

The Benefits from Protecting New Plant Introductions

Evelyn Weidner

Weidners' Gardens, 695 Normandy Road, Encinitas, California 92024

Open any wholesale plant catalog today or take a close look at the label that is attached to the plant and you will almost surely see those little letters next to the plant name (Pat., PPAF, or the small symbols ®,™) that indicate the name is trademarked.

The next thing you will often see is "Propagation Prohibited"; you might even see "Propagation Strictly Prohibited". Perhaps propagation is permitted under license only. Whatever you see, it means that the breeder or his assignee has gone to the time, trouble, and expense of protecting his rights to that particular plant cultivar.

Why is this done? What has caused the sudden proliferation of all these plant patents and trademarks? Who gets the money? How many entities have their hand in the pot? And of course, the final question, how many of you out there will abide by the rules and how many of you will be illegally propagating on the side?

There are a number of factors that have fueled both the proliferation of plant patents and new and exciting cultivars.

BENEFITS

Money. The royalties paid per plant are relatively small, but with the potential in a global marketplace, those pennies add up into big dollars. Without a means of both recouping the costs of breeding and eventually making a profit, there is very little incentive to the breeder.

Demand. Competition within our industry is relentless. To survive, those large companies that supply major crops must introduce newer, better, newer, and even better cultivars in an endless stream.

Public Popularity. The buying public has responded with enthusiasm, especially to the new blooming, cutting-grown "spring crops". What the public wants, the industry will try to provide.

Scientific Advances. High-tech techniques allow breeding breakthroughs that in past years were simply not possible.

Professional Marketing. More and more originators and their licensees have awakened to the fact that "marketing and advertising pay off". This is something other major product producers have known for years. We are just playing catch-up.

It is helpful to understand what plant material can or cannot be protected by plant patent. Who gets the fees involved and what do they do to earn those fees? Here it is in very simple terms. Look up the government's web site (www.uspto.gov) for more information.

If you find a new and wonderful plant, growing in nature — you can grow it, you can sell it, but you cannot get a patent on it!!

If you find a new and wonderful plant, growing in a garden or in a pot — that plant you can patent (if it fits all the rest of the criteria).

If you propagate and grow lots of that same first wild plant and one of those plants sports or mutates into a smashing, variegated beauty: that plant you can patent.

Table 1. Some of the costs of introducing and patenting new plants

Finder/breeder	Foreign agent administrator	Licensed grower/propagator	Finished plant grower
Owns patent on plant	Collects royalties, finds licensees, pays patent fees	Grows the liners, markets, distributes, trade shows	Grows on to sell to retail
\$0.03 to \$0.10	\$0.02 to \$0.05	Nothing to \$0.04	\$0.00

If you cross two plants and make a hybrid new plant—that new plant you can patent. Be prepared to spend money, evaluate, and test hundreds and hundreds of plants. Understand that you may need to work years.

Then you might take some homely wild *Alstroemeria* and end up with a major florist cut flower plant.

All of these types of new cultivars are eligible for patent protection.

We are in the business of bringing beautiful, useful, and successful plant material to the gardening public. We increase our sales of plant material by being enthusiastic participants in the quest for new and exciting plants. It's our responsibility as individuals and industry leaders to pay those patent royalties so that we will continue to see ever better plant material. Nature isn't going to do all the work by herself! The scourge of illegal propagation, copy-cat or stolen (re-baptized) plants, and bringing out plants without thorough growing trials all work directly against the goals that we as members of I.P.P.S. stand for.

The Problems!

Along with all the good that has come from this proliferation of new plants has come intense pressures that have led to a number of problems. Our patent laws in both the United States and Europe have many loopholes that need to be addressed. Recent high tech developments have made many of the old rules obsolete. There is a good article addressing this issue by Paul Ecke Jr. in GPL Greenhouse Product News magazine's September and October issues. The "softening of breeder ethics" is a matter that affects us all. GPL Greenhouse Product News can be reached at www.greenhouseproductnews.com or email at gpntim@aol.com electronically.

The costs of developing and patenting new plants vary (Table 1). The fees vary according to how agreements are made. The royalties can be anywhere from \$0.03 to \$0.10, or even \$1.00 to \$1.50 on certain plants. Some royalties are based on a percentage of the wholesale finished plant price.

Patents are good for 20 years.

Question and Answer Period: Thursday AM General

Session II

Andrew Davis: How is it determined when a "new" plant warrants patenting? What are the current costs for coming up for a genetic fingerprint of a plant?

Evelyn Weidner: A new plant whose protection is being applied for has to be grown alongside other plants. It has to show significant differences in at least one and up to seven to eight different ways. I don't know what the cost is for determining the genetic fingerprint of a plant.

Eunice Messner: What right does the United States have to patent the neem tree that is native to India?

Evelyn Weidner: I don't think they have the right to do that. This is one of the problems we face since we work under two systems of plant patent rules, the U.S. and European. There are many loopholes.