添付資料３

米国特許商標庁プレゼン資料②
「Plant Patent Application Process」
（植物特許出願手続き）

Plant Patent Application Process

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Overview - Plant Patent Application

Plant Patents
Content and Arrangement
Forms & Fees
Formalities Review
Resources

PLANT PATENTS

35 U.S.C. § 161 – Plant Patents

- **Patents to plants which are stable and reproduced by asexual reproduction, and not a potato or other edible tuber reproduced plant, are provided for by Title 35 United States Code, Section 161 which states:**
  - Whoever invents or discovers and asexually reproduces any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state, may obtain a patent therefor, subject to the conditions and requirements of title. (Amended September 3, 1954, 68 Stat. 1190).
  - The provisions of this title relating to patents for inventions shall apply to patents for plants, except as otherwise provided.

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What is a Plant Patent?

- **A government granted exclusive property right.**
- **20 years from the date of filing the application.**
- **Limited to distinct and new plant varieties invented or discovered and asexually reproduced, other than a tuber propagated plants or plants found in an uncultivated state.**

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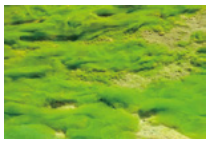
What is a Plant under § 161?

- **This protection is limited to a plant in its ordinary meaning:**
  - A living plant organism which expresses a set of characteristics determined by its single, genetic makeup or genotype, which can be duplicated through asexual reproduction, but which can not otherwise be "made" or "manufactured."
  - Sports, mutants, hybrids, and transformed plants are comprehended.
  - Algae and macro fungi are regarded as plants, but bacteria are not.



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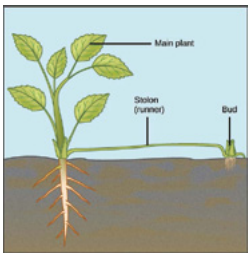
Asexual Reproduction

- Asexual reproduction is the propagation of a plant to multiply the plant without the use of seeds to assure an exact genetic copy of the plant being reproduced.
- Any known method of asexual reproduction which renders a true genetic copy of the plant may be employed.
- The purpose of asexual reproduction is to establish the stability of the plant.



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Asexual Reproduction

- Acceptable modes of asexual reproduction would include, but may not be limited to:
  - Rooting Cuttings
  - Runners
  - Grafting and Budding
  - Bulbs

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What Rights are Conveyed?

- Grant of a patent for a plant precludes others from asexually reproducing, using, offering for sale, selling, or importing the patented plant.
- A plant patent is regarded as limited to one plant, or genome.
- A sport or mutant of a patented plant would not be considered to be of the same genotype, would not be covered by the plant patent to the parent plant, and would, itself, be separately patentable, subject to meeting the requirements of patentability.

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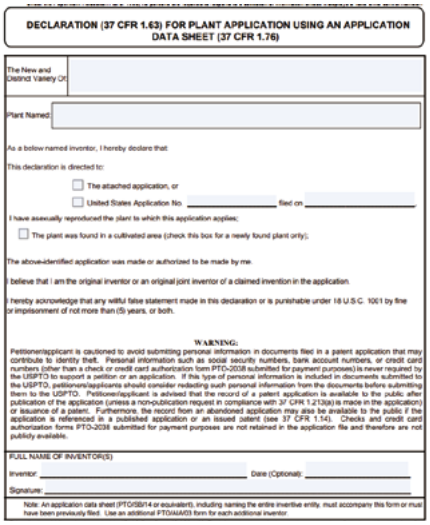
Who can file?



DECLARATION (37 CFR 1.63) FOR PLANT APPLICATION USING AN APPLICATION DATA SHEET (37 CFR 1.76)

The New and Distinct Variety Of:

Plant Named:

As a below named inventor, I hereby declare that:

This declaration is directed to:

☐ The attached application, or

☐ United States Application No. _____ filed on _____

I have asexually reproduced the plant to which this application applies;

☐ The plant was found in a cultivated area (check this box for a newly found plant only);

The above-identified application was made or authorized to be made by me.

I believe that I am the original inventor or an original joint inventor of a claimed invention in the application.

I hereby acknowledge that any willful false statement made in this declaration or is punishable under 18 U.S.C. 1001 by fine or imprisonment of not more than (5) years, or both.

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

FULL NAME OF INVENTOR(S)

Inventor: _____ Date (Optional): _____

Signature: _____

Note: An application data sheet (PTO/SB/14 or equivalent), including naming the entire inventive entity, must accompany this form or must have been previously filed. Use an additional PTO/AIA/03 form for each additional inventor.

- Only the person who bred or discovered the new variety may identify as the Inventor, and said Inventor must sign a Declaration to this effect.
- More than one person can be a named inventor.

When to File?

- Must file within one year of the date on which you first made your variety available to the public anywhere in the world or within one year of priority date if applicable (*e.g.*, a foreign-filed PVP right).

Plant Patentability Requirements

- To be patentable, the applicant must show:
  - That the plant was invented or discovered and, if discovered, that the discovery was made in a cultivated area.
  - That the plant is not a plant which is excluded by statute, where the part of the plant used for asexual reproduction is not a tuber food part, as with potato or Jerusalem artichoke.
  - That the person or persons filing the application are those who actually invented the claimed plant; i.e., discovered or developed and identified or isolated the plant, and asexually reproduced the plant.

Plant Patentability Requirements

- **To be patentable, it would also be required:**
  - That the plant has not been patented, described in a printed publication , in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention.
  - Exceptions may be made for disclosures made one year or less prior to the effective filing date on certain conditions.
  - That the plant be shown to differ from known, related plants by at least one distinguishing characteristic, which is more than a difference caused by growing conditions or fertility levels, etc.
  - The invention would not have been obvious to one skilled in the art at the time of filing by applicant.

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CONTENT AND ARRANGEMENT

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Plant Patent Application Elements

All should appear in the following order:

(1) Plant application transmittal form
(2) Fee transmittal form
(3) Application data sheet (see 37 CFR § 1.76)
(4) Specification
(5) Drawings (in duplicate)
(6) The inventor's oath or declaration (37 CFR § 1.162)

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