

Plant Variety Protection Board Teleconference Minutes

December 15, 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

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 Farms

John Nelsen, RiceTec, Inc.

Bernice Slutsky; American Seed Trade Association

Larry Svajgr; Indiana Crop Improvement Association

Kelly Book, Carl Johnson, and Katherine White were absent.

USDA and Agricultural Marketing Service (AMS) staff:

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

Robert Ertman, USDA/Office of the General Counsel (OGC)

Annette White, RMO Program Analyst

Ellen Tyler, Litigation Specialist

Plant Variety Protection staff:

Chris Apagwu, IT Specialist

Lidia Carrera, Examiner

James Mantooh, Examiner

Janice Strachan, Examiner

Jeff Strachan, Examiner

Beretha Thornton, Examiner

Paul Zankowski, PVPO Commissioner

Visitors: Sign Language Interpreters

The conference call was opened by the Commissioner.

The Board reviewed and approved the minutes of the September 9, 2008 Teleconference Board meeting.

The Board reviewed and approved the agenda for this teleconference with one addition to agenda items #4. The Agenda was:

1. Update on the number of applications vs. budget
2. Progress made in exploring alternative database solutions
3. Internal plans for International interaction for 2009
4. Discussions on the PVPO policy for disposition of seed deposits of parental vegetable lines after the hybrid PVP is expired and extending the term of protection for potato beyond 20 years
5. General update for Board from the American Seed Trade Association (ASTA) meeting [discussions & takeaways]

1. Update on the number of applications vs. budget

The Plant Variety Protection Office (PVPO) statement of operations for fiscal year (FY) 2008 had obligations of \$1,793, 000, revenue of \$2,181,000, and interest of \$64,000 – resulting in a profit of \$452,000. For FY2009 the office is projecting obligations of \$1,990,000 and revenue of \$2,168,000 based on 325 incoming PVP applications and a profit of \$237K

The history of PVPO fees over the past 8 fiscal years was presented; the last 18.8% fee increase occurred in October 2005. The chart also presented the number of incoming applications, the number of applications issued, and the backlog over the past 8 fiscal years. The numbers of applications received each fiscal year varied from 374 in 2002 to 455 in 2007. The application backlog was the greatest in 2001 at 1,043 and the lowest in 2004 at 620; the end of year backlog for 2008 was 789. The Board asked about the current year's incoming applications - as of December 15, 2008 the PVPO received 45 applications including 13 corn, 11 lettuce, 3 potato, 3 spinach, and 3 Kentucky bluegrass.

The top 4 obligations during FY2006 to 2009 are consistently 1) salary, 2) rent, 3) overhead, and 4) contracts. All these obligations were expected to increase in 2009. The Board also reviewed the planned and actual obligations for fiscal years 2006 to 2009. The obligation/revenue trends for FY2006 to 2008 showed a \$54,000 deficit in FY2006, \$792,000 surplus in FY2007, and \$451,000 surplus in 2008; with corresponding trust fund balances of \$1,459,000, \$2,318,000, and \$2,761,000 respectively.

2. Progress made in exploring alternative database solutions

The issue of the Agricultural Research Service (ARS) working with the PVPO on a database solution was discussed by June Blalock. ARS can accept funding for projects that are directly related to ongoing ARS programs and the ARS National Program Staff (NPS) is willing to help the PVPO, if it can. Currently ARS is working to upgrade the Germplasm Resources Information Network (GRIN) Global database using contract

employees under a trust program. It may be possible to incorporate a PVP database upgrade into the GRIN Global project. ARS is asking for a specific request either from the Board or the PVPO in order to pursue this idea further. This project would be a three way effort with 1) funds coming from industry, 2) ARS coordinating the project, and 3) PVPO getting an updated database; and it would be related to the ongoing ARS GRIN Global project.

It was further explained that GRIN Global is mainly for the use of gene bank managers. The new GRIN database may also have better management tools that would allow more countries to know what germplasm is available. Currently the PVPO's issued and pending applications interface with the GRIN database system. ARS will need a letter with more specific proposals for the PVPO – GRIN database interface.

ARS may need some type of in kind contributions such as personnel with knowledge of internal database operations. The Board suggested that they draft a letter to ARS to explore a cooperative research agreement and that the ARS NPS meet with the PVPO to develop an information system that is beneficial to the PVPO and harmonizes with GRIN. The only problem is that the Board expires today and cannot draft this letter. The Board indicated that the letter should be clear that ARS will accept external funds to do this project. The Board also suggested that the Commissioner writes the letter indicating that he has the full support of the Board.

A Board member suggested that the topics of the Chicago ASTA meeting with David Shipman be discussed before proceeding with the PVPO-GRIN database issue further so there can be more clarity of what needs to be accomplished. The Board heard some of the topics discussed at ASTA including the idea that it may not be necessary to search all 38 years of varieties stored in the current PVPO database for the distinctness characterization. The Office of General Counsel (OGC) suggested that length of time to store data may depend on each species, for example no corn is being sold that is more than 20 years old so it may not be necessary to search more than 20 years of corn variety data.

The Board suggested that the PVPO better describes whether the data migration be done on a species by species or whether all the data needs to be migrated and the suggested timelines for how to do this. The Board also suggested that that 1) the PVPO step back and think what's possible regarding information management and 2) that the GRIN database managers get together with PVPO IT specialists to discuss the database.

The Board also suggested that if this project receives seed industry funds - there should be a clear benefit to industry such as the incorporation of corn molecular marker assessment in the new database project. The Board thought that a new database may have a national benefit in having U.S. PVP information available for a worldwide PVP harmonization.

The Board summarized that the PVPO needs to consider a) assessing its current situation, b) review the visionary aspect how to become the best in class, and c) decide how best to get from point a to point b. It was suggested that the new database and automation not be an end in itself, but that the PVPO should take steps back to determine where it should ultimately go. The Board acknowledges that a cooperative agreement with ARS is a possible means to fund the database in coordination with the re-engineering process

3. Internal plans for International interaction for 2009

At the ASTA Chicago meeting it was said that the PVPO should be more proactive internationally with a more refined process to have the industry consult with US government to represent the industry viewpoint, and perhaps have industry be advisors to the US UPOV delegation. The Board suggested that the US could partner with Canada, Australia, and other likeminded partners to consider UPOV issues. The Board suggested that the industry would provide feedback to the PVPO regarding this topic during the Tampa ASTA meeting. The Board indicated that Europeans have greater involvement at UPOV by being delegates/advisors to the International Seed Federation (ISF); the Board would like to see the US seed industry similarly involved through the U.S. delegation to UPOV.

4. Discussions on the PVPO policy for disposition of seed deposits of parental vegetable lines after the hybrid PVP is expired and extending the term of protection for potato beyond 20 years

The Board raised the issue from ISF and the European Seed Association (ESA) that for US PVP vegetable hybrids parents must be deposited with the hybrid PVP seed application. ISF wanted to better understand the policy on what happens to the parents of hybrids after the PVP expires. ESA wanted the period of PVP for potato increased from 20 years to 25-30 years.

The Board indicated that this is an example where the PVPO should better understand how hybrids are handled in Europe PVPOs. It was suggested that this issue be further discussed at ASTA Tampa

OGC explained that the parents of hybrids need to be deposited because they are necessary to create the variety; the main question is what happens after the 20 years when the PVP expires; no hybrid PVPs have expired yet. A Board member indicated that ARS will most likely move the parents to the public collection. It was explained that this question was brought up because Europeans are trying to determine if they should file for PVP in the US.

The Board noted that one of the overall goals of PVP is to provide protection for intellectual property so that genetic materials are widely distributed and used. In addition

to the fees associated with securing such protection, a "cost" to applicants is the eventual release of protected materials for public use. This overall program goal will need to be considered in the specific case of hybrids where inbred lines, whose protection is not being sought, must be submitted with a hybrid application.

5. General update for Board from the ASTA meeting [discussions & takeaways]
– Chicago – December 11, 2008

There were 13 participants from the seed industry at this 2 hour PVP meeting with the David Shipman, AMS Deputy Administrator and the PVPO Commissioner.

Mains Issues from Seed Industry:

- Reduce the hidden costs of PVP data collection.
- Renew an aging database – look at how other countries structured their databases.
- Internationally – more involvement of PVPO in 1) UPOV (especially the UPOV technical committees), 2) other countries PVPOs, and 3) how to get the US PVP system better recognized and understood throughout the world, 4) develop a process for vetting issues for international meetings similar to the Codex process for gathering information (the Codex model provides a more strategic means to react to international issues by getting the industry viewpoint), 5) the seed industry would like to sit as an adviser to the US UPOV delegation, 6) the seed industry should have input on where they want PVPO representation.
- The US system is recognized internationally for its use of molecular markers to the “gold standard” level – it was suggested that the US could elaborate its use of molecular markers in PVP examination on a crop by crop basis. Corn may be an amenable model crop for this molecular system by assessing both phenotypic and molecular characteristics; and progressing to a predominantly molecular approach. The reports from the 2007 UPOV Maize BMT session may be useful for this topic.
- Obtain information on international PVP litigation.
- It was suggested the PVPO develop questions for the industry to address, i.e. how long to keep data in the crop databases, the use of molecular markers, etc.
- China and India PVP training – it was suggested to use the U.S. Patent and Trademark Office (PTO) Training Academy.
- The PVPO should look at using molecular markers more effectively so that it would become a world leader in this area.

Ideas from AMS

- Involve Chuck Martin in PVPO international issues especially China and India.
- Evaluate re-engineering the PVP examination process before updating the database.
- Before updating the database make a determination if all varieties of common knowledge need to be in the database or only the last 20 years – do this on a crop by crop basis.
- It may be easier to get an appropriation for PVP international work than updating the database.

Issues about the Current PVP system

- The industry feels that the backlog reduction is less important as long as it doesn't grow as large as it did in the past. If the examiner's time is diverted from examining in order to participate in a re-engineering review – it would be OK as long as this is communicated to PVP applicants.
- Current incoming number of applications – it could be reduced from the 350-400 annual level to 250-300 due to the economy – but industry indicated that with so many new varieties being developed the number of incoming PVP application could remain in the 350-400 range or increase.
- Criticisms of the current US PVP system include 1) no royalties for farmer saved seed and 2) public availability of the parents of hybrid PVP varieties after 20 years.