

Plant Variety Protection Board Teleconference Meeting Minutes
May 1, 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
John Gardner, Washington State University
Russell Karow; Oregon State University
Patrick Kole; Idaho Potato Commission
V. Larkin Martin, Martin Farm
John Nelsen, RiceTec, Inc.
Bernice Slutsky; American Seed Trade Association
Larry Svajgr; Indiana Crop Improvement Association
Kathy White, Wayne State University
(Carl Johnson was 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

Plant Variety Protection staff:

Lidia Carrera, PVP Examiner
Robin Davis, PVP Examiner
Mark Hermeling, QA PVP Examiner
James Mantooth, PVP Examiner
Janice Strachan, PVP Examiner
Jeff Strachan, PVP Examiner
Bernadette Thomas, Information Technology Specialist
Beretha Thornton, PVP Examiner
Paul Zankowski, Commissioner

Sign Language Interpreters

Outside Participants

Kitisri Sukhapinda, Patent Attorney, U.S. Patent and Trademark Office
Karin Ferriter, Patent Attorney, U.S. Patent and Trademark Office

The conference call was opened by the Commissioner. The participants were welcomed by Dr. Epstein. Dr. Epstein also announced that David Shipman is the new AMS

Associate Administrator, effective April 14, 2008, following the retirement of Dr. Clayton.

The Board reviewed the minutes of the November 2007 Board meeting. It was suggested that the minutes be changed on page 7 under Topics Brought Forward by Board Members – item 3 from “3) the UPOV and the National Council of Commercial Plant Breeders (NCCPB) definitions of terms used to describe variety response” to 3) the UPOV and the National Council of Commercial Plant Breeders (NCCPB) definitions of terms used to describe variety response to biotic and abiotic factors”. It was also recommended that some summary regarding budget would be useful. The November 2007 minutes were approved with the above modification.

The Board did not make any comments regarding the PVPO Strategic plan or the business plan therefore the PVPO will make these documents available to the public.

The meeting agenda was adopted.

Actions on recommendations from November 2007 Board Meeting

1. The US delegate to UPOV asked that the term “tolerance” be allowed for biotic and abiotic factors and that “tolerance” as a character state (separate from the terms resistance and immunity) be reinstated by UPOV.

It was reported that the US delegation to UPOV made an intervention on this topic at the Technical Committee (TC) during the discussion of the paper TGP/12: Special Characteristics. Following this intervention the TC agreed to invite the UPOV technical working parties (TWP), in particular the vegetable working party (TWV), to review the sentence “In general, for DUS purposes, ‘tolerance’ is not a suitable characteristic in relation to biotic factors.” and to modify the sentence to read “In many instances, for DUS purposes, tolerance may not be a suitable characteristic.”. As a part of the review, to consider the definition of “tolerance” for biotic factors and to consider whether it would be appropriate to explain why, in most instances, it is not used as DUS characteristic. [Please note DUS refers to distinct, uniform, and stable]

The Board expressed concern that no one from the US was planning to attend the TWV which will be held June 23 to 27 in Cracow, Poland. The PTO representatives explained that the UPOV spring and fall meetings are the most important for US representation. It was suggested that the embassy, US Trade Representative, or Foreign Agriculture Service (FAS) can attend these meetings if there is enough time, but it may need approval of the Administrator or Under Secretary. The Board suggested that perhaps the Seed Society of the Americas may be the best means for the US industry to speak on this topic at the TWV. The PTO explained that even if the US did not attend the TWPs that the US delegation could make interventions at the UPOV TC to prevent this topic from going forward.

A motion was made that the PVPO explore sources of funding to have representation at the UPOV technical level meetings or have FAS or US embassy read a prepared statement on the US point of view. This motion carried.

2. Board members Patrick Kole, Bernice Slutsky, Russell Karow, and Steve Callistein drafted a letter from the Board to the Secretary on appropriation funding, and a group soon thereafter met with the Under Secretary.

The Board drafted this letter and a group of 4 Board members had a meeting with Under Secretary Knight on April 16. The Under Secretary asked questions about the seed industry's priorities. The Board stressed the need for the PVPO to take a more global view and that updating the database might accomplish this. It was also indicated that the PVPO needed to be very engaged in UPOV and in all bilateral activities. The Under Secretary was receptive to this message and indicated that he would be willing to get funding for the PVPO that did not rely on fee-for-service. This group also suggested that the AMS Associate Administrator and Under Secretary attend the entire PVP Board meeting.

The Board indicated that getting appropriated funds may be difficult because AMS is mostly fee-for-service. Dr. Epstein indicated that the PVPO will submit an appropriation request through AMS. The Board asked about whether in-kind donations may be accepted by the PVPO. The Office of General Counsel (OGC) said that the issue with these types of donations is being reviewed by the General Law Division. It was suggested that the PVPO may be able to lease a database from a land grant university – the university would be able to accept donations from the seed industry and would develop / maintain the database which would be leased back to the PVPO.

The Board indicated that the Under Secretary had other ideas for out-of-the-box funding scenarios and that examples can be provided perhaps following discussions with the AMS Associate Administrator. OGC said that this sort of funding will need approval of the General Law division and Ethics Office.

PVPO Information technology

Dr. Epstein said that the new AMS Strategic Plan includes a management objective for the PVPO database revision and that this objective needs to be addressed by 2013.

Douglas Bailey, AMS Chief Information Officer, began a discussion of the PVPO's database issues. The PVPO's Star hierarchical database is a unique product from Cuadra and that tools are available to convert the database to a relational format. The Board asked if this issue was unique to the PVPO and if any other branch in AMS has done this type conversion. It was indicated that, within AMS, hierarchical databases

are unique to the PVPO and that a hierarchical to relational conversion has not been done before in AMS but may have been done within the USDA.

The Board asked if there was a USDA standard relational database. It was indicated that there is no USDA standard but that the standard relational database in AMS is Microsoft SQL Server using the VB.Net language. Dr. Epstein suggested that the seed industry could provide guidance on the PVPO database similar to the Six Sigma assistance provided to the PVPO by Pioneer Hi-bred in 2001. It was suggested that the framework and strategy for the database conversion be defined before seeking this assistance.

The Board asked what other countries' PVPOs use for databases. The US PVPO is unique in that the breeders provide objective descriptions of varieties and examiners use these descriptions to distinguish the variety from other varieties in the database. The Australian PVPO said that it uses Cold Fusion to run an Interactive Variety Description Database which allows applicants to claim certain characteristics as distinctive and provides its examiners with comparative tables to see whether they agree that the 'ticked' characteristics are in fact clearly distinct. The Canadian PVPO uses FoxPro for tracking applications.

The Board asked what would be lost with a new relational database. The PVPO said the crop databases would no longer be managed by individual examiners. The PVPO examiners indicated that the time required for data entry is the greatest problem with the current database. Douglas Bailey indicated that the current database is very vulnerable from a security and user perspective since the software is proprietary and the search queries are cryptic. He said that while the Star database works – it needs to be moved to a mainstream software product.

It was noted that switching to e-filing should improve data entry and that there should be a method to curate entries (i.e. if one publication indicates that variety X is 34 cm tall versus another publication indicates that the same variety is 24 cm tall). The U.S. Patent and Trademark Office (PTO) has adopted an e-filing system that is efficient and the PVPO should revisit how they accomplished e-filing.

There was a discussion that perhaps the US system should harmonize more with the UPOV system. The Board noted that the US PVPO system is favorable over the European system whereby, the breeders do not collect the data – only collect characteristics of interest to the breeder. The Board suggested that the US PVPO may need to become more like Canada or Australia where breeder generates the data but the PVPO verifies it. Another Board member commented that harmonization does not mean wholesale change, but rather coming to a meeting point.

The Board wanted to know what specific industry assistance the PVPO would request. In order to provide the Board with information on what assistance has been provided in the past, the PVPO will send the Board the Six Sigma report so ideas can be developed on where to proceed with the database project.

Financial status of the PVPO

Dr. Epstein said that the PVPO had its best year for incoming (455) applications in FY2007, but that the office has a liability of almost 800 applications in the backlog (service not completed to date equating to approximately \$3.2 million) and a Trust fund of just over \$2 million, producing a negative net worth for the office. The chance of getting appropriations for the database and international activities is possible but not probable. It was indicated that even if the appropriation request was passed by the USDA Office of Budget and Policy Analysis (OBPA) that it probably would not get approved by the Office of Management and Budget (OMB). The Board was asked its opinion on putting forth a fee increase which would take about 18 months to finalize.

Dr. Epstein said that if \$750,000 of the current trust fund were set aside for the database conversion then the only way to raise the additional money for the conversion would be through a fee increase. The Board asked how long it would take the seed industry (Pioneer) to assess the current PVPO database. It was unsure how long this assessment would require in that the PVPO Six Sigma process required about 1 year.

The Board asked if the fee increase process could be initiated, but implemented after another Board teleconference. OGC thought there may be a rule on time limitation. Dr. Epstein indicated that the first part of the fee increase proposal requires the most work and can be submitted, but hold on implementing the second part. The Board asked if the fee can be reduced on the first part if the office finances improve. It was stated that the fee increase could be reduced in the final rule.

The Board questioned how much should the fee be increased. Dr. Epstein indicated either 15 or 20 percent. He said that based on the Statement of Operation (STOP report) the PVPO is running at a \$73,000 deficit for the first 6 months and if the PVPO had a low number of incoming applications (i.e. 250) the deficit would be about \$500,000. The Board worried that if it approves a fee increase this may reduce the incentive for AMS to look for alternate funding sources. The Board also wanted to know the basis for a 15-20 percent fee increase. Dr. Epstein indicated that the fee increase should be based on the consumer price index as a proxy to inflation from the last October 2005 fee increase. That amount would account for at least a 15 percent increase.

The Board wanted to know if there is any control point when a fee increase can be modified or cancel. OGC indicated that unless there was a Board meeting at the right time that the Board cannot make a comment as a Board, but rather each and every Board member could comment on a fee increase as individuals.

The Board was worried that if the fees were increased the PVPO may be too high (total fees after a 20% increase would be \$6,180) and that utility patents may be

cheaper (utility patents estimated cost = \$3,000 excluding maintenance fees). It was indicated that land grant universities would consider PVP as too expensive. The Board questioned that if the cost for a PVP is increasing above patents, perhaps PVP maintenance fees can be added. OGC indicated that maintenance fees cannot be added under the current Plant Variety Protection Act.

Several Board members felt that a high volume of PVP applications will continue to be submitted each year since varieties are becoming obsolete; however applicants will submit fewer PVP applications when fees increase.

The Board suggested having another teleconference after July 1 so the first 9 months of FY2008 can be assessed and so Board members can get opinions from PVP users on what would happen if fees increased. The Board suggested that the PVPO explore what other funding options are available in preparation for the next teleconference.

The teleconference was adjourned at 3:00 PM.