Plant Patent

Patents to plants which are stable and reproduced by asexual reproduction, and not a potato or other edible tuber reproduced plant, are provided for by Title 35 United States Code, Section 161 which states:

Whoever invents or discovers and asexually reproduces any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state, may obtain a patent therefor, subject to the conditions and requirements of title. (Amended September 3, 1954, 68 Stat. 1190).

The provisions of this title relating to patents for inventions shall apply to patents for plants, except as otherwise provided. This means that the plant patent must also satisfy the general requirements of patentability. The subject matter of the application would be a plant which developed or discovered by applicant, and which has been found stable by asexual reproduction. To be patentable, it would also be required:

- That the plant was invented or discovered and, if discovered, that the discovery was made in a cultivated area.
- That the plant is not a plant which is excluded by statute, where the part of the plant used for asexual reproduction is not a tuber food part, as with potato or Jerusalem artichoke.
- That the person or persons filing the application are those who actually invented the claimed plant; i.e., discovered or developed and identified or isolated the plant, and asexually reproduced the plant.
- That the plant has not been sold or released in the United States of America more than one year prior to the date of the application.
- That the plant has not been enabled to the public, i.e., by description in a printed publication in this country more than one year before the application for patent with an offer to sale; or by release or sale of the plant more than one year prior to application for patent.
- That the plant be shown to differ from known, related plants by at least one distinguishing characteristic, which is more than a difference caused by growing conditions or fertility levels, etc.
- The invention would not have been obvious to one skilled in the art at the time of invention by applicant.

A plant patent is granted by the Government to an inventor (or the inventor's heirs or assigns) who has invented or discovered and asexually reproduced a distinct and new variety of plant, other than a tuber propagated plant or a plant found in an uncultivated state. The grant, which lasts for 20 years from the date of filing the application, protects the inventor's right to exclude others from asexually reproducing, selling, or using the plant so reproduced.