

105TH CONGRESS  
1ST SESSION

# S. 1072

To amend title 35, United States Code, to protect patent owners against the unauthorized sale of plant parts taken from plants illegally reproduced, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 28, 1997

Mr. SMITH of Oregon, introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 35, United States Code, to protect patent owners against the unauthorized sale of plant parts taken from plants illegally reproduced, and for other purposes.

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 Patent Amend-  
5 ments Act of 1997”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress makes the following  
8 findings:

1           (1) The protection provided by plant patents  
2           under title 35, United States Code, dating back to  
3           1930, has historically benefited American agriculture  
4           and horticulture and the public by providing an in-  
5           centive for breeders to develop new plant varieties.

6           (2) Domestic and foreign agricultural trade is  
7           rapidly expanding and is very different from the  
8           trade of the past. An unforeseen ambiguity in the  
9           provisions of title 35, United States Code, is under-  
10          mining the orderly collection of royalties due breed-  
11          ers holding United States plant patents.

12          (3) Plant parts produced from plants protected  
13          by United States plant patents are being taken from  
14          illegally reproduced plants and traded in United  
15          States markets to the detriment of plant patent  
16          holders.

17          (4) Resulting lost royalty income inhibits in-  
18          vestment in domestic research and breeding activi-  
19          ties associated with a wide variety of crops—an area  
20          where the United States has historically enjoyed a  
21          strong international position. Such research is the  
22          foundation of a strong horticultural industry.

23          (5) Infringers producing such plant parts from  
24          unauthorized plants enjoy an unfair competitive ad-

1 vantage over producers who pay royalties on vari-  
2 eties protected by United States plant patents.

3 (b) PURPOSES.—The purposes of this Act are—

4 (1) to clearly and explicitly provide that title  
5 35, United States Code, protects the owner of a  
6 plant patent against the unauthorized sale of plant  
7 parts taken from plants illegally reproduced;

8 (2) to make the protections provided under  
9 such title more consistent with those provided breed-  
10 ers of sexually reproduced plants under the Plant  
11 Variety Protection Act (7 U.S.C. 2321 et seq.), as  
12 amended by the Plant Variety Protection Act  
13 Amendments of 1994 (Public Law 103–349); and

14 (3) to strengthen the ability of United States  
15 plant patent holders to enforce their patent rights  
16 with regard to importation of plant parts produced  
17 from plants protected by United States plant pat-  
18 ents, which are propagated without the authorization  
19 of the patent holder.

20 **SEC. 3. AMENDMENT TO TITLE 35, UNITED STATES CODE.**

21 (a) RIGHTS IN PLANT PATENTS.—Section 163 of  
22 title 35, United States Code, is amended to read as fol-  
23 lows:

1 **“§ 163. Grant**

2        “In the case of a plant patent, the grant shall include  
3 the right to exclude others from asexually reproducing the  
4 plant, and from using, offering for sale, or selling the  
5 plant so reproduced, or any of its parts, throughout the  
6 United States, or from importing the plant so reproduced,  
7 or any parts thereof, into the United States.”.

8        (b) EFFECTIVE DATE.—The amendment made by  
9 subsection (a) shall apply to any plant patent issued on  
10 or after the date of the enactment of this Act.

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