



June 18, 2003

The Honorable Lamar S. Smith  
Chairman, Subcommittee on Courts,  
the Internet, and Intellectual Property  
Committee on the Judiciary  
House of Representatives  
Washington, DC 20515-6219

Dear Mr. Chairman:

Thank you for your cosigned letter requesting views on H.R. 242, the "Plant Breeders Equity Act of 2003." As indicated in the United States Patent and Trademark Office's (USPTO's) September 2002 testimony on the predecessor bill, H.R. 5119, the Department of Commerce is very concerned about protecting the rights of innovative plant breeders in the United States and certainly are aware of the serious concerns in the industry regarding changes the USPTO made in examination procedures to comply with a decision of the Board of Patent Appeals and Interferences. We have had ongoing discussions with industry representatives to address those concerns and otherwise evaluate options to help remedy the adverse effects they have identified.

While we continue to believe that the Plant Breeders Equity Act is a viable option to address industry concerns, we are not in a position to provide unequivocal support for the bill at this time. We have not yet made a determination that the bill, as currently drafted, is the most equitable approach for all interested parties.

As indicated in USPTO's earlier testimony, we feel that, in light of the proposed retroactive effect of the bill, it would be advisable to consider providing some measure of protection to parties that have relied upon the current state of the law. The current language of H.R. 242, as that in the predecessor bill, does not address such relief.

It should also be noted that certain patent bar interests are reluctant to endorse the bill because they feel that all administrative and judicial remedies should be exhausted before a legislative response is considered. They correctly point out that the Federal Circuit has not, as of this date, ruled on a relevant case. Further, they argue that enactment of the bill would place plant patent applicants in a more favorable position than that of other patent applicants.

We would be pleased to continue our discussions with you and members of the plant patent community toward an equitable resolution of their concerns. Further, we would be



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available to join in any discussions between the plant patent community and representatives of the general patent bar on reaching a mutually agreeable approach.

The Office of Management and Budget advises that there is no objection to the transmittal of these views from the standpoint of the Administration's program.

Sincerely,

A handwritten signature in black ink, appearing to read "Theodore W. Kassinger". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Theodore W. Kassinger

cc: The Honorable Howard Berman  
Ranking Minority Member