Patent Public Advisory Committee
Quarterly Meeting

Plant Patents Update

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Patent Attorney

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Overview

• Plant Patent Review
• Plant Patent Administration
• Proposed Legislation

• “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 this title.”

• “The provisions of this title relating to patents for inventions shall apply to patents for plants, except as otherwise provided.”
Utility Patents

e-Filing

Mandatory § 112 Compliance

Claims: 3 Independent, 17 Dependent, Included in Basic Filing Fee

Flexible Claiming

Maintenance Fees

Biological Deposit May be Required

Plant Patents

Distinct
No e-Filing
Cultivated State
Relaxed Description
Asexual Reproduction
Typically Photographic Drawings
1 Claim, Particular Format
Variety Denomination
New Matter Tolerance

Whoever invents or discovers...

Novel, non-obvious

Multiple Inventors

Exceptions

Oath/Declaration*

* Exceptions

Whoever invents or discovers...

Novel, non-obvious

Multiple Inventors

Exceptions

Oath/Declaration*

* Exceptions
(54) APPLE TREE NAMED ‘WA 38’
(50) Latin Name: Malus domestica
     Varietal Denomination: WA 38
(75) Inventor: Bruce H. Barritt, Okanagan Centre
     (CA)
(73) Assignee: Washington State University Research
     Foundation, Pullman, WA (US)
(*) Notice: Subject to any disclaimer, the term of this
     patent is extended or adjusted under 35
     U.S.C. 154(a) by 93 days.
(21) Appl. No.: 13/885,545
(22) Filed: Feb. 23, 2012
(65) Prior Publication Data
     US 2013/0227750 P1     Aug. 29, 2013
(51) Int. Cl.
     A61H 5/00     (2006.01)

(10) Patent No.: US PP24,210 P3
(45) Date of Patent: Feb. 4, 2014
(52) U.S. Cl.
     Plt./161
(58) Field of Classification Search
     Plt./161, 170
     See application file for complete search history.

(55) References Cited
     U.S. PATENT DOCUMENTS
     PP7,197 P * 3/1990 Luby et al. Plt./161
     * cited by examiner

Primary Examiner — Howard Locker
(74) Attorney, Agent, or Firm — Morrison & Foerster LLP

(57) ABSTRACT
     A new and distinctive variety of a Malus domestica apple tree,
     named ‘WA 38’ that is distinguished by its intense and nearly
     full color, internal indices that are different than its parents,
     and its long common storage life.

4 Drawing Sheets
INTERNATIONAL PLANT IP
International Bodies with Plant IP Equities

• USPTO leads the U.S. UPOV delegation
• USPTO serves as technical expert on the ITPGRFA
PLANT PATENT ADMINISTRATION
Plant Patent Corps – AU 1661

• 1 Director
• 1 Supervisory Patent Examiner
• 7 Patent Examiners (4 Hotelers)
Plant Patent Filings 2012-16
Plant Patent Issuances 2012-16
PROPOSED LEGISLATION
Proposed Legislation

• The Plant Patent Act currently covers asexually propagated plants

• The Plant Variety Protection Act covers sexually propagated plant varieties (Breeder’s Right Certificate)
  – Has certain exceptions, but also certain advantageous concepts
Questions and Comments

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