

# USPTO Allows Electronic Filing of Plant Patent Applications Due to COVID-19 Outbreak

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Since March 2020, the United States Patent and Trademark Office (“USPTO”) has announced numerous types of relief in view of the coronavirus (“COVID-19”) outbreak. As of May 6, relief will be offered to plant patent applicants. Typically, electronic filing of plant patent applications is not permitted. However, in the [May 6<sup>th</sup> announcement](#), the USPTO indicated that it will temporarily permit the filing of plant patent applications and follow-on documents via the USPTO patent electronic filing system.

This relief does not change the requirement that only registered users of USPTO patent electronic filing systems may file follow-on documents into existing applications via USPTO patent electronic filing systems. Also, applicants should be aware of certain requirements for filing such applications via the USPTO’s patent electronic filing systems. These requirements include:

- The USPTO’s transmittal form, PTO/AIA/19, Plant Patent Application Transmittal, must be submitted;
- “Transmittal of New Application” must be selected on the PTO/AIA/19;
- The filer must indicate that a “utility patent application” is being filed (as there is no option for a plant patent application);
- Authorization to charge all fees to a USPTO deposit account must be provided; and
- Document description “Drawings-other than black and white line drawings” must be used for the drawings.

General information for plant-specific USPTO forms may be found on [the USPTO’s website](#).

This new relief enables plant patent applicants to enjoy the benefits of electronic filing. However, it is unclear how much impact it will have, as plant innovators often file utility patents that cover their engineered seeds/plants, rather than plant patents.

A quick look at the numbers over the last 20 years, as shown below, suggests that the impact may be minimal in view of the small number of plant patent applications that were filed. There has been a steady increase each year in the number of issued utility patents and filed utility patent applications. For example, from 2005 to 2010, about 200,000 utility patents issued each year, and from 2010 to 2015, over 300,000 utility patents issued each year. Further, since 2015, over 375,000 utility patents issued each year. On the other hand, the numbers for issued plant patents and filed plant applications have been relatively stable, and a tiny percentage of patent applications filed and patents granted. For example, from 2005 to 2010, about 1,200 plant patents issued each year, and from 2010 to 2015, about 1,100 plant patents issued each year. Further, since 2015, over 1,400 plant patents issued each year.

**Table 1 – Trends in filing and issuance of utility and plant patents[1]**

|                             | 2000 to 2005 | 2005 to 2010 | 2010 to 2015 | 2015 to May 2020 |
|-----------------------------|--------------|--------------|--------------|------------------|
| # of Issued Utility Patents | 967,972      | 1,019,595    | 1,574,194    | 1,702,364        |
| # of Issued Plant Patents   | 4,443        | 6,142        | 5,657        | 6,526            |
| # of Utility Applications   | 1,223,692    | 1,280,644    | 1,562,230    | 846,053          |
| # of Plant Applications     | 5,700        | 6,090        | 6,424        | 4,356            |

Despite what the numbers might show prior to the COVID-19 outbreak, the ability to now electronically file plant patent applications and follow-on documents may prove to be a significant benefit to some. Moreover, as innovators re-evaluate their options for protecting their intellectual property, it is possible that we may see an increase in the number of plant patent applications during the time that this relief is in effect.

The USPTO's effort to assist plant patent applicants demonstrates that the USPTO continues to adapt to the COVID-19 pandemic. As long as the pandemic situation continues to have a significant social and economic impact, we can anticipate more such efforts to assist applicants. When the COVID-19 pandemic begins to resolve (which will hopefully be sooner rather than later), it will be interesting to see what if any of the relief efforts will become permanent policies or procedures.

[1] Data obtained from the [USPTO database](#).

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