

eligible as type or the previously designated type) of the adopted, legitimate name of the genus is not validly published unless its epithet repeats the generic name unaltered. [...].”

“26.2. A name of an infraspecific taxon that includes the type (as specified in Art. 52.2(a)–(d) i.e. the holotype or all syntypes or the previously designated type) of the adopted, legitimate name of

the species to which it is assigned is not validly published unless its final epithet repeats the specific epithet unaltered. [...].”

#### Acknowledgements

I thank Nicholas J. Turland and John H. Wiersema for their assistance, and suggestions to revise the proposals.

## (395–402) Proposals to clarify homonyms, new combinations, names at new ranks, replacement names, misapplications and ineffective typifications (Articles 48, 6, 7, 40 and the Glossary)

Michael A. Wisnev

Los Angeles, California 90068, U.S.A.

Address for correspondence: Michael A. Wisnev, [miwisne@gmail.com](mailto:miwisne@gmail.com)

DOI <https://doi.org/10.1002/tax.13049>

First published as part of this issue. See online for details.

While Art. 48.1 of the *Shenzhen Code* (Turland & al. in Regnum Veg. 159. 2018) is included in Chapter VI Section 1 titled “Author Citations”, these rules do much more than provide an author citation for a subset of names. In fact, they clarify the meaning of homonym, new combination, name at new rank and replacement name; once the name’s status is determined, the author citation is quite clear. In my view, the significance and purpose of these rules is not apparent, which may lead to incorrect interpretations of Art. 48.1. These proposals make its purpose clear and address various issues raised by the language of Art. 48.1.

Article 48.1 states “When an author adopts an existing name but definitely excludes its type, a later homonym that must be attributed solely to that author is considered to have been published. [...]” For a reader who is not familiar with Art. 48 and its underlying purpose, this statement raises two immediate issues. First, every homonym under Art. 48 appears to be a homonym under Art. 53, which states that a homonym is a name “spelled exactly like a name based on a different type that was previously and validly published for a taxon at the same rank” (Art. 53.1). The definition of homonym in the Glossary appears to confirm this conclusion – it does not even mention Art. 48. Second, why is it necessary to address the attribution of this subset of homonyms? Because all other homonyms are also attributed to their authors under Art. 46, it seems more appropriate to state that all homonyms are attributed to their authors.

Nicolson (in Taxon 26: 569–570. 1977) provided an answer to these mysteries. At that time, Art. 48 of the *Seattle Code* (Stafleu & al. in Regnum Veg. 82. 1972) stated “When an author circumscribes a taxon in such a way as to exclude the original type of the name he uses for it, he is considered to have published a later homonym that must be ascribed solely to him.” Nicolson (l.c.) proposed the current language because he correctly observed that “This suggests that what are normally considered as misapplications could be regarded as validly published later homonyms [...]” Armed with this explanation, Art. 48.1 now makes sense. While Art. 48 Note 1 mentions misapplications of new combinations, names at new ranks and

replacement names, Art. 48.1 does not mention other misapplied names or new circumscriptions, and the potential implications of Note 1 as to the first sentence of Art. 48.1 are not at all clear, at least to this author.

Nicolson’s (l.c.) proposal adding the current language was designed to ensure that misapplied names are not treated as homonyms “if the type of the earlier name is not demonstrably excluded”. In contrast, Art. 48.1 tells us the treatment if the type is excluded; this statement does not address (even implicitly) the treatment if the type is not excluded.

The proposal below clarifies the first sentence of Art. 48.1 to address these concerns. While Rec. 50D provides a recommended citation method for misapplications, that term is not defined. The brief definition below is derived from Art. 7.3, which addresses misapplied new combinations.

#### (395) Amend Art. 48.1 as follows (new text in bold, deleted text in strikethrough):

“48.1. The application of an existing name to a different taxon without exclusion of the type is considered a misapplication that has no nomenclatural status (see also Rec. 50D). ~~When~~ **However, if** an author ~~applies~~ **adopts** an existing name but definitely excludes its type, a later homonym that must be attributed solely to that author is considered to have been published. [...]”

#### (396) Add a new Note in Art. 48 as follows:

“Note n. A later homonym published as described in Art. 48.1 only has nomenclatural status if it satisfies all the relevant requirements for valid publication of the name of a new taxon.”

#### (397) Add the following sentence at the end of the definition of “homonym” in the Glossary (new text in bold):

“homonym. [...]. **A homonym also results from the application of an existing name to a different taxon if the author definitely excludes its type (see Art. 48).**”

The second sentence of Art. 48.1 states “Similarly, when an author who adopts a name refers to an apparent basionym or replaced synonym but explicitly excludes its type, the name of a new taxon is considered to have been published that must be attributed solely to that author.” While Art. 48.1 does not mention misapplications, Art. 48 Note 1 states that a misapplied new combination, name at new rank, or replacement name “is dealt with under Art. 7.3–7.4”. (For simplicity, I will only address new combinations below; the same problems exist for names at new rank and replacement names.) In turn, Art. 7.3 states that a new combination “is typified by the type of the basionym even though it may have been applied erroneously to a taxon now considered not to include that type (but see Art. 48.1)”.

Both Art. 48 Note 1 and Art. 7.3 begin with the premise that the name is a new combination. They do not state that a name could not qualify as a new combination even if the name was misapplied. As a result, it is not clear whether some misapplications of a potential new combination result in the name of a new taxon even if the type is not excluded.

In particular, the rules do not explicitly address the status of a name if the author of an apparent new combination designates a type that cannot be the type of its basionym. Article 6.10 defines a new combination as “a new name based on a legitimate, previously published name, which is its basionym”. Due to Art. 7.3, it is arguable that the author’s designation of an impermissible type necessarily means the new name is not “based on” the earlier name, with the result that the new name is not a new combination.

The rules do not clearly address a related situation. What happens if the author excludes the type of the apparent basionym but the name is not validly published as the name of a new taxon? Because the automatic typification rule in Art. 7.3 is not part of the definition of new combination (Art. 6.10), it is arguable that a new combination is published in this case; in effect, the author’s statement that the type is excluded is disregarded, just as a misapplication is disregarded. However, it would be absurd to disregard this statement only if the conditions for valid publication of the name of a new taxon were not met.

The proposals offered below explicitly and unambiguously address these matters.

**(398) Convert the second sentence of Art. 48.1 into a new Article in Art. 6 as follows and delete Art. 48 Note 1 (new text in bold, deleted text in strikethrough):**

**“6.n. (a) Unless an author explicitly excluded the type of the apparent basionym or replaced synonym of a name, that name will not fail to be a new combination, name at new rank, or replacement name merely because (1) its author applied it erroneously to a taxon now considered not to include that type and/or (2) its author attempted to designate a type that is contrary to the rules.**

**(b) Similarly, when If an author who adopts a name refers to an apparent basionym or replaced synonym but explicitly excludes its type, the name of a new taxon is considered to have been published that must be attributed solely to that author; however, if the relevant requirements for valid publication of the name of a new taxon are not satisfied, then no name is published even if the requirements of Art. 41 are satisfied.”**

**(c) For this purpose, exclusion of the type is defined in Art. 48.1 and 48.2.”**

~~“Note 1. Misapplication of a new combination, name at new rank, or replacement name to a different taxon, but without explicit~~

~~exclusion of the type of the basionym or replaced synonym, is dealt with under Art. 7.3–7.4.”~~

If the previous proposal is accepted, some of the language in Art. 7.3 and 7.4 is redundant and can be deleted.

**(399) If Prop. 398 is accepted, amend Art. 7.3 and 7.4 as follows (new text in bold, deleted text in strikethrough):**

**“7.3. A new combination or a name at new rank (Art. 6.10) is typified by the type of the basionym ~~even though it may have been applied erroneously to a taxon now considered not to include that type~~ (but see Art. ~~48.1~~ 6.n).”**

**“7.4. A replacement name (Art. 6.11) is typified by the type of the replaced synonym ~~even though it may have been applied erroneously to a taxon now considered not to include that type~~ (but see Art. 41 Note 3 and ~~48.1~~ 6.n).”**

What happens if the author does not exclude the type of the apparent basionym but fails to meet the requirements to publish a new combination? Article 33.8 of the *Vienna Code* (McNeill & al. in *Regnum Veg.* 146. 2006) stated that such a name was not validly published even if the conditions for valid publication of a name of a new taxon were satisfied. While that rule was deleted based on a proposal by Turland (in *Taxon* 59: 1921. 2010), there is no explicit statement that these are names of new taxa, and it may not be readily apparent. This can be noted in a Note.

**(400) Add a new Note in Art. 6 as follows:**

**“Note n. If an author who publishes a potential name on or after 1 January 1953 (a) refers to an apparent basionym or replaced synonym, (b) does not exclude its type, and (c) does not satisfy Art. 41, the name of a new taxon is considered to have been published (if it meets the conditions for valid publication as such).”**

Proposal 398 above addresses a concern that the publication of a new combination with an impermissible type might be treated as the name of a new taxon. There is a related concern that a person who both published an existing name and ineffectively designated a lectotype (or neotype) for it prior to 1 January 1990 inadvertently published the name of a new taxon that is a later homonym; the ineffectively designated lectotype (or neotype) would be treated as the holotype of the name of a new taxon. This interpretation would likely result in hundreds of newly published homonyms. A homonym will almost never be published for later designations due to Art. 40.6; it provides that a name of a new taxon is not validly published on or after 1 January 1990, unless the protologue includes one of the words “typus” or “holotypus”, or its abbreviation.

**(401) Add a new Article in Art. 40 follows:**

**“40.n. A name of a new taxon is not validly published merely because an author attempted to designate a type for an existing name that is contrary to the rules (but see Art. 48.1).”**

Editorially revise “48.1” to “6.n and 48.1” if the second sentence of Art. 48.1 is converted to a new Art. 6.n.

Article 48 Note 2 states “Retention of a name in a sense that excludes its original type, or its type designated under Art. 7–10, can be effected only by conservation (see Art. 14.9).” The term “retention” is not defined here and some might think an Art. 48 homonym has no nomenclatural status unless conserved.

Because the second sentence of Art. 48.1 addresses a name with an apparent basionym that excludes its type, Note 2 might be incorrectly read to suggest that these names also need to be conserved.

**(402) Amend Art. 48 Note 2 as follows (new text in bold, deleted text in strikethrough):**

“Note 2. Retention of a ~~name~~ **later homonym as a legitimate (as opposed to illegitimate) name in a sense that excludes its origi-**

~~nal type, or its type designated under Art. 7–10,~~ can be effected only by conservation (see Art. 14.9).”

**Acknowledgements**

I thank Nicholas J. Turland and John H. Wiersema for their assistance with these proposals.

## (403–406) Proposals to clarify the meaning of rejected and rejected name (Articles 51, 52.1, 53.1 and the Glossary)

Michael A. Wisnev

Los Angeles, California 90068, U.S.A.

Address for correspondence: Michael A. Wisnev, [miwisne@gmail.com](mailto:miwisne@gmail.com)

DOI <https://doi.org/10.1002/tax.13050>

First published as part of this issue. See online for details.

The Glossary of the *Shenzhen Code* (Turland & al. in *Regnum Veg.* 159. 2018) defines a rejected name as “A name ruled as not to be used, either by formal action under Art. 14, 56, or F.7 overriding other provisions of the *Code* [...] or because it was nomenclaturally superfluous when published (Art. 52) or a later homonym (Art. 53 and 54).”

While this definition suggests that a name is rejected only if the applicable provision rules that it is not to be used, Art. 14, 52, 53 and 54 do not state that the name is not to be used. The phrase “not to be used” also suggests that the name may have no nomenclatural status. However, rejected names are often cited as synonyms and in some cases can serve as replaced synonyms, and are “used” in those ways. Based on Art. 11.3, which states that illegitimate names and names rejected under Art. 14 or 56 cannot be correct names for a given taxon, it would be more accurate to state that a rejected name is not to be used as the correct name of a taxon.

The term “rejected name” is not even used in Art. 52–54, which address illegitimate names (although Art. 52 uses “rejected”). The Appendices to the *Shenzhen Code* state that they list all rejected names but in fact list only those rejected by formal action. It would be preferable to limit the definition of rejected names to those rejected by formal action. This change would not impact the operation of illegitimate names under Art. 52–54.

It is also worth noting that a rejected name may be restored under Art. 14.6 “if it is considered the name of a taxon at the same rank distinct from that of the conserved name”. In this case, the name may be used; this exception is noted in the proposed change.

**(403) Amend the definition of “rejected name” in the Glossary as follows (new text in bold, deleted text in strikethrough):**

“rejected name. **Subject to Art. 14.6, a name ruled as that is not to be used as the correct name of a taxon (Art. 11),** either by formal action under Art. 14, 56, or F.7 overriding other provisions of the

*Code* (see *nomen rejiciendum*, *nomen utique rejiciendum*) ~~or because it was nomenclaturally superfluous when published (Art. 52) or a later homonym (Art. 53 and 54).~~ A name treated as rejected under Art. F.7 may become eligible for use by conservation under Art. 14.”

Article 52.1 states that a nomenclaturally superfluous name is “illegitimate and is to be rejected”. As noted above, this might incorrectly be interpreted as stating the name has no nomenclatural standing. Rather than requiring the reader to refer to the meaning of rejected in the Glossary, it would be preferable to state the name cannot be used as a correct name.

In contrast to Art. 52.1, Art. 53.1 states that homonyms are illegitimate but does not add that they are to be rejected. There is no reason for the disparate treatment.

**(404) Amend Art. 52.1 as follows (new text in bold, deleted text in strikethrough):**

“52.1. A name, unless conserved (Art. 14), protected (Art. F.2), or sanctioned (Art. F.3), is illegitimate **(and is not to be used as the correct name of a taxon)** ~~rejected~~ if it was nomenclaturally superfluous when published, [...]”

**(405) Amend Art. 53.1 as follows (new text in bold):**

“53.1. A name of a family, genus, or species, unless conserved (Art. 14), protected (Art. F.2), or sanctioned (Art. F.3), is illegitimate **(and is not to be used as the correct name of a taxon)** if it is a later homonym, [...]”

Article 51.1 states that “A legitimate name must not be rejected merely because it, or its epithet, is inappropriate or disagreeable, or because another is preferable or better known (but see Art. 56.1 and F.7.1), or because it has lost its original meaning.” The Examples