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Cultivating Multilayered IP Strategies For Fruit Tree Varieties

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On Nov. 22, the U.S. patent on the SweeTango apple tree — a successor to Honeycrisp — will expire, but the multilayered intellectual property strategy surrounding this variety will likely mean that it continues to be proprietary even after patent expiry.

IP for plant varieties has become big business, including IP for fruit trees. Strategies have become increasingly complex in recent decades, with new varieties now receiving protection from intricate patent, trademark and licensing regimes.

Drawing from the SweeTango patent and other recent developments in the world of fruit IP, this article will explore how fruit growers and breeders can complement patent protection with trademarks and licensing and distribution agreements to establish a more durable and comprehensive IP strategy than any single form of protection could offer.

How SweeTango Built Lasting IP Protection

While the SweeTango tree itself will soon be free of patent protection excluding others from replicating the trees and selling the fruit, that does not mean a grower will be able to sell a SweeTango-branded apple, because the University of Minnesota trademarked the name.

The nonproprietary name of the variety, which anyone can use, is Minneiska. So long as the University of Minnesota does what the law requires to maintain its SweeTango trademark, it will not expire, and the university can charge royalties for its use. While generic brand apples, like generic pharmaceuticals, are a possibility, the thought of marketing the apple without the well-known brand in a market that is increasingly dominated by branded apple varieties is often unpalatable.

Lasting trademark protection for SweeTango stands as an important upgrade from the protection available for the Honeycrisp apple. Honeycrisp is one of the darlings of the apple industry and the state fruit of Minnesota. It received a U.S. patent in 1988.

Unfortunately, Honeycrisp ran afoul of a rule that is little known to legal practitioners outside the fruit tree industry: You can't trademark a variety name for a plant identified in the associated patent because varietal names are generic designations. The Honeycrisp plant patent is titled "Apple tree: Honeycrisp," meaning that the Honeycrisp label itself is free for anyone to use as a generic source identifier now that

the patent has expired.

The Evolution of Apple IP Strategies

Developers of the later-generation varieties learned from Honeycrisp and are careful to use different trademarked brand names from the names listed in the associated patents for the varieties. The variety name for SweeTango as provided in the plant patent is Minneiska, so Minneiska will be free for anyone to use starting in December, but SweeTango remains protected. As another example, the Cosmic Crisp plant patent U.S. PP24210P3 is titled the unassuming "Apple tree named 'WA 38'." That has even less of a ring to it than Minneiska.

Honeycrisp apples made their way to grocery store shelves in 1997. By 2011, patent royalties for the tree had generated more than $10 million, and by 2025, Honeycrisp accounted for 12% of the American apple market.[1] Even as Honeycrisp rose to prominence, however, apple tree breeders recognized its lower yield and shorter shelf-life and began breeding programs to generate new and improved apple varieties.

Around the time the Honeycrisp patent expired in 2008, a new generation of proprietary apple varieties began hitting the market, of which SweeTango is just one. Other Honeycrisp descendants include SugarBee, Cosmic Crisp and SnapDragon.

Today, roughly half of all new apple varieties available in the U.S. and Canada are Honeycrisp progeny. The expiration of the SweeTango patent marks the beginning of a new wave of patent expiry on the horizon, with the patents on Cosmic Crisp and SugarBee apple trees expiring in 2032, for example.

Licensing, Exclusivity and Market Control

Trademarks and patents are not the only hurdle to competition in the fruit tree industry. More than 50 varieties in the U.S. market, including many Honeycrisp descendants, are so-called club varieties that have strict controls on who can grow the apple trees, how they are grown, and how they are marketed and sold, with growers needing to apply and pay fees in order to join the club and gain access to the varieties.

Proponents argue that this system allows for greater quality control of the trademarked fruit, as well as a higher degree of control of the amount of fruit available for sale. However, others have criticized the club model for creating barriers to entry for smaller or independent growers and have questioned whether it artificially inflates retail prices.

There have also been recent waves of consolidation, concentrating ownership of variety rights in fewer hands. Following a recent bankruptcy, Legendary Fruit Co. now appears to control all license rights to SugarBee, Rockit, Lucy Rose and Lucy Glo apples, and it closely controls licensing. Only select orchards have received contracts to grow these varieties. Like trademarks, these contracts can control use of the varieties even after patent expiry.

Similar consolidations have occurred in the market for stone fruit and pear varieties. The concentration of ownership in fewer hands, in combination with the rise of the club variety model, has limited the ability of small growers to set roots in the industry.

Lessons From the Monalise Nectarine Dispute

Farmer Cesar Mora learned the hard way that fruit tree protections are becoming increasingly complex in Giumarra Brothers Fruit Co. v. Cesar Mora, recently decided by the Fresno County Superior Court. Mora had entered agreements with Giumarra Bros. Fruit Co. to plant and grow the Monalise nectarine variety, and to pack and sell the fruit through Giumarra.

Eventually, he determined that arrangement was too financially onerous, and he sold his nectarine crop through another packer, resulting in Giumarra suing him for violation of the agreement. Mora argued that he was not legally required to uphold the agreement because Giumarra had promised him that the variety was patented but there was in actuality no patent on Monalise.

The court found that was not a valid defense, and barred him from selling his crop. He instead gave away 180,000 pounds of fruit in July, resulting in viral social media attention.

Then, in a verdict returned on Aug. 13, a jury confirmed Mora had breached the agreements. While they awarded no damages, the judge ordered Mora to destroy all the Monalise trees on his property, highlighting the significance of the contractual rights that Giumarra held even in the absence of patent protection.

Building a Comprehensive IP Protection Strategy

Just as the apple trees and other fruit trees keep evolving and improving, so too must the IP strategies used to protect them. Learning from the lesson of Honeycrisp, industry developers are supplementing patent protection with trademarks and licensing agreements, resulting in a more enduring protection than a single type of intellectual property could provide.

As these strategies spread beyond apples to other fruits, growers, breeders and consumers alike would be well served to understand the increasingly complex web of rights that govern what ends up on grocery store shelves.

This presents an opportunity for practitioners to look beyond individual forms of IP protection and help clients achieve their business objectives while strengthening their competitive advantage in the evolving fruit marketplace.

Patents do not exist in a vacuum. A client seeking patent protection for a new variety of fruit tree should also be advised regarding trademark protection and should also put thought into how to frame a successful licensing regime. A savvy practitioner will be able to set their client up for success by building a network of colleagues and trusted contacts who can assist along the entire path from the orchard to the grocery store shelf.

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[1] https://usapple.org/news-resources/2025-26-apple-crop-outlook.