

## Plant Patents and PVP Certificates

### Practices and Industries

---

#### PRIMARY CONTACTS

**Vincent K. Shier Ph.D.**

+1 202.654.4530

**Mark D. Moore Ph.D.**

+1 713.547.2040

---

In the U.S., plant breeders may protect their intellectual property for new plant varieties via a plant patent at the US PTO or a plant variety protection certificate, through the Plant Variety Protection Office at the USDA. Which form of protection is available depends upon how the plant is reproduced. Plant patents are the hidden third leg of the US PTO protection triangle, along with the better-known utility patents and design patents. Plant patents cover asexually propagated cultivars (roses, mums, violets, poinsettias, etc.), while plant variety protection (PVP) certificates are available for seeds, tubers, sexually reproduced plants, and, following the 2018 Farm Bill, asexually reproduced plants. At Haynes and Boone, we have practitioners experienced with preparation and prosecution of both plant patents and plant variety protection certificates.

Although plant patents and plant variety protection certificates provide important marketing tools protecting a plant breeder's specific innovation, these forms of protection are often best used as a complementary tool along with traditional utility patents. Whereas plant patents and plant variety protection certificates focus on protecting the plant, utility patents are used to cover a broad spectrum of innovations from transgenic crop seeds, GMO feedstocks, commercial production stocks (e.g., vegetable oils), microbial bioremediation cell cultures, various methods of making and methods of use, compositions and formulations developed from such plants, etc.

Our Plant Protection team provides strategic advice and trusted counsel to plant breeders to get the most out of their innovations by establishing synergies between the different forms of protection.

Some of our Plant Protection team's experience includes:

- Drafting and prosecuting plant patents.
- Preparing and filing application for PVP certificate including supporting seed or plant tissue deposits.
- Drafting utility patent applications to complement protections offered by plant patents or PVP certificates.
- Conducting freedom-to-operate and infringement investigations.
- Developing global strategies and portfolios to maximize the scope of protection for plant-based inventions.

