

Relief Available to Plant Patent Applicants in View of the COVID-19 Outbreak: File Plant Patent Applications and Correspondence via USPTO Patent Electronic Filing Systems

The United States Patent and Trademark Office (USPTO) considers the effects of the COVID-19 outbreak to be an “extraordinary situation” within the meaning of 37 CFR 1.183. Accordingly, the USPTO will permit the filing of plant patent applications and follow-on documents via USPTO patent electronic filing systems (EFS-Web or Patent Center) in accordance with this notice.

As set forth in the Legal Framework for Patent Electronic System, plant patent applications (see 35 U.S.C. 161) filed under 35 U.S.C. 111(a) and follow-on documents associated with plant patent applications have not been permitted to be filed with the USPTO via USPTO patent electronic filing systems (see <https://www.uspto.gov/patents-application-process/filing-online/legal-framework-efs-web>). Due to the COVID-19 outbreak, any prohibition against filing plant patent applications and follow-on documents via USPTO patent electronic filing systems is hereby waived on a temporary basis until further notice. Filers are reminded that only registered users of USPTO patent electronic filing systems may file follow-on documents into existing applications via USPTO patent electronic filing systems.

The requirements for filing such plant patent applications and follow-on documents via USPTO patent electronic filing systems were developed to assist filers and facilitate the USPTO’s identification and processing of the plant patent applications and follow-on documents. The requirements are as follows:

- (1) The USPTO’s transmittal form, PTO/AIA/19, Plant Patent Application Transmittal, must accompany the application;
- (2) The document description “Transmittal of New Application” (Doc Code TRNA) must be selected for PTO/AIA/19 in USPTO patent electronic filing systems;
- (3) An indication must be made on the appropriate screen in USPTO patent electronic filing systems that a utility patent application is being filed (there is no option for a plant patent application);
- (4) If fees are being paid, an authorization to charge all fees to a USPTO deposit account (e.g., in a fee transmittal form such as USPTO form PTO/SB/17) or an authorization to charge all fees to a credit card using the Credit Card Payment Form (PTO-2038) must be provided. This Credit Card Payment Form can be filed via USPTO patent electronic filing systems or facsimile; and
- (5) The document description “Drawings-other than black and white line drawings” (Doc Code DRW.NONBW) must be used for the drawings so that they will load into the Supplemental Complex Repository for Examiners (SCORE).

As discussed in Section 1605 of the Manual of Patent Examining Procedure (MPEP, e9 r-08.2017), where color is a distinctive feature of the plant, the color should be positively identified in the specification by reference to a designated color as given by a recognized color dictionary or color chart, such as the Horticultural Colour Chart of the Royal Horticultural

Society, London, England (R.H.S. Colour Chart), the Munsell Color System, or the Pantone Color System.

If submitting an Application Data Sheet, “plant” should be selected in the Application Information section. Links are provided below for the plant-specific USPTO forms. Failure to use these forms may result in a petition being required in order to correct the application designation.

- Application Data Sheet 37 CFR 1.76, landing page - <https://www.uspto.gov/patent/forms/important-information-completing-application-data-sheet-ads>
- Declaration for Plant Application Using an Application Data Sheet - <https://www.uspto.gov/sites/default/files/forms/aia0003.pdf>
- Substitute Statement in Lieu of an Oath or Declaration for Plant Patent Application - <https://www.uspto.gov/sites/default/files/documents/aia0004.pdf>
- Plant Patent Application Declaration - <https://www.uspto.gov/sites/default/files/forms/aia0009.pdf>
- Plant Patent Application Transmittal - <https://www.uspto.gov/sites/default/files/documents/aia0019.pdf>

This waiver is temporary and is effective only until the USPTO provides further notice. Such notice may take place by publication in the Official Gazette or Federal Register or on the USPTO’s website. The USPTO is continuing its efforts to modify Patent Center, the new electronic filing and retrieval system, so that plant patent applications can be filed electronically on a permanent basis.

In light of this notice, applicants may submit plant patent applications and follow-on documents to the USPTO via: (1) the USPTO patent electronic filing systems (EFS-Web or Patent Center); (2) the United States Postal Service (USPS) by Priority Mail Express® under 37 CFR 1.10 (MPEP 513) or with a certificate of mailing under 37 CFR 1.8 (MPEP 512); or (3) by hand-delivery to the Customer Service Window (MPEP 501).

Inquiries regarding technical questions regarding filing the application via EFS-Web or Patent Center may be directed to the Patent Electronic Business Center (Patent EBC), by telephone: (866) 217-9197 (toll-free) and (571) 272-4100, or by e-mail: ebc@uspto.gov. Inquiries regarding plant applications may be directed to Shubo (Joe) Zhou, Supervisory Patent Examiner, by telephone: (571) 272-0724.

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Andrei Iancu
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office