Consultation on proposals to streamline our IP processes and support small business

Submission Rijk Zwaan

1. Aligning renewals

We propose the following options:
Option A1 - no grace period
Option B2 - limit payment of renewal fees to 12 months before the renewal date
Option C3 - introduce requirements to issue renewal notices for all IP rights

In practice a system based on these options works very well (based on experience in the EU). In such a system all anniversaries of grants can be grouped in a certain month and the invoice can be sent a few months in advance. The right holder can decide to surrender the right before the anniversary of the date of the grant, or maintain the right by paying before the due date of payment which is for example one month before this anniversary date. Such a system excludes also the risk that payments are made for a variety, for which the right holder actually wanted to withdraw his right.

For example: End of February, we receive an invoice mentioning all PBR's with an anniversary date in June. They have to be paid before 1 May.

3. Extension of time

Page 36: It is very important that the term for taking over overseas reports can be more than 12 months, so that the applicant can wait until the overseas report is ready when filling in part 2 of the application. (Perhaps this is not regarded as a matter of extension because it only relates to part 2 of the application.)

10. Address for correspondence

It is not fully clear to us if the four dots are all “and” or are (partly) “or”. To our opinion option 2 is the best of the three options, but the question is why you need an AFS or AFC at all. In principle, there only should be an AFS in Australia if the application is not filed electronically.

In addition we would like to inform you that we can work well with the system in which a qualified person in Australia is required, but it would be more efficient if we could file directly from the Netherlands, with the only procedure being to fill in harmonized UPOV forms as the overseas report would be taken over.

17. Unjustified threats of infringement

In principle we agree to the option that is also proposed in the public consultation paper (option 3). However, we would like to emphasize that it is important that starting legal action against an alleged infringer including requesting a court order for collecting evidence of a possible infringement, shall not considered to be an unjustified or groundless threat of infringement. This is particularly important in relation to PBR as it is very difficult in practice to gather evidence of an infringement of a PBR as seed is a product that does not show from the outside to which (protected) variety it belongs - it is a living product that changes into a plant and therefore disappears on short notice.
Furthermore it is also important that the right holder is not forced to start an infringement case in court just to show that the threat of infringement is not unjustified.