

农业技术财产的保护

Protecting Ag-Biotech Assets



PIERCE  LAW
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● **美国农业技术财产保护有几种？**
What Are Ag-Biotech Assets in U.S.?

Plant Patent
植物专利法

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**Plant Variety Protection
植物种类保护法**

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"Utility" Patent
实用专利法



农业技术财产的保护 Protecting Ag-Biotech Assets

What is the asset? 什么财产权?

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What is the asset? 什么财产权??

Who owns the asset? 财产权属于谁?

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What rights does the owner have? 财权人对于别人的约束力何如?

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What is it worth? 值得多少?

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Protecting Ag-Biotech Assets

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**What rights does the owner have? 财
权人对于别人的约束力何如?**

What is it worth? 值得多少?

Can I protect it? 可以保护吗?



Who owns the asset?
财产权属于谁？

Plant Patent
植物专利法

Nurseries
田圃业

Passed in 1930
1930年通过

**What rights does the owner have?
财权人对于别人的约束力何如?**

**Plant Patent
植物专利**

**Asexual Propagation
无性繁殖**

**Flowers/Fruits
花卉／果业**

● **What limits the owner's rights?**
财权人对于别人的约束力有何限制?

Plant Patent
植物专利

Not Independent discovery
独立发现 / 发明

**Must be "Distinct and
New"**
显著 / 新颖

Who owns the asset?
财产权属于谁?

种子产业
Seed Companies

Plant Variety Protection
植物种类保护法

Passed in 1970
1970年通过

Who owns the asset? 财产权属于谁?

Plants Protected since 1985
1985年案例

“Composition of Matter”
物质组成

“Utility” Patent
实用专利法

**What rights does the owner have?
财权人对于别人的约束力何如?**

**Plant Variety Protection
植物种类保护法**

**Sexual Propagation/Hybrids
性繁殖／杂种**

**Seed Crops
谷物／蔬菜类**

● What limits the owner's rights?
财权人对于别人的约束力有何限制?

Plant Variety Protection
植物种类保护法

Saving Seed/Replanting
保存种子/再栽种

Research
专为科学研究而使用

What rights does the owner have? 财权人对于别人的约束力何如?

**"Utility" Patent
实用专利法**

**Make, Use, Sell, Import
制造, 使用, 购买, 进口**

**Anything "man-made"
任何“人造的”**

● **What limits the owner's rights?**
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"Utility" Patent
实用专利法

Novelty, Inventive Step
新颖性 / 发明性

Adequate Description
说明足以别人使用

● **What limits the owner's rights?
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**"Utility" Patent
实用专利法**

**No PVP Limitations
无保存限制**

**No Research Exception
禁止别人为研究而使用**

U.S. Supreme Court Pioneer v. J.E.M. (2001)

Important Case of Judicial Interpretation

重要司法解释

Can use all forms of protection for the
same plant

一种植物 / 三种保护



金色稻子 “Golden Rice”

First Generation Genetic
Engineering

第一代基因工程

Insect resistant, herbicide tolerant

防虫，耐药



金色稻子 “Golden Rice”

Second Generation Genetic
Engineering

第二代基因工程

Insect resistant, herbicide tolerant

防虫，耐药

品牌与商标

Brands and Trademarks

Consumer Brand Impression?

消费者对品牌的印象 何如?

品牌与商标强度

Brand/Trademark Strength

Conceptual strength

原有区别性

Commercial strength

广告造成的区别性

商标管理功能 Trademark Management Function

Corporate Trademark
Department 公司内商标部门

Outside Trademark Counsel
(Agent?) 公司外法律顾问(商
标代理?)

商标管理

Trademark Management

Trademark Search 商标检索

Trademark Selection and Design 商标选择与设计

Trademark Registration and Renewal 商标注册与重申

International Trademark Protection 国际商标保护

Trademark Licensing and Assignment 商标许可与授权

Check Company Trademark Use and Advertising

检查本公司的商标使用与广告

Police market for Infringing Uses 检查市场找到侵权与仿
冒行为

Assist in Trademark Disputes 参与商标起诉与调停

Trademark Search 商标检索工具

Internet search 网络检索
 (“google.com”)

Online databases 网上商标数据库

Trademark Search Services
 商标检索服务机构

Business Directories 工商名录

Government Registries 国家商标注册

Trademark Search 商标检索内容

Trademark Clearance 商标查清

Marks Registered 已注册商标查清

Marks in Use 已在使用商标查清

Similar Goods/Services 类似商品/服务

Similar Trademarks 类似商标

Famous Trademarks 驰名商标

Different Goods/Services

异类商品/服务

Trademark Registration and Renewal 商标注册与重申

Trademark Applications 商标申请

Trademark Prosecution 商标申请审查
程序答辩

Foreign Counterpart Applications
涉外商标申请注册

Trademark Oppositions 商标异议程序

TM Cancellations 商标注册撤消

Trademark Licensing 商标许可

Legal formalities 考虑法律程序
Knowledge of Partner 许可对手
“知己知彼”
Ownership of Goodwill 商譽所有权
Control of the Licensee 控制许可人
“OEM” 原始设备制造
Contractual limitations 合同限度

Contractual limitations 许可/合同限度

Territorial/time restrictions
区性或期间限制

Production restrictions
出产量限制

Quality control/Use of trademark
质量管理/商标使用条件



Check Trademark Use/Advertising 检查本公司的商标使用与广告

Legal/Marketing Relations 法律/推销协调

Company Manuals on Proper Trademark
Use 公司内商标合适使用宣传

Product labels 标签

Packaging 包装

Review of advertising by Legal Department
Prior to Use 广告上市之前由法律部批准

Monitor market for Infringing Uses 监督市场找到侵权与仿冒行为

- Collect market information from:
· 搜集商场情报从:
 - Sales force 推销员
 - Distributors 分配者
 - Wholesalers 批发者
 - Retailers 零售者
 - From customers 客户



Assist in Trademark Disputes 参与商标起诉与调停

- Deliberate or Innocent Infringer
· **故意侵权/头脑简单的侵权**
- Notify infringer informally or with formal letter
· **通知侵权人**
- UNLESS COUNTERFEITOR 除仿冒之外
- Cease and desist letter **警告禁止信笺**
- Threaten with legal proceeding **以打官司为威胁**
- Identify other infringed goods and contact owners
· **通知其他商标权被侵犯者**
- Notify AIC or Customs **通知行政管理部门或海关**
- Institute legal proceeding **打官司**

Dealing with Counterfeits 对付仿冒

- Market information 商场情报
- Beginning an investigation
· 引起调查
- Notify authorities 通知官方
- Use trade associations
· 与共商会合作协调

Dealing with Counterfeits 对付仿冒

- Policy considerations 政策要考虑
 - “zero tolerance” 打击所有仿冒
 - “minor tolerance” 宽容小喽罗
 - “avoid offending customers”
无触动客户
 - “attack high quality/ignore low
quality counterfeits”
- 攻打高档，忽略明显劣品

谢谢！

