



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

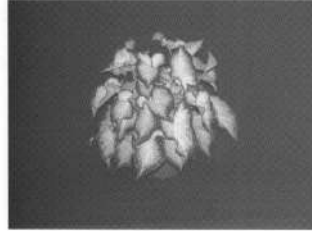
- Covers asexually reproduced plants
- Like utility and design patents, they're issued by the USPTO after an application process
- Must be new and clearly distinguishable from other varieties (e.g., color, taste, disease resistance)
- Can be invented or discovered if discovered in a cultivated area
-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



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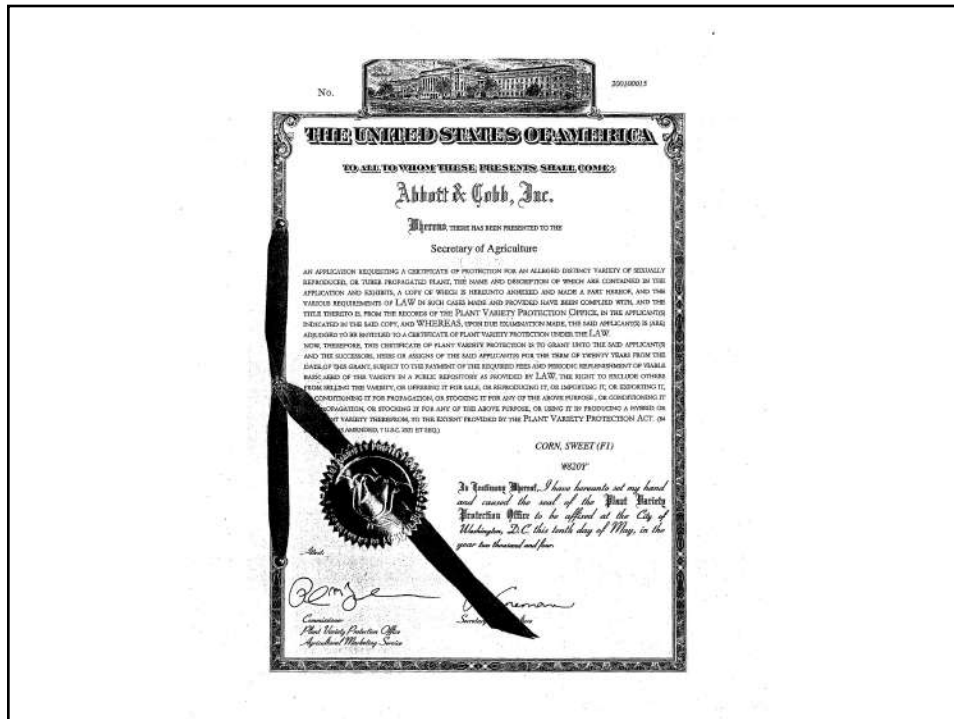
<p>(12) United States Plant Patent Hartman</p> <hr/> <p>(54) CALADIUM PLANT NAMED 'WHITE DYNASTY'</p> <p>(50) Latin Name: <i>Caladiumhortulanum</i> Varietal Denomination: White Dynasty</p> <p>(76) Inventor: Robert Dale Hartman, Lake Placid, FL (US)</p> <p>(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.</p> <p>(21) Appl. No.: 12/802,579</p> <p>(22) Filed: Jun. 9, 2010</p> <p>(51) Int. Cl. A01H 5/00 (2006.01)</p>	<p>(10) Patent No.: US PP22,240 P2</p> <p>(45) Date of Patent: Nov. 8, 2011</p> <hr/> <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 (74) Attorney, Agent, or Firm — C. A. Whealy</p> <p>(57) ABSTRACT</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;">4 Drawing Sheets</p>
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<p>1</p> <p>Botanical designation: <i>Caladiumhortulanum</i>. Cultivar denomination: 'WHITE DYNASTY'.</p> <p style="text-align: center;">BACKGROUND OF THE INVENTION</p> <p>The present invention relates to a new and distinct cultivar</p>	<p>2</p> <p>1. Upright and mounding plant habit; intermediate to tall plant size.</p> <p>2. Uniform potted plant habit with or without de-eyeing tubers.</p> <p>3. Vigorous and dense growth habit.</p>
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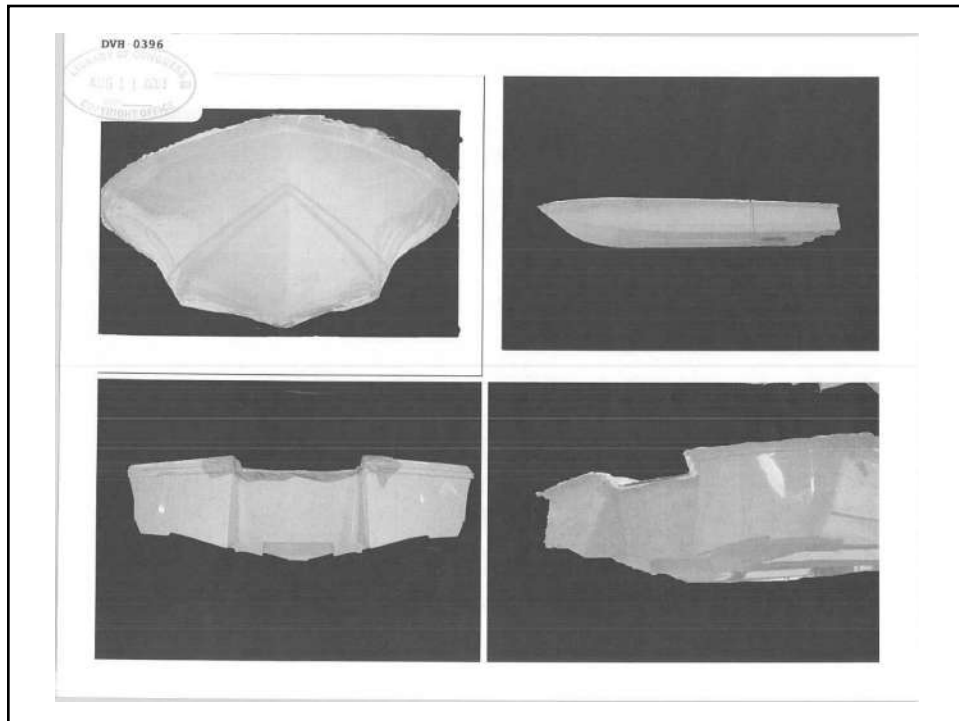
Plant Variety Protection Certificates

- 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



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.



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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