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Discovery

The first plant patent was issued to Henry Bosenberg for a climbing rose, August 18, 1949

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General Note
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Henry Bosenberg 1883 - 1962 was a member of the Bosenberg family. He was born on January 18, 1883. He died on July 1962 at 79 years old. In 1930, the United States began granting patents for plants. Henry F. Bosenberg, a landscape gardener, received U.S. Plant Patent no. 1 on August 18, 1931, for a climbing or trailing rose. He is a horticulturist always been enticed by the natural beauty and fragrance of roses, developed a method by which they grow along a surface, like a fence or a brick wall. He went to the US Patent and Trademark Office (USPTO) and asked the way he could get the intellectual property rights for this new type of flower. At the time, there was no way available. The USPTO went into action and the US government set up a new patent classification system: the plant patent. The implementation of this type of patent gave botanists the ability to develop new plant hybrids and sell them without worrying about unfair competition. Like any patent, the application of a plant patent must fully describe the plant in terms understood by the USPTO. The patent's language must refer to terminology and classification described in the United States Code (Title 35) and the Code of Federal Regulations (Title 37). There are multiple parts to a plant patent application. The USPTO will carefully comb through the application and recent scientific research to make sure that the new plant is stable and doesn't pose a significant mutagenic threat. All information in the plant patent application will be weighed during the decision process, so a plant inventor will need to be very careful to do his or her best. The patent may take a number of months to be fully reviewed. If it is accepted, the inventor will be notified and asked to pay a patent issue fee. After that, the owner of the plant patent is free to build a business on it or sell the patent.

Under patent law, the inventor of a plant is the person who first appreciates the distinctive qualities of a plant and reproduces it asexually. Plants discovered in "the wild" or uncultivated state cannot be patented because they occur freely in nature. But a plant discovered in a cultivated area can be patented, even if it is discovered in a cultivated area owned by someone else. In addition, a tuber plant such as a potato cannot be patented. In order to acquire a plant patent, the inventor must have actually asexually reproduced the plant. Asexual reproduction means that the plant is reproduced by means other than seeds, usually accomplished by cutting or grafting of the plant. Asexual reproduction is the cornerstone of plant patents because that is what proves that the inventor (or discoverer) can duplicate the plant. The patented plant also must be novel and distinctive. If a plant has existed in nature and has reproduced, it is not novel. In other words, if the patent examiner can find a previously reproducing version of the plant in nature, a patent will not be granted. However, a patent will be granted if the only previous version was a spontaneous one-time aberration incapable of reproducing. For example, someone discovers and asexually reproduces a seedless fig plant. Even though the seedless fig plant existed in nature, it was not capable of reproducing. Therefore, the plant is novel and would qualify for patent protection. To be distinctive, the plant must have characteristics that make it distinguishable from other varieties. There are a number of benefits to getting a plant patent. Most notably, a plant patent lasts twenty years. This gives you a very long period of time to sell the plant and be absolutely sure that no one will rightfully capitalize on the plant other than yourself or your company. If you're a voracious gardener and know a thing or two about plant hybrids, you'll be glad to know your creations can be protected.