

Patented Roses by Faith Bickley

Now and then an issue suddenly comes into play that before has not been considered. The concept of patented roses is such an issue. Not long ago we could just take rose cuttings and root (or try to root) them without worrying about this, but nowadays with more and more patented and trademarked roses in commerce, we do have to consider this.

At the TRR cutting exchange last October, some Knockout cuttings were brought, and this triggered the issue of patented roses. The board noted the need for discussion of this and the formation of some policies for the organization thus this article will start the dialog. I personally do not do well wading through legalese so am most grateful to people like Don Gerard, Candy Fite (finding out from Mike Shoup about his policies at the Antique Rose Emporium) and Renee from Chamblee's Roses in Tyler for their help on this subject.

“What is a plant patent? A plant patent is granted by the Government to an inventor (or the inventor's heirs or assigns) who has invented or discovered and asexually reproduced a distinct and new variety of plant, other than a tuber propagated plant or plant found in an uncultivated state. The grant, which lasts for 20 years from the date of filing the application, protects the inventor's right to exclude others from asexually reproducing, selling, or using the plant so reproduced. This protection is limited to a plant in its ordinary meaning.” (This definition is found at <http://www.usto.gov/web/offices/pac/plant/index.html#1>) Something more practical to add to the above is that a plant patent costs \$20,000.

The TRR organization cannot condone propagating patented roses as it is just not ethical and frankly not legal. We need to remember that the organization began with the purpose of perpetuating the old roses. Mike Shoup has made a good point that TRR has gradually evolved more toward educating gardeners and sharing information. We still are thrilled to find an old rose in a cemetery or old home or to get a cutting from a friend. And always our main purpose is to focus on keeping the old roses alive in our gardens for future generations.

Interestingly, Mike Shoup has chosen not to patent his new Pioneer Rose Series as he is still waiting for the test of time to see how these “young” roses perform plus patenting a rose is a real undertaking.

David Austin roses are some that also have to be considered. The ARE has to pay David Austin royalties on every cutting they take of these roses whether they root or not. Some of these are in the trademark category. Renee of Chamblee's commented that only licensed growers can propagate and sell roses under their patent or trademark name.

Don found a list of the patented roses at <http://fpms.ucdavis.edu/WebSitePDFs/Price&VarietyLists/RoseVarietyList.pdf> which was an eye-opener to me. I was about to get some cuttings of Brass Band from a friend, but found it on the list so will instead buy one for my brother.

In reality, there are tons of old roses for collecting and sharing cuttings so let's concentrate on them.