

**From:** Ifat Abraham  
**Sent:** Monday, November 05, 2012 9:05 AM  
**To:** fitf\_rules  
**Cc:** cassy@hortisusa.com; Anat Moshes; Yael Matar; Missulawin-MironDana  
**Subject:** Comment period on America Invents Act extended

To:USPTO

Dear Sir/Madam,

Since the publication of the new changes in the US Patent law in September 2011, we have been looking for a clear announcement made by the USPTO as to the implementation, if at all, of these changes in Plant Patents.

For plants specifically, the original Patent law in the US is already stricter than in other countries – while in most other countries plants are allowed to be sold for up to one year in the country, and up to four years in the world, it was always known that in the US, the first sale date in the world is the important date to consider.

Now, if implementing the new changes with regard to Plant Patents (PP), the adjustment to these changes might be problematic for plant breeders worldwide, since the plant breeding field operates differently than other fields, in which Utility Patents are applied for. In fact, this major change, should they be applied to Plant Patents, might be the beginning of the end of the entire Plant Patent application system, in the worst case, or might cause a wave of provisional applications, in the better case. As the PP system was initially developed to ease the great load of the Patent system and to be more accurate when plants need to be protected, this step might increase the burden instead of reducing it and might complicate the USPTO examiners' work. We are sure that this is not the intention.

Danziger "Dan" Flower Farm submits multiple applications on a yearly basis for many years now. Our field is very dynamic and it is a genuine struggle each year to determine which of our many new varieties will qualify for submission, as the grace period of one year is not always enough to decide. Many factors regarding the professional quality of the plants are taken into account. However, the most important factors are the commercial ones: market requirements and needs, world's trends and innovations in our field.

Part of our considerations when deciding whether to submit an application for US Plant Patent is the feedback we receive from our clients around the world. Without these feedbacks, we will be very limited in our choice of which plant varieties are suitable for application for US Plant Patent, and in fact – instead of applying for varieties with reasonable confidence level as to their potential commercial success, we would be forced to choose the better of the two options – to submit applications for varieties we have very little, or no, technical & commercial knowledge about, or not to submit varieties at all. Without any grounds for decisions, it would mean that varieties will be applied at a risk of withdrawing later on. Considering the high expenses of PP, the meaning would be major costs to us, and to other plant breeders, as we all operate in a similar way.

To conclude, we understand that it is not yet clear if the new changes in the US Patent law regarding first use will be applied for Plant Patents as well. We would like to urge you to make an exemption for Plant Patents and to continue to allow the rule of one year grace period of sales around the world, prior

to the Patent application of plant varieties. We believe that all plant breeders who submit Plant Patent application in the US feel the same and that this exemption will prevent considerable damage to the entire industry.

Best regards,  
Ifat

**Ifat Abraham (Ms.)**  
Intellectual Property



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