations (Art 63 BR)

2. Amendment of variety denominations (Art 66 BR)



QUIZZ
Guess the
denomination!



Can you guess my name?
Hint: named after a song





Hint: A name for
the champions...





Hint: focus on the pattern in my leaves...

Hint: I have a "fierce" name...
can you guess it?



A sweet name for a
sweet-looking plant





Hint: we were named
after famous painters...



3. Trademark Right: Definition and Function

Trademark Right: Definition



A Trademark is a sign that serves to indicate the commercial origin of the goods and/or services in relation to which it is used

"Goods": products on which the Trademark can be physically affixed

"Services": activities of an intangible nature (e.g.: financial, banking, travel or advertising).

In applications for a Trademark right, the goods and services must be classified in accordance with the so-called "Nice Classification system"

Overview of the Nice Classification (portal)



WIPO IP PORTAL MENU NCLPUB

NICE HOME PAGE
DOWNLOAD
EDITION-VERSION
11-2022
OTHERS

CLASS INDEX
GOODS
1 2 3 4 5 6 7 8 9 10
11 12 13 14 15 16 17 18 19 20
21 22 23 24 25 26 27 28 29 30
31 32 33 34
SERVICES
35 36 37 38 39 40 41 42 43 44
45
 Pagination
LANGUAGE
 English
 French
 English/French
 French/English
Other
LINKS TO TM OFFICES
VIEW MODE
 Flat
SHOW
 Explanatory Notes
 Basic No.
NCLPUB v3.2.44
Last modified: 2022.05.31

Classes Alphabetical Class Headings General Remarks Modifications Search

Class 31

Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables, fresh herbs; natural plants and flowers; t

Explanatory Note

Class 31 includes mainly land and sea products not having been subjected to any form of preparation for consumption, live animals and plants, as well as foodstuffs for animals.

This Class includes, in particular:

- unprocessed cereals;
- fresh fruits and vegetables, even after washing or waxing;
- plant residue;
- unprocessed algae;
- unsawn timber;
- fertilised eggs for hatching;
- fresh mushrooms and truffles;
- litter for animals, for example, aromatic sand, sanded paper for pets.

This Class does not include, in particular:

- cultures of micro-organisms and leeches for medical purposes (Cl. 5);
- dietary supplements for animals and medicated animal feed (Cl. 5);
- semi-worked woods (Cl. 19);
- artificial fishing bait (Cl. 28);
- rice (Cl. 30);
- tobacco (Cl. 34).

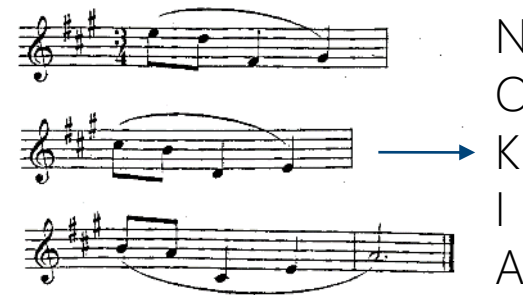
310003 algae, unprocessed, for human or animal consumption / seaweed, unprocessed, for human or animal consumption
310124 algarovilla for animal consumption
310125 almonds [fruits]
310148 aloe vera plants
310162 anchovy, live
310052 animal fattening preparations / livestock fattening preparations
310007 animal foodstuffs
310006 live animals
310147 aromatic sand [litter] for pets
310161 arrangements of fresh fruit



Different types of Trademarks



GIORGIO ARMANI



Trademark Right: Function



Essential Function (commercial origin):
a Trademark serves to distinguish
goods and/or services of an
undertaking from those of other
undertakings in the marketplace

- Consumers are informed that the products or services bearing the sign originate from a certain undertaking (i.e. have been produced or marketed by it).

The EU Court of Justice recognised
other functions [*L'Oréal v Bellure*
(C-487/07) [2009] and other case law]

- Guaranteeing the quality of the goods or services in question
- Communication
- Investment
- Advertising



Trademark Right: Protection

Trademarks can enjoy legal protection under a Trademark Right

Trademark Applicants can apply at national level, regional level (Benelux or EU) and at international level (Madrid system)

In the EU territory, the national TM regimes of the EU MS are based on national law – harmonised by virtue of Directive 2008/95/EC

At EU level, it is possible to obtain an EUTM which is valid and enforceable in the totality of the EU territory, applying before the European Union Intellectual Property Office (EUIPO) pursuant to Regulation No 2017/1001 on the EU trade mark ("EUTMR").



Trademark Right: Exclusive monopoly

Once registered, the TMR holder acquires the exclusive right to use the registered sign for its goods and/or services.

The TMR holder can prevent any third party from using the same or a confusingly similar sign for the same or similar goods and/or services.

The right lasts for 10 years and can be renewed indefinitely (periods of 10 years)



EUIPO examination of the EUTM application



Absolute grounds for refusal (Art. 7 EUTMR) Protection is excluded for signs:

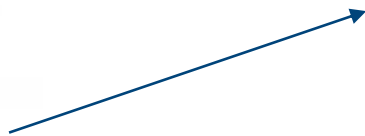
- devoid of distinctive character
- descriptive of characteristics of the goods or services (nature, quality, or geographical origin)
- generic
- deceptive or against public order or morality
- conflicting with an earlier protected geographical indication or appellation of origin, or denomination

If EUIPO considers that the EUTM application fulfils all requirements, the application is published in the EU Trade Marks Bulletin.

Within **3 months** from the publication of the EUTM application, during which opposition can be filed against the proposed EUTM application



Example of Trademark used for varieties



3 different varieties:

- 'Rosy Glow'
- 'Sekzie'
- 'Cripps Pink'

EUTM No 10 562 593

Class 31 in Nice Classification:

Agricultural and horticultural products; fruits, grains, plants and trees; apples and apple trees.





4. Interface between Plant Variety Denominations and Trademarks

Trademarks and PVRs: Comparison



Trademark: Commercial origin of the goods/services

Indefinite period of protection

IP right on the sign



Denomination: Generic Designation to Identify the variety (plant material)

PVR: Limited period of protection

IP right on the variety, not on the Denomination

→ Right/Duty to use the Denomination



TMs as prior rights vis-à-vis denomination proposals

Prior rights of third parties
can constitute an
impediment to suitability of
Denomination

*Most often, conflicting prior
rights are Trademark rights*

If a Denomination proposal is
identical to a prior TMR registered
for an identical good (Nice Class 31 -
species is in list of goods):

*The CPVO informs the applicant
about it so that the applicant can
make a new proposal*

Denominations as prior right vis-à-vis EUTM application



Article 7(1)(m) of Regulation 2017/1001 (EUTMR)

Absolute ground of refusal to the registration of signs in conflict with prior denominations

(= Art. 4(1)(l) Directive 2015/2436)



The following shall NOT be registered:

*"trade marks which consist of, OR reproduce in their essential elements, an **earlier denomination registered** in accordance with Union legislation or national law, or international agreements to which the Union or the Member State concerned is a party, providing for **protection of plant variety rights**, and which are in respect of **plant varieties of the same or closely related species**".*

See EUIPO Examination Guidelines: Section 4, Absolute grounds for refusal, Chapter 13 Trade marks in conflict with earlier plant variety denominations



The notion of “Closely related species”

UPOV General Rule: 1 Genus = 1 Class

Exceptions to the rule (Annex I of UPOV EXP Notes on Denominations):

1. Some varieties belong to same Genus (Class) but are not regarded as closely related species (Annex I, Part I)
2. Some varieties belong to different Genera but are grouped within same UPOV Class (Annex I, Part II)

The notion of "Closely related species"



UPOV General Rule: 1 Genus = 1 Class

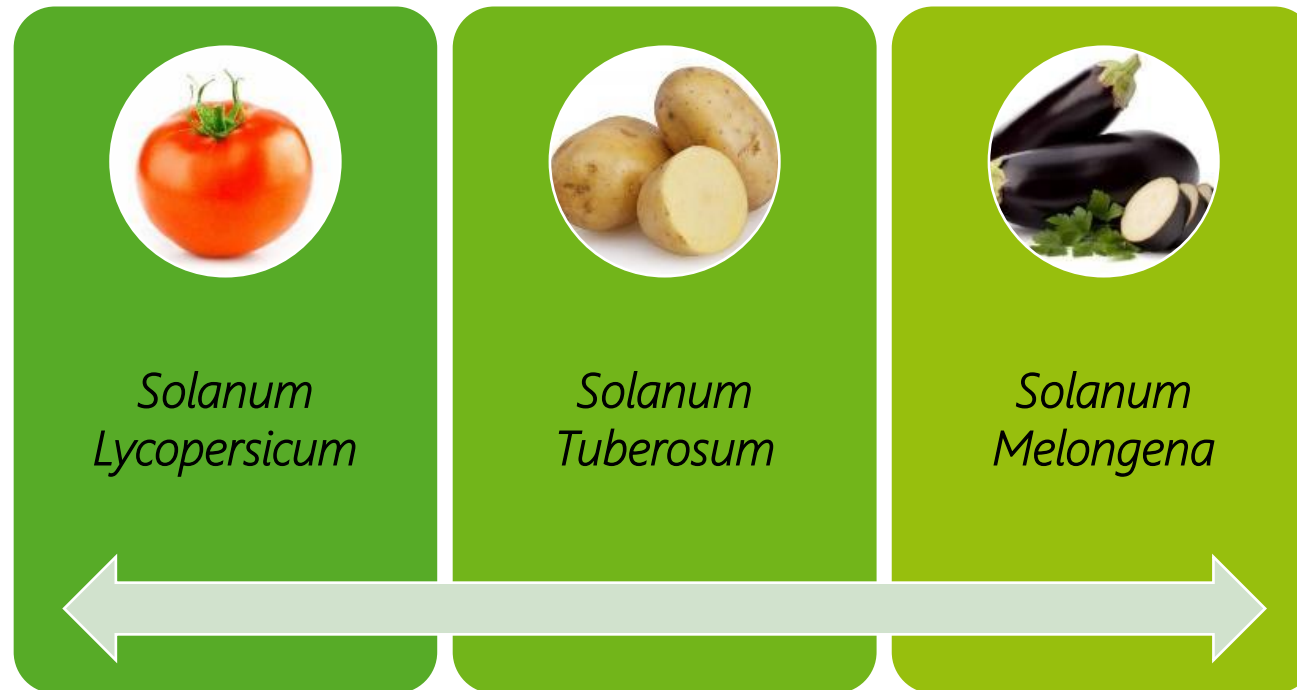
- Example: *Phaseolus*



The notion of "Closely related species"



- Species belonging to the same genus but in **different UPOV Classes**
 - Example: *Solanum*



The notion of "Closely related species"



- Species belonging to **different genus** but grouped within same UPOV Class
 - Example: *Triticum aestivum* (class 201)





Application of Art. 7(1)(m) in practice

EUTM Class 31



Variety Denomination



EUIPO applied Art. 7(1)(m) in application for EUTM for figurative sign "GIOIA CREA BONTÀ" based on earlier Denomination 'GIOIA.'

GIOIA' is registered for a variety within the genus *Dianthus L.*

The size and position of the Denomination 'GIOIA' enhance its visual relevance in the sign.

The elements "CREA BONTÀ" are in a secondary position.

Solution: the list of goods in the EUTM application was limited to exclude plants belonging to the botanical genus *Dianthus L.*

Relevant EUIPO Case law



EUIPO Board of Appeal

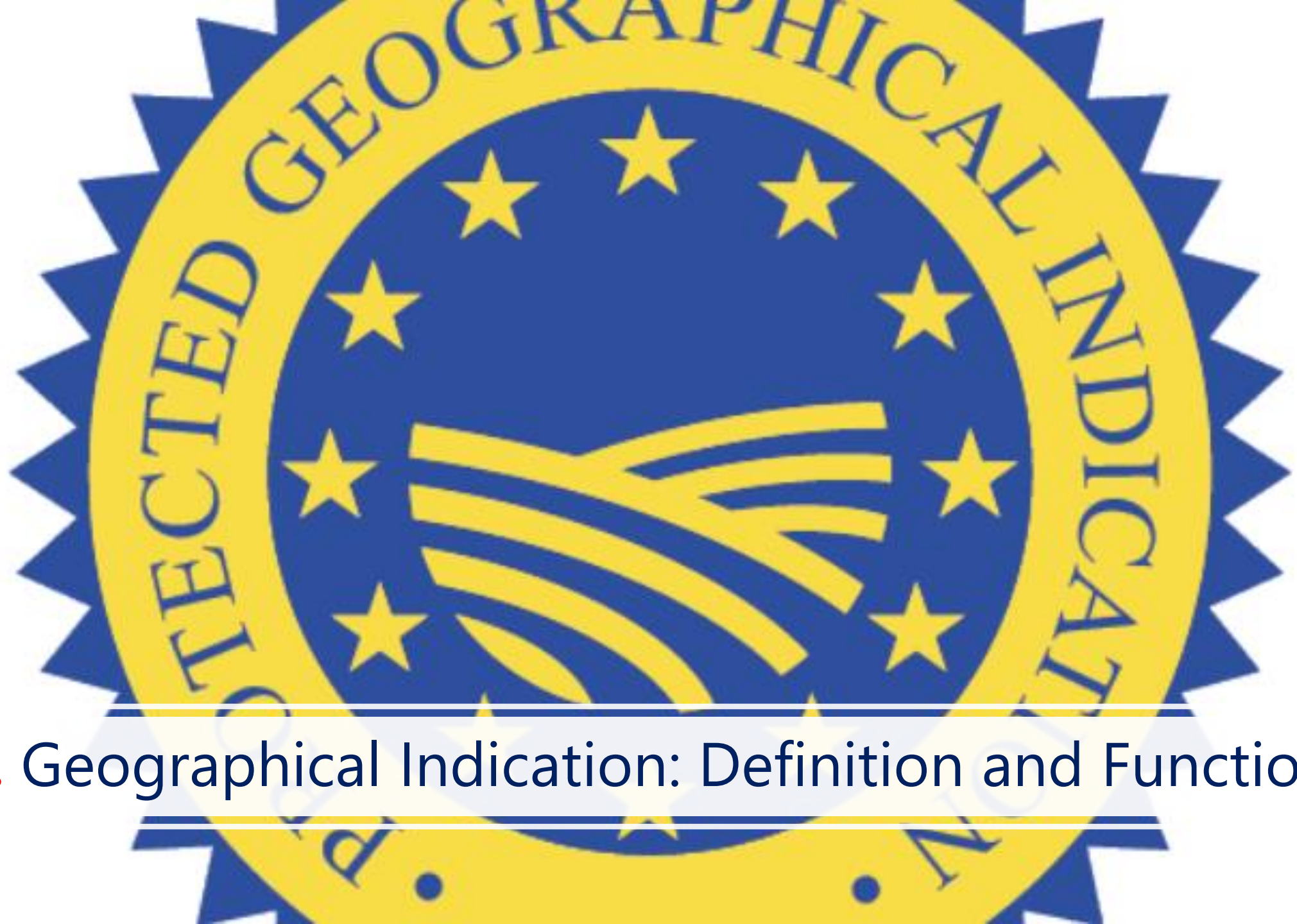
- Landmark joint cases Silverado (R 279/2014-1), Ice Tea (R 895/2014-1), Geisha (R 528/2014-1), Wasabi (R 691/2014-1), Skyfire (R 894/2014-1), and Goldrush (R 280/2014-1) [*cases preceding the entry into force of the current EUTMR*].
- Cases Gro Max by DLF (R 2541/2017-2); Microclover by DLF (R 2542/2017-2)

GroMax[®]
by DLF

microclover[®]
by DLF

General Court

- *Kordes' Rose Monique* (T-569/18) [2019]



5. Geographical Indication: Definition and Function

Geographical Indication (GI): Definition



A Geographical Indication is an IPR on a name which serves to identify a good as originating from a specific geographical area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.



Typically, the products have qualities deriving from the place of production and are influenced by specific local factors, such as climate and soil.



The GI confers an exclusive (collective) right on all producers in the defined geographical area who abide by the product specifications (conditions) to use the GI.

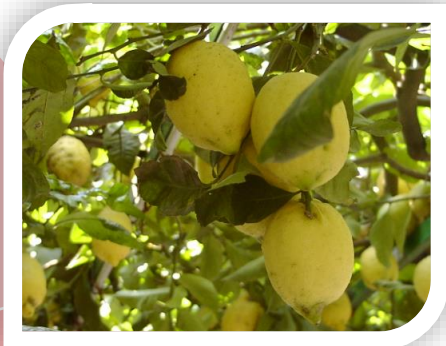


Geographical Indication: Examples

Champagne

Cognac

Limone di
Sorrento



Roquefort

Parma Ham

Darjeeling





Geographical Indication: Functions

Public interest:
consumers perceive
a GI as denoting
the origin and
quality of the
products

Tool to promote traditional
knowledge and local
economic development in
rural areas

Protection of legitimate
producers

Fostering
investment in
quality of local
production

Legal basis for protection of EU Geographical Indications



Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on
Quality schemes for agricultural products and foodstuffs

Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013
establishing a common organisation of the markets in agricultural products

Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition,
description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the
presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the
use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages

Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the
definition, description, presentation, labelling and the protection of geographical indications of aromatised
wine products



Process of legislative reform of the EU GI framework

Proposal to strengthen GI system

On 31 March 2022, the Commission adopted a [proposal for a regulation](#) on GIs for wine, spirit drinks and agricultural products, and other quality schemes for agricultural products. The proposal aims to increase the uptake of GIs across the EU in order to benefit the rural economy and achieve a higher level of protection for products, especially online.

The Commission has proposed the following measures, among others, to strengthen and improve the existing system:

- **more sustainability** by allowing producers to valorise their actions relating to social, environmental and economic sustainability in their product specifications;
- **increased protection** for GIs on the internet, specifically with regard to sales via online platforms, protection against bad faith registrations and use of GIs in the domain name system;
- **empowering producers' groups** to manage, enforce and develop their GI by having access to anti-counterfeiting authorities and customs in all EU countries;
- **a shortened and simplified registration procedure** will merge the different technical and procedural rules, resulting in a single GI registration procedure for EU and non-EU applicants.

Source: Commission

Types of GIs: Protected Designation of Origin (PDO), Protected Geographical Indication (PGI), and Traditional Specialities Guaranteed (TSG)



	PDO 	PGI 	TSG 
Name	Specific place, region or (exception) country	Specific place, region or country	Different from Geographical Indication
Link with Geographical Area (GA)	Essentially or exclusive	Quality, reputation or other characteristic	No delimited GA. Traditional method of production or product composition
Production steps	All in GA	At least one in GA	Anywhere
Raw materials	GA	Anywhere	Anywhere

Protected designation of origin (PDO)

source: European Commission



Protected designation of origin (PDO)

Product names registered as PDO are those that have the strongest links to the place in which they are made.

- **Products:** food, agricultural products and wines.
- **Specifications:** Every part of the production, processing and preparation process must take place in the specific region. For wines, this means that the grapes have to come exclusively from the geographical area where the wine is made.
- **Example:** Kalamata olive oil PDO is entirely produced in the region of Kalamata in Greece, using olive varieties from that area.
- **Label:** mandatory for food and agricultural products, optional for wine.

Protected Geographical Indication (PGI)

source: European Commission



Protected geographical indication (PGI)

PGI emphasises the relationship between the specific geographic region and the name of the product, where a particular quality, reputation or other characteristic is essentially attributable to its geographical origin.

- **Products:** food, agricultural products and wines.
- **Specifications:** For most products, at least one of the stages of production, processing or preparation takes place in the region. In the case of wine, this means that at least 85% of the grapes used have to come exclusively from the geographical area where the wine is actually made.
- **Example:** Westfälischer Knochenschinken PGI ham is produced in Westphalia using age-old techniques, but the meat used does not exclusively come from animals born and reared in that specific region of Germany.
- **Label:** mandatory for food, agricultural products, optional for wines.

Traditional Speciality Guaranteed (TSG)

source: European Commission



Traditional speciality guaranteed



Traditional speciality guaranteed (TSG) highlights the traditional aspects, such as the way the product is made or its composition, without being linked to a specific geographical area. The name of a product being registered as a TSG protects it against falsification and misuse.

- **Products:** food and agricultural products.
- **Example:** Gueuze TSG is a traditional beer obtained by spontaneous fermentation. It is generally produced in and around Brussels, Belgium. Nonetheless, being a TSG, its production method is protected but it could be produced somewhere else.
- **Label:** mandatory for all products.

Geographical Indication: Registration



Applications for GI can be filed by the producer group (association of farmers, producers and/or of processors producing the same product). The product must be defined according to the product specifications.

The application for registration of a GI must be filed by the applicant group before the EU MS authorities.

The application is examined by the national EU MS authorities (national opposition process).

The national authorities take a decision on approval and forward the application to the European Commission.

For non-EU products, third country producers can send their applications for GI registration either directly to the European Commission or via their national authorities.



6. Interface between Plant Variety Denominations and Geographical Indications

Geographical Indications and PVRs: Comparison



Geographical Indication: Link between Geographical Area and product

Indefinite period of protection

IP right on the name



Denomination: Generic Designation to Identify the variety (plant material)

PVR: Limited period of protection

IP right on the variety, not on the Denomination

→ Right/Duty to use the Denomination



Earlier GIs vis-à-vis denomination proposals

Article 3(2) of Commission Regulation 2021/384 on the suitability of denominations & CPVO Guidelines with EXP Notes

2. In the case of geographical indications, designations of origin or traditional specialties guaranteed for agricultural products and foodstuffs, spirit drinks, aromatised wines and wine products as a prior right of a third party, a variety denomination in the territory of the Union shall be precluded where the variety denomination would breach:

- (a) Article 13 or 24 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council ⁽⁶⁾;
- (b) Article 103 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council ⁽⁷⁾;
- (c) Article 20 of Regulation (EU) No 251/2014 of the European Parliament and of the Council ⁽⁸⁾;
- (d) Article 21(2) of Regulation (EU) 2019/787 of the European Parliament and of the Council ⁽⁹⁾.

Article 13 of Regulation 1151/2012 (Quality Schemes)



Registered names shall be protected against:

- any direct or indirect commercial use of a registered name in respect of products not covered by the registration where those products are comparable to the products registered under that name or where using the name exploits the reputation of the protected name, including when those products are used as an ingredient;
- *any misuse, imitation or evocation;*
- *any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product; etc.*

Earlier Denominations vis-à-vis GI applications



Article 6(2) of Regulation 1151/2012
(Quality Schemes)

A name may NOT be registered as a designation of origin or geographical indication where it conflicts with a name of a plant variety [...] AND is likely to mislead the consumer as to the true origin of the product.



what are other
words for
coexistence?

coincidence, concurrence,
conjunction, simultaneity,
concomitance, peace,
synchronicity, accord



7. Coexistence between Plant Variety Denominations and Other Designations



Legal basis for the coexistence of Denominations and other Designations

Article 20(8) UPOV Convention

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

Article 17(1) BR

- *where it is used in writing, the variety denomination shall be readily distinguishable and clearly legible.*
- *If a trade mark, trade name or similar indication is associated with the designated denomination, this denomination must be easily recognizable as such*

Coexistence GIs-TMs-Denomination Wine labelling



Coexistence GIs-TMs-Denomination Apples



Disciplinare di produzione
della Indicazione Geografica Protetta "Mela Alto Adige"
o "Südtiroler Apfel" IGP

Art. 1 – Nome del prodotto

Coexistence of TMs and Denominations: Notices



For TMs:

TM or ®

For Denominations:
"denomination" or
abbreviation "var."

OR single
quotation marks
('...'



More examples



Secondary
Trademark

Primary
Trademark

Species
Name

Denomination

Another example



Benito Que Eternity



Herr Alexandre



Lady Snow Second Love



Newton Falls



Prince Diana Red Baron



White Summer Tania





Recommendations on the combined use of TM and Denominations

A breeder could register a TM to promote a product-range including varieties sharing similar characteristics, but use of a single TM for a single variety should be avoided;

Use of Denomination is mandatory (propagating material), must be recognisable (e.g.: use of single quot. marks);

Trademark ideally accompanied by a TM-notice;

Use of the TM as adjective, and not as noun (e.g.: "Pink Lady apples" instead of "Pink ladies");

Setting of clear guidelines/usage protocols in TM-licenses with third parties and ensure compliance;

Proactive monitoring of the market to prevent improper use by third parties & taking immediate action (e.g.: variations on TM).



8. Relevant Databases

Variety Finder database



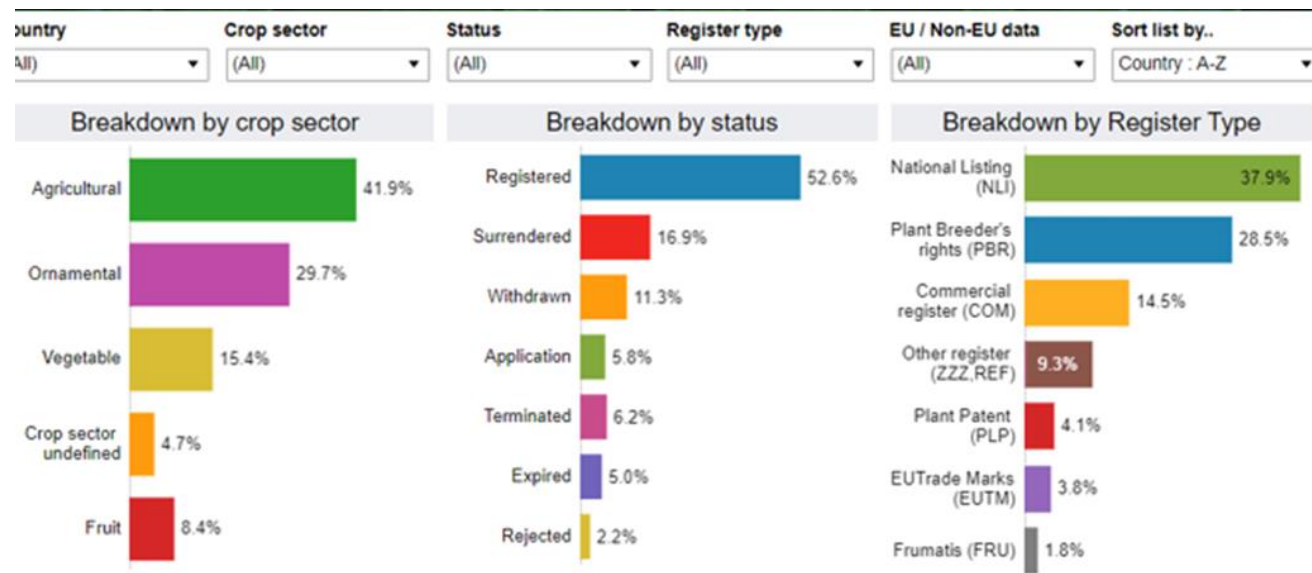
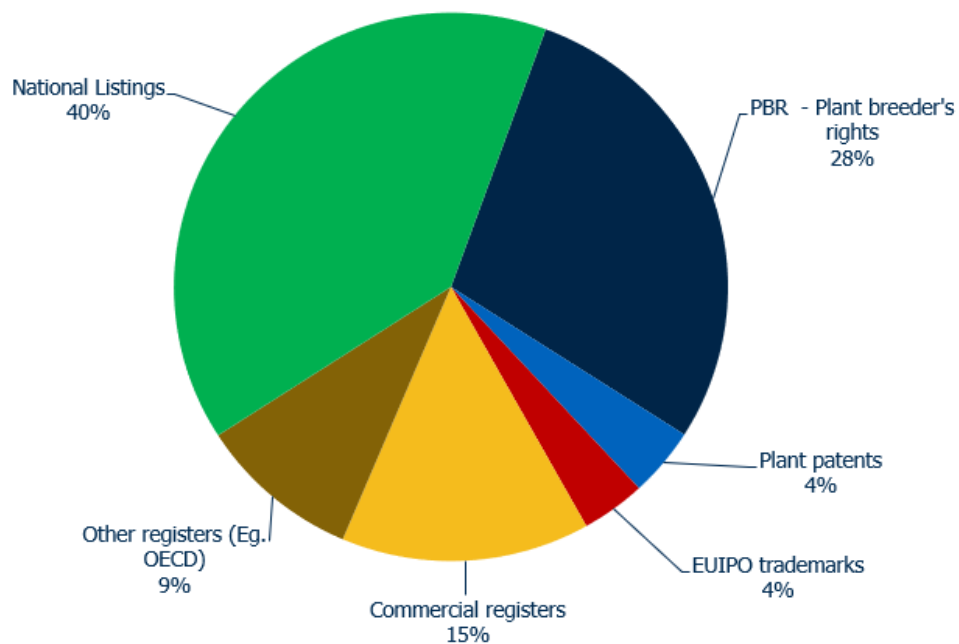
- CPVO Variety Finder is a database equipped with a search tool and a similarity search tool
 - **70** countries
 - **174** registers (National listing, PVRs, EUIPO trademarks, Plant Patents...)
 - **+1.4** million denominations
- **Manage** all contributions to the database -> 350-400 contributions per year
 - Regular contact with contributors, up-to-date information, completeness
- **Close cooperation with the UPOV Office** for the data collection for some non-EU data and quality aspects
- Our colleague **Carole Bonneau** is the CPVO staff member responsible for the management of Variety Finder





Variety Finder: Content

Variety Finder content
Shares in number of records by type of registers (09/2022)





CPVO Variety Finder

Search among **1.475.943** Denominations, **1.327.222** Varieties, **155** Registers in **73** Countries

Denomination

Species Latin Name Include Synonyms [+ add from list](#)

Denomination Nature Variety Status Register type

Breeder's Reference Breeder's Name

[Configure search fields](#) [Help](#) [Clear fields](#) [Save search](#) [Search](#)

4 results matching your criteria

Columns Default View Download Excel 50 Records per page Showing 1 to 4 of 4

Denomination	Denomination Nature	Species Latin Name	Countries	Register type	Variety Status	Application Number	Breeder's Reference	Breeder's Name	Applicant	Holder	Maintainer
Snowdrop	Denomination	Phalaenopsis Bl.	NL	PBR	SURRENDERED	0P5849	223244	Floricultura B.V.	Floricultura B.V.	Floricultura B.V.	Floricultura B.V.
Snowdrop	Denomination	Phalaenopsis Bl.	US	PLP	REGISTERED	13573519		Schoone Rene	Schoone Rene	Floricultura	
Snowdrop	Denomination	Phalaenopsis Bl.	US	PLP	REGISTERED	13573519_1		Schoone Rene	Schoone Rene	Floricultura	
Snowdrop	Denomination	Phalaenopsis Bl.	US	PLP	REGISTERED	13573519_2		Schoone Rene	Schoone Rene	Floricultura	

Columns Default View Download Excel 50 Records per page Showing 1 to 4 of 4



Variety Finder: General search

Denomination

Starts with ▾ Enter denomination (e.g. pink floyd)

Species Latin Name

Contains ▾

Countries

Select ▾

Denomination Nature

Select ▾

Variety Status

Select ▾

Register type

Select ▾

Breeder's Reference

Contains ▾

Breeder's Name

Contains ▾

Valid Denomination

All ▾

⚙️ Configure search fields

Clear fields

Save search

Search

Variety Finder: To learn more



[CPVO Variety Finder | CPVO \(europa.eu\)](https://cpvo.europa.eu), 2 minutes video



CPVO variety finder



TMR Databases

TMview

WIPO
IP PORTAL

MENU

Global Brand Database

 eSearch plus

The EUIPO's database *access*

Search trade marks, designs, owners, representatives, Bulletins and Office decisions in one single application. [Learn how](#)

[Advanced search](#)



 eSearch Case Law


From

To

Language







 *Enter case number without letters (e.g. 44/2000-3, 122/01)*

Case number Nickname

[Advanced search](#)

GI Databases



eAmbrosia

the EU geographical indications register

GIview



eAmbrosia is a legal register of the names of agricultural products and foodstuffs, wine, and spirit drinks that are registered and protected across the EU.

It provides a direct access to information on all registered geographical indications, including the legal instruments of protection and product specifications. It also displays key dates and links for applications and publications before the geographical indications are registered.

also find information about the traditional terms for wine and the traditional specialities guaranteed in the section [Related links](#) below.

Search for Geographical Indications across the European Union and beyond

Wine register

Agricultural products and foodstuffs register

Spirit drinks register

Country



Geographical Indication / File number

Search

Geographical indications - Search



Product type

Product category

Name

Application type

Country zone

Country

Type

Status

File number

Search

Reset



9. Final Considerations

Denominations, TMs and GIs: Commonalities



Designations/signs/names

On the marketplace

Providing information on the goods

Facilitating purchase choices...

...within a competitive environment



Wrap-up

TMs

- Holder
- Third parties with owner's consent
- **Exclusive right**

TMs

- Any good
- Any service

GIs

- All producers who comply with product specifications
- **Collective right**

GIs

- Agricultural Products (e.g. Limone di Sorrento)
- Foodstuff (e.g. Havarti cheese)
- Wines and Spirits (e.g. Champagne)

PVDs

- Anyone commercializing the Plant Variety
- **Obligation**

PVDs

- Agricultural crops (e.g. cereals, fodder)
- Fruits and vegetables
- Ornamentals (e.g. flowers, some types of shrubs)

Final Considerations



Different legal nature, scope of protection and function of TMs, GIs, and Denominations

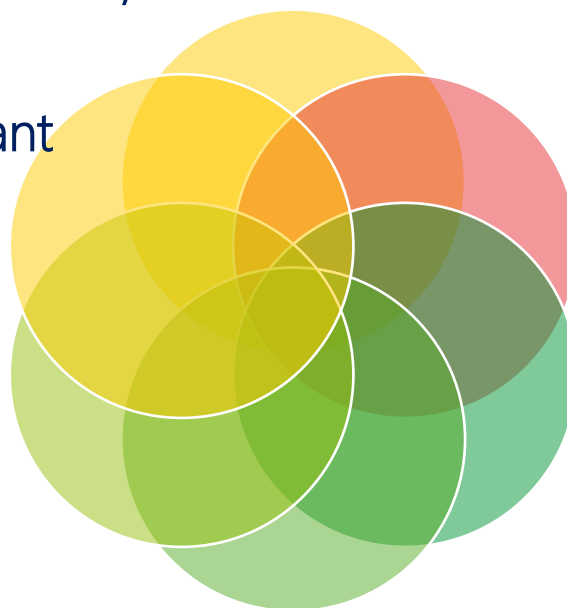
Inter-institutional cooperation is important from the public sector's perspective

Different designations can coexist in the market under certain conditions

Use of search tools and databases

Combination of different IPRs can represent a powerful strategic business tool

Solid knowledge on the different features of each right and areas of interface is important to avoid conflicts among rights





CPVO

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