

添付資料 5

法律事務所プレゼン資料
「Westerman Hattori Daniels &
Adrian, LLP」

www.WHDA.com

Jan. 2017

WESTERMAN
HATTORI
DANIELS &
ADRIAN, LLP

Making American Plant Protection Great Again...
Plant Variety Protection Certificates, Plant Patents, Utility Patents

Nicolas E. Seckel

Intellectual Property Law

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Choices, choices...

- Plant Variety Protection Certificates
- Plant Patents
- Utility Patents

Plant Variety Protection Certificates

- PVPO: Plant Variety Protection Office (U.S. Department of Agriculture - USDA)
 - Small number of PVP Examiners
 - Formal procedure, informal communications
-

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Informal communications

Sincerely,

Leigh

Leigh Wiltison-Combs

Associate Plant Variety Examiner
USDA, AMS, S&T, Plant Variety Protection Office
1400 Independence Avenue, S.W.
Room 4512-South Building, Mail Stop 0274
Washington, D.C. 20250-0002
Main Office Telephone: 202-260-8983
Main Fax Number: 202-260-8976
Desk Telephone: 202-720-1124
Email: Leigh.Wiltison@ams.usda.gov
Website: <http://agnis/sites/pvpo/default.aspx>

“It is only the farmer who faithfully plants seeds in the Spring, who reaps
a harvest in the Autumn. – B.C. Forbes

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PVP application: forms and exhibits

19. CHECK APPROPRIATE BOX FOR EACH ATTACHMENT SUBMITTED (Follow instructions on reverse)

- a. ☐ Exhibit A. Origin and Breeding History of the Variety
 - b. ☐ Exhibit B. Statement of Distinctness
 - c. ☐ Exhibit C. Objective Description of Variety
 - d. ☐ Exhibit D. Additional Description of the Variety (*Optional*)
 - e. ☐ Exhibit E. Statement of the Basis of the Owner's Ownership
 - f. ☐ Exhibit F. Declaration Regarding Deposit
-

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PVP application: submit seed sample

National Center for Genetic Resources Preservation PVP Sample Submission Protocols

PVP Seed Voucher Sample Submission Protocols

A complete listing of the rules and regulations associated with deposit of PVP voucher specimens can be found in Section 97.7 of the PVP Act Regulations and Rules of Practice. A pdf copy of the PVP Act and Regulations can be downloaded from the PVP website: www.ams.usda.gov/pvpo.

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Examination process: re-submit exhibits



UNITED STATES
DEPARTMENT OF
AGRICULTURE

AGRICULTURAL
MARKETING
SERVICE

SCIENCE AND
TECHNOLOGY
PROGRAM

PLANT VARIETY PROTECTION OFFICE
HALL BLDG., ROOM 400
10301 BALTIMORE AVENUE
BELTSVILLE, MARYLAND 20705-2351
TELEPHONE: 301-504-5218
FACSIMILE: 301-504-5201

Nicolas E. Seckel
Westerman, Hattori, Daniels & Adrian, LLP
1250 Connecticut Avenue, NW Suite 700
Washington, DC 20036

Dear Esq Seckel:

Subject: [REDACTED] Application No. [REDACTED]

Exhibit B - Statement of Distinctness

Your comparisons supporting your claim of distinctness are not considered valid [REDACTED]
[REDACTED]

We suggest that you provide the English translation of the [REDACTED] application including the DUS trials

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Re-submit seed sample

From: [REDACTED]@ams.usda.gov>
Sent: [REDACTED]
To: Seckel, Nicolas
Cc: [REDACTED]
Subject: PVP# [REDACTED]
[REDACTED]

Good afternoon Mr. Seckel.

SUBJECT: Request for Seed Replacement for: [REDACTED]
[REDACTED] Certificate No. [REDACTED]

Section 52(4) and 83(c) of the Plant Variety Protection Act and §97.104(b) and (c) of the Regulations requires the replacement of a viable basic seed sample.

Your seed sample for the subject variety was found to be low in germination [REDACTED]. Therefore, a new seed sample is requested. There is a new fee [REDACTED]

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Wishes, wishes... more international forms



International Union for the Protection of New Varieties of Plants

PRESS RELEASE

UPOV Press Release 108

January 16, 2017

Launch of UPOV Electronic Application Form (EAF)

The International Union for the Protection of New Varieties of Plants (UPOV) is pleased to announce the launch of the Electronic Application Form (EAF).

What are the features of the EAF?

- An **online plant breeders' rights (PBR) application tool** that can be used to provide application data to all participating PVP Offices in the required format (hard copy, e-mail, system to system communication)
- Application forms can be displayed in a **range of languages** (note: answers must be provided in an acceptable language for the PVP Office)
- **Information can be automatically re-used in subsequent application data**

Source: http://www.upov.int/edocs/pressdocs/en/upov_pr_108.pdf
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Questions, questions... Seed marketing: certified or not certified?

20. DOES THE OWNER SPECIFY THAT SEED OF THIS VARIETY BE SOLD ONLY AS A CLASS OF CERTIFIED SEED? (See Section 83(a) of the Plant Variety Protection Act)

- ☒ YES (If "yes", answer items 21 and 22 below)
- ☐ NO (If "no", go to item 23)
- ☐ UNDECIDED

Procedures: follow the rules!

United States
Department of
Agriculture

Agricultural
Marketing
Service

Revised July
2013



Plant Variety Protection Act and Regulations and Rules of Practice

§ 97.20 Abandonment for failure to respond within the time limit.

- (a) Except as otherwise provided in section 97.104, if an applicant fails to advance actively his or her application within 30 days after the date when the last request for action was mailed to the applicant by the Office, or within such longer time as may be fixed by the Commissioner, the application shall be deemed abandoned. The application fee in such cases will not be refunded.

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Procedure: but rules can be waived... sometimes

For: [REDACTED]

RESPONSE TO LETTER DATED [REDACTED] 2012 AND PETITION/REQUEST FOR REVIVAL

Plant Variety Protection Office
USDA, AMS, S&T, Plant Variety Protection Office
1400 Independence Avenue, S.W.
Room 4512-South Building, Mail Stop 0274
Washington, D.C. 20250-0002

Date: [REDACTED] 2016

Good morning Nicolas.

The Commissioner, Dr. Paul Zankowski, and Deputy Commissioner, Jeff Haynes, reviewed your request for revival of application [REDACTED]. The decision was made to revive the application [REDACTED].

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Conclusion on PVP Certificates

An application fee of \$4,382 must be paid with the application. This can be paid by [credit card](#) or check drawn on a U.S. Bank made payable to "Treasurer of the United States".

Thank you for your interest in the Plant Variety Protection Program.

Sincerely,

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USDA, AMS, SSC, Plant Variety Protection Office
1400 Independence Avenue, S.W.
Room 4513-South Building, Mail Stop 0274
Washington, D.C. 20250-0002
Main Office Telephone: 202-860-8983
Main Fax Number: 202-860-8976
Desk Telephone: 202-730-1134
Email:
Website:

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Digression: (in)formalism at other U.S. agencies

From: Alcohol Labeling & Formulations Div
<AlcoholLabeling&FormulationsDiv@ttb.gov>
Sent: [REDACTED]
To: Seckel, Nicolas
Subject: RE: [EXTERNAL] [REDACTED] form TTB F 5100.51 [REDACTED]

Mr. Seckel,
Please see response to your second email regarding this inquiry.

Thank you,
Technical Information Center
ALFD/TTB/tvm

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Plant Patents

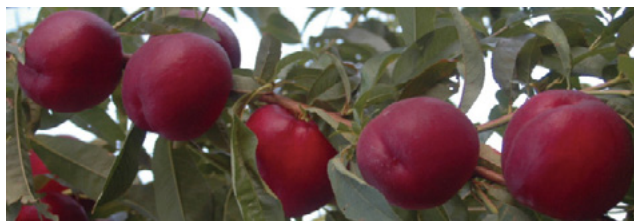
- USPTO: U.S. Patent and Trademark Office (U.S. Department of Commerce)
- Small number of USPTO Plant Examiners
- Formal procedure, relatively formal communications
- Easier substantive rules

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Examples: fruit trees

(12) **United States Plant Patent** (10) Patent No.: **US PP25,633 P3**
 Maillard et al. (45) Date of Patent: **Jun. 23, 2015**

(54) NECTARINE TREE NAMED "NECTABINGO" (51) Int. CL. **A01H 5/08** (2006.01)
 (50) Latin Name: *Prunus persica* var. *nucupersica* (L.) Batsch. (52) U.S. CL. **USPC** **Plt./190**
 Varietal Denomination: NECTABINGO



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Examples: flowers

(12) **United States Plant Patent**
Sonoda

(10) Patent No.: **US PP24,974 P3**
(45) Date of Patent: **Oct. 21, 2014**

(54)	MANDDEVILLA LINDL PLANT NAMED "SGLIGHTRED9"	(51)	Int. Cl. A01H 5/00 (2006.01)
(59)	Latin Name: <i>Mandevilla floral</i> Verbal Description: SGLightred9	(57)	U.S. Cl. USPC
(11)	Applicant: Norio Sonoda, Kagoshima I.P.	(58)	Field of Classification Search USPC



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Examples: mushrooms



United States Plant Patent No. US 9,912,929 P2

[illegible]

1. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 1, p. 103 (1966).
2. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 2, p. 103 (1967).
3. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 3, p. 103 (1968).
4. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 4, p. 103 (1969).
5. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 5, p. 103 (1970).
6. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 6, p. 103 (1971).
7. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 7, p. 103 (1972).
8. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 8, p. 103 (1973).
9. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 9, p. 103 (1974).
10. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 10, p. 103 (1975).
11. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 11, p. 103 (1976).
12. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 12, p. 103 (1977).
13. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 13, p. 103 (1978).
14. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 14, p. 103 (1979).
15. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 15, p. 103 (1980).
16. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 16, p. 103 (1981).
17. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 17, p. 103 (1982).
18. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 18, p. 103 (1983).
19. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 19, p. 103 (1984).
20. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 20, p. 103 (1985).
21. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 21, p. 103 (1986).
22. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 22, p. 103 (1987).
23. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 23, p. 103 (1988).
24. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 24, p. 103 (1989).
25. V. A. Kiselev, *Tr. Vsesoyuzn. nauch. konf. po fiz. i khim. plazmy*, No. 25, p. 103 (1990).

U.S. Patent Sept. 10, 2003 Sheet 9 of 9 Plant 12,928

FIG. 9



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Examples: not tubers

(12) **United States Plant Patent**
Mahon

(10) Patent No.: **US PP20,666 P2**
(45) Date of Patent: **Jan. 19, 2010**

(54) **SWEET POTATO PLANT NAMED 'MAHON YAM'**
(50) Latin Name: *Ipomoea batatas (L.) Lam*
Varietal Denomination: **Mahon Yam**
(70) Inventor: **John A. Mahon**, 540 Tard St., Clinton, SC 29535-5503
(*) Notice: Subject to any disclaimer, the term of this patent is extended to its statutory term under 35 U.S.C. 154(b) by 0 days.
(21) Appl. No.: **12/219,597**
(22) Filed: **Jul. 7, 2008**
(51) Int. Cl. **A01H 5/00** (2006.01)

(52) U.S. Cl. **Plt./258**
(53) Field of Classification Search **Plt./258**
See application file for complete search history.
Previous Publication—An entire H Page
(57) **ABSTRACT**
A new variety of sweet potato, *Ipomoea batatas*, identified as "Mahon Yam" is disclosed having superior eating quality. "Mahon Yam" is characterized by an orange-fleshed root that, when cooked, is moist, meaty and not stringy or starchy (i.e., starchy). The plant itself is distinguished by unusual leaves for an eating quality sweet potato, they are several (7) lobed.

6 Drawing Sheets

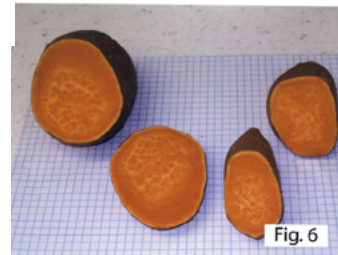


Fig. 6

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Example: artichokes

(12) **United States Plant Patent**
Jordan

(10) Patent No.: **US PP21,700 P2**
(45) Date of Patent: **Feb. 8, 2011**

(54) **ARTICHOKE PLANT 'B13'**
(50) Latin Name: *Cynara scolymus L.*
Varietal Denomination: **B13**
(70) Inventor: **Stephen Jordan**, Lompoc, CA (U.S.)

(58) **Field of Classification Search** **Plt./258**
See application file for complete search history.
(56) **References Cited**
U.S. PATENT DOCUMENTS



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Procedure: formal communications



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
ADDRESS COMMISSIONER, PATENT TRIESTE
P.O. Box 400
ALEXANDRIA, VIRGINIA 22313-1400
(571) 272-1000

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY'S DOCKET NO.	CONTINUATION NO.
██████████	██████████	██████████	██████████	██████████

MAIL TO: WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW

EXAMINER
PARA, ANNETTE H.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette H. Para whose telephone number is (571) 272-0982. The examiner can normally be reached Monday through Thursday from 5:30 a.m. to 4:00 p.m.

For all other customer support, please call the USPTO Call Center (USCC) at 800-786-9199.

/Annette H Para/
Primary Examiner

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Procedure: formal examination

Claim 1 is provisionally rejected under 35 USC 102(a)(1) (pending the response to the Requirement for Information) based upon a public use, sale or other public availability of the claimed invention. Upon Para Plant Variety Database ██████████ discloses that the ██████████ named ██████████ plant application in the European Community was published in ██████████ 2013, before the filing date of the instant application.

AMENDMENT UNDER 37 C.F.R. §1.111

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This submission is in response to the Office Action dated ██████████

Amendments ██████████ begin on page 2.

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Conclusion on plant patents: more familiar bundle of rights?

Fed. Circ. Affirms Validity Of USDA Grape Patents

By Ryan Davis

Law360, New York (January 9, 2015, 4:23 PM EST) -- The Federal Circuit ruled Friday that two U.S. Department of Agriculture plant patents covering varieties of grapes are not invalid, rejecting arguments by three grape growers that the plants were in public use more than a year before the patents were filed.



Delano Farms v. California Table Grape Commission (Fed. Cir. 2015)

© Farmers' Union, 2015. © Dennis Crouth

Patent/Co-Author

Dennis Crouth
Associate Professor, University of
Alabama School of Law

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Utility patents

- USPTO: U.S. Patent and Trademark Office
- Plant-based invention can be sufficiently described
 - section 112 of U.S. patent laws
- Markedly different from a product of nature
 - section 101 of U.S. patent laws, judicial exception
- No variety exclusion
 - Contrast with European patent laws

Article 53(4)(b) [44]

Exceptions to patentability

European patents shall not be granted in respect of

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Example

(12) **United States Patent**
Lewis et al.

(10) **Patent No.:** US 9,095,554 B2
(45) **Date of Patent:** Aug. 4, 2015

(54) **BREEDING, PRODUCTION, PROCESSING
AND USE OF SPECIALTY CANNABIS**

FOREIGN PATENT DOCUMENTS

GB 2459125 1322009

(71) Applicant: **Biorech Institute LLC**, Westlake
Village, CA (US)

OTHER PUBLICATIONS

(57) **ABSTRACT**

The invention provides compositions and methods for the breeding, production, processing and use of specialty *cannabis*.

16 Claims, 19 Drawing Sheets

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The invention claimed is:

1. A hybrid cannabis plant, or an asexual clone of said hybrid cannabis plant, or a plant part, tissue, or cell thereof, which produces a female inflorescence, said inflorescence comprising:

- a) a B₇/B₇ genotype;
- b) a terpene profile in which myrcene is not the dominant terpene;
- c) a terpene oil content greater than about 1.0% by weight; and
- d) a CBD content greater than 3%;

wherein the terpene profile is defined as terpinolene, alpha phelladrene, beta ocimene, carcen, limonene, gamma terpinene, alpha pinene, alpha terpinene, beta pinene, lenchol, camphene, alpha terpineol, alpha humulene, beta caryophyllene, linalool, cary oxide, and myrcene; and wherein the terpene oil content is determined by the additive content of the terpenes in the terpene profile; and wherein the terpene contents and CBD content are measured by gas chromatography-flame ionization detection (GC-FID) and calculated based on dry weight of the inflorescence; wherein a representative sample of seed producing said plants has been deposited under NCIMB Nos. 42246, 42247, 42248, 42249, 42250, and 42254.

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Questions, comments?

Nicolas E. Seckel
(1) 202-822-1100
nseckel@whda.com

This presentation is not legal advice

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