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PATENT AND TRADEMARK OFFICE



The logo consists of a blue lowercase 'i' and a yellow uppercase 'H' with a blue horizontal bar at the top of the 'H'.

# Patent Trial and Appeal Board

## Inventor Hour: Episode 28

**Sharon Fenick**, Administrative Patent Judge

**Ryan Flax**, Lead Administrative Patent Judge

**Jeffrey Fredman**, Administrative Patent Judge

**David McKone**, Lead Administrative Patent Judge

**Rachel Townsend**, Administrative Patent Judge

**Ulrike Jenks**, Administrative Patent Judge

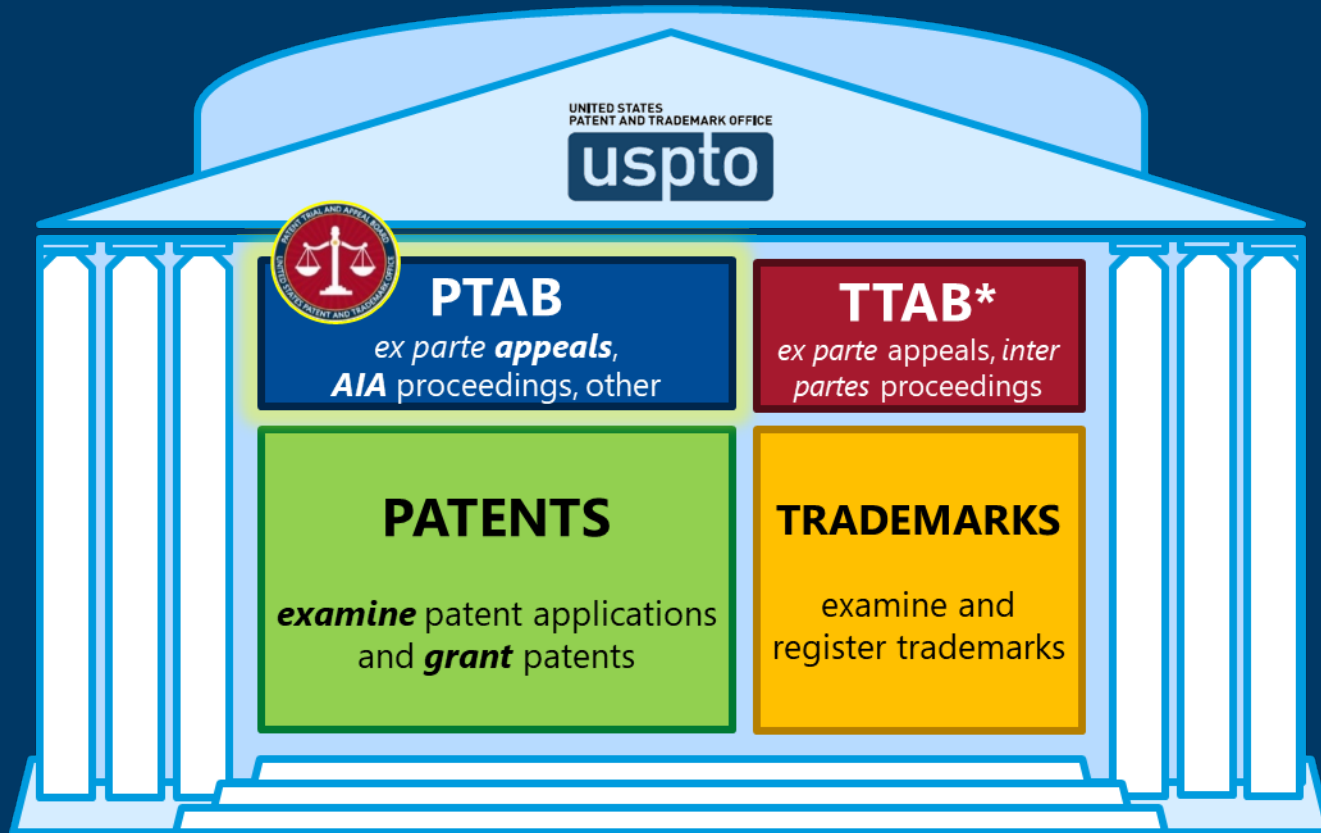
*Special guest:* **Shubo (Joe) Zhou, Ph.D.**, Supervisory Patent Examiner

May 23, 2024



UNITED STATES  
PATENT AND TRADEMARK OFFICE ®

# What is the Patent Trial and Appeal Board?



# Today's agenda



# Question/comment submission

To send in questions or comments about the presentation, please email:

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Ulrike Jenks, Administrative Patent Judge



## **An interview with Joe Zhou, Ph.D.**

Supervisory Patent Examiner



**Joe Zhou, Ph.D.**  
*Supervisory Patent Examiner*

# Example: US Plant Patent No. 32,852 P3

[Barcode]

[500992532P3]

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

**(30) Patent No.:** US PP32,852 P3  
**(45) Date of Patent:** Mar. 2, 2021

**(54) CHERRY TREE (ROOTSTOCK) NAMED "CLARE"**

**(56) Latin Name:** *Prunus subgenus Cerasus Koehne*  
**Varied Determination:** *Clare*

**(71) Applicant:** Board of Trustees of Michigan State University, East Lansing, MI (U.S.)

**(72) Inventor:** Amy Bateman, East Lansing, MI (U.S.)

**(73) Assignor:** Board of Trustees of Michigan State University, East Lansing, MI (U.S.)

(\* ) Notice: Subject to any disclaimer, the term *patent* is extended or adjusted in U.S.C. 154(b) by 535 days.

**(21) Appl. No.:** 157506732

**(22) Filed:** Oct. 31, 2016

**(65) Prior Publication Data**  
US 20180124770 P1 May 3, 2018

**(51) Int. Cl.**  
A01H 5/06 (2018.01)  
A01H 6/74 (2018.01)  
A01H 5/00 (2018.01)  
A01H 5/02 (2018.01)

**(52) U.S. Cl.**  
USPC: A01H 5/06 (2013.01); A01H 6/74 (2013.01); A01H 6/744 (2013.01)

US PP32,852 P3

9 10

(141) SEARCH OF SEQ ID NOS: 4  
(151) SEQ ID NOS: 1  
(161) SEQ ID NOS: 20  
(171) SEQ ID NOS: 100  
(181) SEQ ID NOS: 1000  
(191) SEQ ID NOS: 10000

U.S. Patent Mar. 2, 2021 Sheet 1 of 5 US PP32,852 P3

I claim:

1. A new and distinct variety of cherry tree substantially as described and illustrated herein.

**1**

**Botanical designation:** The present invention relates to a new cherry tree variety. Based on a visual assessment of the seed parent, it appeared to be a natural species hybrid, of unknown complexity among three species within the *Prunus* subgenus Cerasus section of *Cerasus*. Koehne that are native to the collection region and cross naturally in the wild. These three species are *Prunus avium* L., *Prunus cerasus* L., and *Prunus pseudo-cerasus* Pall. The seed resulted from open-pollination and the parental parent is unknown.

**Variety denomination:** The new plant has the variety denomination "Clare".

**BACKGROUND OF THE INVENTION**

This invention relates to a new and distinct variety cherry tree. In the field of plant genetics, researchers conduct an extensive and continuing plant-breeding program including the organization and selection of reproduction of orchard trees, and of which plums, peaches, nectarines, apricots, cherries, almonds and interspecifics are exemplary. It was against the background of activities that the present variety of cherry tree was originated and asexually reproduced in our experimental orchard.

**2**

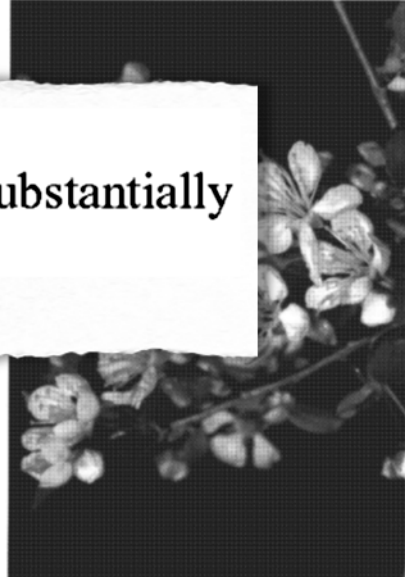
**PRIOR VARIETIES**

Among the existing varieties of cherry trees, which are known to us, and mentioned herein, "Hedelfinger" (not patented); "Marianmeyer" (not patented); "Hing" (not patented); "Goldstar 7" U.S. Plant Pat. No. 8422 and "Goldstar 8" U.S. Plant Pat. No. 8354.

**ORIGIN OF THE VARIETY**

Open-pollinated *Prunus* seeds were collected in hillsides surrounding Budapest, Hungary, and the seeds were then germinated at East Lansing, Mich. The plot of seedlings from which this variety was selected were sown in 1938 in a cultivated area in Clarkville, Mich. Selection of the present variety was actually based on observations of desirable traits to include its overall plant growth, vine tolerance, (Prune Dwarf Virus and Prune Necrotic Ringspot Virus), and timing/persistence of self-rooted cuttings. The selected seedlings were then subjected to three trials over the course of approximately eleven years to select for desirable traits when used as a rootstock (Table 1). Selection of the present variety was based upon observations that it induced excellent trunk cross-sectional area, height, precocity, and disease resistance.

**FIG. 1**





Aug. 18, 1931.

H. F. BOSENBERG  
CLIMBING OR TRAILING ROSE  
Filed Aug. 6, 1930

Plant Pat. 1



Fig.1

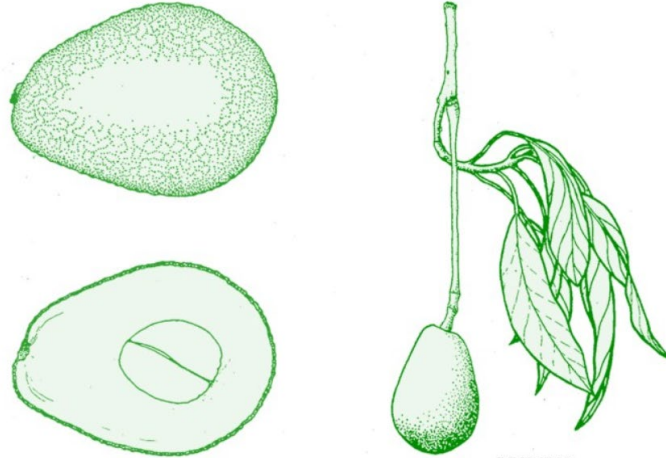
Fig 2

INVENTOR.  
Henry F. Bosenberg.  
By  
*Agnes*  
Orville M. Kile

Aug. 27, 1935.

R. G. HASS  
AVOCADO

Plant Pat. 139



AVOCADO-PATENT-HASS-1935

INVENTOR.  
*RUDOLPH G. HASS*

Mar. 20, 1990

Sheet 2 of 2

Plant 7,197

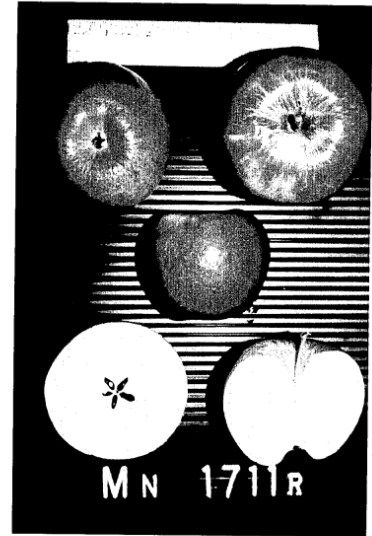


FIG.3

# Question/comment submission

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# PTAB's Fast-track Appeals Pilot Program



- Appellants can have their ex parte appeals **advanced out of turn** by filing a *petition* and paying a \$420 petition fee
- PTAB has a target of issuing a decision within **six months** from the date the petition is granted and the ex parte appeal is entered into the program
- This pilot program **runs until July 2, 2024**

[www.uspto.gov/patents/ptab/fast-track-appeals-pilot-program](https://www.uspto.gov/patents/ptab/fast-track-appeals-pilot-program)  
(for more information and contact info)

**Sharon Fenick**, Administrative Patent Judge

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**Rachel Townsend**, Administrative Patent Judge



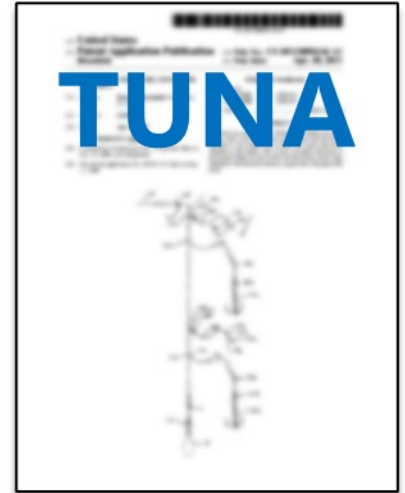
## Hearing byte: Mock oral argument

# Invention and claim

1. A method for protecting marine seismic equipment by coating the equipment with an electropositive metal attached to repel sharks away from the equipment.

# Examiner's rejection

- Claim 1 is rejected as **obvious** over the combination of the "**Tuna**" and "**Flounder**" **prior art references**
- **Tuna** discusses problems in the commercial fish industry. One problem is that sharks and other unwanted fish are often caught with the desired tuna fish. Tuna teaches that coating fishing hooks with electropositive metals will repel sharks and other fish but not the tuna
- **Flounder** teaches how to haul seismic marine equipment in the ocean



# Appellant's response

**Tuna** is **not analogous art** because

- **Tuna** is not from the same *field of endeavor* as the claimed invention; and
- **Tuna** is not reasonably *pertinent to the problem* to be solved by the claimed invention

A **person of ordinary skill in the art would not have been motivated** combine **Tuna** and **Flounder** because

- They teach entirely *different* things – **Tuna** concerns avoiding by-catch whereas **Flounder** deals with hauling seismic equipment



# Examiner's final rejection

**Tuna** is analogous art because

- **Tuna** is from the *same field of endeavor* as the claimed invention, namely, *preventing shark attacks*; and
- **Tuna** is reasonably *pertinent to the problem* solved by the claimed invention, which is *repelling shark attacks*

A **person of ordinary skill in the art would have been motivated to combine Tuna and Flounder** because each reference addresses the *common problem of repelling sharks*





# Notice of Appeal

The Applicant/Appellant filed a **Notice of Appeal**, followed by an **Appeal Brief** to PTAB

The Examiner then entered an **Examiner Answer**

The Applicant/Appellant **requested a hearing**

-Time for Oral Argument -



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# New to PTAB webpage



- Contains basic information about ex parte appeal and AIA trial proceedings
- Available in languages including:
  - Chinese
  - Japanese
  - Korean
  - Spanish
  - German
  - French
  - Hindi

[www.uspto.gov/patents/patent-trial-and-appeal-board/about-ptab/new-ptab](http://www.uspto.gov/patents/patent-trial-and-appeal-board/about-ptab/new-ptab)



**Questions?**

# Future programs

## **Inventor Hour, Episode 29**

Thursday, June 27, 2024, noon (ET)

## **Inventor Hour, Episode 30**

Thursday, July 25, 2024, noon (ET)



