

109TH CONGRESS  
1ST SESSION

# H. R. 121

To make technical corrections in patent law.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2005

Mr. ISSA introduced the following bill; which was referred to the Committee  
on the Judiciary

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## A BILL

To make technical corrections in patent law.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Plant Breeders Equity  
5       Act of 2005”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) Since 1930, the Plant Patent Act has bene-  
9       fited the public by encouraging innovation and devel-  
10      opment of new varieties of asexually reproduced  
11      plants, including trees, shrubs, flowers, and fruit-  
12      producing plants.

1           (2) The United States is a signatory to the  
2           International Union for the Protection of New Vari-  
3           eties of Plants (UPOV) Convention; however, the  
4           plant patent system has not been modernized to in-  
5           corporate important provisions of UPOV, placing  
6           breeders of asexually reproduced plants in a position  
7           of inequity with breeders of other types of plants in  
8           the United States and with foreign breeders.

9           (3) Closer harmonization of the plant patent  
10          system with UPOV will restore equity and ensure  
11          continued innovation and development of horti-  
12          cultural plant varieties.

13 **SEC. 3. AMENDMENTS TO TITLE 35, UNITED STATES CODE.**

14          (a) NOVELTY.—Section 162 of title 35, United States  
15          Code, is amended—

16               (1) by striking the section heading and insert-  
17               ing the following:

18 **“§ 162. Description, claim, novelty”;**

19               (2) in the first undesignated paragraph, by  
20               striking “No plant” and inserting the following: “(a)  
21               DESCRIPTION.—No plant”;

22               (3) in the second undesignated paragraph, by  
23               striking “The claim” and inserting the following:  
24               “(b) CLAIM.—The claim”; and

25               (4) by adding at the end the following:

1 “(c) NOVELTY.—

2 “(1) IN GENERAL.—Except as provided in para-  
3 graph (2), no plant patent application shall be de-  
4 nied, nor shall any issued plant patent be invali-  
5 dated, on the grounds that the invention was sold or  
6 otherwise disposed of.

7 “(2) EXCEPTIONS.—Paragraph (1) shall not  
8 apply if—

9 “(A) more than 1 year prior to the date of  
10 the application for patent in the United States,  
11 the invention was sold or otherwise disposed of  
12 to other persons in the United States, by or  
13 with the consent of the inventor or discoverer,  
14 or the successor in interest of the inventor or  
15 discoverer, for purposes of exploitation of the  
16 invention;

17 “(B) except as provided in subparagraph  
18 (C), more than 4 years prior to the date of the  
19 application for patent in the United States, the  
20 invention was sold or otherwise disposed of to  
21 other persons in a foreign country, by or with  
22 the consent of the inventor or discoverer, or the  
23 successor in interest of the inventor or discov-  
24 erer, for purposes of exploitation of the inven-  
25 tion; or

1           “(C) more than 6 years prior to the date  
 2           of the application for patent in the United  
 3           States, in the case of a tree or vine, the inven-  
 4           tion was sold or otherwise disposed of to other  
 5           persons in a foreign country, by or with the  
 6           consent of the inventor or discoverer, or the  
 7           successor in interest of the inventor or discov-  
 8           erer, for the purposes of exploitation of the in-  
 9           vention.”.

10       (b) PLANT PATENT GRANT.—Section 163 of title 35,  
 11       United States Code, is amended—

12           (1) by striking “In the case” and inserting the  
 13       following: “(a) IN GENERAL.—In the case”; and

14           (2) by adding at the end the following:

15       “(b) APPLICATION.—Subsection (a) applies equally  
 16       to any plant that is not clearly distinguishable from a pro-  
 17       tected plant.”.

18       (c) CONFORMING AMENDMENT.—The chapter anal-  
 19       ysis for chapter 15 of title 35, United States Code is  
 20       amended by striking the item relating to section 162 and  
 21       inserting the following:

“162. Description, claim, novelty.”.

22       (d) APPLICATION.—The amendments made by this  
 23       section apply to—

1           (1) all applications for plant patents filed on or  
2           after the date of enactment of this Act, or pending  
3           on that date; and

4           (2) in the case of the amendments made by  
5           subsection (a), all plant patents in force on the date  
6           of enactment of this Act.

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