

添付資料 2

米国特許商標庁プレゼン資料①
「U. S. IP Protection for Plants」
(米国における植物の特許保護)

U.S. IP PROTECTION FOR PLANTS

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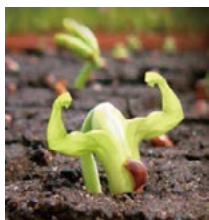


Topics

- Plant IP System – USPTO
 - Plant Patent
 - Plant Utility Patent
- Plant IP System – Plant Variety Protection through the US Department of Agriculture
- UPOV



Why Protect Plants through IP?



- Enhances crop production, expands genetic resources, helps to ensure food security
 - Incentivizes new drought and pest resistant varieties, nutritionally superior varieties, etc.
- Plant breeding can be a decisive factor in improving income for farmers and overall economic development
 - Increase the value and marketability of crops
 - Ornamental plants may be valuable exports
- Resource intensive plant development requires long-term investment
 - IP allows investors to recoup costs

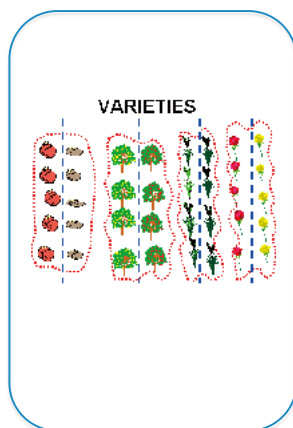


TRIPS Agreement

- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) seeks to promote effective and adequate protection of IP rights.
- TRIPS Art. 27.1 requires that “**patents shall be available** for any inventions, whether products or processes, **in all fields of technology**, provided that they are **new**, involve an **inventive step** and are capable of **industrial application**.”



TRIPS Agreement - Plant Variety Protection



TRIPS Art. 27.3

--Members must provide for the protection of **plant varieties** either by patents or by an effective *sui generis* system or by any combination thereof.

-- UPOV is an excellent example of a *sui generis* system.



Plant IP System - USPTO



IP Protection for Plants in U.S.

U.S. Patent and Trademark Office (USPTO)	USDA-Plant Variety Protection Office (PVPO)
<ul style="list-style-type: none"> • Utility Patent <ul style="list-style-type: none"> ➢ All technologies • Plant Patent (PPA) <ul style="list-style-type: none"> ➢ Asexually reproduced plants 	<ul style="list-style-type: none"> • Plant Variety Protection Certificate (PVPA) <ul style="list-style-type: none"> ➢ Seed reproduced varieties ➢ Edible tubers

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IP Primer - Patents

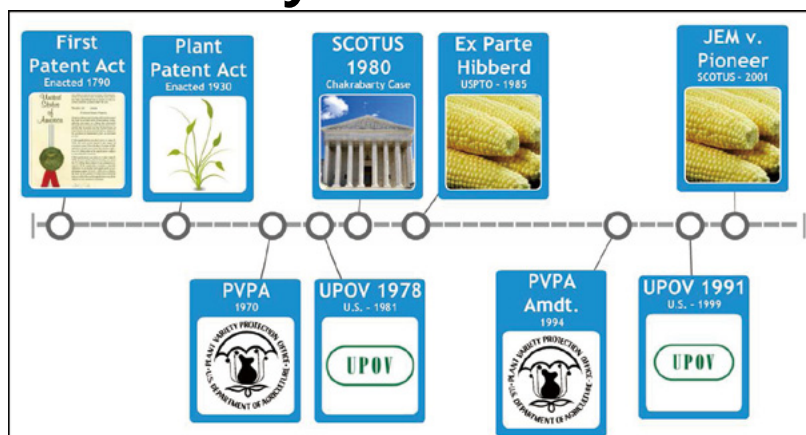
Time limited exclusive property right



- Generally the term is 20 years from filing
- Geographically limited right
- Patents provide the right to exclude others from making, using, offering for sale, selling or importing the patented invention
- Patentee is responsible for enforcement of rights

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History of U.S. Plant IP



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PLANT PATENTS

Asexually Reproduced Plants



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Requirements For a Plant Patent

- Plant Patent Act, 1930 (35 U.S.C. §§ 161-164)
- Requirements: plant is **new**, **distinct** from other known varieties, **asexually** reproduced + basic patentability standards
 - Novelty
 - Utility
 - Non-obviousness
 - Written Description



*Plant Patents are
administered by
the USPTO*

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Plant Patent

- Asexually reproduced: rooting, cuttings, grafting, budding, division, slips, layering, bulbs, rhizomes, runners, corms, tissue culture, etc.
- Examples: grape vine, apple tree, azalea plant, chrysanthemum plant, pear tree, rose plant
 - Include algae and fungi
 - Not bacteria
 - Not edible tubers

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Plant Patent

- **20** year term from date of filing
- Right to **exclude** others from making, using, selling, offering for sale and importing the plant, or any of its parts
- Protects a single plant and **asexual** progeny
- No maintenance fee

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Plant Patent

Example:
Standard Claim Structure-

- A Petunia plant substantially as described and illustrated in the specification herein.



UTILITY PATENTS

