

DELANO FARMS v. THE CALIFORNIA GRAPE COMMISSION, Appeal No. 2014-1030 (Fed. Cir. January 9, 2015). Before Prost, Bryson and Hughes. Appealed from E.D. Cal. (Judge Haddon).

Background:

The CGC is a licensee of plant patents for varieties of table grapes developed by the USDA. The CGC sublicenses the patents to grape growers in California and collects royalties that are shared with the USDA. Delano Farms, a sublicensee, sued the CGC and USDA to invalidate the plant patents on the grounds that the grape varieties covered by the patents were in public use more than one year before the applications for the plant patents were filed.

The district court held that Delano Farms failed to meet its burden of showing by clear and convincing evidence that the actions of third parties who obtained samples of the patented plant varieties in an unauthorized manner and planted them in their own fields constituted an invalidating public use under 35 U.S.C. §102(b). Therefore, the district court rejected Delano Farms' challenge to the validity of the patents.

Issue/Holding:

Did the district court err in its finding of no public use under 35 U.S.C. §102(b)? No, Affirmed.

Discussion:

The Federal Circuit held that the unauthorized "gift" by USDA representative of two plants to a third party who in turn gifted the plants to two other third parties and the subsequent actions of these third parties prior to the critical date did not constitute a public use under 35 U.S.C. §102(b). The gift by the USDA representative was accompanied by terms such as 'do not let the material get away from you' and do not 'put them in a box', which the accepting third party understood to mean keep the material confidential and do not sell. The accepting third party shared the plant material with another third party under the same conditions and each third party grafted over 700 vines of the plant material in a field visible to the public; however, none of the vines were marked, or had distinguishing characteristics. Each party had significant motive to keep the vines confidential so as to establish an early entry market advantage, and each party acted accordingly, maintaining an environment of confidentiality, tight control over knowledge of the vines, and limited cultivation in comparison to the total cultivation of other grapes grown by the third parties. Based on these findings of fact, the Federal Circuit affirmed the district court's decision rejecting Delano Farms' challenge to the validity of the patents.