

Plant Variety Protection Board Teleconference Meeting Minutes

September 9, 2008, 1:00 to 3:00 PM

Room 3074

United States Department of Agriculture

1400 Independence Ave.

Washington, DC 20090

Board Members attending (with affiliation):

June Blalock; USDA, ARS, Office of Technology Transfer

Kelly Book; Texas Department of Agriculture

Kent Bradford; University of California, Davis

Steven Callistein; Pioneer Hi-Bred International, Inc.

Harry Collins; Delta and Pine Land Company

Russell Karow; Oregon State University

Patrick Kole; Idaho Potato Commission

V. Larkin Martin, Martin Farm

John Nelsen, RiceTec, Inc.

Larry Svajgr; Indiana Crop Improvement Association

Katherine E. White, Wayne State University

John Gardner, Carl Johnson, and Bernice Slutsky were absent.

USDA and AMS staff:

Robert Epstein, Deputy Administrator, USDA/AMS/Science and Technology

Alan Post, Associate Deputy Administrator, USDA/AMS/Science and Technology

Robert Ertman, USDA/Office of the General Counsel

Douglas Bailey, AMS Chief Information Officer

Lavern Harris, S&T Resource Management Officer

Annette White, RMO Program Analyst

Ellen Tyler, Litigation Specialist

The conference call was opened by the Commissioner. The participants were welcomed by Dr. Epstein.

The Board reviewed the minutes of the May 1, 2008 Teleconference Board meeting. One Board member commented that she did not receive these minutes until this morning. The May 1, 2008 Minutes were approved.

Plant Variety Protection Office (PVPO) Update

The Board reviewed the PVPO e-business goals, the database migration issues, topics brought forward from the May 2008 conference call, and PVP application status. Topics from the May 2008 teleconference included: sources of funding to have greater PVPO representation at UPOV meetings, more information on accepting in-kind donations, conversion of the Star database, and a potential fee increase.

The Board asked why 2007 had the most incoming PVP application ever and what is done to realign examiners to crops when more applications are filed for a crop. The 455 applications received in 2007 included over 100 corn applications, perhaps due to the increased use of biofuels. The PVPO also said that no crop distributions other than Zinnia and pepper have occurred in 2008 to realign examiners and increased crop applications.

On the issue of accepting in-kind funding, OGC explained that government agencies cannot accept funds from seed companies or seed related associations. However if a land grant college accepts money from these entities it can develop and design a PVPO database and send the resulting software to the USDA by CD. OGC said that the PVPO could populate and use the new database. The Board suggested that the PVPO work with the USDA Agricultural Research Service (ARS) as an authority to develop a cooperative research and development agreement (CRADA) for the new database with the seed industry using the ARS National Program staff. The Board agreed that a new PVPO database is required and that the only means to fund the database may be through a land grant university, an ARS CRADA, or from user fees. The Commissioner will set up a meeting with ARS National Program Staff to discuss the possibilities of working on a database/electronic application filing system projects.

The Board asked if the PVPO plans to hire more staff to assist with the incoming applications. The PVPO responded that a second information technology specialist and document management specialist have already been hired but it was noted that neither of these positions would help with application examination per se. The PVPO will look into hiring more PVP associate examiners. The Board asked what is being done to harmonize the US PVP system with other UPOV members, i.e. can DUS (distinct, uniform, and stable) test results be accepted and exchanged between the PVPO and other countries. The PVPO indicated that the Plant Variety Protection Act of 1970 (amended 1994)–requires all new PVP applications be examined (including those applications from UPOV members) prior to granting protection to the new varieties.

PVPO Finance Update

The Board reviewed the history of PVP fees and certificate activities, the top 4 office obligations, the PVPO trust fund budgets for Fiscal year (FY) 2006 to FY 2008 with planned versus actual obligations, the PVPO obligations/revenue trends, and the most recent PVPO statement of operations.

The top 4 obligations over the past 3 years are consistently salary, rent, contracts, and overhead. In FY06 the PVPO Trust fund had a deficit of \$54,000, a \$791,000 surplus in FY07, and a projected surplus of \$265,000 in FY08. The obligations and revenue over the past three years resulted in a Trust fund balance of \$1,459,000 in FY06 and projected to be \$2,573,000 by the end of FY08. The PVPO statement of operations report shows the office would have an operating reserve of 16.8 months by the end of FY 08.s. The

operating reserve is expected to decrease to 11.9 months at the end of FY09 due to increased obligations and reduced revenue. Need to define operating reserve!

The Board has requested, as well as our stakeholders, that the office expand its use of electronic technology for filing new applications, invest resources to enhance office workflow, and attend more domestic and international meetings. Our major priorities for FY 09 include: 1) electronic scan conversion of all PVP certificates (because of the National Archives and Records Administration rules the conversion priority is: 1 = recently issued PVP certificates, 2 = expired PVP certificates, and 3 = all other issued certificates), 2) hiring new associate examiners and 3) cross training the current PVP examiner on major crops. It was stressed that hiring two additional examiners and cross training existing staff members were an office priority.

The Board was informed that the current fee schedule, last increased in October 2005, is no longer adequate to cover these proposed obligations. A fee increase would be needed. PVPO is recommending a 15 percent fee increase. The Board again indicated their concern regarding a possible reduction of incoming applications if a 15% increase were put into place. The Board asked what the U.S. Patent and Trademark Office (PTO) is doing on fee increases. One Board member commented that they expected PTO fees to increase especially when additional patent claims are filed. Another member asked if the PVPO is set on the amount of a fee increase. The Board again suggested looking at what the PTO would do; it was speculated that the combination of a PTO fee increases and a PVPO increase would put more pressure on applicants to choose between PVP and patents; and that plant intellectual property applicants would favor patents given the choice. The Board indicated some concern regarding any fee increase.

The Board asked if applicants feel they are getting better value for patents or for PVP. Some Board members thought patents offer better value and protection, whereas PVP has an international advantage for those wanting PVP in other countries. The Board suggested that the PVPO perform a DUS (distinct, uniform, and stable) assessment to make international PVP filing easier. It was also suggested that it may be good to ask seed companies (especially soybean) why they stopped filing PVP applications.

The Board indicated that by looking over the PVPO finances for the past 3 years it appears that the office operated in the black by \$900,000 and that if the assumption of the last 2 years is a best model then the PVPO would break even next year. The Board stated that it was not comfortable supporting a fee increase without demand destruction assessment (i.e. going to users and ask why they decreased using PVP). The Board suggested that the PVPO go back to the PVP constituency and ask if they want more international representations, help with breeders rights outside of the us, and other issues that would increase the value of a PVP. The Board also said that the PVPO should consider the point of diminishing returns that if fees increase without changes in the PVP value then PVP applicants will go towards patents.

The PVPO might schedule a Board teleconference in November and get an assessment from the Board and industry about the effect of a 15 percent increase. The Board

suggested that the PVPO make a presentation at the ASTA Chicago meeting and ask why PVP usage is decreasing. A Board member will ask this question at the California Seed Association. The Board suggested that the next teleconference should be December 15 which is after the ASTA meeting and before the current Board expires.

The Board wanted to know what has been done thus far regarding a fee increase filing at the USDA. The PVPO explained that a work plan has been prepared and is being reviewed by USDA's Office of Budget and Policy Analysis. The work plan and supporting documents will be forwarded to the Office of Management and Budget to determine if the fee increase is classified as a significant or non significant docket. The Board asked if a fee increase within the consumer price index would be considered significant. The Board would also like to see a more in depth analysis of the PVPO's expenses such as the description of the current staff, how many staff members are eligible to retire, and if the PVPO fees were increased – who would be hired versus current staff retained.

The Board stressed that the PVPO needs to be more involved in UPOV so that the US is part of the international community. The Board was interested in a better understanding of what the public would receive following the increase, i.e. if fees were increased how many more meetings could be attended and what level could the PVP application backlog be reduced.

The Board wanted to know how the seed industry can best participate at UPOV. The PVPO indicated that the industry could most likely participate as part of an observer organization such as International Seed Federation (ISF) or the Seed Association of the Americas (SAA).

The Board asked can the PVPO pull together the list of the top 10 PVP applicants over the past 5 years and provide this to the Board. The Board also wanted to know if the database could be divided into pieces. The PVPO indicated that the entire project would need to be funded at one time

The teleconference was adjourned at 3:00 PM.