

Plant Patent Act (1930)

Requirements

- Subject matter
 - Asexually reproduced (budding, grafting)
 - Plant (including macro fungi, but not bacteria)
- Distinct
 - Must be clearly distinguishable from other varieties (color, taste, disease resistance)
- New

Can be invented or discovered if discovered in a cultivated area

Covers the entire plant

- Not infringement to sell fruit, flowers, seeds, etc.

Like utility patents, administered through the USPTO

Sports (somatic mutants) are non-infringing of the parent patent and are potentially separately patentable

Duration: 20 year term of protection from filing of application

Description requirement is relaxed compared to utility patents

In practicality, an infringing plant must be a vegetative descendant of the patented plant

Plant Variety Protection Act (1970)

Requirements

- Subject matter
 - Sexually reproducing
 - Plant (not bacteria, fungi)
- New
- Distinct
- Uniform
- Stable

Comparisons to patents:

- Administered through USDA, not PTO
- Protects against creation of derivative plant lines
- Allows farmers to save and plant seeds (otherwise, seed sales are infringing)
- Research exemption allows use for breeding to develop a new variety

Covers first-generation hybrids

Duration: 20 years generally, 25 years for trees and vines