

Arrangement of the Specification

- Title of the Invention
- Cross Reference to Related Applications
- Statement regarding Federally Sponsored Research [35 U.S.C. § 202(c)(6)]
- Latin Name of the Genus and Species
- Variety Denomination
- Background of the Invention
- Summary of the Invention
- Brief Description of the Drawing
- Detailed Botanical Description of the Plant
- Claim
- Abstract of the Disclosure

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Detailed Botanical Description of the Plant

- The description must include the characteristics that distinguish the invented plant over related known varieties, and its antecedents.
- The description must be in **botanical terms** in the general form followed in standard botanical text books or publications dealing with the varieties of the kind of plant involved, rather than a mere broad non-botanical characterization such as commonly found in nursery or seed catalogs.
- The **description should also include the origin or parentage** of the plant variety sought to be patented and must particularly point out where and in what manner the variety of plant has been asexually reproduced.
 - Where the plant variety originated as a newly found seedling, the specification must fully describe the conditions (cultivation, environment, etc.) under which the seedling was found growing to establish that it was not found in an uncultivated state.
- The description should positively **identify the color when color is a distinctive feature** of the plant.

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Detailed Botanical Description of the Plant

- Among the factors which must be ascertained for a reasonably complete botanical description for the claimed plant are:
 - Genus and species
 - Habit of growth
 - Cultivar name
 - Vigor
 - Productivity
 - Precocity (if applicable)
 - Botanical characteristics of plant structures (i.e. buds, bark, foliage, flowers, fruit, etc.)
 - Fertility (Fecundity)
 - Other characteristics which distinguish the plant such as resistance(s) to disease, drought, cold, dampness, etc., fragrance, coloration, regularity and time of bearing, quantity or quality of extracts, rooting ability, timing or duration of flowering season, etc.

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The Claim

- Only one claim is permitted.
- *E.g.*, "A Petunia plant substantially as described and illustrated in the specification herein."

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The Drawings

- The application must also contain a plant color coding sheet.
- Plant patent drawings are not mechanical drawings, they are normally photographic.
- They may also be artistically rendered so as to disclose all the distinctive characteristics of the plant capable of visual representation.
- When color is a distinguishing characteristic of the new variety, the drawing must be in color.



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The Drawings



- Two copies of color drawings must be submitted.
- Drawings requirements will be strictly adhered to because the claim incorporates the drawing by reference.

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Filing

- Applications have to be prepared on paper because **the United States Patent and Trademark Office does not accept electronic filing of plant patent applications.**



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Helpful Hints

- Don't use a plant name that is confusingly similar to a plant of the same market or botanical class.
- File all drawings in duplicate.
- File each individual application in a separate envelope, and be sure to include all of the parts of each application in the same envelope.
- Model the application after a patent of acceptable format and content which describes a plant which is related to or in the same market class as the claimed plant, if one is available.

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Helpful Hints

- Double check the oath or declaration.
- Where color is a distinguishing characteristic of the plant, specify the color of the plant as defined by reference to an established color dictionary which is recognized in this country.
- Be sure that drawings filed reasonably correspond with the colors of the plant which are specified and to the true and characteristic plant coloration.
- Include the appropriate filing fee, search fee, and examination fee with the application to avoid processing delays.
- Direct pre-examination questions concerning the application to the Examiner, by telephone, to expedite prosecution.

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FORMS & FEES



Plant Patent Transmittal Form

APPLICATION ELEMENTS <small>See MPFP chapter 600 & 1000 concerning plant patent application contents.</small>	ACCOMPANYING APPLICATION PARTS
1. <input type="checkbox"/> Fee Transmittal Form (PTO/SB/17 or equivalent)	8. <input type="checkbox"/> Assignment Papers (cover sheet & document(s))
2. <input type="checkbox"/> Applicant asserts small entity status. <small>See 37 CFR 1.37</small>	9. <input type="checkbox"/> 37 CFR 1.78(e) Statement (when there is an assignee) <input type="checkbox"/> Power of Attorney
3. <input type="checkbox"/> Applicant certifies micro entity status. <small>See 37 CFR 1.39.</small> <small>Applicant must attach form PTO/SB/15A or B or equivalent.</small>	10. <input type="checkbox"/> English Translation Document (if applicable)
4. <input type="checkbox"/> Specification [Total Pages _____] (preferred arrangement set forth below) - Descriptive title of the invention - Cross References to Related Applications - Statement Regarding Fed sponsored R & D - Latin name of genus and species - Variety denomination - Background of the invention - Brief Description of the Drawings - Detailed Botanical Description - A single claim - Abstract of the Disclosure	11. <input type="checkbox"/> Information Disclosure Statement (IDS) (PTO/SB/08 or PTO 1449) <input type="checkbox"/> Copies of foreign patent documents, publications, and other information
5. <input type="checkbox"/> Color Drawing(s) [Total Sheets _____] (2 copies required - 37 CFR 1.165(b))	12. <input type="checkbox"/> Preliminary Amendment
6. <input type="checkbox"/> Inventor's Oath or Declaration [Total Pages _____] (including substitute statements under 37 CFR 1.64 and assignments serving as an oath or declaration under 37 CFR 1.61(p)) a. <input type="checkbox"/> Newly executed (original or copy) b. <input type="checkbox"/> A copy from a prior application (37 CFR 1.65(d))	13. <input type="checkbox"/> Return Receipt Postcard (MPFP § 503) (Should be specifically itemized)
7. <input type="checkbox"/> Application Data Sheet * See note below <small>See 37 CFR 1.76 (PTO/BA/14 or equivalent)</small>	14. <input type="checkbox"/> Certified Copy of Priority Document(s) (if foreign priority is claimed)
	15. <input type="checkbox"/> Request Nonpublication (Under 35 U.S.C. 172(b)(2)(R)(i). Applicant must attach form PTO/SB/35 or equivalent.)
	16. <input type="checkbox"/> Other: _____ _____ _____
<small>*Note: (1) Benefit claims under 37 CFR 1.78 and foreign priority claims under 1.55 must be included in an Application Data Sheet (ADS). (2) For applications filed under 35 U.S.C. 111, the application must contain an ADS specifying the applicant if the applicant is an assignee, person to whom the inventor is under an obligation to assign, or person who otherwise shows sufficient proprietary interest in the matter. See 37 CFR 1.46(b).</small>	



Fees

- **Three fees are required to file:**
 - Basic Plant Filing: \$180 (\$90 small, \$45 micro)
 - Plant Search Fee: \$380 (\$190 small, \$95 micro)
 - Plant Examination Fee: \$580 (\$290 small, \$145 micro)
- **Issuance Fees: \$760/\$380/\$190**
- **No Maintenance Fees**
- **Filing an application without sufficient fees may result in loss of filing date and/or having to pay an additional fee (a surcharge) to reactivate the application.**
- **Filing an application which is not complete may result in the application not being accepted by the PTO, and thus may result in the loss of intellectual property rights by the applicants.**
- **Applications which are not formal when filed may also result in loss of rights.**



FORMALITIES EXAMINATION



Formalities Examination

- **Upon filing**, the application is **reviewed for formalities** in the USPTO Initial Processing Branch where it is assigned a serial number, assembled into a file jacket, and reviewed by application examiners for formal requirements.
 - *E.g.*, title, oath or declaration, presence of an abstract, and the arrangement of application components
- If found in compliance, the application is then forwarded to the examining group, where it is classified and assigned to a patent examiner.
- The application is then filed in chronological order, by serial number, to await examination on the merits.



RESOURCES



Resources

Current Fees:

<http://www.uspto.gov/web/offices/ac/qs/ope/fees.htm>

Directory of Registered Patent Attorneys:

<http://www.uspto.gov/web/offices/dcom/olia/oed/roster/index.html>

General Plant Patent Information:

<https://www.uspto.gov/patents-getting-started/patent-basics/types-patent-applications/general-information-about-35-usc-161>

37 CFR §§ 161-167 (specific plant rules, other rules applicable):

https://www.uspto.gov/web/offices/pac/mpep/consolidated_rules.pdf

Forms:

<https://www.uspto.gov/patent/forms/forms-patent-applications-filed-or-after-september-16-2012>



Thank You

- christian.hannon@uspto.gov



