



Invention & Industry

# Sui Generis Rights

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Konomark  
Most rights sharable

## Sui Generis Rights – Initial Observations (1/2)

- The default under the law is that you can copy others' ideas, innovations, expression, etc.
- This can be understood to be a basic principle of a free society, including ...
  - our free market economy, encouraging the entry of competitors to reduce prices and increase value to consumers
  - notions of freedom of expression (e.g., the “marketplace of ideas” concept for democracy — that good ideas catch on and drive out the bad ideas)

### **Sui Generis Rights – Initial Observations (2/2)**


- Nevertheless, individuals and firms recurrently complain that being copied is unfair or harmful.
- Sometimes courts stretch existing regimes to new subject matter — without precedent or even arguably at odds with doctrine/precedent, e.g.:
  - copyright for computer programs (code) as a literary work
  - utility patents for cell lines not reproducible from the specification alone; with “written description” deemed fulfilled by making samples available
- But when courts reject subject matter from established rights regimes, would-be plaintiff sometimes find success in Congress.

### **Some Sui Generis Rights Created by Congress**

- Plant Patents
- Plant Variety Protection
- Mask Work Protection
- Vessel Hull Protection

# Plant Patents

- Covers asexually reproduced plants
- Like utility and design patents, they're issued by the USPTO after an application process
- Must be new and clearly distinguishable from other varieties (e.g., color, taste, disease resistance)
- Can be invented or discovered if discovered in a cultivated area
- Source of law: Plant Patent Act (1930), 35 U.S.C. § § 161-164
- Duration: 20 year term of protection from filing of application



US00PP22240P2

<p>(12) <b>United States Plant Patent</b> <b>Hartman</b></p> <p>(54) <b>CALADIUM PLANT NAMED 'WHITE DYNASTY'</b></p> <p>(50) Latin Name: <i>Caladiumhortulanum</i> Varietal Denomination: <b>White Dynasty</b></p> <p>(76) Inventor: <b>Robert Dale Hartman</b>, Lake Placid, FL (US)</p> <p>(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.</p> <p>(21) Appl. No.: <b>12/802,579</b></p> <p>(22) Filed: <b>Jun. 9, 2010</b></p> <p>(51) Int. Cl. <b>A01H 5/00</b> (2006.01)</p>	<p>(10) Patent No.: <b>US PP22,240 P2</b></p> <p>(45) Date of Patent: <b>Nov. 8, 2011</b></p> <p>(52) U.S. Cl. ..... Plt./373</p> <p>(58) Field of Classification Search ..... Plt./373 See application file for complete search history.</p> <p>Primary Examiner — Susan McCormick Ewoldt</p> <p>(74) Attorney, Agent, or Firm — C. A. Whealy</p> <p>(57) <b>ABSTRACT</b></p> <p>A new and distinct cultivar of <i>Caladium</i> plant named 'White Dynasty', characterized by its upright and mounding plant habit; intermediate to tall plant size; uniform potted plant habit with or without de-eyeing tubers; vigorous and dense growth habit; fast growth rate; and lance-type leaves that are white and greyed green with few random red purple-colored spots, dark green-colored margins and greyed green-colored venation.</p> <p style="text-align: center;"><b>4 Drawing Sheets</b></p>
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**1**

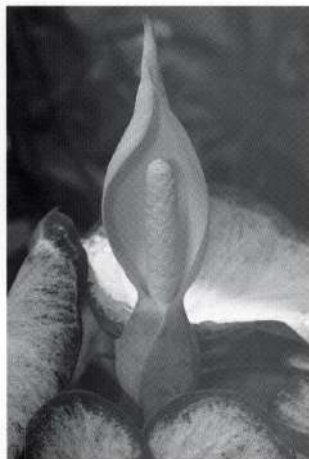
Botanical designation: *Caladiumhortulanum*.  
Cultivar denomination: 'WHITE DYNASTY'.

BACKGROUND OF THE INVENTION

The present invention relates to a new and distinct cultivar

**2**

1. Upright and mounding plant habit; intermediate to tall plant size.
2. Uniform potted plant habit with or without de-eyeing tubers.
3. Vigorous and dense growth habit.



# Plant Variety Protection Certificates

- Protects stable sexually reproducing varieties
- Administered through USDA, not PTO
- Source of law: Plant Variety Protection Act (1970), 7 U.S.C. § § 2321-2582
- Duration: 20 years generally, 25 years for trees and vines

REPRODUCE LOCALLY. Include form number and date on all reproductions				Form Approved - OMB No. 0581-005	
U.S. DEPARTMENT OF AGRICULTURE AGRICULTURAL MARKETING SERVICE SCIENCE AND TECHNOLOGY - PLANT VARIETY PROTECTION OFFICE				The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552a) and the Paperwork Reduction Act (PRA) of 1995. Application is required in order to determine if a plant variety protection certificate is to be issued (7 U.S.C. 2421). Information is held confidential until certificate is issued (7 U.S.C. 2425).	
APPLICATION FOR PLANT VARIETY PROTECTION CERTIFICATE (Instructions and information collection burden statement on reverse)					
1. NAME OF OWNER  Abbott & Cobb, Inc.		2. TEMPORARY DESIGNATION OR EXPERIMENTAL NAME  ACX 812		3. VARIETY NAME  #820Y	
4. ADDRESS (Street and No., or R.F.D. No., City, State, and ZIP Code, and Country)  4151 Street Road P. O. Box 307 Feasterville, PA 19053-0307		5. TELEPHONE (include area code)  215-245-6666		FOR OFFICIAL USE ONLY  PVPO NUMBER 200100015	
		6. FAX (include area code)  215-245-1068		FILING DATE 10/12/2000	
7. IF THE OWNER NAMED IS NOT A "PERSON", GIVE FORM OF ORGANIZATION (corporation, partnership, association, etc.)  Corporation		8. IF INCORPORATED, GIVE STATE OF INCORPORATION  PA		9. DATE OF INCORPORATION  1/1/74	
10. NAME AND ADDRESS OF OWNER REPRESENTATIVE(S) TO SERVE IN THIS APPLICATION. (First person listed will receive all papers)				FILING AND EXAMINATION FEES	
a) Dr. Bryant Long Abbott & Cobb, Inc. 11460 Fortune Circle West Palm Beach, FL 33414		b) Keith Parr, Esq. Lord, Bissell & Brook 115 So. LaSalle Street 28th Floor Chicago, IL 60603		FEE \$ 2,705.00 DATE 10/10/00	
				CERTIFICATION FEE: \$ 432.00 DATE 4/14/04	
11. TELEPHONE (include area code) a) 561-795-0121 b) 312-443-0497		12. FAX (include area code) a) 561-795-0251 b) 312-443-0336		13. E-MAIL a) bryantlong@aol.com b) kparr@lordbissell.com	
14. CROP KIND (Common Name) sweet corn					
18. CHECK APPROPRIATE BOX FOR EACH ATTACHMENT SUBMITTED (Follow instructions on reverse)				19. DOES THE OWNER SPECIFY THAT SEED OF THIS VARIETY BE SOLD AS A CLASS OF CERTIFIED SEED? See Section 83(a) of the Plant Variety Protection Act	
a. <input checked="" type="checkbox"/> Exhibit A. Origin and Breeding History of the Variety				<input type="checkbox"/> YES (If "yes", answer items 20 and 21 below)	
b. <input checked="" type="checkbox"/> Exhibit B. Statement of Distinctness				<input checked="" type="checkbox"/> NO (If "no," go to item 22)	
c. <input checked="" type="checkbox"/> Exhibit C. Objective Description of Variety				20. DOES THE OWNER SPECIFY THAT SEED OF THIS VARIETY BE LIMITED AS TO NUMBER OF CLASSES? <input type="checkbox"/> YES <input type="checkbox"/> NO	
d. <input checked="" type="checkbox"/> Exhibit D. Additional Description of the Variety (Optional)				IF YES, WHICH CLASSES? <input type="checkbox"/> FOUNDATION <input type="checkbox"/> REGISTERED <input type="checkbox"/> CERTIFIED	

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21. DOES THE OWNER SPECIFY THAT THE CLASSES BE LIMITED AS TO NUMBER OF GENERATIONS? IF YES, SPECIFY THE NUMBER 1, 2, 3, etc. <input type="checkbox"/> FOUNDATION <input type="checkbox"/> REGISTERED <input type="checkbox"/> CERTIFIED							
22. HAS THE VARIETY (INCLUDING ANY HARVESTED MATERIAL) OR A HYBRID PRODUCED FROM THIS VARIETY BEEN SOLD, DISPOSED OF, TRANSFERRED, OR USED IN THE U. S. OR OTHER COUNTRIES? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <small>IF YES, YOU MUST PROVIDE THE DATE OF FIRST SALE, DISPOSITION, TRANSFER, OR USE FOR EACH COUNTRY AND THE CIRCUMSTANCES. (Please use space indicated on reverse.)</small>							
23. IS THE VARIETY OR ANY COMPONENT OF THE VARIETY PROTECTED BY INTELLECTUAL PROPERTY RIGHT (PLANT BREEDER'S RIGHT OR PATENT)? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO <small>IF YES, GIVE COUNTRY, DATE OF FILING OR ISSUANCE AND ASSIGNED REFERENCE NUMBER. (Please use space indicated on reverse.)</small> 9600094 '781 ultra'							
24. The owners declare that a viable sample of basic seed of the variety will be furnished with application and will be replenished upon request in accordance with such regulations as may be applicable, or for a tuber propagated variety a tissue culture will be deposited in a public repository and maintained for the duration of the certificate. <small>The undersigned owner(s) is/are the owner of this sexually reproduced or tuber propagated plant variety, and believe(s) that the variety is new, distinct, uniform, and stable as required in Section 42, and is entitled to protection under the provisions of Section 42 of the Plant Variety Protection Act.</small> <small>Owner(s) is/are informed that false representation herein can jeopardize protection and result in penalties.</small>							
SIGNATURE OF OWNER <i>Arthur C. Abbott Pres/CEO</i>				SIGNATURE OF OWNER			
NAME (Please print or type) Abbott & Cobb, Inc.				NAME (Please print or type)			
CAPACITY OR TITLE Chief Executive Officer		DATE 10/30/00		CAPACITY OR TITLE		DATE <div style="text-align: right; font-size: 2em; font-weight: bold;">1</div>	
<small>ST-470 (2-99) designed by the Plant Variety Protection Office with WordPerfect 6.0a. Replaces ST-470 (8-98) which is obsolete. (Use reverse for instructions and information collection burden statement)</small>							

## Mask Work Protection

- Protects original mask works for making semiconductor chips. (A mask work is a two- or three-dimensional layout of an integrated circuit on a semiconductor chip.)
- Source of law: Semiconductor Chip Protection Act (1984), 17 U.S.C. § § 901-914
- Duration: 10 years
- Registration/administration through Library of Congress Copyright Office
- Unlike copyright, a mask work must be registered before protection begins.

Type of Work: Mask Work

Registration Number / Date: MW0000019263 / 2011-06-14

Title: Mask work as contained ADC12D500A.

Description: 4 semiconductor chips in housings + col. composite plot.

Copyright Claimant: ©National Semiconductor Corporation

Date of First Exploitation: 27May11

Basis of Claim: New Matter: mask work.

Other Title: ADC12D500A

Names: National Semiconductor Corporation

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## Vessel Hull Design Protection

- Protects vessel hulls (i.e., of boats and ships), plus superstructure, per later amendment
- It's a legislative response to the fact that after a fiberglass hull is made from a mold, the hull can be used to produce a new mold, allowing manufacture of copies.

# Vessel Hull Design Protection

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- It's a legislative response to the fact that after a fiberglass hull is made from a mold, the hull can be used to produce a new mold, allowing manufacture of copies.
- Source of law: Vessel Hull Design Protection Act (1998), 17 U.S.C. § § 1301-1332
- Duration: 10 years
- Must be registered with the Copyright Office for protection to commence.
- An application for registration must be filed no later than two years after the hull was exhibited or offered for sale to the public.

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right Office  
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right Office, or call (202) 707-3000.

**Form D-VH**  
For Vessel Hull Design  
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

**DVH 0396**

DATE OF REGISTRATION/PUBLICATION

**10 08 08**  
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET. (Form D-VH/CON)

**1**  
TITLE

Please give the make and model of the vessel that embodies the design.

Scout 191 Bay Scout

**2**  
DESIGN

(a) What is the type or style of the design for which registration is sought?

Bay Boat

(b) Provide a brief general statement setting forth the salient features of the design.

Hull form, deck configuration, and overall appearance.

Integrated Fiberglass Leaning Post/Baitwell.

The reverse shoebox hull to deck joint construction method.

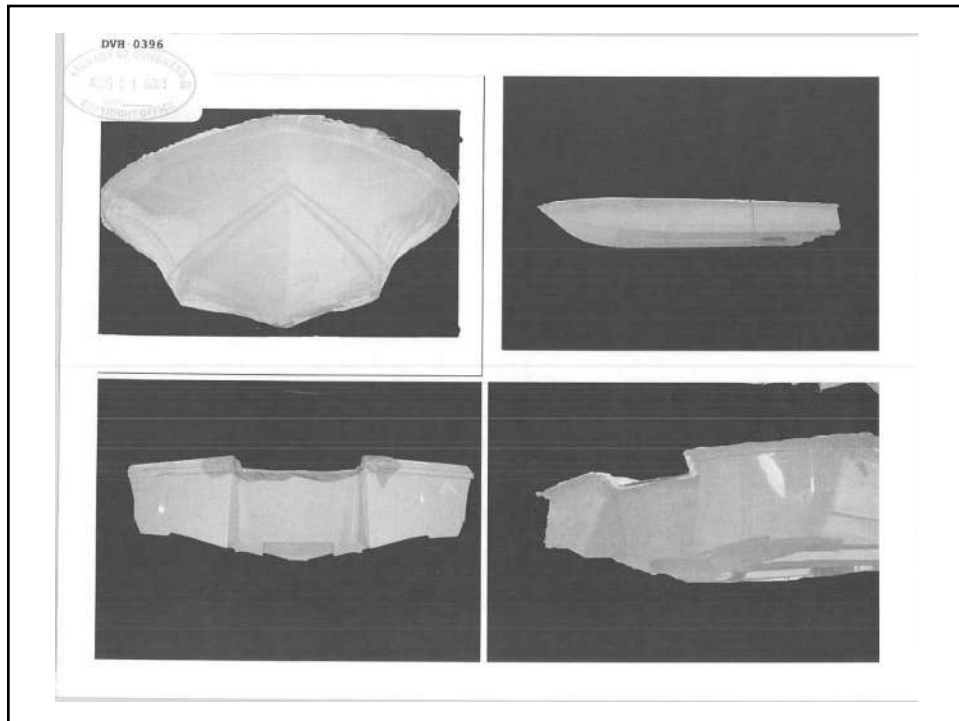
(c) If this design is derived from an earlier design, describe how that design has been revised, adapted, or rearranged.

**3**  
DESIGNER(S)

Provide the name and address of the designer(s). The name of the employer may be given instead of the designer(s) if, (1) the design was made within the regular scope of employment of the designer(s) and (2) the individual authorship of the design is difficult or impossible to ascribe.

☐ Please check here if those conditions are satisfied and you are providing the employer's name.





Which of the following doctrines of intellectual property is not generally recognized in the United States?

- (A) database rights
- (B) vessel hull design rights
- (C) design patents
- (D) plant variety protection certificates
- (E) rights of publicity

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