

A Word About Plant Patents

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There has always been some misunderstanding about plant variety patents: who gets them, who owns them, and how they operate. I'm writing this piece at some risk, since I'm not an authority or qualified expert on the topic. I have had some experience administering two or three variety patents, and have been asked these questions many times.

First, we should identify the principle benefactors of a variety patent. These are presumed to be *none of* the following: inventor, administrator, licensee, or grower. Rather the chief benefactor is presumed to be the end user or, collectively, society itself. This is not to say that the inventor, administrator, licensee, etc. derive *no* benefit from the patent. The theory behind the patent process is that new inventions and processes are good for society. By protecting new ideas or products from competition for a period of time, inventors are given an incentive to keep working at their ideas. Who, for instance, would have produced and promoted the Hass avocado tree had it not been protected for a time from competing farmers? The Hass, after all, was rough, black, and poorly shaped. Without patent protection, Rudolph Hass probably wouldn't have bothered to distribute the fruit beyond his own family. Because he was able to patent it, he managed to convince some risk-taking nurseryman to grow and promote it,

Plant patents have a limited life. Normally, they are in effect for 17 years from the date of application. That's not a very long period of time when it comes to avocado tree germplasm. The Hass avocado patent was applied for in 1932. It wasn't until about 1967 that Hass became our dominant variety. That's 35 years. The patent itself wore out in 1949. It is clear that the fruit producer of this new variety benefited far more than the patent owner and licensed propagator. Since the Hass became today's finest avocado fruit, being today's best buy over a long season every year, the consumer benefited most of all from its introduction.

What are these incentive-producing protections and restrictions that apply to a patented variety? First, only those persons specifically licensed by the patent holder are allowed to further propagate the variety. Without this protection the inventor's efforts to introduce and promote the variety would never be repaid. Competitors who had undertaken none of his efforts and risks would soon be competing on an equal basis. Some growers feel that this protection to the inventor is an imposition on their freedom and on their rights as tree owners. A grower such as this feels that, once he (or she) has purchased a tree, he should be free to do with it what he will. Well, he has bought an individual tree and is free to nurture that individual tree as he sees fit, or hack it to pieces. What he hasn't bought is the right to its germplasm pattern. The right to utilize patented germplasm for reproduction is owned exclusively by the patent holder.

Patents serve an important function in our society. So when the University patents a new variety, honor it. A lot of someone else's invention time and promotion effort have been expended to make the rest of us aware of a new opportunity. Our support of the protections and charges on these new varieties will stimulate others to keep up the good work and provide us with the best tools possible to compete and survive in the evolving world of avocados.