

22 December 2004  
 Victoria, B.C.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Walters Gardens, Inc.,	)	
	)	OPPOSITION NO. 91153755
Opposer,	)	
	)	Mark: PILLU
	)	Serial No.: 76/201,447
v.	)	Filed: January 29, 2001
	)	
Pride of Place Plants, Inc.,	)	
	)	
Applicant.	)	

---

DEPOSITION

of

RICK SORENSON

---

APPEARANCES:

For the Applicant:

BRIAN K. BROOKEY, ESQ.  
 CHRISTIE PARKER HALE  
 350 W. Colorado Blvd., Suite 500  
 Pasadena, CA 91105  
 (626) 795-9900

For the Opposer:

BARRY C. KANE, ESQ.  
 MILLER, JOHNSON, SNELL &  
 CUMMISKEY  
 250 Monroe Avenue NW Suite 800  
 Grand Rapids, MI 49501-0306  
 (616) 831-1700

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Official Reporter

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1 22 December 2004

2 Victoria, BC

3 RICK SORENSON: Affirmed,  
4 testifies as follows:

5 (PROCEEDINGS COMMENCED AT 9:00 A.M.)

6 DIRECT EXAMINATION BY MR. BROOKEY:

7 Q Good morning, Mr. Sorenson.

8 A Good morning.

9 Q How are you feeling this morning?

10 A I've had better days but I think we'll manage. We'll  
11 go as far as we can and if I fall asleep on you mid  
12 sentence you know it's time for me to take a break.

13 Q Okay. Are you currently taking any medication?

14 A Yes. Pain is fairly substantial today, about eight  
15 out of ten, so I'm on a liquid morphine and Tylenol  
16 3s.

17 Q Well, if you need to take a break let me know and  
18 Mr. Kane and I will accommodate you. All right?

19 A I think you recognize as of yesterday's meeting how  
20 fast a break takes place.

21 Q Mr. Sorenson, are you familiar with the plants that  
22 are sold under the name Piilu?

23 A No.

24 Q Have you heard of something called Clematis Little  
25 Duckling Piilu?

TTAB

TRADEMARK  
Docket No. 110.2\*1/GJN/P622

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

WALTERS GARDENS, INC.

Opposer,

v.

PRIDE OF PLACE PLANTS, INC.

Applicant.

Opposition No. 91153755

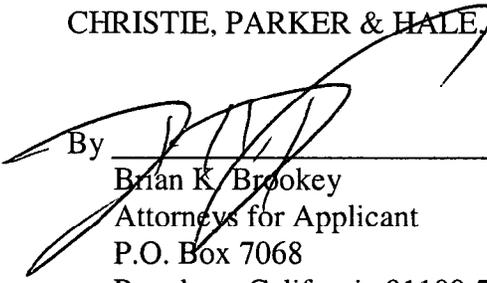
**NOTICE OF FILING DEPOSITION  
OF RICK SORENSON**

PLEASE TAKE NOTICE that the transcript of the Deposition of Rick Sorenson has been filed with the Trademark Trial and Appeal Board.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date: February 10, 2005

By   
\_\_\_\_\_  
Brian K. Brookey  
Attorneys for Applicant  
P.O. Box 7068  
Pasadena, California 91109-7068  
626/795-9900



02-11-2005

In the Matter of  
Opposition No. 91153755

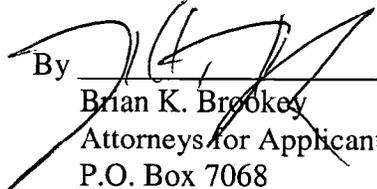
**CERTIFICATION OF MAILING AND SERVICE**

I certify that on February 10, 2005, the foregoing NOTICE OF FILING DEPOSITION OF RICK SORENSON is being deposited with the United States Postal Service by first-class mail addressed to:

Commissioner of Trademarks  
P.O. Box 1451  
Alexandria, Virginia 22313-1451

It is further certified that on February 10, 2005, the foregoing NOTICE OF FILING OF DEPOSITION OF RICK SORENSEN is being served by mailing a copy thereof by first class mail addressed to:

Barry C. Kane, Esq.  
Miller, Johnson, Snell & Cumminskey  
250 Monroe Avenue NW Suite 800  
Grand Rapids, MI 49501-0306

By 

Brian K. Brookey  
Attorneys for Applicant  
P.O. Box 7068  
Pasadena, California 91109-7068  
626/795-9900

1 A Yes.

2 Q What is that?

3 A It's a plant that we currently manage on behalf of the  
4 Kivistik family in Estonia.

5 Q When you say "manage," what do you mean?

6 A Well, we look after their affairs from the standpoint  
7 of marketing, distribution of young plants,  
8 protection, i.e. trademarking plant patents in both  
9 Canada and the United States.

10 Q Are you familiar with naming conventions for plants?

11 A Yes.

12 Q Okay. So can you break down the various components of  
13 what the name Clematis Little Duckling Piilu denote?

14 A Genus, species and cultivar. However, normally in  
15 Clematis cultivars you rarely see the species used  
16 alone with cultivars unless they are true species.

17 Q So if you're looking at the name Clematis Little  
18 Duckling Piilu, what is the cultivar?

19 A The cultivar is Little Duckling.

20 Q Okay. Has that plant ever been sold using another  
21 cultivar name prior to Little Duckling?

22 A Yes, it was sold under Kivso.

23 Q When did you first start selling or distributing this  
24 plant?

25 A Would have been the year 1999. That would have been

1 in the early spring of either 1999 or 2000.

2 Q And when I say "you" I'm referring to Pride of Place  
3 Plants. You understand that?

4 A Yes, I understand that.

5 Q And actually can you tell me are you employed by Pride  
6 of Place Plants?

7 A I am.

8 Q What is your position?

9 A President.

10 Q So when you were selling this plant starting in 1999  
11 what cultivar name were you using to describe the  
12 plant?

13 A Kivso.

14 Q Now, going back to the naming conventions. When you  
15 would use the Piilu name as part of the name what was  
16 Piilu used as?

17 A We had always intended to use it as a trademark.

18 Q Is that how you actually used it, is as a trademark?

19 A Yes.

20 Q And how did you convey the fact you were using it as a  
21 trademark?

22 A We put the proprietary T.M. at the end of the word  
23 Piilu.

24 Q Did you ever advertise this as a trademark?

25 A Yes.

1 Q And did you expend any money advertising it as Piilu?

2 A Yes, indeed.

3 Q How much money did you spend to advertise Piilu as a  
4 trademark?

5 A I think overall, and it's difficult to come down to  
6 the last penny, but I think overall we probably spent  
7 about \$50,000, and I throw in the 50,000 with the  
8 exchange rate from US funds to Canadian for whatever  
9 that's worth.

10 Q Okay. So we're clear, is that 50,000 US or 50,000  
11 Canadian?

12 A I'm saying Canadian.

13 Q Have you ever granted licenses authorizing other  
14 people or companies to use the name Piilu?

15 A Yes.

16 Q And do you collect any money with regard to those  
17 licenses?

18 A Yes.

19 Q Do you ever license people to sell plants without --  
20 that don't have trademark names?

21 A No.

22 (EXHIBIT 1: PRICE LIST FOR PRIDE OF PLACE PLANTS  
23 SPRING 1999)

24 BY MR. BROOKEY:

25 Q Mr. Sorenson, the Court Reporter has handed you a

1 document that's been marked as Applicant's Exhibit 1.

2 Can you tell me what this document is?

3 A Yes. I suspect that we would suggest this is a price  
4 list or an offering of plants from Pride of Place  
5 Plants in the spring of 1999.

6 Q Was this something that was prepared by Pride of Place  
7 Plants?

8 A Yes.

9 Q And is it contained in Pride of Place Plants' business  
10 records?

11 A Yes.

12 Q If you go down to the second to the last line do you  
13 see the reference to Clematis Piilu?

14 A I do.

15 Q And you see there's a TM after the name Piilu. Do you  
16 see that?

17 A Yes.

18 Q Now, what were you trying to convey using the TM after  
19 the name Piilu?

20 A That the proprietary rights to the name would belong  
21 to Pride of Place Plants.

22 **(OFF-THE-RECORD DISCUSSION)**

23 BY MR. BROOKEY:

24 Q Mr. Sorenson, if you look again at Exhibit 1 there's a  
25 reference there at the top to the fact that these

1 items are apparently available for spring delivery in  
2 1999. Do you see that?

3 A Yes.

4 Q So looking at that do you have an understanding as to  
5 when this document would have been prepared?

6 A Some time in the fall of '98.

7 Q And when would this document have been distributed?

8 A My best estimate would be probably October of 1998.

9 **(EXHIBIT 2: TESTING AGREEMENT RE PRIDE OF PLACE**  
10 **PLANTS & SPRING VALLEY GREENHOUSE)**

11 BY MR. BROOKEY:

12 Q Mr. Sorenson, the Court Reporter has marked as  
13 Applicant's Exhibit 2, this document is titled Testing  
14 Agreement between Pride of Place Plants, Inc. and  
15 Spring Valley Greenhouse Inc. Can you tell me what  
16 this document is?

17 A Yes. This allows our participants, or that is in this  
18 case the testers in test sites/test nurseries, allows  
19 them up to a year to take the new plant and under  
20 their conditions see whether it fits with their  
21 cultural conditions and their market conditions. It  
22 can be extended but normally one year is sufficient  
23 for at least the people that we deal with.

24 Q If you turn to the second page there are a couple of  
25 dates, March 11, 1999 and then May 19, 1999. Do you

1 see that?

2 A Yes, I do.

3 Q Was this document prepared on or -- or in or around  
4 the spring of 1999?

5 A Yes, in and around the spring of '99. And if I can  
6 make one note, the negotiations prior to the  
7 distribution of the agreement would have taken place  
8 in the fall of '98.

9 Q And whose signature appears above the name Pride of  
10 Place Plants, Inc.?

11 A That's mine.

12 Q And is this something that's contained in Pride of  
13 Place Plants' business records?

14 A Yes.

15 Q If you look at numbered paragraph 10 on the second  
16 page it says "Varieties covered by this agreement are  
17 shown in the attached appendix." Then if you turn the  
18 page you see Appendix A?

19 A Yes.

20 Q And what appears after the name Clematis Piilu?

21 A The TM.

22 Q What was that intended to convey?

23 A It was intended so that we owned the proprietary  
24 rights to the word Piilu.

25 Q When you say you own the proprietary rights, what do

1           you mean?

2           A     All rights that are -- that can be owned under the  
3           Act, under the Trademark Act.

4           Q     Do you have a specific understanding what the initials  
5           TM stand for in the context of which you're using it  
6           here?

7           A     I'm sorry, could you repeat that?

8           Q     Sure. Do you have an understanding of what those  
9           initials stand for, TM?

10          A     Trademark, yes.

11                   **(EXHIBIT 3: GROWERS MARKETING AGREEMENT RE ROSEVILLE**  
12                   **FARMS & PRIDE OF PLACE PLANTS)**

13 BY MR. BROOKEY:

14          Q     Mr. Sorenson, you now have in front of you what the  
15           Court Reporter has marked as Applicant's Exhibit 3  
16           titled Growers Marketing Agreement between Roseville  
17           Farms and Pride of Place Plants, Inc. What is this  
18           document?

19          A     This is the one step further that our participants, or  
20           our growers if you like, go to after they've decided  
21           that the plant on the test agreement has fulfilled all  
22           their needs and essentially it causes them to forward  
23           to us on a semiannual basis payments for the sale of  
24           that particular plant.

25          Q     If you flip over to the third page do you see the date

1 is December 2001? Do you see that note at the bottom?

2 A Yes.

3 Q And do you know whose signature that is beneath the  
4 date?

5 A David Raab from Roseville Farms.

6 Q If you turn back to the first page in the first  
7 paragraph of text is the reference to Clematis Piilu  
8 TM. Do you see that, Mr. Sorenson?

9 A I do.

10 Q What is that TM intended to convey?

11 A It's intended to convey to David Raab at Roseville  
12 Farm that we own the proprietary rights to the word  
13 Piilu.

14 Q If you look beneath that under numbered paragraph 1  
15 there's a requirement that each plant bear a label  
16 containing the details of the plant protection  
17 obtained in North America. Do you see that?

18 A Yes.

19 Q What did you mean by that provision?

20 A We were in the process of attempting to gain  
21 proprietary rights to the word Piilu. That would have  
22 been upon the acceptance of the US Patent & Trademark  
23 Office. That would have been, as an example, what we  
24 would have supplied to David Raab. That we would say  
25 please apply this small terminology to the backside of

1           your label.

2           Q     And Mr. Raab didn't object to this provision of the  
3           marketing agreement?

4           A     No.

5           Q     Again this is dated December 2001. Is it your  
6           understanding that the document was prepared some time  
7           around there, December 2001?

8           A     Yes.

9           Q     It's maintained in Pride of Place Plants business  
10          records?

11          A     It is.

12                   **(EXHIBIT 4: GROWERS MARKETING AGREEMENT**

13                   **RE PEPINIERE L'AVENIRE & PRIDE OF PLACE PLANTS)**

14 BY MR. BROOKEY:

15          Q     Mr. Sorenson, the Court Reporter has now handed you  
16          what's been marked as Applicant's exhibit number 4,  
17          this is a Growers Marketing Agreement, and I'm not  
18          going to try to pronounce the name of the other  
19          party.

20          A     Right.

21          Q     What is this document?

22          A     Again, it's an agreement which allows this company in  
23          Quebec to sell the plant as trademarked.

24          Q     And again the first paragraph there's a reference to  
25          Clematis Piilu TM. What were you trying to convey

1 with the use of the TM symbol?

2 A Again, the Canadian proprietary rights to the word  
3 Piilu.

4 Q And then in paragraph 1 again there's a language that  
5 each plant must bear a label containing the details of  
6 the plant protection obtained in North America. What  
7 was that intended to provide?

8 A That was a process that we were underway in looking at  
9 protecting by trademark the word Piilu and once  
10 accomplished we would have forwarded a request to this  
11 company on all their labelling to please use the term.

12 Q If you look at the second page this is dated  
13 apparently February 17, 2001.

14 A Yes.

15 Q Was this document prepared about that time?

16 A Yes.

17 Q Is this maintained in your business records?

18 A Yes.

19 **(EXHIBIT 5: GROWERS MARKETING AGREEMENT RE GARDEN**  
20 **IMPORT & PRIDE OF PLACE PLANTS)**

21 BY MR. BROOKEY:

22 Q Mr. Sorenson, you now have before you Applicant's  
23 Exhibit 5 which is a Growers Marketing Agreement  
24 between Garden Import and Pride of Place Plants.  
25 Again this contains much of the same language.

1           There's a reference to Clematis Piilu TM. And what  
2           was the TM meant to convey?

3           A     It was meant to convey that we had the proprietary  
4           rights to the word Piilu.

5           Q     And in paragraph 1 there's another reference to label  
6           containing details of plant protection obtained in  
7           North America. What was that intended to convey?

8           A     It was to convey upon the successful completion of the  
9           application of the trademark that we would forward to  
10          this firm the fact that they should use on all of  
11          their packaging, in fact boxes and otherwise, that the  
12          general public -- because this is a garden -- not a  
13          garden centre but a mail order gardening company, so  
14          that the individuals would recognize it as a protected  
15          plant as well.

16          Q     All right. If you turn to the last page. This  
17          document is dated February 8th, 2001. Was it prepared  
18          about that time?

19          A     Yes.

20          Q     And is this maintained in the business records of  
21          Pride of Place Plants?

22          A     This is.

23                   **(EXHIBIT 6: GROWERS MARKETING AGREEMENT RE HOLE'S**  
24                   **GREENHOUSES & PRIDE OF PLACE PLANTS)**

25          BY MR. BROOKEY:

1 Q Mr. Sorenson, the Court Reporter has now handed you  
2 Applicant's Exhibit 6, a Growers Marketing Agreement  
3 between Hole's Greenhouses and Gardens Limited and  
4 Pride of Place Plants.

5 Once again there's a reference to Clematis Piilu  
6 TM. Do you see that, sir?

7 A I do.

8 Q And what was that intended to convey, the use of the  
9 TM?

10 A So that Hole's Greenhouses and Gardens recognize that  
11 we owned the proprietary rights to the word Piilu.

12 Q And again paragraph 1 refers to a label containing  
13 details of plant protection. And what does that mean?

14 A Upon the acceptance by the US or Canadian trademark  
15 offices we would have then forwarded to Hole's  
16 Greenhouses the paragraph that we would like to see  
17 attached to all their labelling.

18 MR. KANE: If I may interrupt. Would it benefit you at all  
19 if we stipulated to the fact that the use of the TM  
20 reflected their intent to claim trademark status in  
21 the term Piilu? Would that help you with your  
22 questioning?

23 MR. BROOKEY: I think we're about done with these.

24 MR. KANE: I was wondering how many more of these we are  
25 going to refer to reflect that.

1 MR. BROOKEY: I just want to make sure the record is clear. Do  
2 you want to stipulate to the authenticity of all the  
3 documents too?

4 MR. KANE: Yes, I can do that.

5 MR. BROOKEY: All right. We'll stipulate that these are  
6 business records of Pride of Place Plants.

7 MR. KANE: Right.

8 MR. BROOKEY: And these were created on or about the dates they  
9 were signed.

10 MR. KANE: I can agree to that.

11 MR. BROOKEY: That can speed things up a little bit. That's  
12 just lawyer talk.

13 THE WITNESS: I didn't understand a word of it.

14 MR. KANE: If you like you can say the documents by Bates  
15 number if you like.

16 (EXHIBIT 7: GROWERS MARKETING AGREEMENT, BATES  
17 POP 248-250)

18 BY MR. BROOKEY:

19 Q Mr. Sorenson, you now have in front of you Exhibit 7,  
20 a Growers Marketing Agreement and it's been designated  
21 with the Bates range of POP 248 through 250. And  
22 again the use of TM in the first paragraph and the  
23 paragraph 1 regarding the details of the plant  
24 protection are the same with regard to this document  
25 as with regard to the prior documents. Is that

1 correct?

2 A That's correct.

3 (EXHIBIT 8: GROWERS MARKETING AGREEMENT, BATES  
4 POP 251-253)

5 BY MR. BROOKEY:

6 Q Mr. Sorenson, you now have before you Applicant's  
7 Exhibit 8, the Bates ranges are POP 251 through 253  
8 and it contains the same language with Piilu TM and  
9 the paragraph 1 referring to details of plant  
10 protection. Those should be viewed the same way as  
11 with regard to the earlier documents. Correct?

12 A That's correct.

13 (EXHIBIT 9: GROWERS MARKETING AGREEMENT, BATES  
14 POP 254-256)

15 BY MR. BROOKEY:

16 Q Mr. Sorenson, you now have Applicant's Exhibit 9,  
17 Bates ranges 254 through 256. This has the same  
18 language with regard to Piilu TM and details of plant  
19 protection. Those were intended to convey the same  
20 ideas and concepts as with regard to the earlier  
21 documents. Is that right?

22 A That's correct. Excuse me, legal counsel, may I ask  
23 you the note --

24 Q Sorry, something you want to point out on that  
25 document?

1 A Yes, can I?

2 Q Yes.

3 A I'd just like to point out that the date at which  
4 Broelick signed this was February 2 of the year 2000,  
5 which meant that the negotiation would probably be  
6 well into the 1999 season, if not before primarily,  
7 because I have a method of coming out to see the  
8 material grown on my site. So they would have  
9 probably been in negotiations for a year or at least a  
10 year and a half just because of their adjudication  
11 process.

12 MR. KANE: May I ask for a point of clarification? Is it  
13 Mr. Broelick, B-R-O-L-E-C-K?

14 THE WITNESS: B-R-O-E-L-I-C-K.

15 MR. KANE: Thanks.

16 (EXHIBIT 10: GROWERS MARKETING AGREEMENT RE SPRING  
17 VALLEY GREENHOUSE & PRIDE OF PLACE PLANTS)

18 BY MR. BROOKEY:

19 Q Mr. Sorenson, you now have Applicant's Exhibit 10  
20 before you, a Growers Marketing Agreement between  
21 Spring Valley Greenhouse and Pride of Place Plants,  
22 Inc. This has the same language with regard to Piilu  
23 TM and in paragraph 1 a label containing the details  
24 of the plant protection obtained in North America and  
25 those were intended to convey the same ideas that we

1           talked about earlier. Right?

2           A     That's right.

3           Q     And whose handwriting is this at the bottom?

4           A     That would be Jim -- it would be the president of  
5                 Spring Valley Greenhouse and I'm sorry, I can't  
6                 remember his last name.

7           Q     All right. And this was something that he added or  
8                 changed?

9           A     Yes, he did. He didn't fit -- his production did not  
10                fit the mold of our section 3 so we negotiated him to  
11                be -- allow him to fit that into his production  
12                methods.

13          Q     Okay. So even though this is kind of a standard  
14                Marketing Agreement at least in this case you accepted  
15                some modifications to that?

16          A     Yes.

17                **(EXHIBIT 11: GROWERS MARKETING AGREEMENT)**

18 BY MR. BROOKEY:

19          Q     Do you recall Jim's last name now?

20          A     Yes, I do it's Jim Laeken, L-A-E-K-E-N.

21          Q     Mr. Sorenson, you now have what's been marked as  
22                Applicant's Exhibit 11, it's another Growers Marketing  
23                Agreement with the same language using Piilu with a TM  
24                and then paragraph 1 referring to details of plant  
25                protection, and those were intended to convey the same

1 information that we discussed earlier?

2 A Yes.

3 (EXHIBIT 12: GROWERS MARKETING AGREEMENT RE WAYSIDE  
4 GARDENS & PRIDE OF PLACE PLANTS)

5 BY MR. BROOKEY:

6 Q Mr. Sorenson, I've handed you actually the last  
7 Growers Marketing Agreement I'm going to give you this  
8 morning between Wayside Gardens and Pride of Place  
9 Plants. It has the same language we've been looking  
10 at with regard to Piilu followed with a trademark  
11 symbol and then paragraph 1 referring to details of  
12 plant protection and those were intended to convey the  
13 same information?

14 A That's correct.

15 Q Now, when you entered into the Testing Agreements or  
16 Growers Marketing Agreements with other parties were  
17 those other parties given a chance to read the  
18 agreements?

19 A Yes.

20 Q And as with the one we saw a few minutes ago, there  
21 was a possibility of making some changes?

22 A That's correct.

23 Q And to your knowledge were any of these agreements  
24 changed to remove the trademark references?

25 A No.

1 Q So it's fair to say that every Testing Agreement and  
2 every Growers Marketing Agreement that you entered  
3 into to the best of your knowledge contained the  
4 language referring to trademark?

5 A Yes.

6 Q Or at least some language referring to trademark.  
7 Correct?

8 A Yes.

9 Q And in terms of establishing royalties or license  
10 payments, did part of that compensation include  
11 compensation for use of the proprietary name Piilu?

12 A Yes.

13 (EXHIBIT 13: DOCUMENTS BATES POP 004-026)

14 BY MR. BROOKEY:

15 Q Mr. Sorenson, the Court Reporter has handed you  
16 Exhibit 13, a group of documents with Bates ranges POP  
17 004 through 026. If you can look at the fourth page,  
18 POP 007.

19 A Um-hum.

20 Q There's a reference to Piilu TM Estonia. Do you see  
21 that?

22 A Yes.

23 Q What is this document? What does this depict?

24 A This is a plant label.

25 Q Okay. How would the plant label be used?

1           A     Essentially it slid down the side -- between the  
2                    plastic and the soil media and a small mechanism  
3                    that's there in those creases holds that upright and  
4                    steady.

5           Q     What is the symbol TM intended to convey in this plant  
6                    label?

7           A     It's intended for people to recognize that we own the  
8                    proprietary rights to the word Piilu.

9           Q     And how long has a plant label for the Piilu plant  
10                   been in use by Pride of Place Plants?

11          A     May I ask, this particular label?

12          Q     Talking about this particular label, yes.

13          A     This particular label it's probably going into its --  
14                   going into its third year I think.

15          Q     And this is an accurate depiction of a Piilu plant  
16                   label?

17          A     It is.

18          Q     This is maintained in the business records of Pride of  
19                   Place Plants?

20          A     It is, yes.

21          Q     If you can turn to the next set of documents starting  
22                   on POP 008. Can you tell me what this document is?

23          A     Yes.

24          Q     What is this?

25          A     It's a page from our website.

1 Q And when it says "Our plants," who is the "our"?

2 A Pride of Place Plants.

3 Q And if you look underneath that "our plants," it says

4 "Clematis Kivso Piilu." Do you see that?

5 A I do.

6 Q Going back to the naming conventions we talked about,

7 what is Clematis? Where does that fit in the genus of

8 the species?

9 A That's the genus.

10 Q And what is Kivso?

11 A Kivso is a name that --

12 Q Again in the naming conventions, what was that

13 intended to convey? If Clematis is a genus what is

14 Kivso?

15 A That was the cultivar name.

16 Q And then Piilu is followed by the trademark symbol.

17 Correct?

18 A Correct.

19 Q And what were you intending to convey there?

20 A With the trademark symbol?

21 Q Yes.

22 A The fact that we owned the proprietary rights to

23 Piilu.

24 Q Okay. So if someone in the industry was looking at

25 this reference to Clematis Kivso Piilu, could they

1           figure out what the cultivar name was by looking at  
2           this?

3 MR. KANE:           Objection. It calls for speculation. It's not  
4           based on personal experience. He can go ahead and  
5           answer the question.

6 MR. BROOKEY:       Go ahead and answer.

7 MR. KANE:           I'm sorry, just so I'm clear, periodically I will  
8           raise an objection just for the record and that  
9           doesn't mean that you do not have to answer, unless he  
10          tells you to do so. So I just put that on there.

11 MR. BROOKEY:       It is -- actually I should rephrase that anyway.

12 BY MR. BROOKEY:

13           Q       Were you intending to signal to people who would view  
14           the web page what this plant was in terms of what the  
15           name of the plant was?

16           A       Yes.

17           Q       Okay. And when you use Kivso here in the middle with  
18           the single quotes what were you trying to tell people  
19           that Kivso meant?

20           A       That it meant the cultivar name.

21 MR. KANE:           Sorry for the interruption there, Counsel.

22 MR. BROOKEY:       That's fine.

23 BY MR. BROOKEY:

24           Q       What, if anything, does Pride of Place Plants do to  
25           police the use of the trademark Piilu?

1           A     Well, on a scheduled basis we check through the web  
2                   contents for any particular plant that we have  
3                   offered. We check through the lists of plants which  
4                   our licensed growers have sold to, that is they send  
5                   us a list of their purchase -- of their purchasers or  
6                   consignees, and we review that and at times phone  
7                   those customers to thank them and so on and so on. We  
8                   have individuals within lists of participants, because  
9                   everybody who grew Kivso would also buy other plants,  
10                  other Clematis plants from those same individual  
11                  companies. So we would have some policing, if you  
12                  like, in effect because if nursery "A" went to  
13                  nursery "B" and saw Clematis Kivso he would be on the  
14                  phone back to me and say how come he doesn't show up  
15                  on any list. So there was a scheduled once a month  
16                  some policing situation and a policing situation by  
17                  means of distribution of all consignees throughout  
18                  North America.

19          Q     And specifically part of the policing was policing the  
20                  use of the name Piilu as a trademark?

21          A     Absolutely.

22          Q     And did you ever have any conversations with people  
23                  about making sure that they used that as a trademark?

24          A     Absolutely, yes. I think in some cases it was done --  
25                  one could say that was done by mistake on their part,

1 and they were very apologetic and all the rest of it,  
2 and some didn't really care.

3 Q All right. Have you ever authorized anyone else to  
4 use the term Piilu generically as opposed to a  
5 trademark?

6 A No.

7 Q And does Pride of Place Plants use it generically to  
8 refer to this plant as opposed to using it as a  
9 trademark?

10 A No.

11 Q Does Pride of Place Plants authorize anyone to use  
12 Piilu to refer to the cultivar rather than using Piilu  
13 as a trademark? In other words, you testified earlier  
14 that the current cultivar name was Little Duckling and  
15 the previous one was Kivso. Correct?

16 A Um-hum.

17 Q So have you told anyone ever that -- sorry, since you  
18 started selling these plants have you told anyone that  
19 notwithstanding the Kivso Little Duckling cultivar  
20 names it's okay to use Kivso as the cultivar name  
21 instead?

22 A No.

23 Q And have you used it that way, as a cultivar name  
24 since you started selling?

25 MR. KANE: You have to speak verbally.

1 THE WITNESS: No.

2 MR. BROOKEY: I have no further questions.

3 (PROCEEDINGS ADJOURNED AT 9:46 A.M.)

4 (PROCEEDINGS RESUMED AT 10:21 A.M.)

5 CROSS-EXAMINATION BY MR. KANE:

6 Q Mr. Sorenson, thanks. I hope you had a little rest  
7 after the break. I hope you're okay.

8 A I did, thank you.

9 Q Good.

10 A And thank you for going out of your way to accommodate  
11 me. I appreciate it very much.

12 Q Not a problem. I have to admit when I was first  
13 informed about your condition I was a bit skeptical.

14 A Yes, I gathered that. And yes, I imagined that as  
15 well primarily it went through my mind the timing here  
16 is shitty, but --

17 MR. BROOKEY: Why don't we get to the cross-examination.

18 MR. KANE: Thanks. Just want to make sure he's  
19 comfortable.

20 MR. BROOKEY: I understand that.

21 BY MR. KANE:

22 Q Mr. Sorenson, I represent Walters Gardens as you might  
23 expect and so I'll be asking you questions, trying to  
24 limit it to your counsel's direct questions, and if  
25 there's at any time a question that you don't

1 BY MR. KANE:

2 Q What's the dosage of liquid morphine that you're  
3 taking with each dose?

4 A Well, I take 30 milligrams four times a day or as  
5 needed.

6 Q Did you take some this morning?

7 A Yes, I did.

8 Q Did you take some immediately before the testimony  
9 period?

10 A No, I didn't.

11 Q When was the last time you took a dose?

12 A 7:30.

13 Q You also mentioned you're taking Tylenol number 3?

14 A Yes.

15 Q How many milligrams?

16 A Oh, my gosh. I don't know how many milligrams there  
17 are in a tablet, I'm sorry, but I would say over the  
18 course of a day about four or five.

19 Q Four or five tablets per day?

20 A Yes.

21 Q Were you staying at the hotel, Mr. Sorenson?

22 A No.

23 MR. BROOKEY: I'll object. This is irrelevant.

24 MR. KANE: I just want to know how he got to the Deposition  
25 this morning.

1 THE WITNESS: My wife drove me.

2 BY MR. KANE:

3 Q Thank you. At the beginning the very first question,  
4 I guess, asked by your counsel was are you familiar  
5 with a plant named Piilu and your response was no.

6 A Yes. I think I wasn't sure whether he was asking it  
7 in the format of the trademark or of the plant, and so  
8 there was some confusion early there in my answer.

9 Q Okay.

10 A But as we went along I got in step with what he was  
11 actually asking.

12 Q All right. If I were to use the term Piilu in  
13 connection with a genus of Clematis, you follow me?

14 A Um-hum.

15 Q Would that identify a specific plant or would that be  
16 associated with a specific plant in the genus  
17 Clematis?

18 MR. BROOKEY: Object. It's vague and ambiguous but he can  
19 answer it if he understands.

20 THE WITNESS: Well, I can only suggest that under the suspicion  
21 that once the trademark went through that then it  
22 could be identified as a plant in the genus Clematis.

23 BY MR. KANE:

24 Q Okay. The plant, the Clematis plant which you're  
25 claiming to be using the Piilu trademark on, does that

1 plant have a very specific set of biological  
2 characteristics? What I mean is does it have a very  
3 specific sepal, colour and pattern? Are there  
4 characteristics that are specific to that plant that  
5 is referred to as Piilu?

6 A In the plants that I've seen throughout the world  
7 it's -- it is somewhat variable.

8 Q But is it generally a purplish flower?

9 A No. I think I've seen it from dark red to light  
10 pink. I've seen it with double flowers to single  
11 flowers. There are areas throughout the world where  
12 it does not get double flowers and the question has  
13 arisen from time to time is why not.

14 Q Would you agree with me, though, that the Piilu would  
15 not refer to a Clematis of yellow flowers?

16 A I would agree to that.

17 Q Would you agree that the term Piilu is not associated  
18 with a Clematis of black flowers?

19 A I'll agree to that.

20 Q But it's generally the flowers are in the red to  
21 purplish range, and if I can refer to a previous  
22 exhibit, one of your marketing materials, it refers to  
23 a specific plant that originated in Estonia. Is that  
24 correct?

25 A Correct.

1 Q Is the colour pink sometimes stripped with purple?

2 A No.

3 Q Does it refer to a specific plant that its flower is  
4 sometimes single and double with 6 to 12 centimeters  
5 across?

6 MR. BROOKEY: Object. It's vague and ambiguous. He can answer  
7 if he understands.

8 THE WITNESS: Yes.

9 BY MR. KANE:

10 Q Does it refer to a plant that has sepals of single  
11 flowers four to six, mauve to pink, bar broad,  
12 purple-red surface texture with irregular white  
13 markings?

14 MR. BROOKEY: Same objections.

15 THE WITNESS: Again, I would have to suggest that that is  
16 variable dependent on, if I can use such a broad term,  
17 as where it's located in the world.

18 BY MR. KANE:

19 Q Let's go a little bit broader if I can. Is Piilu  
20 associated with a deciduous woody climbing vine?

21 MR. BROOKEY: Same objections.

22 THE WITNESS: It is a woody climbing vine.

23 BY MR. KANE:

24 Q Okay. And has leaves that are dark green, ternate or  
25 rarely pennate?

1 A Yes.

2 Q And does it flower from May to June most of the time?

3 A Again, dependent on where it's planted.

4 Q And when you say "where it's planted," you're talking  
5 about maybe latitude, the climate zones four to five  
6 or however that's used?

7 A Yes.

8 Q The term Piilu does not refer to any plants in the  
9 genus Hosta for example. Correct?

10 A I don't know. There could be --

11 MR. BROOKEY: Don't speculate.

12 THE WITNESS: I don't know.

13 BY MR. KANE:

14 Q I notice your counsel here is trying to coach you  
15 while you're giving testimony and I appreciate that.  
16 I'm just going to ask that you refrain.

17 MR. BROOKEY: I'm not coaching.

18 MR. KANE: You can object.

19 MR. BROOKEY: I'm not coaching.

20 MR. KANE: I don't mean to be -- I mean to be very congenial  
21 about this. I'm not getting in your face about this.

22 BY MR. KANE:

23 Q Let's go back to the questions proffered by your  
24 counsel. He asked if you were familiar with the  
25 naming nomenclature.

1 MR. BROOKEY: Objection. Mischaracterized of prior testimony  
2 and questions. There's not a question pending so why  
3 don't you move on.

4 BY MR. KANE:

5 Q Are you familiar with naming conventions?

6 A Yes.

7 Q And you referred to -- I guess if I can I'm going to  
8 ask you to restate rather than asking you to go back  
9 on the record, what are the naming conventions for  
10 perennial plants?

11 A Genus, species, cultivar.

12 Q What is a variety? Do you know what the term variety  
13 is?

14 MR. BROOKEY: Objection. Vague and ambiguous.

15 MR. KANE: I'm just asking does he know what the term  
16 variety means.

17 MR. BROOKEY: It's vague and ambiguous. Variety show on TV?

18 MR. KANE: No, variety as it applies to flowers.

19 MR. BROOKEY: It's vague and ambiguous. He can answer if he  
20 understands.

21 BY MR. KANE:

22 Q Tell you what, I'll withdraw the question.

23 I'm going to refer to Applicant's Exhibit 2 and  
24 I'm going to place that -- do you have a copy of it  
25 before you? Should be one that's officially marked as

1 Exhibit 2. I'm going to direct your attention to  
2 paragraph number 2. This again represents the Testing  
3 Agreement that Pride of Place Plants had with Spring  
4 Valley Greenhouse Incorporated. Is that correct?

5 A Had with Spring Valley?

6 Q Yes.

7 A As opposed to has?

8 Q Well, I believe your previous testimony said that  
9 these were good for one year. Is that correct?

10 A No.

11 Q So you believe that this agreement is still in place?

12 A Yes.

13 Q So it's current. That's fine. Paragraph 2 says, and  
14 I'll just read it on the record:

15 "Without special permission the  
16 tester of the variety must not  
17 propagate varieties covered by  
18 this agreement or allow others to  
19 do the same."

20 What variety are you referring to in this agreement?

21 A Generally in the nursery business we use that term  
22 variety when there is neither a registered species or  
23 cultivar name recognizable within the trade.

24 Q But in this case here -- I mean this agreement covered  
25 a specific plant, did it not?

1 A A specific plant that was new to the tester and new to  
2 the North American marketplace.

3 Q Okay.

4 A So the people involved in the raising and growing of  
5 Clematis that we contacted in North America had never  
6 seen it heard of it prior to our discussion.

7 Q And the people that you're referring to in that  
8 answer, the people that you spoke to, are those the  
9 ones that took the Testing Agreements?

10 A Those are finally the people who signed our Test  
11 Agreements after recognizing that the plant fit with  
12 the criteria that they needed to run their operation.

13 Q Okay.

14 A And if you'll let me inject, each company will have a  
15 different criteria.

16 Q Based on, again, growing zone or --

17 A Overall crop timing. It's a multitude.

18 Q Whether they're greenhouse or outdoor growers, that  
19 type of thing. Is that correct?

20 A Manpower on hand. It's a multitude of things. It  
21 could be an arm's length of things.

22 Q Fair enough. In this Testing Agreement that we're  
23 referring to, which is Applicant's Exhibit 2, what is  
24 the variety that is identified in this particular  
25 agreement?

1 MR. BROOKEY: Objection. It's vague and ambiguous. He can  
2 answer.

3 BY MR. KANE:

4 Q Let me clarify. Paragraph 10 on page 2 says that  
5 varieties covered by this agreement -- and again I  
6 guess your definition is these are plants that do not  
7 have a species name or a recognized cultivar name.  
8 Correct?

9 A Registered and/or -- registered and/or recognized --  
10 no, not and/or. Recognized would be one word and  
11 registered would be the second situation.

12 Q Okay.

13 A Let me back up just a second. Not registered.  
14 Patented or trademarked.

15 Q Okay. So you want to just substitute the term --  
16 remove the term registered and say patented or  
17 trademarked. Correct?

18 A Correct.

19 Q Okay. So in this case the variety, which is not  
20 trademarked nor patented, is the Clematis Piilu  
21 identified in Appendix A. Is that correct?

22 A That is correct.

23 Q Okay. It's a long way of going about it, but Clematis  
24 Piilu referenced on Appendix A is the variety that  
25 you're referring to?

1 A It is.

2 Q Let's talk about we mentioned -- still talking about  
3 naming conventions in the industry. As it appears in  
4 literature in the industry or on plant labels or  
5 however, how is the genus expressed when you're  
6 referring to a plant? I mean how does it appear in  
7 writing?

8 MR. BROOKEY: Object. It seems to call for speculation.

9 MR. KANE: I'm asking for his knowledge.

10 MR. BROOKEY: I also think it's vague and ambiguous. I'm not  
11 sure what you mean.

12 BY MR. KANE:

13 Q Is the term Clematis always -- is the genus name  
14 always referred to first when referring to a plant in  
15 that genus?

16 MR. BROOKEY: Still calls for speculation. It's overly broad.  
17 If he can answer it then he can go ahead.

18 THE WITNESS: Not within the trade.

19 BY MR. KANE:

20 Q Okay. Then how is the species name used or does it  
21 appear in your practice?

22 A In my practice?

23 Q Yes.

24 A We try and be more definitive primarily because we try  
25 to use proper language. The trade has a lot of slang.

1 Q Shorthand references?

2 A Tons of it.

3 Q Okay. So if we were to use your nomenclature, the  
4 three aspects that you pointed out, genus, species and  
5 cultivar name, I'm going to take those two, the  
6 genus/species names, are those often referred to as  
7 the botanical names?

8 MR. BROOKEY: Objection. Calls for speculation.

9 BY MR. KANE:

10 Q Again with respect to your practice, genus/species.

11 A With my practice?

12 Q Yes.

13 A Specifically, yes, to practice.

14 Q And in your practice are botanical names typically in  
15 a Latin form?

16 A Latin is the language of our business.

17 Q Just because it's been there forever. I mean Latin  
18 was the term of science so everyone continues to use  
19 it today with respect to plants?

20 A Not unlike dentistry and doctors.

21 Q Sure.

22 A Lawyers and so on. So yeah, it has some remaining  
23 meaningful discussion points, yes.

24 Q Okay. So we have the botanical names and then there's  
25 the cultivar variety names. Would you agree that

1           there's generally two sets of names that are often  
2           used with plants?

3 MR. BROOKEY:     Object again.  It calls for speculation, overly  
4           broad, but he can answer.  Also vague and ambiguous.

5 BY MR. KANE:

6           Q     It's all right.  You don't have to answer.  Are the  
7           botanical names of plants -- do they include any  
8           punctuations?

9 MR. BROOKEY:     Same objections.  You can answer it.

10 THE WITNESS:    It depends on whether you're talking trade or  
11           specifics.

12 BY MR. KANE:

13           Q     Okay.

14           A     As I said and stated before, there's a tremendous  
15           amount of slang in our industry.

16           Q     All right.  What does the use of the single quotations  
17           in a plant name generally mean?  Why is that term in  
18           single quotes in quotations?  In your practice what --

19 MR. BROOKEY:    Still not foundation for the question.  It's  
20           vague and ambiguous.  If he understands the question  
21           he can answer it.

22 BY MR. KANE:

23           Q     You refer to -- we'll skip the answer on that one.  
24           I'll strike the question.

25                     In your Appendix A to your Testing Agreement you

1 refer to a plant variety by the name of CLEMATIS  
2 'Piilu' followed by the common law designation TM.  
3 Why is the term Piilu in your document enclosed in  
4 single quotations?

5 A I don't know.

6 Q I think I need to do a little bit of voir dire here in  
7 the sense of, Mr. Sorenson, how long have you been in  
8 the nursery business?

9 A If you give me a moment I'd like to check and see if  
10 it's that way throughout or --

11 MR. BROOKEY: There's a question pending.

12 THE WITNESS: Sorry. Could you repeat your last question?

13 BY MR. KANE:

14 Q Sure. How long have you been in the nursery business?

15 A 1970 is when I started.

16 Q And what was your position in 1970?

17 A I was an owner of a nursery.

18 Q And what was the name of the nursery?

19 A Homestead Nursery.

20 MR. BROOKEY: What is the relevance of what you're doing and  
21 how does it fit within the scope of the direct?

22 MR. KANE: I'm trying to understand Mr. Sorenson's  
23 background and his understanding of nomenclature.  
24 His, as you called it, familiarity with naming  
25 conventions.

1 MR. BROOKEY: Right, but I assume we're not going to go through  
2 34 years of --  
3 MR. KANE: No, I'm not.  
4 MR. BROOKEY: I'll object. It's irrelevant.  
5 BY MR. KANE:  
6 Q Are you formally trained in horticulture?  
7 A No.  
8 Q So you do not have a degree in horticulture?  
9 A No.  
10 Q When you started in 1970 did you come right out of  
11 high school?  
12 A Yes.  
13 Q We look to be about the same age.  
14 A I'm 45, I don't know about you.  
15 Q When did you become associated with Pride of Place  
16 Plants?  
17 A 1996.  
18 Q And what is the nature of the business of Pride of  
19 Place Plants in 1996?  
20 A Plant finders.  
21 Q Could you explain to me what is a plant finder? I  
22 just want to understand where I'm going on this.  
23 MR. BROOKEY: Counsel, still object that it's irrelevant, not  
24 reasonably calculated to lead to constructive  
25 admissible evidence, and in fact this isn't a

1           discovery Deposition and the question is beyond the  
2           scope of the direct. I'll let him answer that  
3           question. I'm about to stop this line.

4 THE WITNESS:     Basically we travelled around the world looking  
5           for plants that improved the existing genus.

6 BY MR. KANE:

7           Q     Okay. And if you found a plant that was of -- you  
8           thought had some interest, would you then try to find  
9           a market for it?

10 MR. BROOKEY:     Objection. Calls for speculation.

11 MR. KANE:        I'm asking him about his particular business.  
12           It's not speculation. This talks about exactly what  
13           he's doing. I'd appreciate it if you wouldn't  
14           interrupt me any more. You can simply put your  
15           objection on the record.

16 MR. BROOKEY:     The objections are about to turn into  
17           instructions not to answer. You had the opportunity  
18           to do a discovery Deposition on written questions.  
19           You elected not to. You're very far afield from the  
20           scope of the direct examination and you've got a  
21           relatively short leash in light of the direct, and  
22           you've asked two or three cross-examination questions  
23           and I'm not going to let him answer more discovery  
24           Deposition questions.

25 MR. KANE:        This all goes to your direct.

1 BY MR. KANE:

2 Q You're free to answer the question now. As we talked  
3 about earlier, he's free to put his objection on the  
4 record. The Court is now free to ignore your answer  
5 if they agree with his objection.

6 So the question on the table, as I understand it,  
7 was that you would find plants as a plant finder and  
8 then try to find a market for them. Is that correct?

9 MR. BROOKEY: Same objection. That's a completely hypothetical  
10 question not limited to time or scope and not related  
11 to the direct. If it's possible for him to answer  
12 that question, I'll let him answer that one, but I  
13 think we're about done with the discovery Deposition.

14 THE WITNESS: I think if you want a good comparison is that we  
15 are like farmers -- professional farmers who live in  
16 Kentucky and have a field full of racehorses and we  
17 would like to improve the bloodline.

18 BY MR. KANE:

19 Q Okay. When you found a plant how would that plant  
20 be -- strike the question.

21 Let's move on. I'm going to have you refer to  
22 Applicant's Exhibit 3, which is the Growers Marketing  
23 Agreement between Roseville Farms and Pride of Place  
24 Plants.

25 A Yes.

1 Q Okay. You'll again refer to -- just refer to the  
2 opening paragraph of that document. Would you mind  
3 just taking a second to read that first paragraph  
4 below the reference to Pride of Place Plants?

5 A Beginning with "As you are aware"?

6 Q Yes, sir.

7 A "As you are aware Pride of Place  
8 Plants has acquired the exclusive  
9 license to propagate and sell a  
10 variety Clematis Piilu in North  
11 America with the rights to grant a  
12 sub-license to growers."

13 Q Okay. Thank you. I refer to the part that says "Has  
14 acquired the exclusive license." Who did Pride of  
15 Place Plants obtain the exclusive license from?

16 A The Kivistik family.

17 Q And what license did you obtain from them?

18 A Worldwide rights to manage their proprietary rights.

19 Q Okay. So when you say "manage," do you refer to the  
20 term to propagate and sell? Is that correct?

21 A Well, those are the rights they've given me.

22 Q Okay. And what rights do the Kivistik family own that  
23 you're aware of?

24 MR. BROOKEY: Object. Obviously calls for legal conclusion.

25 It's beyond the scope of the direct testimony.

1 MR. KANE: It refers to the Growers Marketing Agreement.

2 You brought this into the forum.

3 MR. BROOKEY: This goes beyond the scope. I'll let him answer  
4 the last question.

5 THE WITNESS: Can you repeat the question, please?

6 BY MR. KANE:

7 Q Sure. You've obtained exclusive rights to propagate  
8 and sell and you've just said you got that from the  
9 Kivistik family. Was this exclusive license in a  
10 written form?

11 A No.

12 Q It's not a written contract?

13 A No, it is not.

14 Q Do the Kivistiks own any patents on the variety  
15 Clematis Piilu that you're referring to?

16 MR. BROOKEY: Same objections. Irrelevant.

17 BY MR. KANE:

18 Q You may answer.

19 A Not at this time.

20 Q Okay. Did the Kivistiks convey to you -- strike  
21 that.

22 Did the Kivistiks obtain any plant variety or  
23 breeder's rights in the Clematis Piilu plant that  
24 they -- did they represent to you that they had any  
25 breeder's rights in this particular variety?

1 MR. BROOKEY: Same objections.

2 THE WITNESS: I don't know.

3 BY MR. KANE:

4 Q Okay. You say that they have given you the exclusive  
5 license to propagate and sell the variety Clematis  
6 Piilu. Do you know if the Kivistik family ever  
7 provided Clematis Piilu plant material to others prior  
8 to your agreement with the Kivistik family?

9 A Not that they're aware of.

10 Q When did you obtain the exclusive license to propagate  
11 and sell the variety Clematis Piilu from the Kivistik  
12 family?

13 A Late 1997 -- or I'm just thinking about -- it could  
14 have been probably March of 1997 thereabouts.

15 Q Do you know if the Kivistik family at the time in  
16 March of 1997 were claiming trademark rights in the  
17 term Piilu?

18 MR. BROOKEY: It's irrelevant. It's beyond the scope of  
19 direct. It calls for a legal conclusion. It's  
20 irrelevant.

21 THE WITNESS: I don't know.

22 BY MR. KANE:

23 Q You don't know. Do you know if these were part of the  
24 rights that they were conveying to you in your  
25 agreement with them in March of 1997?

1 MR. BROOKEY: Same objections.

2 THE WITNESS: I don't claim to be an expert on the politics of  
3 their land, but you must recognize that they were  
4 under communist rule until late 1990.

5 BY MR. KANE:

6 Q I understand.

7 A And bearing that in mind, and bearing in mind how slow  
8 laws become effective in North America, one can't  
9 determine even if they had the capabilities.

10 Q Okay. So I understand that they had -- they were  
11 under a suppressed political regime. When did you  
12 first meet the Kivistiks --

13 MR. BROOKEY: Hold on. I'm going to have to shut down the  
14 discovery Deposition. We're not even remotely within  
15 the scope of the direct testimony.

16 MR. KANE: I'm sorry, you brought up these Growers Marketing  
17 Agreements with these parties. He's claiming that he  
18 had rights -- exclusive rights from a third party. I  
19 need to explore that third party relationship.

20 MR. BROOKEY: You're way beyond the scope of the direct  
21 examination. This direct examination is about the use  
22 of the trademark.

23 MR. KANE: It is about trademark. We're talking about the  
24 trademark, the exclusive rights to the trademark that  
25 he's claiming rights in.

1 MR. BROOKEY: I understand, but you're sitting here badgering  
2 and harassing a chronically ill witness because you  
3 regret apparently not having done a deposition on  
4 written questions. This is not a discovery  
5 Deposition. Please stay within the scope of the  
6 direct examination.

7 MR. KANE: I object because that's conclusory and it's  
8 speculative. I'm just going to play your game.

9 MR. BROOKEY: We're taking a break.

10 MR. KANE: Sure.

11 (PROCEEDINGS ADJOURNED AT 11:00 A.M.)

12 (PROCEEDINGS RESUMED AT 11:10 A.M.)

13 MR. KANE: Let's get back to your naming conventions. I  
14 mean this is where we started off. I want to  
15 apologize to counsel for my outbursts.

16 MR. BROOKEY: That's fine. It happens.

17 BY MR. KANE:

18 Q Okay. I believe when we were talking about naming  
19 conventions we were talking about genus, species and  
20 cultivar. And I believe you asked -- or you answered  
21 that the cultivar name for the plant branded as Piilu  
22 is what?

23 A Little Duckling.

24 Q Little Duckling is the cultivar name. Would the  
25 cultivar name be included in single quotations in your

1 practice?

2 A That's correct.

3 Q Okay. Does the term Piilu, is that an English word?

4 A No.

5 Q What language is it?

6 A Estonian.

7 Q And what is the translation of the term Piilu from  
8 Estonian to English?

9 A Little Duckling.

10 Q So if I were Estonian and wished to refer to this  
11 plant in Estonian by the cultivar name, it would be  
12 called Clematis Piilu. Correct?

13 MR. BROOKEY: Objection. Calls for speculation. You can  
14 answer.

15 THE WITNESS: I don't know.

16 BY MR. KANE:

17 Q Well, you just told me that Piilu is Estonian for the  
18 terms Little Duckling. Correct?

19 A I did.

20 Q And if I were Estonian and I wished to name this plant  
21 would I not call it Clematis Piilu to refer to the  
22 Little Duckling?

23 A I don't know.

24 MR. BROOKEY: Same objection.

25 BY MR. KANE:

1 Q But it's the same, Piilu is Little Duckling in  
2 Estonian? I don't need to belabour this point. I've  
3 made my point. He's told me Piilu means Little  
4 Duckling. Little Duckling is the cultivar name. I've  
5 won the case.

6 MR. BROOKEY: No, I don't think that's the way it works.

7 MR. KANE: I believe you should recognize that.

8 BY MR. KANE:

9 Q Okay. And do you know if that admission was made to  
10 the United States Patent & Trademark Office?

11 MR. BROOKEY: Object. It's vague and ambiguous and  
12 argumentive. What admission are you talking about?

13 MR. KANE: That the term Little Duckling in Estonian is  
14 Piilu.

15 MR. BROOKEY: I'll object to the characterization that's some  
16 type of an admission.

17 BY MR. KANE:

18 Q Did you not hire the law firm of Christie Parker and  
19 Hale to obtain a trademark registration for the term  
20 Piilu?

21 A Yes, I did.

22 MR. KANE: I'm going to have this marked as Sorenson's  
23 Exhibit 14.

24 (EXHIBIT 14: PROSECUTION FILE HISTORY OF PIILU TM  
25 APPLICATION FROM US PATENT & TM OFFICE)

1 MR. KANE: Have you seen this?

2 MR. BROOKEY: Let's take a break for a second.

3 (PROCEEDINGS ADJOURNED AT 11:15 A.M.)

4 (PROCEEDINGS RESUMED AT 11:16 A.M.)

5 BY MR. KANE:

6 Q How are you holding out, Mr. Sorenson?

7 A Fine, thanks.

8 Q Mr. Sorenson, the Court Reporter has marked for  
9 identification purposes exhibit number 14 in your  
10 examination. And I'm going to place it before you and  
11 ask you to refer to pages 5 through 7. They're not  
12 numbered but in sequentially they're that page in that  
13 packet of documents.

14 MR. BROOKEY: Do you have a copy for me?

15 MR. KANE: I'm afraid I don't. I didn't anticipate going  
16 here but I'm sure you've reviewed the document. It's  
17 the file history of the Piilu trademark application.  
18 And in particular pages 5 through 7, if I may  
19 characterize them, represent the actual application as  
20 filed with the United States Patent & Trademark  
21 Office.

22 BY MR. KANE:

23 Q My question is, Mr. Sorenson: Have you seen this  
24 document before? Just the pages 5, 6 and 7. For the  
25 record they're marked as pages 1, 2 and 3 at the

1 bottom. They do not contain any Bates numbers.  
2 You're shaking your head. Do you recognize the  
3 document?

4 A Yes. I don't recognize the document but my signature  
5 would suggest that I have seen it, yes.

6 Q Okay. From a review of the document does it refresh  
7 your recollection as to what the document is?

8 A Not really, sir.

9 Q Okay. You did file an application for registration of  
10 the term Piilu with the United States Patent &  
11 Trademark Office through the firm of Christie Parker  
12 and Hale, did you not?

13 A I did.

14 Q Could this be the application paper that you signed  
15 that they prepared on your behalf?

16 A Yes.

17 Q Okay. Did Christie Parker and Hale during the  
18 prosecution of the application share with you  
19 correspondence that they received from the United  
20 States Patent & Trademark Office during the  
21 prosecution of the application? Do you follow me?  
22 It's not attorney/client privilege. It's government  
23 documents I'm referring to.

24 MR. BROOKEY: He can answer the question yes or no. Obviously  
25 he can't answer any questions about the content of any

1                   communications. But if you recall you can answer yes  
2                   or no.

3 BY MR. KANE:

4           Q     See we're talking a fine line here, Mr. Sorenson.

5           A     I don't remember to be quite honest. I mean, my  
6           honest recollection is I can't remember.

7           Q     Okay. Do you recall if there was any controversy  
8           about the translation of the term Piilu? What that  
9           term meant?

10 MR. BROOKEY:    Again, he can answer it without disclosing the  
11           contents of any communication with counsel.

12 THE WITNESS:    No, I do not.

13 BY MR. KANE:

14           Q     Okay. Done my questions with that one. Thank you.  
15           I'm going to again refer to what's been marked as  
16           Applicant's Exhibit 3 that should be before you. It  
17           is the Growers Marketing Agreement between Roseville  
18           Farms and Pride of Place Plants.

19           A     Um-hum.

20           Q     This is the Growers Marketing Agreement. Correct?

21           A     That is correct.

22           Q     And you indicated here that it was your intention to  
23           obtain trademark rights for the plants that they are  
24           distributing. Is that correct? That's why you put  
25           the term TM behind Piilu. I believe that was your

1 earlier testimony. And I may have paraphrased it, but  
2 the idea there was to indicate that you're claiming  
3 rights in the term Piilu to Roseville Farms. Is that  
4 correct?

5 A I'm claiming proprietary rights.

6 Q Okay. And as part of this Growers Marketing Agreement  
7 are you also licensing them to use the term Piilu in  
8 connection with this variety of Clematis?

9 A They would in turn, yes.

10 Q Can you point to me the very specific provision that  
11 says that they are entitled to use the term Piilu as a  
12 trademark under your authority?

13 A I don't think --

14 MR. BROOKEY: Hold on. It calls for a legal conclusion. I  
15 object. But he can answer to his understanding.

16 THE WITNESS: Not within this agreement. We do it in a  
17 different way.

18 BY MR. KANE:

19 Q Is it done in a written agreement?

20 A No.

21 Q Is there any written documentation between you and  
22 Roseville Farms setting forth the terms and conditions  
23 under which they use the term Piilu?

24 A No.

25 Q Okay. Are you familiar with the business of Roseville

1 Farms?

2 A Familiar?

3 Q It's a broad term, I know. Are they a nursery?

4 A Yes.

5 Q Are they a retail nursery?

6 A No.

7 Q Are they a wholesale nursery?

8 A Yes.

9 Q Are they a grower?

10 A Yes.

11 Q Are they a breeder of nursery stock?

12 A I don't know.

13 Q Fair enough. Do you know the geographic market for

14 Roseville Farms?

15 A No.

16 Q Do you know how Roseville Farms receives its stock of

17 Clematis Piilu?

18 A Yes.

19 Q How do they receive their stock of Clematis Piilu?

20 A Well, they propagate their own.

21 Q Have you or anyone on behalf of Pride of Place Plants

22 visited the facility of Roseville Farms?

23 A No.

24 Q Have you or anyone on behalf of Pride of Place Plants

25 inspected how they are growing the Clematis Piilu at

1           their facility in Apopka, Florida?

2           A     Clematis Little Duckling.

3           Q     I'll take the English translation. The answer is no  
4           you've not?

5           A     No.

6           Q     Do you control or inspect any labelling that is  
7           applied to the product that Roseville Farms sells  
8           containing the term Piilu?

9           A     We see it once a year.

10          Q     Do you ever inspect or receive live plants from  
11          Roseville Farms of the variety Little Duckling that  
12          we're referring to here?

13          A     No.

14          Q     So you never get a chance to inspect the quality of  
15          the product that they're selling under that Piilu  
16          name?

17          A     Not under.

18          Q     Okay. How did Roseville Farms receive the plant stock  
19          from which they're propagating plants? Do you know?

20          A     Yes.

21          Q     Where did they receive that plant stock?

22          A     From Taavi and Ali Kivistik and Roseville Farms.

23          Q     So it was shipped directly to Roseville Farms from the  
24          Kivistiks?

25          A     That's correct.

1 Q Didn't come through Sidney, British Columbia?

2 A No.

3 Q You did not sell it to Roseville Farms?

4 A No.

5 Q Let's refer to Applicant's exhibit number 7 if we  
6 may. I'm sorry, I'm going to take these out of  
7 order. They just happen to be in that order in my  
8 stack. It's the Carolina Nurseries agreement.

9 And I believe you testified earlier that Exhibit  
10 7 that you have before you is essentially the same as  
11 Exhibit 4 through 6 that you provided through  
12 testimony earlier in that regard.

13 The question is this: Do you monitor the labels  
14 that Carolina Nurseries applies to the variety  
15 Clematis Piilu that they sell?

16 A No.

17 Q Have you inspected the quality of the product, that is  
18 the plant material, that Carolina Nurseries sells  
19 under the variety Clematis Piilu?

20 A No.

21 Q Have you or anyone on behalf of Pride of Place Plants  
22 ever physically visited the facility of Carolina  
23 Nurseries?

24 A No.

25 Q Do you know the geographic extent of the market for

1 Carolina Nurseries?

2 A No, I don't.

3 Q Do you know if they're a retail nursery?

4 A Yes.

5 Q Are they also a wholesale nursery?

6 A Yes.

7 Q Are they a grower?

8 A Yes.

9 Q And do you know how Carolina Nurseries received its  
10 original plant stock for the variety Clematis Piilu?

11 A No, I don't.

12 Q That's a valid answer. I'll take that if you don't  
13 know.

14 Do you know if Carolina Nurseries -- what's the  
15 term I'm looking for here? Do they run a brick and  
16 mortar business? Do they have an actual office  
17 facility?

18 A I don't know.

19 Q Okay. Do you know if they do any mail order business?

20 A No, I don't.

21 Q I'm going to refer you now to Applicant's exhibit  
22 number 9, which are the Growers Marketing Agreement  
23 with Zelenka Nurseries.

24 A Yes.

25 Q Now, what I'd like to do is I'd just like to lump

1           these altogether to shorten the time here. We've got  
2           Zelenka Nurseries, which is Applicant's Exhibit 9, we  
3           have the Spring Valley Greenhouse Incorporated Growers  
4           Marketing Agreement, which you have before you as  
5           Exhibit 10, and then we have the Wayside Gardens  
6           agreement Growers Marketing Agreement, which has been  
7           marked as Applicant's Exhibit 12. And maybe you  
8           should just take a second to review those three  
9           documents quickly. Well, at your leisure.

10           **(OFF-THE-RECORD DISCUSSION)**

11 BY MR. KANE:

12           Q     I'm just going to give you the time to take a look at  
13           them. The dates aren't crucial. I won't get to the  
14           dates.

15           A     It's for my own interest.

16           Q     Okay. Have you had a chance? Okay. Would you agree  
17           with me that all three of these agreements concern  
18           companies in the United States?

19           A     Yes.

20           Q     Okay. And I'm going to ask you the same questions  
21           with respect to these three entities in gross that I  
22           did with Roseville Gardens and that I did with the one  
23           in Carolina.

24                     Did you or anyone on behalf of Pride of Place  
25           Plants actually visit any one of these locations?

1           A     No.

2           Q     Have you or anyone else on behalf of Pride of Place  
3                 Plants physically inspected the plant material that's  
4                 being sold under the name Clematis Piilu?

5           A     No.

6           Q     Have you or anyone on behalf of Pride of Place Plants  
7                 inspected the labelling that's applied to these plants  
8                 at the facilities?

9           A     No, we haven't.

10          Q     Do you know whether plant tags are attached to the  
11                 plant material being sold under the name Clematis  
12                 Piilu?

13          A     No. However, in communication they're requested to.

14          Q     Okay. But to the best of your knowledge you have  
15                 never seen the plant tags?

16          A     No, I haven't.

17          Q     Okay. That concludes my questions with respect to  
18                 Exhibits 9, 10 and 12. I take that back.

19                     Do you know the nature of the business for  
20                     Zelenka Nurseries?

21          A     Yes.

22          Q     Are they a retail nursery?

23          A     No.

24          Q     Are they a wholesale nursery?

25          A     Yes.

1 Q Are they a mail order nursery?  
2 A No, they're not.  
3 Q To the best of your knowledge you do not believe  
4 they're a mail order?  
5 A Zelenka Nurseries?  
6 Q Yes.  
7 A To the best of my knowledge they are not.  
8 Q Okay. Spring Valley Greenhouse Inc., do you know the  
9 nature of their business?  
10 A I think I do.  
11 Q Rather than me going through the litany of questions  
12 again, can you tell me what kind of business they are?  
13 A Growers.  
14 Q They're growers. So do I infer from that that they're  
15 a wholesaler then --  
16 A Yes.  
17 Q -- of product? And the same with Wayside Gardens.  
18 Same questions. Are they a retail nursery?  
19 A Yes.  
20 Q Are they a wholesale nursery?  
21 A Yes.  
22 Q Are they a mail order nursery?  
23 A Yes.  
24 Q Now I'm going to refer to Exhibit 4, 5, 6, 8, and 11  
25 as a group. And maybe I can short-circuit it rather

1           than trying to actually find all the documents, if I  
2           just reference the names of the contracting parties  
3           would that help rather than --

4 MR. BROOKEY:     Try it.

5 BY MR. KANE:

6           Q     Exhibit 4 is the Growers Marketing Agreement with  
7           Pepiniere L'Avenir.

8           A     Yes.

9           Q     It appears that they have an address in Quebec,  
10          Canada.

11          A     Correct.

12          Q     What is the geographic extent of their business? Do  
13          you know?

14          A     Quebec.

15          Q     Locally in Canada?

16          A     Quebec.

17          Q     Do they ship into the United States?

18          A     Not that I know of.

19          Q     Okay. Are they a mail order business?

20          A     No.

21          Q     Retail nursery?

22          A     Yes.

23          Q     And so their market -- your belief is that they're  
24          restricted to Quebec pretty much?

25          A     Pretty much, yes.

1 Q Would it be fair to say that they're restricted to  
2 Canada?  
3 A Yes.  
4 Q Okay. The next one Garden Import in Thornville,  
5 Ontario.  
6 A Yes.  
7 Q Are they a mail order business?  
8 A Yes.  
9 Q Do you know the geographic extent of their business?  
10 A No.  
11 Q Okay. If I say mail order does that naturally put  
12 them as a retail nursery?  
13 A They sell generally retail through the mail.  
14 Q They could also be a wholesale nursery?  
15 A I suspect they could be, yes.  
16 Q Do you know if they do business strictly within  
17 Canada?  
18 A I don't know.  
19 Q Then we have one Hole's Greenhouses and Gardens  
20 Limited?  
21 A Yes.  
22 Q In St. Albert in the Province of Alberta.  
23 A Yes.  
24 Q Are you familiar with the nature of the business?  
25 A Yes.

1 Q Rather than going through the whole questions, are  
2 they wholesale/retail?  
3 A Wholesale, retail, mail order.  
4 Q The geographic extent of their business?  
5 A Canada.  
6 Q And is also the Clearview Horticulture Products in  
7 Alderville, BC, are they -- is their business also  
8 restricted to Canada?  
9 A No.  
10 Q So they ship outside the country?  
11 A They do.  
12 Q Are they strictly mail order?  
13 A No.  
14 Q Do you have any idea how far they sell product?  
15 A Across North America.  
16 Q And then the same with Mori Nurseries in just says  
17 Ontario. Do you happen to know what city they are in  
18 Ontario?  
19 A Niagara on the Lake.  
20 Q I get it. Sorry, I'm not familiar with the postal  
21 codes.  
22 A That's a town. Niagara on the Lake.  
23 Q Are they a Canadian business or do they --  
24 A Yes, Canadian business.  
25 Q Do they primarily serve customers in Canada?

1           A     Primarily?

2           Q     Yes.

3           A     Yes.

4           Q     Do you know if they sell product in the States?

5           A     Yes.

6           Q     Now, with respect to those Canadian entities, have you  
7                 or anyone on behalf of Pride of Place Plants  
8                 physically visited their facilities?

9           A     Yes.

10          Q     Which facilities have you visited?

11          A     Clearview Horticultural Products.

12          Q     The one here in BC?

13          A     Yes.

14          Q     And the remainder, then, you have not physically  
15                 visited?

16          A     No.

17          Q     Have you or anyone on behalf of Pride of Place Plants  
18                 physically inspected the plant material, that is the  
19                 quality of the plant material that they're shipping  
20                 under the cultivar Clematis Piilu?

21          A     The cultivar Little Duckling.

22          Q     Same thing. Clematis Little Duckling.

23   MR. BROOKEY:     Object to the characterization. He can answer.

24   THE WITNESS:     The question was? I'm sorry.

25   BY MR. KANE:

1 Q Have you actually physically inspected the quality of  
2 the plant product that they're selling under the name  
3 Clematis Piilu?

4 A I've been to Clearview Horticulture and seen their  
5 product, yes.

6 Q But with respect to the others, again the answer is  
7 no?

8 A That is correct.

9 Q Other than the Clearview facility have you -- strike  
10 that.

11 What facilities in Canada have you inspected the  
12 labels that they use to attach to their plant  
13 material --

14 A All of them.

15 Q -- they ship and how often do you do that inspection?  
16 How -- strike the question.

17 In the case of Pepiniere L'Avenire, which is  
18 stated here took place in February of 2001, since then  
19 how many times have you inspected the labels that  
20 Pepiniere L'Avenire applies to its plant product?

21 A Each spring.

22 Q With respect to Garden Imports in Thornville, Ontario,  
23 since February of 2001 how many times have you  
24 inspected the labels that they apply to plant material  
25 that they sell?

1 A None.

2 Q Do you know if they apply labels to the plant material  
3 they sell that refers to the plant as Clematis Piilu?

4 A I don't know if they sell that plant.

5 Q Good point. You have an agreement. It doesn't  
6 necessarily mean they sell. Do they pay you  
7 royalties?

8 A No.

9 Q Of the Canadian entities that we have these Growers  
10 Marketing Agreements with, how many of them are paying  
11 you royalties for the sale of Clematis Piilu?

12 A All except for --

13 Q The last one, Garden Import?

14 A Yes.

15 Q If I can, each of these agreements are substantially  
16 the same, are they not? The Canadian and the US  
17 agreements are substantially the same but for the one  
18 agreement that has the modification of the pot size?

19 A Right.

20 Q I can't remember which organization that was. That  
21 would have been Spring Valley Greenhouse. And for the  
22 contracting parties. I mean those are really the only  
23 differences between the agreements. Is that correct?

24 A Yes.

25 Q And these were all executed between -- do you remember

1 the first one that you signed approximately?

2 A No, not without researching it.

3 Q I see February 2000 is the earliest one, and right now  
4 that appears to have been with Spring Valley  
5 Greenhouses, Exhibit 10?

6 A As I recall there was a '99 that I saw within the  
7 package, but I don't know which one and I suspect one  
8 has to go through each one to find out.

9 Q That's fine. But they all started approximately 1999  
10 and concluded probably as late as 2001/maybe 2002? I  
11 have to go back and check that myself. No question  
12 outstanding. I just may want to confirm that. 2003.  
13 October 15th, 2003 appears to be the latest one and  
14 that was with Wayside Gardens.

15 Each of those agreements again, and with the  
16 patience of counsel, there is this very statement  
17 again that says that you acquired the exclusive  
18 license to propagate and sell the variety Clematis  
19 Piilu in North America. That's consistent through  
20 them all. Correct?

21 A Correct.

22 Q Do you recall in your conversations with the Kivistiks  
23 in acquiring those rights whether or not she assigned  
24 to you the rights in the name of Piilu?

25 A No.

1 MR. BROOKEY: It's vague and ambiguous. To the extent it calls  
2 for a legal conclusion, I object, but he's already  
3 answered.

4 MR. KANE: Sure. So the answer was no.

5 BY MR. KANE:

6 Q I'm now going to refer to what's been marked as  
7 Applicant's exhibit number 13. And this appears to be  
8 a collection of labels and advertising literature. Do  
9 you recall that exhibit? Do you have it there in  
10 front of you?

11 A Yes.

12 Q Applicant's Exhibit 13, and I'm going to refer to the  
13 pages that are marked as POP 004 through POP 007.  
14 These are the first four pages of that exhibit.

15 Now, on direct examination counsel only asked you  
16 about the page appearing on POP 007, which was a label  
17 that contained the term Piilu with the capital "T"  
18 capital "M" at the end. Do you recall?

19 A Yes.

20 Q I'm going to focus my question with respect to this  
21 particular exhibit, but I'm also going to ask you to  
22 review the other four -- I mean the other three.

23 Are these representative of plant tags that are  
24 to be attached to plant material being sold?

25 A They're all Roseville Farm tags.

1 Q That's where I was going to. The source is these are  
2 from Roseville Farms because frankly I didn't see  
3 Pride of Place Plants mentioned anywhere on here. I  
4 was trying to figure out who was the source of these  
5 labels.

6 When was the first time that you saw these  
7 labels? Do you recall?

8 A I think I answered that once already today, but I  
9 believe 2000 would be three springs ago.

10 Q Okay. Is that the last -- do they send you these  
11 labels every year? Roseville Farms I refer to.

12 A Yes.

13 Q Do you get the same labels from Wayside Gardens?

14 A No.

15 Q Are these labels used on products sold by Wayside  
16 Gardens?

17 A I don't know.

18 Q Do you know if these labels are used on products sold  
19 by Zelenka Nurseries?

20 MR. BROOKEY: Can we just clarify what you mean by "these  
21 labels"?

22 MR. KANE: I'm referring to the labels identified in Exhibit  
23 13.

24 MR. BROOKEY: The specific versions of these?

25 MR. KANE: Yes.

1 MR. BROOKEY: You can answer it.

2 THE WITNESS: The specific design or the specific company?

3 BY MR. KANE:

4 Q The same type of format.

5 A The same format?

6 Q Yes.

7 A I don't know.

8 Q Do you know the company that produces these labels?

9 A Yes.

10 Q Do you know the name of the company?

11 A Yes.

12 Q What is the name of the company that produces these  
13 labels?

14 A Horticulture, Integra. There is two or three in the  
15 United States that produce. It's my artwork.

16 Q How are you holding up?

17 A Good.

18 Q Okay. I want to get back to the question about naming  
19 conventions. You've been with Pride of Place Plants  
20 since 1986. Did I remember that correctly? 1996.  
21 How about that.

22 A That's correct.

23 Q Okay. Is Pride of Place Plants a member of any --  
24 strike that.

25 In your experience over the last 30 years since

1           you started in 1970 is there an organization  
2           recognized by the horticultural industry in general,  
3           to the best of your knowledge, that sets forth  
4           guidelines for naming plant material?

5           A     State the last part of your question.

6           Q     Maybe it would be best if I had it reread.

7                     **(RECORD READ)**

8   MR. BROOKEY:     Do you understand the question?

9   THE WITNESS:     Well, in general -- are we speaking in general in  
10                    the world?

11 BY MR. KANE:

12           Q     Referring to the horticultural industry which is --  
13                    let me put this question first then: Is the  
14                    horticultural industry a worldwide industry?

15           A     Pretty much, yes.

16           Q     So it's not restricted to Canada and the States. And  
17                    in fact, I mean at least in our state, Michigan,  
18                    tulips are huge and a lot of that stuff comes from  
19                    Holland/the Netherlands. Right? Was that a yes?

20           A     Yes.

21           Q     Sorry. And you mentioned that the Clematis material  
22                    comes over from Europe, from Estonia. Correct?

23           A     Well, that particular shipment did.

24           Q     So you would agree with me, then, that the industry  
25                    for plant material, buying and selling, shipping it,

1           the whole bit, the whole commercial, is a global  
2           business rather than a local business?  
3           A     That's correct.  
4           Q     Is there an organization that's generally recognized  
5           that sets guidelines for how you refer to plants  
6           around the world?  
7           A     Not that's consistent.  
8           Q     Okay.  Have there been attempts?  
9           A     Yes.  
10          Q     Okay.  Have you ever heard of the international code  
11          of nomenclature for cultivated plants?  
12          A     Um-hum.  
13          Q     Have you used that in connection with your business?  
14          A     I've used it, yes.  
15          Q     So you've actually used it as a reference?  
16          A     Yes.  
17          Q     Do you recognize it as some document that has some  
18          import?  
19          A     Yes.  
20          Q     So you recognize it as having some valid points?  
21          A     Some valid points, yes.  
22          Q     Okay.  Do you keep a copy at your facility?  
23          A     Yes.  Yes, we do.  
24          Q     Do you know the last time -- the date of the document  
25          that you have?

1           A       Probably that one.

2 MR. KANE:           You're referring to the one I'm holding in my  
3 hand. Can we have this marked as Exhibit 15.

4                    (EXHIBIT 15: INTERNATIONAL CODE OF NOMENCLATURE FOR  
5 CULTIVATED PLANTS)

6                    (OFF-THE-RECORD DISCUSSION)

7 BY MR. KANE:

8           Q       I'm now going to present to you what's been marked as  
9 Exhibit 15, which I will represent to you is a  
10 photocopy of the International Code of Nomenclature  
11 for Cultivated Plants. I realize it's in black and  
12 white but is it generally accurate or represent what  
13 you believe to be the publication you have in your --  
14 strike all that. Does that look familiar to you?

15           A       Is it the same one? Yes.

16           Q       Okay. Now, in your professional history have you been  
17 a member of any professional organizations?

18           A       Yes.

19           Q       As president of Pride of Place Plants are you a member  
20 of any professional organizations?

21           A       The company is.

22           Q       The company is. What organizations are you a member?

23 MR. BROOKEY:       Object. It's irrelevant. He can answer.

24 MR. KANE:           Harmless.

25 THE WITNESS:       The Canadian Nursery Trades, American Nurseries

1 Trades, BC Nurseries Trades, Mail Order Gardening  
2 Association.

3 BY MR. KANE:

4 Q That was all set forth here down on the bottom.

5 A And so on and so on.

6 Q Quite a few.

7 A Yes.

8 Q Do nomenclature issues ever become a point of  
9 discussion with these associations?

10 A I've never been involved with one at the association  
11 level.

12 Q Okay. Do you hold a position as an officer with any  
13 of these organizations?

14 A No.

15 Q Are you familiar with a company called Horticultural  
16 Printers?

17 A Yes.

18 Q Is that the company that produced the tags that we  
19 were referring to here in Exhibit 13? These were the  
20 four tags?

21 A I believe they are.

22 Q Okay. Have you dealt personally with this company,  
23 Horticultural Printers?

24 A I have.

25 Q Do you use their product?

1 A No. They use mine.

2 Q Please clarify.

3 A I think within the Marketing Agreement we asked that  
4 they -- maybe it's our new one, that they use our  
5 artwork for all labels so that the labelling is  
6 consistent throughout. We don't care what the label  
7 looks like so long as the picture in the label is the  
8 same.

9 MR. KANE: May I have this marked as Exhibit 16.

10 (EXHIBIT 16: LABELS)

11 BY MR. KANE:

12 Q I'm going to present to you what's been marked for  
13 identification purposes as Exhibit 16. I'm going to  
14 ask you if you've ever seen anything like this before?

15 MR. BROOKEY: Object. Vague and ambiguous to "like this." He  
16 can try to identify.

17 THE WITNESS: Like this?

18 BY MR. KANE:

19 Q We can become more specific. Have you seen this  
20 document before?

21 A I've never seen this document before.

22 Q Okay. We can stop the questions right there. Are you  
23 familiar with a text by the name of the International  
24 Clematis Register and Checklist for 2002?

25 A Yes.

1 Q Do you have a copy of this publication at your  
2 business?

3 A I do.

4 Q Do you reference the publication from time to time?

5 A I have.

6 Q Do you use it as a reference in your business?

7 A Not as a reference, no.

8 Q Do you have an opinion as to the validity of the  
9 contents of that publication?

10 MR. BROOKEY: Object. It's irrelevant and overly broad. It's  
11 vague and ambiguous. If he understands it he can  
12 answer it I guess.

13 THE WITNESS: I know the author.

14 BY MR. KANE:

15 Q You know the author?

16 A I know the author.

17 Q Who is the author?

18 A Victoria Matthews.

19 Q How do you know Ms. Matthews?

20 A She's the RHS and IHS -- or ICS registrar.

21 Q RHS meaning the Royal Horticultural Society and the  
22 ICRA --

23 A ICS.

24 Q International Clematis Society?

25 A Yes.

1 Q Do you know if Piilu is contained within the  
2 International Clematis Register and Checklist of 2002?

3 A No, I don't know that.

4 Q Do you know what Ms. Matthews was attempting to do by  
5 the publication of this book? Can you give me an oral  
6 response?

7 MR. BROOKEY: It's yes or no for the Court Reporter.

8 THE WITNESS: Oh. Yes, I do.

9 BY MR. KANE:

10 Q In your opinion what was she trying to do?

11 A She is trying to put down on a hard copy every  
12 Clematis known to man.

13 Q How is the text organized? Is it arranged by genus  
14 name?

15 MR. BROOKEY: Vague and ambiguous.

16 THE WITNESS: I don't know to be honest.

17 MR. KANE: Tell you what, let's have this marked as Exhibit  
18 17 and it consists of Bates numbers WG 0363 through  
19 371. The entire text has been marked as other  
20 exhibits, which I believe you've had a chance to refer  
21 to, is that correct, Counsel?

22 MR. BROOKEY: Right.

23 MR. KANE: So I am duplicating the exhibit list here, but  
24 this is just an abbreviated version rather than  
25 carrying the whole text through.

1 (EXHIBIT 17: INTERNATIONAL CLEMATIS REGISTER FOR  
2 2002, BATES WG 0363-371)

3 BY MR. KANE:

4 Q I'm going to present to you what has been marked as  
5 Exhibit 17 and consists of Bates numbers that I've  
6 just mentioned. Do you recognize the first page of  
7 this exhibit?

8 A Yes, I do.

9 Q Does it accurately represent the cover page of the  
10 text from Ms. Matthews?

11 A Yes.

12 Q Like to have you take a look in there and just review  
13 the document for a minute and see if you can just  
14 generally equate yourself. Actually you did say that  
15 you own a copy.

16 A Yes, I do, yes.

17 Q When is the last time you looked at it?

18 A I would say about July of last year.

19 Q Now, do you know if the term Piilu is referenced in  
20 her text?

21 A Yes.

22 Q And are you looking at a particular page?

23 A 253.

24 MR. BROOKEY: Just so the record is clear, that's labeled the  
25 Bates number WG 0366.

1 BY MR. KANE:

2 Q And actually the page that you're looking at, the  
3 Bates number is an enlargement of that page because  
4 the text was kind of small so I blew it up.

5 There's a heading you see contained in single  
6 quotes. Is that correct?

7 A Yes.

8 Q Do you see the term TM applied anywhere?

9 A No.

10 Q Do you see the genus name associated with that term  
11 Piilu in its --

12 A No.

13 Q Is it fair to say that the text of that section  
14 provides a description of the plant associated with  
15 the term Piilu?

16 A I don't know nor does anybody check to know whether  
17 what she's done here is correct. This is all done  
18 voluntarily.

19 Q That's all right.

20 A There's no paid follow through.

21 Q Do you know who published the book?

22 A No.

23 Q Would it surprise you if I said it was published by  
24 the Royal Horticultural Society?

25 A No.

1 Q Is Ms. Matthews a member of the Royal Horticultural  
2 Society?

3 A I don't know.

4 Q Okay. Do you have an opinion with respect to the  
5 veracity of the Royal Horticultural Society? Do you  
6 respect them or not?

7 MR. BROOKEY: I think it's irrelevant, still kind of vague and  
8 ambiguous. It's overly broad.

9 MR. KANE: But I believe you can answer.

10 MR. BROOKEY: If it's possible to answer it. It's an awfully  
11 broad question.

12 THE WITNESS: I respect anybody who promotes plants in a  
13 favourable fashion.

14 BY MR. KANE:

15 Q Would you put the Royal Horticultural Society in that  
16 category?

17 A In a general way.

18 Q Mr. Sorenson, of the advertising budget that you  
19 testified about earlier - if I recall it was  
20 approximately \$50,000 Canadian that you have spent in  
21 promoting product - I'd like to just obtain a little  
22 clarification. Is the \$50,000 expense associated  
23 solely with the advertising of the Piilu variety,  
24 Little Duckling cultivar, or is that an expense that  
25 you have made in connection with all of the Clematis

1           that you have produced advertising literature for?

2           A     I've never broken it out.

3           Q     Okay.  So it's fair to say, then, that of that budget,  
4           the \$50,000 that you expended, a fraction -- some  
5           subset of that was dedicated solely to Piilu.  Is that  
6           correct?

7           A     Some -- well, yes, some portion.

8           Q     Because I mean you don't sell just Clematis Piilu.  
9           You sell a number of different plants.

10          A     We promote.

11          Q     You promote.  Just curious, how many different types  
12          of plants do you promote?  And I guess we could do it  
13          by genus.  How many different genus do you promote?

14          A     I don't know.

15          Q     Are they on the order of 100?

16          A     Hundred genus?

17          Q     Yes.

18          A     Wouldn't be 100 genus, no.

19          Q     Fifty genus?  I'm just trying to get a feel for how  
20          many different kind of different plants you promote.

21   MR. BROOKEY:     I don't think that's relevant.

22   MR. KANE:        But I'm trying to equate that to his advertising  
23                    expenditures which he related.

24   THE WITNESS:     If you take a look at the genus hydrangea we  
25                    promote 50.

1 BY MR. KANE:

2 Q Fifty different genus --

3 A No.

4 Q Just the genus hydrangea you promote 50 different  
5 varieties or cultivars. Is that correct?

6 A That's correct. In the genus Clematis we promote 330.

7 Q 330 different varieties or cultivars of Clematis?

8 A Yes.

9 Q I'm just kind of shocked. That's a lot of different  
10 plant material. No question. No question pending.  
11 It's a statement.

12 Of those 350 how many of those do you think you  
13 can find in the International Clematis Register and  
14 Checklist of 2002 that you have back at your office?  
15 I think virtually all of them.

16 MR. BROOKEY: I think it misstates prior testimony, it's vague  
17 and ambiguous, speculative and irrelevant, but if you  
18 can answer.

19 BY MR. KANE:

20 Q Would you expect all of those to be in Ms. Matthews'  
21 list?

22 MR. BROOKEY: Same objection.

23 THE WITNESS: The answer is none or few.

24 BY MR. KANE:

25 Q I believe you testified that you first started to

1 market the Clematis Piilu in or around 1998. Is that  
2 correct?

3 A Yes.

4 MR. KANE: And like to have marked for identification  
5 purposes Exhibit 18.

6 (EXHIBIT 18: LETTER, DATED 17 SEPTEMBER 1998)

7 BY MR. KANE:

8 Q Mr. Sorenson, I'm going to present to you what's been  
9 marked as Exhibit 18. Have you seen this document  
10 before, Mr. Sorenson?

11 A Oh, yes.

12 Q It's a letter dated September 17th, 1998.

13 A '98.

14 Q It's addressed to Mr. John Elsley, and who is Mr. John  
15 Elsley?

16 A He was at one time the general manager of Wayside  
17 Gardens.

18 Q And at the bottom of the document is that your  
19 signature?

20 A It is.

21 Q This is a photocopy, but do you have any reason to  
22 believe that this is not an accurate representation of  
23 the letter that you sent to Mr. Elsley on September  
24 17th, 1998?

25 A I don't know. I don't know. I guess so.

1 Q It appears to be an accurate document. Right?

2 A Yes.

3 Q Okay. What was the purpose of this letter? Do you  
4 recall?

5 A Oh, I think before I went to Europe I had been talking  
6 with John and John had a similar interest. Wayside  
7 Gardens has a big interest in new plant products. So  
8 it was a continuation of a "Hey, tell me what's new in  
9 Europe when you get back."

10 Q And then this document do you make reference to a  
11 particular plant? I direct your specific attention to  
12 paragraph 3, last sentence.

13 A Yes.

14 Q I don't need to have you refer to it, it's going to  
15 speak for itself, but you're referring to Clematis  
16 Piilu. Is that correct?

17 A I am.

18 Q You say: "It's an excellent example of a great find  
19 from the region of Estonia." In the previous sentence  
20 you say: "Consequently, species and cultivars became  
21 available not seen prior to this exploration." Did I  
22 read that accurately?

23 A Yes.

24 Q Okay. Are you referring to Clematis Piilu as a  
25 cultivar in this particular sense?

1 A No.

2 Q Won't belabour the fact, but this was before you  
3 actually started introducing product into this  
4 country. Is that correct?

5 A No.

6 Q You said that this was before you went to Europe in  
7 1998. Wasn't it during the trip to Europe after  
8 September 17th, 1998 that you actually started to  
9 promote Clematis Piilu in Canada and the United  
10 States?

11 A It would have been after this trip, yes.

12 Q In this letter we don't see any single quotes for the  
13 term Piilu, do we? You have to say yes or no.

14 A No, you do not. Sorry.

15 Q I'm slipping into the same mode. We also don't have  
16 any reference to the TM at this point, do we?

17 A That's correct.

18 Q Thank you. I just have one other question and then we  
19 can break. Mr. Sorenson, at the time that this  
20 trademark opposition began there was essentially the  
21 Notice of Opposition filed and then there was some  
22 discovery. Do you recall receiving some discovery in  
23 the case? Do you understand what I mean by the  
24 term "discovery"? Rather, let me be more specific.

25 Do you remember receiving questions from our

1 office addressed to your legal counsel that required  
2 you to provide some input to provide answers on?

3 A Yes.

4 MR. KANE: That was my question. Okay.

5 THE WITNESS: Let him go.

6 BY MR. KANE:

7 Q Do you remember receiving some -- a document  
8 particularly called a Request for Admissions from  
9 Walters Gardens, or us on behalf of Walters Gardens,  
10 and in particular I'll direct your attention to one  
11 question: "Admit that the word Piilu is a name of a  
12 Clematis cultivar." Correct?

13 MR. BROOKEY: Well, that's --

14 MR. KANE: Right. Let's strike the question because it's  
15 not going in the right direction.

16 BY MR. KANE:

17 Q Do you also recall receiving a request for production  
18 of documents surrounding your use of the term Piilu in  
19 connection with the sale of plants?

20 A I don't remember the question specific, no.

21 Q Did you provide a number of documents that were in  
22 your possession that related to the use of the term  
23 Piilu in connection with the genus Clematis? That's  
24 what this whole dispute is about. Correct?

25 A Yes.

1 Q Do you recall in responding to those documents, that  
2 document request or the discovery in general, ever  
3 altering any documents prior to giving them to  
4 counsel?

5 A No, no altering. As is as they come out of the  
6 computer. I mean, we don't type anything any more.

7 Q In a version of a document that was produced in  
8 connection with this case there was a copy of a letter  
9 that's not on Pride of Place Plants letterhead, but  
10 addressed to the same individual with the same date,  
11 yet the section that I referred to in that paragraph  
12 where it says Clematis Piilu has been changed to read  
13 Clematis Kivso in single quotes Piilu TM. Do you  
14 remember ever making that change to the document?

15 MR. BROOKEY: There's so many problems with those questions.  
16 I'll strike the preparatory statement. Move to strike  
17 that. He's laid no foundation for the question.  
18 Doesn't have a copy of the document. Object to the  
19 characterization of what may have been changes or  
20 altered. If you want to show him the document,  
21 introduce it.

22 MR. KANE: What I'll do is ask him a question. If he says  
23 no, he doesn't recall it then I'll give him something  
24 to refresh his memory. If you want to stick to the  
25 strict Rules of Evidence here.

1 MR. BROOKEY: You're editorializing as to what the document is  
2 or does or says. So I don't think it's possible for  
3 him to answer the question the way you've framed it.

4 MR. KANE: Okay. Why don't you give me a few minutes here  
5 for lunch and we'll find the document and I'll present  
6 it to him. It's actually in the Pride of Place Plants  
7 documents.

8 (OFF-THE-RECORD DISCUSSION)

9 (PROCEEDINGS ADJOURNED AT 12:35 P.M.)

10 (PROCEEDINGS RESUMED AT 1:20 P.M.)

11 BY MR. KANE:

12 Q Mr. Sorenson, hopefully we'll have this concluded  
13 within the next hour. That's my goal. When we left  
14 off, Mr. Sorenson, we were reviewing exhibit number  
15 18. And I don't believe there was any question as to  
16 the authenticity of the original letter that's  
17 reflected in that copy. That's my characterization.  
18 It's an editorial.

19 My point is this, is that you've now had lunch  
20 and you've had a chance to think about what went forth  
21 this morning, and I'm curious if there's anything that  
22 you'd like to comment about this particular letter.

23 MR. BROOKEY: That's not a question. Do you want to ask a  
24 specific question about the letter?

25 BY MR. KANE:

1 Q Do you think that it mischaracterizes or been altered  
2 or does not represent an accurate copy of the  
3 original?

4 MR. BROOKEY: If you know.

5 THE WITNESS: Well, I just wondered where all of the -- we  
6 belong to the associations and we generally list all  
7 the associations that we belong to along the bottom.  
8 And whether --

9 BY MR. KANE:

10 Q Normally that would be there you would think then,  
11 right? If it's of any question I happen to have the  
12 original, it has the original blue ink signature in it  
13 and it's identical to what I have presented before  
14 you. If you want me to take the time I can get it  
15 again.

16 A That's my only comment.

17 Q I'll give it to you for review. It's what's been  
18 marked as WG 315, it is in blue and, again, the only  
19 difference in the document marked as WG 315 and what  
20 is shown as WG 0250 is the fact that 250 has some  
21 facsimile header at the bottom.

22 A And what's the difference here?

23 Q I'm saying that's the original. I just came across  
24 that.

25 A I see.

1 Q And rather than changing exhibit numbers I'm curious  
2 again if you have any reason for believing that what's  
3 shown in Exhibit 18 is inaccurate in any regard?

4 A All I can -- my comment is all I have.

5 Q Okay. And before we left for break my question to you  
6 was: Do you recall providing documents in response to  
7 some discovery requests that were served on your  
8 counsel and if you remember providing any documents  
9 that may have been altered in any way. And if you  
10 don't know, I'll take that as a don't know.

11 MR. BROOKEY: I think there were two questions there.

12 BY MR. KANE:

13 Q Okay. Strike the questions that are pending. Let me  
14 put it this way: Did you personally provide the  
15 documents in response to the discovery requests that  
16 were propounded in this case by Walters Gardens?

17 A Not entirely, no.

18 Q Who assisted you?

19 A I guess my wife and other members of the family but  
20 that would be it.

21 Q Okay. You mention that you don't originally -- you  
22 don't type documents. Just before the break I think  
23 that was the reference. Do you keep copies of  
24 documents/letters like this that are on letterhead  
25 that go out?

1 A Only in the computer.

2 Q So in the computer all you would see is the text, the  
3 letterhead is in a separate -- that's already  
4 preprinted. Is that correct?

5 A No, comes out of the printer.

6 Q So I'm looking at the Exhibit 18 this Pride of Place  
7 Plants logo and information at the top is printed at  
8 the same time that the letter is printed? Is that  
9 a yes?

10 A Yes.

11 MR. KANE: During the break we had some documents that are  
12 marked as exhibits, hopefully speed up the process,  
13 and I have before me what's been marked as Exhibit 19.  
14 (EXHIBIT 19: LETTER, DATED 17 SEPTEMBER 1998)

15 BY MR. KANE:

16 Q I'm going to present this to you. It has Pride of  
17 Place Plants, Bates number 027 in the lower right-hand  
18 corner. This was produced by your counsel in response  
19 to discovery requests. Does this document reflect the  
20 date of September 17th, 1998?

21 A Yes.

22 Q It does not contain the Pride of Place Plants header  
23 information that would be the letterhead information.  
24 Correct?

25 A That's correct.

1 Q It does not contain your signature at the bottom. Is  
2 that correct?

3 A That's correct.

4 Q Does it reflect your name? It does show Rick Sorenson  
5 at the bottom.

6 A That's correct.

7 Q Who was the letter addressed to?

8 A John Elsley.

9 Q I'm going to direct you to the fourth paragraph in  
10 that letter. Particularly the last sentence in the  
11 fourth paragraph where it says -- beginning with  
12 Clematis.

13 Can you explain the difference between that  
14 sentence in the letter that you're holding in your  
15 hand which has been marked as Exhibit 19 and what is  
16 represented as the original letter that you signed and  
17 sent on September 17th, 1998?

18 A No, I can't and we don't alter.

19 Q There is a difference. Correct?

20 A Yes, there is a difference all right.

21 Q In 1998 were you using the term Kivso in connection  
22 with Clematis?

23 A I don't know. I'd have to go back.

24 Q I actually think that you testified that you began  
25 using Kivso later on, substantially later on. Does

1                   that refresh your memory?

2 MR. BROOKEY:     Objection to that characterization of the prior  
3                   testimony but he can answer.

4 MR. KANE:         It's okay.

5 THE WITNESS:     Don't know.

6 BY MR. KANE:

7           Q     Do you recall when you -- this may be redundant, asked  
8                   and answered, but you do not recall when you began  
9                   using the term Kivso as a cultivar identification?

10          A     No, I don't.

11          Q     Okay. Let's see if I can get the order right because  
12                   I'm confused. This letter marked as Exhibit 18 as of  
13                   September 17th, 1998 indicates that you were at least  
14                   using Clematis Piilu as of that date. Correct?

15          A     Um-hum.

16          Q     And I believe we have testimony from you that now says  
17                   that you're using the cultivar name as Little Duckling  
18                   for that Clematis. Is that correct?

19          A     That is correct.

20          Q     Did Little Duckling come after or before the use of  
21                   the term Kivso?

22          A     After.

23          Q     Okay. So we went from Clematis Piilu to Clematis  
24                   Kivso Piilu in double quotes to Clematis Little  
25                   Duckling Piilu in double quotes. Does that sound

1 right in a general chronological sense?

2 MR. BROOKEY: I object that it's vague and ambiguous. To the  
3 extent that you're suggesting that Clematis Piilu was  
4 using Piilu as a cultivar name I object.

5 MR. KANE: I'm just using the sequence here because I'm  
6 using the letter of September 17th as the starting  
7 point -- not the starting point but at least a  
8 priority point, and I just want to understand the  
9 sequence in general chronological terms how the name  
10 change occurred. Kivso is not introduced here and  
11 neither is Little Duckling present in the letter of  
12 September 17th, 1998 marked as Exhibit 18.

13 THE WITNESS: We went so far as to even change the country.

14 MR. BROOKEY: There's no question pending.

15 THE WITNESS: Sequentially you're right, that's how it went.

16 BY MR. KANE:

17 Q Okay. On the letter that's marked as Exhibit 18 that  
18 I have it paperclipped with suggests to me that  
19 there's some attachments.

20 A Um-hum.

21 Q I don't have it in front of me but can we flip through  
22 them?

23 A Um-hum.

24 Q There's a press release which is marked as WG 0251?

25 A Um-hum.

1 Q And do you recall if that press release accompanied  
2 the letter of September 17th to Mr. John --

3 A No, I don't think it did. This was directed directly  
4 at John because I would have sought two to three --  
5 no, it wasn't attached.

6 Q Well, I'm looking at the bottom of the page and it has  
7 documents -- there's a facsimile header at the bottom  
8 of the page. I have the benefit of looking at it  
9 right side up, but does this indicate that this is a  
10 facsimile that came from you, Rick Sorenson, POP?

11 A Yes.

12 Q Dated 9/17/1998?

13 A Yes.

14 Q Okay. Then I direct you to the second page and  
15 there's also a facsimile header at the bottom of that  
16 page. Do you see that?

17 A Yes.

18 Q Does it also reflect 9/17/1998 as the date that that  
19 was sent?

20 A It does.

21 Q And it says it was page 5 in the upper right-hand  
22 corner, which would be your lower left-hand corner.

23 Do you agree with me so far?

24 A I do.

25 Q Okay. And then the third page again also refers --

1           there's an attachment that says Clematis Piilu in  
2           single quotes followed by the parentheses Patents  
3           Group. Correct?

4           A     Um-hum.

5           Q     And would you confirm that that was sent on a  
6           different date?

7           A     Yes.

8           Q     I don't know why I have them in that order. So at  
9           least as of September of 1998 you had the term Piilu  
10          in single quotes without any reference to any kind of  
11          trademark status?

12          A     Yes, that's correct.

13          Q     Okay. We touched on an organization earlier called  
14          the American Clematis Society. Do you recall that?

15          A     I know it, yes.

16          Q     Maybe I'm incorrect in actually whether or not we  
17          talked about it, but my point is you are familiar with  
18          the organization?

19          A     Yes.

20          Q     Do they have any -- have you had any correspondence  
21          with anybody at the American Clematis Society?

22          A     Yes.

23          Q     And has that correspondence related to naming  
24          conventions?

25          A     No.

1 Q Okay. Are you aware that they maintain a website?  
2 A Yes.  
3 Q Have you visited the website?  
4 A I have.  
5 Q Do you know if the Piilu brand of Clematis is listed  
6 on that website?  
7 A Yes.  
8 Q You mentioned earlier that you do some policing  
9 activities?  
10 A I talked to Edith about that.  
11 Q Yes. Edith. You mentioned Edith. Who is Edith?  
12 A Self-proclaimed president.  
13 Q Okay. So I suggest from your demeanour in your answer  
14 that the American Clematis Society is probably not an  
15 officially recognized or sanctioned organization in  
16 your opinion. I have to get an oral.  
17 A In my opinion that's true.  
18 Q Do you know Edith's last name?  
19 A No, I don't.  
20 Q Is she the person that apparently is maintaining this  
21 website?  
22 A I don't know.  
23 Q Okay. But she said she was like the self-proclaimed  
24 president?  
25 A I said that she was.

1 MR. KANE: Now, you have contacted her. You said you spoke  
2 to Edith about that and I've got here marked as  
3 Exhibit 20, and I'm just going to present that to you  
4 so we know what we're speaking about.

5 (EXHIBIT 20: CLEMATIS A TO Z AC SOCIETY)

6 BY MR. KANE:

7 Q Do you recognize that page?

8 A Um-hum.

9 Q Can you tell me what you believe it to be?

10 A Well, it's an interpretation of a plant which she  
11 seems to be determined to call Piilu.

12 Q Okay. If I may. So it says "Clematis A to Z." Does  
13 that suggest it's sort of like a listing of all the  
14 Clematis from A to Z?

15 A Um-hum.

16 Q And she has a name there -- she has a section or  
17 paragraph there and it says name Piilu. Is that  
18 correct?

19 A That's correct.

20 Q Does she provide any description of the plant that's  
21 associated with that name?

22 A She does.

23 Q Do you know if you provided that text?

24 A I didn't.

25 Q And so now I want to make sure -- have you contacted

1 her to try to correct how it's listed?

2 A Um-hum.

3 Q And what have you instructed her to do? I take that  
4 "um-hum" was a yes.

5 A Yes. Sorry. We talked about two things, one being  
6 this and both I felt needed improvement or change.

7 Q What was the second item?

8 A Golden Tiara. Clematis Golden Tiara.

9 Q That's another plant that you promote?

10 A Yes.

11 Q Sorry. Edith, have you met with her socially?

12 A No, I haven't.

13 Q Have you spoken to her by telephone?

14 A Yes.

15 Q How long have your conversations lasted? I'd like to  
16 try to feel for how long with Edith --

17 MR. BROOKEY: Again, we're getting really far afield of what's  
18 relevant and what's within the scope of the direct.  
19 Do you want to limit that to conversations regarding  
20 the Piilu?

21 MR. KANE: Yes, that was my intent. I want to talk about  
22 really the policing of the use of the term.

23 MR. BROOKEY: That's fair. I don't want to get beyond that.

24 THE WITNESS: Five minutes.

25 BY MR. KANE:

1 Q Did you ever follow up with any written correspondence  
2 to her?

3 A No, I didn't.

4 Q Did you ever threaten to take legal action against her  
5 if she didn't correct?

6 A No, I did not.

7 Q And policing the mark, you mentioned that -- you say  
8 it's done internally. I think that was the  
9 characterization. Maybe you can tell me how do you  
10 police the mark Piilu?

11 MR. BROOKEY: Objection. It's been asked and answered. You  
12 can explain it again.

13 MR. KANE: I wish I had the transcript in front of me and I  
14 wish my computer was working and I wouldn't have to  
15 ask it, but I think it's more expedient to go this  
16 way.

17 THE WITNESS: So answer it?

18 MR. BROOKEY: Go ahead and explain it again.

19 BY MR. KANE:

20 Q You mentioned something about your consignees.

21 A What we do on a semiannual basis is we send out a  
22 request for royalties. At that time we also request a  
23 list of the other consignees and the consignee list we  
24 use as a phone list and/or fax and/or letter, but it's  
25 a contact list. And what we do basically is phone up

1 the consignees to find out if things are okay. In  
2 general were the plants okay, in general was the  
3 service okay, thank you very much for putting some  
4 faith in that particular cultivar and oh, by the way,  
5 there's a couple more things you might want to look at  
6 down the road. So it's used as a sales tool and a  
7 contact tool. And it obviously enlarges our contact  
8 with the trade on a whole.

9 Q Do you send out any formal written notice instructing  
10 these consignees how to use the term Piilu in  
11 connection with the sale of that particular plant  
12 material? I'm asking in short do you ever send out  
13 any guidelines for these folks to follow?

14 A For the whole list of consignees?

15 Q Yes.

16 A No, it's too big. Some phone calls of ours are just  
17 too big.

18 Q Are you familiar with a nursery -- we were talking  
19 earlier about nomenclature and the scope of the  
20 horticultural industry. Are you familiar with a  
21 nursery by the name of J. Van Zoest, Z-O-E-S-T?

22 A Yes, I am.

23 Q Do you know where they're located?

24 A Um-hum. Boskoop, Holland.

25 Q And are they a grower of plant material?

1 A We represent a plant of theirs called My Angel.

2 Q What is the genus of that plant?

3 MR. BROOKEY: Objection. It's irrelevant.

4 MR. KANE: I want to know. I don't know what My Angel is.

5 THE WITNESS: A Clematis.

6 BY MR. KANE:

7 Q Because I notice you just use the shorthand  
8 reference.

9 A Just because you had it shining in your face there I  
10 thought you might have taken some minutes to look at  
11 what you had in front of you.

12 MR. KANE: Well, I do have something here which has been  
13 marked as Exhibit 21.

14 (EXHIBIT 21: CLEMATIS CATALOGUE 1999)

15 BY MR. KANE:

16 Q And it is a catalogue from J. Van Zoest and says  
17 Clematis Catalogue 1999 and indeed on the front cover,  
18 as you pointed out, there is this reference to My  
19 Angel which is a cultivar of Clematis. Correct?

20 A Um-hum.

21 Q Do you promote My Angel?

22 A No.

23 Q Do you know as of 1999 at least whether they were  
24 selling Clematis Piilu?

25 A No, I don't.

1 Q Do you know the geographic scope of their business?

2 A No, I don't.

3 Q Do you know if they ship into the United States?

4 A No, I don't. I don't know whether they --

5 Q Are you providing product for them to sell?

6 A No.

7 MR. KANE: Can we go back to the testimony referencing My  
8 Angel.

9 (OFF-THE-RECORD DISCUSSION)

10 (RECORD READ)

11 BY MR. KANE:

12 Q So you're handling, as I understand the answer to that  
13 question or your statement, maybe there wasn't a  
14 statement, but you said that you're handling material  
15 that they're selling. Is that correct?

16 A Um-hum.

17 MR. BROOKEY: Yes or no.

18 THE WITNESS: Yes. But as you're aware we don't have  
19 production facilities. It's all done on paper.

20 BY MR. KANE:

21 Q Do you have clients in the United States that are  
22 selling My Angel?

23 MR. BROOKEY: Objection. This is completely irrelevant and  
24 outside the scope of the direct. Are you about done  
25 talking about this plant that's not an issue?

1 MR. KANE: That plant is not an issue. I would just like to  
2 know if that plant is actually being sold in the  
3 United States, because he said he didn't know if they  
4 shipped that into the United States.

5 MR. BROOKEY: But that in itself is irrelevant, this whole  
6 line, but I'll let him answer the question, but let's  
7 get back to the cross-examination of the direct  
8 examination.

9 MR. KANE: This all goes to policing.

10 MR. BROOKEY: My Angel?

11 MR. KANE: No, Piilu.

12 MR. BROOKEY: Then let's talk about Piilu. He can answer that  
13 last question.

14 BY MR. KANE:

15 Q I direct your attention to page 24 of their catalogue  
16 on the left-hand side and has a column -- three  
17 columns, one marked by name, one marked by group and  
18 one marked FL, second word is colour, C-O-L-O-U-R.

19 A What do they --

20 MR. BROOKEY: There's not a question pending.

21 BY MR. KANE:

22 Q Do you see the term Piilu listed on that page 24,  
23 which is your left hand page?

24 A Um-hum.

25 Q Why don't you take a minute or two to take a look at

1 the catalogue. I don't know if you've seen this  
2 catalogue before or not. My question is have you seen  
3 this catalogue before?

4 A No, I haven't.

5 MR. BROOKEY: There's no other question pending.

6 MR. KANE: He's free to illustrate on a matter if he wishes.

7 MR. BROOKEY: You're free to ask a question. Why don't you ask  
8 one.

9 BY MR. KANE:

10 Q All right. Are you aware that they're selling  
11 Clematis Piilu?

12 MR. BROOKEY: Objection. Foundation.

13 MR. KANE: Just a question. I asked if he's aware if  
14 they're selling it and he shook his head no I believe  
15 and you have to give us an oral answer.

16 MR. BROOKEY: Objection foundation. You can answer the  
17 question.

18 THE WITNESS: Sorry, what was the question?

19 BY MR. KANE:

20 Q Do they appear from the catalogue that you have in  
21 your hands to be selling Clematis Piilu?

22 A Yes, they do.

23 Q Okay. Prior to today were you aware that they have  
24 been, at least as of 1999 in that catalogue, were  
25 offering Clematis Piilu for sale?

1 A Yes, I was.

2 Q And did you ever contact them about use of the term  
3 Piilu in connection with the sale of Clematis in the  
4 United States?

5 A Yes.

6 Q And what did you say to them?

7 A I'm not sure exactly what I said to them about Piilu,  
8 but I do recollect what I said to them about My Angel.

9 Q Okay. I'm going to direct your attention to the back  
10 cover. Do you see an illustration or photograph of a  
11 Clematis Piilu?

12 A Yes.

13 Q And how is the plant -- what's the reference at the  
14 bottom of that image?

15 MR. BROOKEY: Vague and ambiguous. Do you understand the  
16 question?

17 BY MR. KANE:

18 Q At the bottom of the image of the photograph there  
19 there's a name. Right?

20 A Yes.

21 Q And what is the name?

22 A Piilu.

23 Q Is there any trademark associated with it?

24 A No.

25 Q Is there any other designation that it's proprietary?

1           A     No.

2 MR. KANE:           Finished with that one. You can leave that in  
3 your stack there. I'm now going to present to you  
4 what's been marked as Exhibit 22, but before I do I  
5 have a question.

6                   **(EXHIBIT 22: ROSEVILLE FARMS CURRENT AVAILABILITY**  
7                   **LISTS)**

8 BY MR. KANE:

9           Q     Roseville Farms is one of your licensed growers. Is  
10 that correct?

11          A     He is.

12          Q     And he became a licensed grower as of when? Do you  
13 remember? Exhibit 3 said December of 2001. Is that  
14 about correct? Looking at the Growers Marketing  
15 Agreement which is applicants Exhibit 3.

16          A     Yes.

17          Q     I'm not sure of the source of this but I'm going to  
18 present to you two pages, WG 260, 261 in sequence  
19 marked as Exhibit 22. I'm going to ask if you've ever  
20 seen this before.

21          A     No, I haven't seen this before.

22          Q     Okay. You can put it down. I have no questions on  
23 it.

24                   In 1998 and particularly the end of that year  
25 December 17th, 1998, do you recall actually selling or

1 correction. Do you recall invoicing Wayside Gardens  
2 for three cultivars of Clematis?

3 A Yes.

4 MR. KANE: I have these in reverse order. I'm going to  
5 present to you what's been marked as Exhibit 23.

6 (EXHIBIT 23: 3-PAGE PRIDE OF PLACE PLANTS INVOICES)

7 BY MR. KANE:

8 Q It's a three-page document and it does contain some  
9 editing on it which is done in red.

10 MR. BROOKEY: Whose editing is that?

11 MR. KANE: Well, I would believe that it's probably not  
12 Mr. Sorenson's.

13 MR. BROOKEY: Is it yours?

14 MR. KANE: It's not mine.

15 BY MR. KANE:

16 Q These documents were produced to us by Wayside Gardens  
17 directly. It came from their records and so I must  
18 assume that the red is their notation. Actually the  
19 testimony on the origin of it is contained in the  
20 Chris Hansen testimony Deposition.

21 What three varieties, cultivars, plants were you  
22 selling?

23 A At that time?

24 Q Yes.

25 MR. BROOKEY: Object. Vague and ambiguous to the terminology

1                   used.

2 BY MR. KANE:

3           Q     I tried to use that interchangeably because I know if  
4                   I made a specific reference you might object. But  
5                   there are three plants that you sold. Correct?

6           A     Correct.

7           Q     And what three plants are they?

8           A     My Angel, Blue Light and Piilu.

9           Q     And this was in December of '98. Yes?

10          A     Yes.

11          Q     Did you have a response to that, that was the  
12                   affirmation to the time of the sale? Was it  
13                   December '98?

14          A     We don't actually sell to them. Ross Bergen and  
15                   Grootendorst do and we just facilitate them getting  
16                   into the United States by invoicing them from our  
17                   office. We don't see the plants, we just do the  
18                   paper. My Angel is also sold as Angelina.

19          Q     Okay. And at least as of -- going to refer to pages  
20                   WG 0320 and WG 0321, both invoices from Pride of Place  
21                   Plants to Wayside Gardens dated December 17th, 1998.

22                   The documents on their face say that you invoiced  
23                   them, you didn't sell them, but you invoiced them for  
24                   nine plants of My Angel Clematis, 'My Angel', those  
25                   are single quotes, followed by the T.M. So at least

1 as of December 17th, '98 you were claiming trademark  
2 rights in the term My Angel. Correct?

3 A Yes.

4 Q Followed by the listing of 'Blue Light' with TM. Is  
5 that correct? It's reflected there. How come you do  
6 not show TM with Piilu in that invoice as of December  
7 1998?

8 A I think the plant has always been a work in progress.

9 Q There's another invoice here which is the cover page,  
10 WG 0319. You invoiced a second sale to Wayside  
11 Gardens, this is July 20th, 1999. What, is Piilu  
12 still a work in progress there in terms of claiming  
13 trademark status?

14 A I think it's still a work in progress as we sit here  
15 today.

16 MR. KANE: I can leave this over here.

17 (EXHIBIT 24: LETTER DATED 25 NOVEMBER 1998)

18 BY MR. KANE:

19 Q I have a three-page document which has been marked as  
20 Exhibit 24. They appear in sequence and in my files  
21 simply because it's the way we received them and I'm  
22 going to present them to you. Have you seen these  
23 three pages before?

24 A Yes.

25 Q Okay. And can you please characterize the nature of

1                   that document and its attachments for me, please?

2 MR. BROOKEY:     Object.  It's vague and ambiguous.  If you  
3                   understand.

4 MR. KANE:         I'd like to have him explain what it is.

5 THE WITNESS:     Letter of Offering for sale.

6 BY MR. KANE:

7           Q     It originated from you at Pride of Place Plants?

8           A     Yes.

9           Q     Has your signature at the bottom.  Do you make  
10           reference to the term Piilu in that offering?

11          A     Yes.

12          Q     How is it spelled?

13          A     With one "I".

14          Q     I must assume that that was just probably an error.  
15                Right?  It's the only aberration I see.  The  
16                correspondence we've gone over was the correspondence  
17                to Wayside Gardens at least as of starting in November  
18                25th, 1998 with you having invoices in December of '98  
19                and '99.  Yet Exhibit 12, which is the Growers  
20                Marketing Agreement, do you remember when you  
21                concluded that negotiation?

22          A     Yes.

23          Q     Was it October of 2003?

24          A     They were sent two sets, one in the year 1999 and one  
25                in the year 2003.  And the reason that they didn't

1 send the '99s is because John Elsley was such a pig  
2 pen in his office, and he got fired in the meantime as  
3 a result of it, and so she asked me what copies should  
4 she send back because they found the copies that were  
5 sent to them originally.

6 Q You made reference to she. Do you remember the name  
7 of --

8 A The owner. I'll come up with a name in a minute.

9 Q That's okay. Somebody acting on behalf of the  
10 company?

11 A The owner. And she said that John just left, there  
12 was stuff all over the place, some of that must have  
13 been your agreements, I said yeah, I've been after  
14 your office for those agreements for four years.  
15 Nobody could ever find them but was always on the hunt  
16 for them.

17 And finally she decided to do it and found them  
18 in the last drawer remaining. So she said do you want  
19 the new ones or the old ones. I said I want the old  
20 ones, because it's the old ones that are important to  
21 me primarily because of the date showing the late  
22 1990s rather than the early 2000s that I'm keenly  
23 interested in because you've been acting irresponsibly  
24 in advertising a plant that you're licensed to grow/to  
25 sell.

1 Q Where were they doing their advertising?

2 A In their catalogue.

3 Q You can see that I have them in my hands, at least  
4 some colour copies right now. Right?

5 A Yes.

6 MR. KANE: I'm going to present to you a host of Exhibits  
7 25, 26, 27, 28, and 29.

8 (EXHIBIT 25: WAYSIDE GARDENS CATALOGUE 2000)

9 (EXHIBIT 26: WAYSIDE GARDENS CATALOGUE 2001)

10 (EXHIBIT 27: WAYSIDE GARDENS CATALOGUE 2002)

11 (EXHIBIT 28: WAYSIDE GARDENS CATALOGUE 2003)

12 (EXHIBIT 29: WAYSIDE GARDENS WEBSITE EXCERPT CLEMATIS  
13 PIILU)

14 BY MR. KANE:

15 Q What I would like to do is hand them to you  
16 individually and then we can confirm --

17 A Karen Jennings.

18 Q Here's Exhibit 25. It's not the entire collection as  
19 you can imagine. Have you seen their catalogues  
20 before?

21 A I've never seen them.

22 Q So you just told me that you thought that they were  
23 misusing the name in advertising.

24 A Came out of your request from them -- to them.

25 Q I'm sorry, I'm going to have to ask you to clarify. I

1 don't understand the answer. You apparently said that  
2 you learned that they were misusing the term Piilu.  
3 Correct?

4 A Your office said because they weren't using the TM in  
5 their advertising of the plant Piilu that they had  
6 then rendered that name generic. I wrote Karen and  
7 said, "Karen, what's the deal? You won't send me back  
8 my agreement, I'm getting hassled because you guys  
9 don't advertise it correctly, and you send me back an  
10 agreement that was made in 2003. The originals were  
11 all made up in 1999. Where is that?"

12 So I get on the phone with Chris and I said I  
13 want to know why the instructions in the 1999 copy say  
14 Clematis Piilu TM. He said if I would have known that  
15 -- we watch it very closely to protect the breeders  
16 and their agents. I said well, not in this case you  
17 didn't. So you're telling me a guy gets fired because  
18 he keeps a messy office, you find my stuff four years  
19 later, you get a letter from a lawyer which really  
20 prompts you to start digging, and then you get a  
21 letter from me who does and has been doing all kinds  
22 of half-assed illegal invoicing on your behalf and now  
23 you expect me to take the heat? No.

24 MR. BROOKEY: Let's take a break for a second.

25 MR. KANE: He's in the middle of answering a question.

1 MR. BROOKEY: He's finished answering.

2 MR. KANE: You just instructed him to finish the answer?

3 THE WITNESS: I'm tired.

4 MR. BROOKEY: He's finished the answer and there's not a  
5 question pending and he's obviously tired. We'll take  
6 just a two-minute break.

7 (PROCEEDINGS ADJOURNED AT 2:05 P.M.)

8 (PROCEEDINGS RESUMED AT 2:15 P.M.)

9 BY MR. KANE:

10 Q Where we left off was the policing of the mark with  
11 Wayside Gardens. That's where I was trying to go and  
12 I believe you just reflected that you'd been trying  
13 to -- that you commented to them that because they  
14 didn't sign the -- the earlier agreement rather than  
15 the 2003 agreement that they had been improperly using  
16 the Piilu name. Is that correct?

17 A That's correct.

18 Q Do you remember when you had that conversation? Did  
19 you say it was July of 2004 or 2003?

20 A Four.

21 Q Since that conversation do you know if they have taken  
22 any action to --

23 A I don't know.

24 Q I'll tell you what, I've had all these catalogues  
25 marked as exhibits in advance and you say you've never

1           seen them. I'm just going to present them right in  
2           front of you, you don't need to look at them, I just  
3           want to make sure that they're in order of some kind.  
4           They actually are just in sequence there.

5           I have here what's been previously marked as  
6           Exhibit 29, which is a copy of the Wayside Gardens  
7           website and it's dated May 26th, 2004. So this was  
8           made before or after your conversation with  
9           Ms. Jennings about the agreement?

10          A    I don't know.

11          Q    All right. Well, again, I'm just going to put it in  
12               front of you. At least as of May 26th, 2004 based on  
13               that copy from the website of Wayside Gardens do you  
14               see that they have conformed to your demands?

15          A    No, they haven't.

16          Q    Okay. You mentioned that a company by the name of  
17               Zelenka Nursery is also one of your licensees. Is  
18               that correct?

19          A    That's correct.

20   MR. KANE:        I have a shiny two-page document which has been  
21                        marked as Exhibit 30.

22                        **(EXHIBIT 30: CLEMATIS SHEET, BATES WG 0313)**

23   BY MR. KANE:

24           Q    And our Bates number WG 0313 on just one side. I'm  
25               going to ask if you've ever seen this piece of

1 literature before.

2 A Yes, I have.

3 Q Is it indeed from Zelenka Nurseries?

4 A Yes.

5 Q Do they advertise in that piece of literature product  
6 that you have promoted, Clematis product?

7 A Yes.

8 Q In particular is the variety Piilu listed on that  
9 piece of literature?

10 A Yes.

11 Q Do you see it -- which side is it on? The opposite  
12 side. It's right there. It's on the page opposite to  
13 that containing the Bates number. Do they also make  
14 reference -- I see reference to it on the first page  
15 as well.

16 A Um-hum.

17 Q And it's under the heading by the name of "common  
18 name." Did you object to their use of that listing?

19 A I don't think I ever noticed it before, so no.

20 Q Do you know when this piece of literature was  
21 produced?

22 A 2001 I believe.

23 Q Do you know if they're still using that literature?

24 A I don't know.

25 Q Would you have any reason to believe that they are

1 not?

2 A Yes.

3 Q Would it change your mind if I told you that I just  
4 had that delivered to me at the time that that Bates  
5 number is in sequence, which would be 2003?

6 A Would it surprise me?

7 Q Yes.

8 A No.

9 Q Are you familiar with two individuals by the name of  
10 Mary Toomey and Everett Leeds?

11 A Yes.

12 Q And what context have you become familiar with their  
13 names?

14 A I know Everett.

15 Q Is he in the growing business?

16 A Not that I'm aware of.

17 Q Does he take a fancy in horticulture?

18 A Um-hum.

19 MR. BROOKEY: Objection. Calls for speculation. He can answer  
20 it, but answer it orally.

21 THE WITNESS: He has a very nice garden, that's all I know  
22 about his role in agriculture/horticulture.

23 BY MR. KANE:

24 Q So it's perhaps more of a very nice hobby for him.  
25 He's a gardener.

1 MR. BROOKEY: Same objection.

2 MR. KANE: If you know.

3 BY MR. KANE:

4 Q Have you met or do you know Mary Toomey?

5 A No, I haven't met her.

6 Q Do you know if they've -- do you know them as  
7 coauthors of a book?

8 A Yes.

9 MR. KANE: I have what's been marked as Exhibit 31 and this  
10 is just photocopies of certain pages.

11 (EXHIBIT 31: ILLUSTRATION ENCYCLOPEDIA OF CLEMATIS)

12 BY MR. KANE:

13 Q Does that look like copies from the book that  
14 Ms. Toomey and Mr. Leeds have authored?

15 A Yes, it does.

16 Q And the subject matter of the book, is it restricted  
17 to a particular genus of plants? Is it related to  
18 Clematis?

19 A It is.

20 Q Do you know when that book was published?

21 A Two years ago.

22 Q Do you know if it contains any reference to Clematis  
23 Piilu?

24 A It does.

25 Q And did they contact you regarding any of the content?

1 A No, they did not.

2 Q Do you know where they gathered their information  
3 concerning --

4 A No, I don't.

5 Q Do you know if they follow the trademark designation  
6 for the term Piilu in their discussion of the plant?

7 A No, they don't.

8 Q Have you ever contacted them in the two years since  
9 you've been aware of the publication that it's  
10 improper?

11 A Yes, I have.

12 Q Has it been oral?

13 A Yes.

14 Q Did you follow it up with them in writing?

15 A No.

16 Q Are you familiar with a person by the name of John  
17 Howells?

18 A Yes.

19 Q How do you know the name John Howells? Have you met  
20 the gentleman?

21 A No.

22 Q Do you know him as an author?

23 A I do.

24 Q Do you own any of his books?

25 A No, I don't.

1 Q Is he English?

2 A I believe he is.

3 MR. BROOKEY: Irrelevant.

4 MR. KANE: I meant in the terms of is he UK or does he  
5 reside in the United States? This is marked as  
6 Exhibit 32.

7 (EXHIBIT 32: CHOOSING YOUR CLEMATIS BY HOWELLS)

8 THE WITNESS: I don't know where he resides.

9 MR. KANE: It's okay.

10 BY MR. KANE:

11 Q Have you seen this book before?

12 A No, I haven't.

13 Q Are you familiar with the name of Guido, G-U-I-D-O,  
14 T-O-O-V-E-R-E?

15 A I am.

16 Q And how do you know the name of Mr. Toovere?

17 A I got notice of his recent passing.

18 Q Did you ever read any of his publications?

19 A Never.

20 Q That's assuming that you know that he had some  
21 publications. Lack of foundation.

22 A I don't know of any.

23 Q Do you know if he was acquainted with the Kivistik  
24 family?

25 A He was.

1 Q So was he Estonian? I'm just curious.

2 MR. BROOKEY: This is completely irrelevant.

3 MR. KANE: I'm just trying to make the man relax, be  
4 comfortable. He's shaking his head yes, I think he  
5 indicated that knew that he was Estonian.

6 MR. BROOKEY: Why don't you get back to the cross-examination  
7 limited to the scope of the direct.

8 BY MR. KANE:

9 Q Do you know if he was a nursery man?

10 A I don't know actually.

11 MR. KANE: This has been marked as Exhibit 33. I'm just  
12 curious if you happen to recognize that.

13 (EXHIBIT 33: LIST CATALOGUE OF LARGE FLOWERED  
14 CLEMATIS)

15 THE WITNESS: No, I don't recognize that.

16 BY MR. KANE:

17 Q Okay. Are you familiar with a nursery by the name of  
18 Joy Creek Nursery?

19 A Yes.

20 Q Do you know where they're located?

21 A Yes.

22 Q Have you had any dealings with the folks at Joy Creek  
23 Nursery?

24 MR. BROOKEY: With regard to Piilu?

25 MR. KANE: With respect to horticulture in general.

1 MR. BROOKEY: I object. It's irrelevant and overly broad.

2 MR. KANE: We'll get to it.

3 THE WITNESS: No.

4 BY MR. KANE:

5 Q Have you had any conversations with them regarding  
6 Clematis?

7 A Yes.

8 Q Do you remember when you first spoke to anyone at Joy  
9 Creek Nursery regarding Clematis?

10 A Yes.

11 Q Can you tell me about the approximate date?

12 A The day before you guys showed up at his place.

13 Q You mean the day before we took his Deposition?

14 A The day before they took his Deposition.

15 Q Did you ever have any conversations with them in 1998?

16 A I don't recall.

17 Q Do you recall if you ever visited their facility?

18 A I've never been there.

19 Q Did you read the Deposition transcript of a  
20 Mr. Maurice Horn?

21 A I started to.

22 Q Do you recall ever making a visit to Skapoose, Oregon  
23 in 1997?

24 MR. BROOKEY: Are we going to get back into --

25 MR. KANE: I'm trying to feel --

1 MR. BROOKEY: It's not a discovery Deposition. It's not the  
2 time to try to. Would you please limit your questions  
3 to the scope of the direct examination.

4 MR. KANE: It's relating to policing is where this is all  
5 trying to.

6 BY MR. KANE:

7 Q Do you know that Joy Creek Nursery has been selling  
8 Clematis Piilu for some time?

9 MR. BROOKEY: Objection. Foundation.

10 MR. KANE: I'm asking just does he know.

11 MR. BROOKEY: You're asking if he knows that they sell. That's  
12 different from asking whether he knows whether they  
13 sell.

14 BY MR. KANE:

15 Q Do you understand the question, Mr. Sorenson?

16 A I understand the question. I think I understand the  
17 question but I do not know whether they have been  
18 selling it, but I'm interested in the fact that they  
19 are.

20 Q Mr. Sorenson, have you taken any more of your  
21 medication since we broke for lunch? No?

22 A No. You can put this down, but I sure wish I could.

23 MR. KANE: I've just passed you what's been marked as  
24 Exhibit 34, which is a web page from Joy Creek  
25 Nursery.

1 (EXHIBIT 34: JOY CREEK NURSERY WEB PAGE)

2 BY MR. KANE:

3 Q Have you ever heard of a company by the name of White  
4 Flower Farm?

5 A Yes.

6 Q And in what context have you heard their name?

7 A Well, we're in dealings with them at the moment.

8 Q "In dealings" do you mean that you're trying to have  
9 them carry the products that you promote through --

10 A They contacted me.

11 Q Do you know if they're, I think you use the term  
12 consignee, of any of your licensees?

13 A No.

14 MR. KANE: I have what's been marked previously as exhibit  
15 number 35

16 (EXHIBIT 35: WHITE FLOWER FARM WEB PAGE)

17 BY MR. KANE:

18 Q This is a copy of the web page from White Flower Farm  
19 and it's regarding a catalogue and it's dated 2002.  
20 Do you see reference to the term Piilu?

21 A I do.

22 Q There's a series of letters following the term  
23 P.P.A.F. Do you know what P.P.F.A. stands for?

24 A I do.

25 MR. BROOKEY: Objection. Calls for speculation to the extent

1                   it's used by a third party, but he's answered.

2 BY MR. KANE:

3           Q     Is it a standard term used in the industry in your  
4                   experience?

5           A     I don't think it's standard.  It's not used everyday,  
6                   no.

7           Q     Do you know what it's an abbreviation for?

8           A     Yes.

9           Q     Can you please tell me?

10          A     Plant patent applied for.

11          Q     How would they know if -- how would you know, I mean  
12                   if you saw that -- I'm just throwing this out for  
13                   speculation.

14 MR. BROOKEY:    If it's for speculation, it's --

15 BY MR. KANE:

16          Q     Says patent applied for.  Why would they be claiming  
17                   that the plant patent has been applied for?

18 MR. BROOKEY:    On it's face calls for speculation.  It's  
19                   irrelevant and beyond the scope of a direct  
20                   examination.

21 BY MR. KANE:

22          Q     Have you ever represented in your marketing materials  
23                   that there's been a plant patent applied for for the  
24                   Clematis Piilu?

25 MR. BROOKEY:    Object.  It's irrelevant, beyond the scope of the

v

1                   direct but he can answer.

2 MR. KANE:           Again goes to the policing issue.

3 THE WITNESS:       Because of the work in progress there was a plant  
4                   patent applied for, since withdrawn.

5 BY MR. KANE:

6           Q       Since when?

7           A       Since withdrawn.

8           Q       Do you know when the plant patent was filed?

9           A       No.

10 MR. BROOKEY:       Again, objection. It's irrelevant and beyond the  
11                   scope of the direct.

12 MR. KANE:           I'm sorry, I appreciate your objection and trying  
13                   to protect him, but your first exhibit referred to  
14                   certain proprietary rights and by introducing that you  
15                   open up the plant patents, you open up the trademark,  
16                   you open up all sorts of areas about exclusive rights  
17                   and I'd like to know what he owns and that is all I'm  
18                   going to say about the issue.

19 MR. BROOKEY:       Well, doesn't really matter what you say about  
20                   the issue. It matters what the board says. I made  
21                   the objections, but I'll let him answer and we can  
22                   deal with it later.

23 BY MR. KANE:

24           Q       That's fine. Do you know when the application was  
25                   filed, Mr. Sorenson?

1           A     I don't.

2 MR. BROOKEY:     Objection.  It's irrelevant, beyond the scope of  
3                   the direct.

4 BY MR. KANE:

5           Q     Do you continue to promote literature that has the  
6                   P.P.A.F. designation?

7           A     No.

8 MR. BROOKEY:     Stating same objection.  Now it's overly broad  
9                   because it's not limited to what's at issue here.

10 MR. KANE:        Goes to your advertising and that again you  
11                   opened up.

12 MR. BROOKEY:     No, you did not limit that to the Piilu plant at  
13                   issue.

14 MR. KANE:        It's all plant limited and the board will  
15                   understand that.

16 BY MR. KANE:

17           Q     Let me just rephrase the question.  Do you know if  
18                   you're still using P.P.A.F. in regards to Clematis  
19                   Piilu in your advertisements?

20 MR. BROOKEY:     It's still objectionable.  It's irrelevant and  
21                   beyond the scope.  He can answer.

22 BY MR. KANE:

23           Q     In conversations with your counsel have they informed  
24                   you that it's improper to designate that a plant  
25                   patent is pending on a product when indeed it is not?

1           That's a yes or no.

2 MR. BROOKEY:    No, that is not a yes or no. That is per se by  
3           definition asking for the content of a communication  
4           between an attorney and his client. He's obviously  
5           instructed not to answer that.

6 MR. KANE:        Okay. Question is out and you don't have to  
7           answer.

8 MR. BROOKEY:    That's right, he doesn't.

9 BY MR. KANE:

10           Q     Mr. Sorenson, why did you seek to obtain a trademark  
11           on the term Piilu?

12 MR. BROOKEY:    Again, he can answer that to the extent he  
13           doesn't disclose the content of privilege or work  
14           product communications.

15 MR. KANE:        I'm asking -- the question was quite specific to  
16           his intent. Not counsel's intent.

17 MR. BROOKEY:    Subject to the objection, he can answer.

18 THE WITNESS:    Well, I think we've gone over that before but was  
19           to protect the proprietary rights, ours and the  
20           breeder's.

21 BY MR. KANE:

22           Q     Wasn't it really a means of trying to garner revenues  
23           for the Kivistik family?

24 MR. BROOKEY:    Objection. It's irrelevant, beyond the scope of  
25           the direct.

1 BY MR. KANE:

2 Q The question is there. He's stated his objection. If  
3 you have an answer to the question I'd appreciate it.  
4 You have no answer?

5 A It wasn't there to garner funds for anybody.

6 Q You testified earlier that you have an agreement with  
7 the Kivistiks concerning the management of -- that  
8 there's several varieties of Clematis. Is that  
9 correct?

10 A Yes.

11 Q What is the nature of the agreement in the sense of --  
12 if I can characterize this, and you can tell me  
13 whether I'm wrong or right, you had been authorized by  
14 the Kivistiks to authorize others in this country to  
15 sell Clematis Piilu. Correct?

16 A To sell Clematis Little Duckling, yes.

17 Q Okay. Piilu means Little Duckling. That's the  
18 translation.

19 MR. BROOKEY: Well, I don't think that necessarily has been  
20 established, and you can smirk all you want.

21 MR. KANE: It's okay. I think it has been established.

22 MR. BROOKEY: Well, think again.

23 MR. KANE: I asked him if he knew what Piilu meant and he  
24 said Little Duckling.

25 MR. BROOKEY: You didn't lay a foundation for that question.

1 MR. KANE: I don't need a foundation. This is not the trial  
2 court. This is an administrative proceeding and  
3 they'll look through a lot of that.

4 MR. BROOKEY: I understand that. I'm sure they'll look through  
5 your familiarity with --

6 THE WITNESS: I'm sure --

7 MR. BROOKEY: There's no question pending.

8 BY MR. KANE:

9 Q What is your financial arrangement with the Kivistiks  
10 in terms of this management deal?

11 MR. BROOKEY: That's irrelevant, proprietary beyond the scope  
12 of the direct. He's instructed not to answer that.

13 MR. KANE: I'm sorry, you raised the issue when you talked  
14 about managing on behalf of the Kivistiks. I'd like  
15 to know what the financial arrangement is.

16 MR. BROOKEY: My instruction is not to answer.

17 BY MR. KANE:

18 Q Your documents say that you produce or give them 50  
19 percent of the royalties that you receive. Is that  
20 true?

21 MR. BROOKEY: Which documents are you referring to?

22 MR. KANE: Royalties on behalf of the sale of Kivistik  
23 collection plants.

24 MR. BROOKEY: Which documents are you referring to that  
25 supposedly say that?

1 MR. KANE: It's documents that you've produced.

2 MR. BROOKEY: Objection. He hasn't laid a foundation for that  
3 question.

4 MR. KANE: They are before the trademark trial appeal board  
5 on the Notice of Reliance, and if you didn't object to  
6 them, they're on the record.

7 MR. BROOKEY: You haven't laid a foundation for the question.  
8 To the extent possible you can answer.

9 THE WITNESS: No, that's not the financial set up.

10 BY MR. KANE:

11 Q When did you first meet the Kivistiks?

12 MR. BROOKEY: Objection. It's irrelevant, beyond the scope of  
13 the direct.

14 MR. KANE: Goes to the contractual arrangements and the  
15 proprietary rights that he apparently is continuing to  
16 receive.

17 MR. BROOKEY: No, it doesn't go to proprietary rights. The  
18 financial arrangement we've established is  
19 objectionable, so I don't think there's any reason for  
20 him to answer that.

21 BY MR. KANE:

22 Q I think you indicated earlier that you went to Europe  
23 after September of 1998. Is that correct?

24 A I've been to Europe quite a few times since then.

25 Q Was that when you first met the Kivistiks in person?

1           A     No.

2           Q     Was it earlier?

3           A     Yes.

4           Q     How much money have you spent in actually policing the  
5                 mark Piilu?

6           A     I don't know.

7           Q     How much time have you spent since the filing of the  
8                 application policing the mark Piilu?

9           A     I think a few hours a week.

10          Q     And have you produced documents which evidence your  
11                 policing of the mark Piilu?

12          A     No.

13          Q     Do you have the understanding that the discovery  
14                 requests that were filed in this case need to be  
15                 supplemented from time to time when documents are  
16                 relevant to a particular question that's been asked?  
17                 Are you aware of that?

18   MR. BROOKEY:     I'll object.  There's no foundation to that  
19                     question.

20   MR. KANE:         We talked about discovery earlier.  I think he  
21                     knows what I'm talking about.

22   THE WITNESS:     No, I don't actually.

23   BY MR. KANE:

24           Q     Okay.  You do know that there were discovery requests  
25                 propounded in connection with this case.  Correct?

1           Discovery requests meaning questions, admissions,  
2           requests for documents that related to the Piilu  
3           matter. You're shaking your head.

4           A     Yes, I recall that, yes.

5           Q     And do you know that there was a continuing obligation  
6           to provide documents that relate to those questions?  
7           I'm just asking if you know.

8   MR. BROOKEY:     Again, there's no foundation that that is true.  
9           There's no continuing obligation to provide responses  
10          to discovery requests that were objected to and  
11          objectionable. For instance, there is no foundation  
12          for the question. I think it's impossible to answer.  
13          Certainly impossible to answer without breaching  
14          attorney/client privilege. If he has some independent  
15          knowledge and he can make sense of your question,  
16          which I can't, he can answer it.

17   MR. KANE:        You're counsel. I'm sure you can answer the  
18          question. Have you read the trademark trial and  
19          appeal board rules and procedures?

20   MR. BROOKEY:     Is that question directed to the witness?

21   MR. KANE:        It's directed to you actually.

22   MR. BROOKEY:     Why don't you ask the witness a question? I  
23          would appreciate it if you would have started off in  
24          your professional demeanour and stop the smirking and  
25          take a moment to learn how to control yourself and

1                   we'll take another break.

2 MR. KANE:           I'm doing actually quite well here, thank you  
3                   very much, and if you can't handle the heat get out of  
4                   the kitchen, pal. That's what it is.

5 MR. BROOKEY:       Is that on the record?

6 MR. KANE:           It's on the record.

7 MR. BROOKEY:       Then again, I think you do need a couple of  
8                   minutes to regain your composure.

9                   **(PROCEEDINGS ADJOURNED AT 2:43 P.M.)**

10                   **(PROCEEDINGS RESUMED AT 2:50 P.M.)**

11 BY MR. KANE:

12           Q       I'm just going to sort of wrap things up here,  
13                   Mr. Sorenson. I hope after the break that you're duly  
14                   refreshed and we can move on.

15                   A lot of questions have been asked regarding the  
16                   term Piilu, and I just want to confirm that the term  
17                   Piilu is a name that is used in association with a  
18                   specific cultivar of Clematis. Is that true?

19           A       No, it's false.

20           Q       It is not used with a specific cultivar of Clematis?

21           A       It's false.

22           Q       Do you use the term Piilu on other cultivars of  
23                   Clematis?

24           A       No.

25           Q       If you do not use it with other cultivars of Clematis,

1           how many cultivars of Clematis is the name Piilu  
2           associated with?

3           A     One.

4           Q     And is that one cultivar -- withdrawn.

5                     This relates to nomenclature and naming  
6           conventions that you were asked questions about  
7           earlier. We talked about the Royal Horticultural  
8           Society briefly/sporadically. Do you know if the  
9           Royal Horticultural Society is the international  
10          registration authority for recognizing cultivars of  
11          Clematis?

12   MR. BROOKEY:    I'm going to object. Lacks foundation and to the  
13                     extent it calls for a legal conclusion, he can  
14                     answer.

15   THE WITNESS:    I don't know which -- I don't know.

16   BY MR. KANE:

17           Q     Okay. Did you read the answer to the answers to  
18           Interrogatories that were prepared by your counsel  
19           prior to the time that they were mailed/sent in?

20           A     Briefly.

21           Q     Do you remember signing a verification that says:

22                     "I, Rick Sorenson, declare that I  
23                     am the officer of Pride of Place  
24                     Plants and that I have read the  
25                     foregoing Applicant's responses to

1                   Opposer's first set of  
2                   Interrogatories and that I either  
3                   know of my own knowledge or am  
4                   informed and believed that the  
5                   matters stated therein are  
6                   true."?

7 MR. BROOKEY:     Again, this is beyond the scope of the direct,  
8                   unless you're going to tie it into something specific,  
9                   he can answer that question.

10 THE WITNESS:    I spoke to legal counsel --

11 MR. BROOKEY:    I'm going to caution you not to disclose --

12 MR. KANE:       Counsel, are you coaching the witness here in his  
13                   answer?

14 MR. BROOKEY:    No. And would you stop making that suggestion.  
15                   It's offensive and unprofessional. What I'm doing is  
16                   cautioning him not to disclose the content of  
17                   attorney/client communications. I'm sure you would  
18                   agree that that's not a proper area of inquiry.

19 MR. KANE:       Okay.

20 BY MR. KANE:

21           Q     Mr. Sorenson, did you meet with counsel yesterday?

22           A     Yes.

23           Q     Did you discuss the subject matter of this meeting  
24                   today, this Deposition?

25 MR. BROOKEY:    You know that has nothing to do with the direct

1 examination.

2 MR. KANE: You may answer.

3 MR. BROOKEY: No, he may not. Let's stick to cross-examination  
4 on the questions that were asked on direct  
5 examination. I'm asking four hours to do that and  
6 effectively you're doing this with a witness that is  
7 ill and on pain medication is deeply offensive. So if  
8 you don't have any further questions that relate to  
9 the direct examination then we can move on to  
10 redirect.

11 BY MR. KANE:

12 Q Relating to enforcement and policing of your  
13 proprietary rights, you'd mentioned that an  
14 application for patent had been filed and withdrawn.  
15 I think you had offered testimony to that effect. Do  
16 you remember who you listed as the inventory?

17 MR. BROOKEY: Objection. It's irrelevant. Beyond the scope of  
18 direct.

19 BY MR. KANE:

20 Q Did you list yourself as the inventory?

21 MR. BROOKEY: Same objections. Don't answer. Also point out  
22 that patent applications are confidential.

23 BY MR. KANE:

24 Q They were actually requested in this matter and they  
25 were asserted that they did not exist and that no

1           patent application had ever been applied for.

2 MR. BROOKEY:     Do you have a question?

3 MR. KANE:        This is directed to you, Counsel, if you --

4 MR. BROOKEY:     I'm not going to answer questions directed to  
5                   me. This is not my Deposition. This is your  
6                   cross-examination of this witness limited to the scope  
7                   of the direct examination. It now seems to me that  
8                   you're out of those questions.

9 MR. KANE:        Are you withholding evidence in this case?

10 MR. BROOKEY:    Would you stop the ad hominem attacks, the  
11                   improper accusations, the smirking and the highly  
12                   unprofessional --

13 MR. KANE:        If the fact that I'm having fun and appear to be  
14                   smiling you're characterizing as smirking, if you find  
15                   that offensive, I truly regret that you're so easily  
16                   offended. As counsel you're supposed to have fairly  
17                   thick skin and that shouldn't bother you.

18 MR. BROOKEY:    I have fairly thick skin, but it does bother me,  
19                   yes, that you are dragging out this proceeding and  
20                   taking advantage of a witness' poor health. I'll ask  
21                   you one more time, do you have any questions on  
22                   cross-examination relating to the scope of the direct  
23                   or are you ready for me to redirect?

24 MR. KANE:        I will continue. You may terminate the  
25                   Deposition if you think that I'm abusing the

1 situation.

2 MR. BROOKEY: You are abusing it and we're very close to  
3 terminating it, so why don't you finish?

4 BY MR. KANE:

5 Q Mr. Sorenson, did you produce copies of any pending  
6 patent application to counsel in response to discovery  
7 requests in this case?

8 MR. BROOKEY: Object. It's beyond the scope of the direct  
9 examination.

10 BY MR. KANE:

11 Q When you visited the Kivistik farm -- actually, when  
12 was your first visit to the Kivistik farm?

13 MR. BROOKEY: Object. That's already been asked and objected  
14 to as irrelevant and beyond the scope of the direct.

15 MR. KANE: I'm sorry, this does relate to his dealings in  
16 obtaining any proprietary rights the Kivistiks may  
17 have had and I am entitled to explore that option.

18 BY MR. KANE:

19 Q So if you don't mind, Mr. Sorenson, I would like to  
20 have you recount to me the dates that you visited the  
21 Kivistik farm concerning the promotion of Clematis  
22 Piilu.

23 MR. BROOKEY: It's beyond the scope of the direct examination.  
24 If you can remember a date, I guess you can tell it to  
25 him.

1 THE WITNESS: I can't remember.

2 BY MR. KANE:

3 Q Do you remember approximately?

4 A Some time prior to the death of Mr. Kivistik.

5 Q And when did he pass away?

6 MR. BROOKEY: Same objection. You can answer if you recall.

7 THE WITNESS: I don't know. Should know but I don't know.

8 BY MR. KANE:

9 Q Did you negotiate this acquisition of exclusive rights  
10 with Uno Kivistik?

11 A No.

12 MR. BROOKEY: Same objections.

13 THE WITNESS: No.

14 Q So you negotiated these with -- was it Ali Kivistik?

15 A Taavi.

16 Q Taavi is the wife?

17 MR. BROOKEY: Let me object. These are all objectionable as  
18 irrelevant and beyond the scope of the direct  
19 examination.

20 BY MR. KANE:

21 Q Did Mr. Kivistik pass away in 2002?

22 MR. BROOKEY: Same objections.

23 THE WITNESS: '98.

24 BY MR. KANE:

25 Q Passed away in '98. I was off. When you visited the

1 Kivistik farm regarding the promotion of the  
2 various -- the Piilu brands of Clematis that they were  
3 growing, did you visit them alone or with a group of  
4 individuals?

5 MR. BROOKEY: You know, that's enough. It's completely  
6 irrelevant and way beyond the scope of the cross.  
7 I've been patient but I'm not going to let him answer  
8 any more of these questions that have nothing to do --

9 MR. KANE: Are you instructing him not to answer?

10 MR. BROOKEY: I'm instructing him not to answer these questions  
11 that are beyond the scope of the direct examination,  
12 that's right, and that are irrelevant. You had your  
13 chance to take a discovery Deposition on written  
14 questions, you chose not to do that, this is not your  
15 chance to take a make-up test.

16 MR. KANE: This goes to the Growing Marketing Agreements,  
17 every one of them, eight of which you paraded before  
18 the witness here this morning.

19 MR. BROOKEY: You can make that argument to the board if you  
20 like.

21 BY MR. KANE:

22 Q We've done. Now, would you please answer the  
23 question. When did you negotiate orally with the  
24 Kivistik family acquisition of the exclusive rights to  
25 the Clematis Piilu plant?

1 MR. BROOKEY: Hold on. I wish we were videotaped because I  
2 want the record to reflect that Mr. Kane raised his  
3 voice to this witness, asked him a question that had  
4 effectively already been objected to on a line of  
5 questions that had been objected to. He's berating  
6 the witness, he's badgering the witness, he's  
7 harassing the witness, he's taking advantage of the  
8 witness' illness. It's been a very long day. If you  
9 don't have any questions relating to the direct  
10 examination then let's move on to redirect and finish.

11 MR. KANE: I'm sorry, this is my cross-examination.

12 MR. BROOKEY: I've given you plenty of leeway. I'm not giving  
13 you any more.

14 MR. KANE: Thank you. Appreciate that discourse on the  
15 record.

16 MR. BROOKEY: You're welcome.

17 BY MR. KANE:

18 Q Now, Mr. Sorenson, with respect to the exclusive  
19 rights that you claim to have obtained in Canada and  
20 the United States, namely North America, when did you  
21 have the discussions with the Kivistik family to  
22 obtain those rights?

23 MR. BROOKEY: The same objections on every basis. Go ahead and  
24 answer.

25 BY MR. KANE:

1 Q Are these rights imaginary?

2 MR. BROOKEY: That's argumentive in addition to all the other  
3 -- objectionable for all the other reasons.

4 MR. KANE: You won't let the witness answer. You're not  
5 going to let him give the answer to my question.

6 MR. BROOKEY: Ask a question that's related to the scope of the  
7 direct examination.

8 MR. KANE: This does relate to his rights. He's claiming  
9 proprietary rights in the term Piilu, Counsel. I want  
10 to know where he obtained those rights.

11 MR. BROOKEY: And I want you to take a proper deposition,  
12 properly limited to cross-examination.

13 MR. KANE: Off the record.

14 (OFF-THE-RECORD DISCUSSION)

15 MR. BROOKEY: Mr. Kane asked to go off the record so that he  
16 could curse at me using a four letter word beginning  
17 with "F" followed by the word "you," followed by  
18 "pal." That's improper on the record, it's improper  
19 off the record. Whether you're an attorney or whether  
20 you're the vice-president of the United States, it's  
21 not appropriate. So I'm ready to do my redirect if  
22 you're finished with your cross-examination.

23 MR. KANE: I suggest you take the witness and terminate the  
24 Deposition because you're not letting him get to my  
25 questions on cross-examination and these are relevant

1           questions.  If you continue to be obstructionist --  
2           actually that's the term I'd like to use.

3 MR. BROOKEY:     Well, it's better than the term you used when we  
4           were off the record.

5 MR. KANE:         Well, you know, you call a shoe a shoe when you  
6           see it.  Okay.

7 BY MR. KANE:

8           Q     Mr. Sorenson, you mentioned that you do not sell  
9           product.  Is that correct?

10          A     Pride of Place Plants does not grow product.

11          Q     I take it from that answer, then, that you have not as  
12                a company, Pride of Place Plants, used the mark Piilu  
13                in connection with interstate commerce on plant  
14                material, living plant material.  Is that correct?

15 MR. BROOKEY:     That mischaracterizes the testimony.  He's  
16           answered.

17 BY MR. KANE:

18          Q     Did you not file an application for registration --

19 MR. BROOKEY:     Counsel, will you please stop raising your voice  
20                when you're questioning the witness.  If you want to  
21                curse at me or raise your voice at me that's one  
22                thing, but at least treat the witness with some  
23                dignity.

24 MR. KANE:         I am.

25 BY MR. KANE:

1 Q Did you not file through counsel an application for  
2 registration on the mark Piilu to be used on living  
3 plant material? And the reason I'm being so  
4 punctuative (sic) here is to make sure that my  
5 question is clear.

6 MR. BROOKEY: The question is beyond the scope of the direct.  
7 I'll let him answer it to the extent that he recalls.

8 THE WITNESS: If that's the question, that's the answer is yes.

9 BY MR. KANE:

10 Q And the next question is, and perhaps I didn't get the  
11 answer that I wanted, but I want to make sure I'm  
12 clear, you earlier testified that Pride of Place  
13 Plants does not sell living plant material.

14 A We don't grow it.

15 Q Do you actually take possession and deliver the plant  
16 material?

17 A We don't deliver.

18 Q So what you're telling me is that this plant material  
19 is not originating with Pride of Place Plants, is it?

20 MR. BROOKEY: Objection. It's vague and ambiguous and beyond  
21 the scope of the direct. You can answer if you  
22 understand it.

23 THE WITNESS: Could I ask you to put forth the question again,  
24 please?

25 MR. KANE: Could I have it read back to me?

1 (RECORD READ)

2 MR. BROOKEY: With the objections, he can answer if he  
3 understands.

4 THE WITNESS: In many transactions we act as a broker.

5 BY MR. KANE:

6 Q You're providing a service? Is that yes?

7 A Yes.

8 Q And in this case as a plant finder you are acting as a  
9 broker. Correct? Particularly with respect to  
10 Clematis Piilu.

11 A I don't think so.

12 Q You testified earlier that you did not deliver the  
13 product yourself. Correct? That the material is  
14 shipped directly to your licensee from the Kivistik  
15 farm. Is that correct?

16 A No.

17 Q How did Roseville Farms obtain their plant material  
18 for the Piilu brand of Clematis?

19 MR. BROOKEY: Objection. Asked and answered.

20 THE WITNESS: It's been -- yeah.

21 BY MR. KANE:

22 Q From who?

23 A Well, we have answered it before but it came from the  
24 Kivistiks.

25 Q Okay. So essentially your role was to work out the

1                   logistics and broker plant material sold by the  
2                   Kivistiks directly to Roseville Farms. Correct?

3           A       No.

4           Q       Did you maintain a warehouse in Canada that received  
5                   product from the Kivistik farm?

6           A       My garage.

7           Q       Then did you in turn take that material that's in your  
8                   garage and ship it to Roseville Farms?

9           A       I don't recall whether we did it on that particular  
10                   shipment.

11          Q       With respect to Wayside Gardens, did you physically  
12                   take possession of any plant material and ship it to  
13                   Wayside Gardens?

14          A       No. No.

15          Q       You arranged in that case --

16          A       I didn't arrange anything.

17          Q       How did Wayside Gardens obtain its plant stock?

18          A       Ask them.

19          Q       Pride of Place Plants does not produce any labelling  
20                   or labels containing the Piilu name, do they?

21          A       No.

22   MR. BROOKEY:     By "labels" you mean plant labels?

23   MR. KANE:        Any labelling that contains the Piilu name.

24   THE WITNESS:    No, we don't.

25   BY MR. KANE:

1 Q Do you physically -- withdrawn.

2 In the case of Wayside Gardens, we did look at  
3 documents here that were introduced late, three  
4 invoices that were directed to Wayside Gardens,  
5 correct, in December of '98 and roughly again in  
6 December of '99.

7 I take it that you did not, then, provide any  
8 direct product to Wayside Gardens in association or  
9 relation to those invoices?

10 MR. BROOKEY: Objection. Asked and answered. He can answer it  
11 again.

12 THE WITNESS: Again, I think you should talk with Karen. It's  
13 her business and I'm only one half of that business  
14 and she can answer it.

15 MR. KANE: That answer is good enough for me. I'll leave it  
16 up to you to ask your redirect. I'm finished on my  
17 cross right now subject to re-cross on your  
18 questions.

19 MR. BROOKEY: The witness is looking tired. Why don't we take  
20 five minutes.

21 (OFF-THE-RECORD DISCUSSION)

22 (PROCEEDINGS ADJOURNED AT 3:12 P.M.)

23 (PROCEEDINGS RESUMED AT 3:25 P.M.)

24 BY MR. KANE:

25 Q Mr. Sorenson, may I get your attention? I know you're

1 looking at one of the exhibits. Have you ever heard  
2 of a nursery by the name of T & L Nursery?

3 A No.

4 Q Do you have any idea where Redmond, Washington is?

5 A Yes.

6 Q Washington State, yes?

7 A Yes.

8 Q Is it close to Seattle?

9 A It is in Seattle.

10 MR. KANE: I have a document that's been marked as  
11 Exhibit 36.

12 (EXHIBIT 36: T & L NURSERY CATALOGUE)

13 BY MR. KANE:

14 Q I take it you've had no discussions with them  
15 concerning the sale of Clematis Piilu?

16 A No.

17 Q Okay. That's fine. You did testify earlier, and we  
18 talked about this, it goes back to the naming  
19 convention for this particular plant, and I'm still  
20 just a little bit puzzled. And just so I know I'm  
21 going to ask the Court Reporter here to see if you can  
22 do a quick search of the text to see if he answered  
23 when the name change from Clematis Piilu to Clematis  
24 Kivso Piilu occurred.

25 MR. BROOKEY: I object to that characterization. Going to

1 object to the characterization when you first asked  
2 the question.

3 MR. KANE: I'm just going to try to find if there's a time  
4 when it was mentioned. That's all. I think there was  
5 a discussion about the sequence of events and he did  
6 say that my sequence was correct. Right?

7 MR. BROOKEY: But subject to all the objections as to how you  
8 were characterizing what happened in that sequence.

9 MR. KANE: Yes, I'm using a shorthand reference.

10 MR. BROOKEY: I understand that.

11 (OFF-THE-RECORD DISCUSSION)

12 BY MR. KANE:

13 Q Mr. Sorenson, did you send correspondence either  
14 e-mail or written announcing the name change from  
15 Clematis 'Kivso' "Piilu" T.M. to Clematis 'Little  
16 Duckling' "Piilu" TM?

17 A Yes.

18 MR. KANE: I have what's been marked as Exhibit 37.

19 (EXHIBIT 37: NOTICE OF NAME CHANGE)

20 BY MR. KANE:

21 Q And I'm going to ask if you seem to recall that being  
22 one of the announcements.

23 A Yes.

24 Q Okay. The date on that, does that refresh your  
25 recollection as about the time that announcement

1           occurred?

2           A     September 10th.

3           Q     And the year is?

4           A     '03. No, I think it was after that.

5           Q     It's interesting you say this. Who was the addressee

6           of this correspondence?

7           A     Me.

8           Q     May I see it? The addressee or the addressor. Sorry,

9           you're correct. It says to R. Sorenson at

10          PacificCoast.net?

11          A     Um-hum.

12          Q     There's no question here, but the reason I'm asking is

13          because the name at the top of this, Kurt Kissling,

14          he's my associate and apparently he received this in a

15          broadcast. Do you send out these announcements in a

16          broadcast form?

17          A     Um-hum. Yes.

18          Q     Were you aware that my associate's name was on your

19          e-mail list?

20          A     Yes, I was actually.

21          Q     Okay. This contact list that you -- lack of

22          foundation. What did you use as an address list for

23          all these -- for these announcements? You mentioned

24          earlier -- I believe that you said that these

25          consignees that you had from your licensees you used

1 as contact information to follow up with them?

2 A Um-hum.

3 Q Is that the list that you may have used to send this  
4 announcement?

5 A I don't know.

6 Q Okay. Not a problem. But it does essentially  
7 announce that in 2003 that you were making a name  
8 change?

9 A That's over a year ago. Yes, that's exactly what it  
10 announces, yes.

11 Q And what was the basis for the name change?

12 MR. BROOKEY: Objection. Vague and ambiguous. You can answer  
13 if you can.

14 THE WITNESS: It's ongoing.

15 BY MR. KANE:

16 Q Apparently you had some discussion, the content of  
17 that e-mail from what I read, and you're free to read,  
18 I take it there was some discussion between you and  
19 the Kivistik family about the name or how best to name  
20 this particular variety of -- this particular cultivar  
21 of Clematis. Correct?

22 MR. BROOKEY: I think it calls for a yes or no answer. Is it  
23 correct or is it not correct. Do you need it read  
24 back?

25 MR. KANE: Withdrawn.

1 BY MR. KANE:

2 Q Some time prior to December 19th, 2003 did you become  
3 aware of some controversy surrounding the naming of  
4 the specific plant associated with the Piilu term?

5 A No.

6 Q Then why was there a name change announced in --  
7 sorry, did I say December 19th? It should have been  
8 September 19th, 2003. If there was no controversy why  
9 was there a name change?

10 A There's 132 cultivars in this selection. Some have  
11 good translations, some don't. Our first offering was  
12 40.

13 Q Forty?

14 A Cultivars. And the guy said they couldn't read half  
15 of them. Couldn't make head nor tail of them. Some  
16 of them make -- some Estonian words make good  
17 translation, some do not. This is going -- this has  
18 been going on for more than five years, it's going to  
19 continue on for probably another six or eight years.  
20 So we might be here again, boys.

21 Q May I have the document? And perhaps I should have  
22 been courteous enough to let counsel review it.

23 MR. BROOKEY: Do you have a question?

24 MR. KANE: I would just like to give you a chance to review  
25 it.

1 BY MR. KANE:

2 Q In this announcement, and I'm going to quote  
3 here, "The English equivalent to the Estonian word  
4 Piilu is Little Duckling." Is that a true quotation?

5 MR. BROOKEY: Are you correctly quoting from the e-mail?

6 MR. KANE: That's right, am I correctly quoting from the  
7 e-mail.

8 THE WITNESS: Yes.

9 BY MR. KANE:

10 Q Okay. Immediately after that you state that "The  
11 trade name will remain "Piilu" T.M., and a Patent  
12 Application will be submitted as soon as possible."  
13 And this was in September 2003. Is that correct?

14 A That's correct.

15 Q So at least as of that date no application had been  
16 filed. Is that correct?

17 A That's correct.

18 Q And when did you first begin offering for sale  
19 Clematis Piilu to customers/growers in the United  
20 States?

21 MR. BROOKEY: Objection. Asked and answered several times.

22 BY MR. KANE:

23 Q Do the Growers Marketing Agreements that were  
24 identified this morning represent your offering the  
25 plants to these growers?

1 A Offering the trademark, offering the trademark Piilu,  
2 offering the ability to grow the plant Piilu.

3 Q But the second paragraph in these agreements, they're  
4 all consistent, say "We hereby grant to you a  
5 non--exclusive license..." Actually this one says  
6 for Canada. Let me find one that says for the United  
7 States. Take the Carolina Nurseries one, which has  
8 been marked as Applicant's Exhibit 7 there.

9 "We hereby grant you a  
10 non-exclusive license for the  
11 United States of America  
12 (territory) to propagate and sell  
13 the variety upon the following  
14 terms and conditions."

15 And then in paragraph 3 it says:

16 "That the licensee will sell each  
17 plant of the variety as a finished  
18 plant in a 1.5 litre minimum pot  
19 or the equivalent to a U.S.A. one  
20 gallon pot."

21 Do you disagree with me that that's what those say?

22 A No.

23 Q Okay. Why were you trying to patent the Clematis  
24 Piilu five years after you first offered it for sale  
25 in the United States?

1 MR. BROOKEY: Object. It's beyond the scope of the direct.

2 MR. KANE: I'll try to tie it back to the proprietary.

3 MR. BROOKEY: But, again, you shouldn't be trying to tie that  
4 to the proprietary rights. I allowed you to reopen  
5 the cross after you concluded on your representation  
6 that you were going to introduce a couple of  
7 additional documents and now you're going back and  
8 asking things unrelated to these documents.

9 To the extent he can answer that, to the extent  
10 he can answer that without disclosing the content of  
11 privileged communications, he can. Unless you have  
12 another question about the documents, I'm going to  
13 move on to redirect.

14 MR. KANE: Sure.

15 THE WITNESS: Go on to redirect.

16 MR. BROOKEY: Can't answer the question?

17 THE WITNESS: No.

18 BY MR. KANE:

19 Q In your policing of the mark do you intend -- I'm not  
20 talking about prospective here let me just say. Do  
21 you intend to object to growers using the term  
22 Clematis Kivso to refer to the particular cultivar?

23 A Yes.

24 Q Do you intend to object of growers using the term  
25 Clematis Little Duckling in selling this particular

1 plant?

2 A No.

3 Q Is this particular plant still referred to as Clematis  
4 Kivso?

5 A No.

6 Q Have you decided to stop using the term Kivso in  
7 connection with this plant?

8 MR. BROOKEY: Objection. Asked and answered several times.

9 BY MR. KANE:

10 Q We didn't get to the intent of stopping. I want to  
11 know essentially if he's abandoned the term Kivso. Is  
12 that correct?

13 A Yes.

14 Q Okay. So in conclusion here, as long as the grower is  
15 not using the term Piilu in connection with the sale  
16 of this Little Duckling cultivar you have no  
17 objection?

18 MR. BROOKEY: Well, misstates prior testimony.

19 MR. KANE: I just want to make sure that I did this  
20 conclusive from him.

21 MR. BROOKEY: I think it's vague and ambiguous. I think it  
22 misstates the prior testimony. It's overly broad. I  
23 don't know if it's possible to answer the question as  
24 framed.

25 MR. KANE: All right. Withdrawn.

1 BY MR. KANE:

2 Q Do you contend today that the term Little Duckling is  
3 the proper cultivar name for this -- what was formerly  
4 referred to earlier as Clematis Piilu, later changed  
5 to Clematis Kivso and now is called Clematis Little  
6 Duckling?

7 MR. BROOKEY: And I object to the characterization of what was  
8 formerly referred to, or what changes supposedly were  
9 made. It's obviously been asked and answered several  
10 times, but I guess he can answer yet again whether  
11 Little Duckling is the current cultivar name.

12 MR. KANE: I just want to know if he has an objection with  
13 people using the cultivar name.

14 MR. BROOKEY: He's already told you that he doesn't.

15 MR. KANE: Okay. My questions are concluded on cross.

16 **REDIRECT EXAMINATION BY BROOKEY:**

17 Q Mr. Sorenson, when Mr. Kane started asking you  
18 questions he was describing characteristics of some  
19 plants by colour and blossoms and nature of blooming,  
20 things like that. Do you recall that?

21 A Yes.

22 Q And he was throwing around the term prelude. Do you  
23 remember that?

24 A Yes.

25 Q Did you have an understanding what he was referring to

1           in asking the questions, about what plant?

2           A     Yes.

3           Q     What was that understanding?

4           A     Well, I felt that he was asking me to describe the  
5           major characteristics of the plant under discussion.

6           Q     The Clematis Little Duckling?

7           A     Yes.

8           Q     The cultivar?

9           A     The cultivar.

10          Q     Do you speak Estonian?

11          A     No.

12          Q     Do you read Estonian?

13          A     No.

14          Q     You mentioned before your understanding that Piilu may  
15          translate to Little Duckling in English and on what do  
16          you base that understanding?

17          A     Well, we go through it all the time with Japanese  
18          material --

19          Q     On what do you base your understanding of the  
20          translation of Piilu into English if you don't speak  
21          Estonian?

22          A     Oh, basically it was a question that I asked the  
23          Kivistik family and they answered.

24          Q     And if you were to translate Little Duckling back into  
25          Estonian --

1 A It may not come out the same.

2 Q You have no idea --

3 A They translate well in one direction but maybe not as  
4 well in the next direction.

5 Q So you don't know what Little Duckling would be  
6 translated into in Estonian. Correct?

7 A And that is a problem, yes.

8 Q Do you have any reason to believe that somebody in  
9 Estonia, for instance, would feel the need to transfer  
10 the cultivar name into Estonian?

11 A No.

12 Q All right. We talked before about the book that Mary  
13 Toomey coauthored. Did you ever have a conversation  
14 with Ms. Toomey about that book?

15 A Not with Ms. Toomey but with Everett Leeds.

16 Q And what did you discuss with Mr. Leeds?

17 A Conveniently the pages that we discussed were left out  
18 of this particular WG 0346 in so much that what I was  
19 most interested in with talking with him was that even  
20 in this index here there are a lot of trademark  
21 Clematis plants. For instance, Sugar Candy with a TM  
22 is called Evi One as the cultivar name.

23 Q Was there any discussion about Piilu as the Clematis  
24 plant?

25 A Yes, you have to get it right in the next rewrite.

1 Q What did you mean by "get it right"?

2 A Well, that never intended on having Piilu as the  
3 cultivar name. We'd always intended it on being  
4 something else and the literal translation of the  
5 foreign language gave us hope that there might be  
6 something in there.

7 Q What did Mr. Leeds say to you when you talked to him  
8 about correcting the next issue of the book?

9 A Well, the problem with that is the next rewrite is  
10 probably two or three years down the road.

11 Q Did he make any promises to you at that time?

12 A No.

13 Q Does Pride of Place Plants have a bona fide intent to  
14 use the Piilu mark in connection with the Clematis  
15 Little Duckling cultivar?

16 A I'm sorry, could you say that again?

17 Q Sure. Does Pride of Place Plants have a bona fide  
18 intent to use the Piilu mark?

19 A Yes. I see what you mean, yes.

20 Q It does?

21 A Yes.

22 Q In connection with --

23 A The sale of Little Duckling.

24 Q Are you at all familiar with the quality of the plants  
25 that are sold under the Piilu mark by sublicensees?

1           A     Yes, we have to be, and I think we have to make sure  
2                   that we've chosen the right growers because we carry  
3                   an awful lot of plants. We carry 500 different  
4                   assorted plants. So I call the lists the consignee  
5                   lists just to see how things went as Mr. Kane pointed  
6                   out. I mean, we develop a lot of things from that  
7                   list and one of the things that we develop is a method  
8                   of checking out our growers. You know, how is the  
9                   quality, how was the shipping. And we hear some  
10                  things back, too. We hear some things like it was not  
11                  good and some of it doesn't relate to the sale of  
12                  Clematis Little Duckling, but some of it may relate to  
13                  the delivery time of thuyapyramabalis. We let our  
14                  growers know hey, by the way, we're also getting  
15                  this.

16 MR. BROOKEY:     I have no further questions.

17 MR. KANE:        I got distracted.

18 MR. BROOKEY:     So no re-cross?

19 MR. KANE:        Not yet.

20 RE-CROSS-EXAMINATION BY MR. KANE:

21           Q     Mr. Sorenson, on the translation issue, since you  
22                  don't speak Estonian, as I take it you didn't come up  
23                  with the translation yourself, and you testified you  
24                  asked the Kivistiks and they indicated it was Little  
25                  Duckling, how did the disclaimer -- do you know how

1           the disclaimer for the term -- correction. Do you  
2           know how the statement in the trademark application as  
3           to the translation of the term Piilu into Little  
4           Duckling came to be?

5           A     I'm sorry, I don't understand.

6           Q     Did you provide that information to counsel or was it  
7           raised by the trademark office in a question does  
8           Piilu have a term/a meaning somewhere other than the  
9           mark?

10          MR. BROOKEY:     Now I don't understand the question.

11          BY MR. KANE:

12                 Q     Well, I'm looking at Exhibit 14. An application was  
13                 apparently filed on January 19th, 2001 with  
14                 Mr. Sorenson's signature, and you mention that he did  
15                 have a bona fide intention to use the mark, et  
16                 cetera.

17                         In the review of the application by the patent  
18                 trademark office they report that they have not found  
19                 any conflicting marks, however they do ask the  
20                 question:

21                                 "The Applicant must indicate  
22                                 whether Piilu has any significance  
23                                 to the trade or any geographical  
24                                 significance or a meaning in a  
25                                 foreign language."

1           A     Their website states it.

2 MR. BROOKEY:     Well, wait for a question.

3 BY MR. KANE:

4           Q     And so apparently there was a response made and it was  
5                 stated that:

6                         "In response Applicant submits  
7                         that the term Piilu is an Estonian  
8                         word meaning "Little Duckling"."

9           And I'm curious if you know how that was entered into  
10           the final history of this case?

11          A     No, I don't.

12          Q     Did you provide Mr. Gioia - is that the name - with  
13                 information on the Kivistik website? I know you're  
14                 going to object to that because you think it's  
15                 attorney/client privilege.

16 MR. BROOKEY:     It does ask him to disclose the content of a  
17                 specific communication with counsel, so I can't let  
18                 him do that on the grounds of attorney/client  
19                 privilege.

20 BY MR. KANE:

21          Q     Were you informed that the Notice of Allowance was  
22                 issued in the Piilu application? This is simply a  
23                 forwarding of a document from the United States Patent  
24                 & Trademark Office announcing that they have found no  
25                 objection to the application and they will allow it to

1           publish.

2 MR. BROOKEY:     Frame it as does he recall seeing that Notice of  
3           Allowance.

4 MR. KANE:        I'll accept that.

5 BY MR. KANE:

6           Q     Do you recall receiving an indication from the United  
7           States Patent & Trademark Office that your application  
8           had been substantially approved?

9           A     No.

10          Q     Okay. This relates to again to the policing and to  
11          the quality checking that counsel just offered  
12          redirect on.

13                   I think you testified earlier that you physically  
14          did not inspect, but that you are relying on -- you do  
15          a questionnaire apparently as to the quality --

16          A     We phone them.

17 MR. KANE:        In your estimation, actually in your  
18          experience -- strike that. Do you have any further  
19          redirect?

20 MR. BROOKEY:     I have nothing further.

21 MR. KANE:        I think I'm finished.

22                   (PROCEEDINGS ADJOURNED AT 4:00 P.M.)

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REPORTER'S CERTIFICATE

I, JEAN T. FISCHER, Official Reporter in the Province of British Columbia, Canada, do hereby certify:

THAT the proceedings were taken down by me in shorthand at the time and place therein set forth and thereafter transcribed, and the same is a true and correct and complete transcript of said proceedings to the best of my skill and ability.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22nd day of December 2004.



JEAN T. FISCHER  
Official Reporter

**New and Visually Attractive Plant Introductions Price List**  
 ➤ *Available for spring delivery 1999*

<b>Amelanchier alnifolia 'White Obelisk'<sup>TM</sup></b>	
From Holland, bare root two year plants 60-80cm	\$7.50 U.S. dollars
<b>Hydrangea 'Golden Sunlight'<sup>TM</sup></b>	
From Canada 2-3 branch, 4inch round pot	\$3.00 Canadian funds
<b>Cistus 'Golden Treasure'<sup>TM</sup></b>	
From England, 7cm liners propagated in rock wool	\$2.50 U.S. dollars
<b>Geranium 'Janette'<sup>TM</sup></b>	
From Holland bare root field divisions	\$2.25 U.S. dollars
From U.S.A -Rose Pot liners	\$1.25 U.S. dollars
-1 gallon pot	\$3.50 U.S. dollars
-2 gallon pot	\$7.50 U.S. dollars
<b>Photinia 'Deep Purple'<sup>TM</sup></b>	
From Holland 1 1/2 year old field grown liners, bare root	\$2.50 U.S. funds
<b>Campsis 'Indian Summer'<sup>TM</sup></b>	
From Holland, bare root two year grafted plants	\$6.50 U.S. dollars
<b>Clematis 'My Angel'<sup>TM</sup></b>	
From Holland 1 1/2 year old #1	\$6.50 U.S. dollars
<b>Clematis 'Blue Light'<sup>TM</sup></b>	
From Holland 1 1/2 year old #1	\$6.50 U.S. dollars
<b>Clematis 'Pilu'<sup>TM</sup></b>	
From Estonia 1 1/2 year old #1	\$7.50 U.S. dollars
<b>Lonicera 'Honey Baby'<sup>TM</sup></b>	
From Holland 7 cm liners propagated in rock wool	\$2.50 U.S. funds

EXHIBIT NO. FOR IDENTIFICATION  
 Examination of: R. Sorenson  
 DATE: 22 Dec 04  
 JEAN FISCHER, Verbatim Reporter  
 Premiere Verbatim Reporting Ltd., Victoria, B.C.

POP028

Page 2

<b>Malva sylvestris 'Marina' R Dema™</b> From Holland 2year old saleable field grown bare root	<b>\$2.50 U.S. funds</b>
<b>Oenothera 'African Sun'™</b> From Holland bare root field grown divisions	<b>\$1.90 U.S. funds</b>
<b>Picea glauca 'J.W. Daisy's White'™</b> From Holland 2 year old bare root liners	<b>\$2.50 U.S. funds</b>
<b>Symphoricarpos x doorenbosii ' Marleen'™</b> From Holland , field grown, bare root liners	<b>\$2.50 U.S. funds</b>

A Test Agreement and or Marketing and Production Agreement may accompany the above offerings.

A prescribed royalty payment is attached to each of the cultivars listed.

We are hopeful you may consider one or more of these cultivars to include in your New Plant Inventory. Thank you.

Sincerely,

Rick Sorenson.



**ORIGINAL COPY  
Please Return**

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

**TESTING AGREEMENT**

**BETWEEN:** **PRIDE OF PLACE PLANTS INC.™ (The Owner)**  
674 Cromarty Ave.,  
Sidney B.C. Canada  
V8L 5G6

**AND:** **SPRING VALLEY GREENHOUSE INC.,**  
3242 Daansen Road Box 552  
Walworth, New York  
U.S.A. 14568-0552 **(The Tester)**

**Permission to grow the Plants or Plants listed in the Appendix for production/trial purpose only.**

1. All propagating material, plants or other reproductive material belong to the Owner of the variety (See Appendix A)
2. Without special permission the Tester of the variety must not Propagate varieties covered by this Agreement or allow others to do the same.
3. Sports (mutations) which are found in varieties covered by this Agreement belong to the Owner of the variety and are at once to be informed to the Owner of the variety.
4. The Tester of the variety must not send, give over or assign any of these plants covered by this Agreement, or parts of plants as well as propagating material to any other person or persons, organization or business whatever the aim.
5. This agreement may be terminated during the established testing period upon notice by either party and accepted by both parties. After the initial testing period has elapsed, the Owner may terminate the agreement by notifying the Tester in writing.

**MEMBER ASSOCIATIONS**

Mallorder Gardening	BC Landscape & Nursery Trades	American Nursery & Landscape Association	Canadian Nursery Trades Association
---------------------	-------------------------------	--	-------------------------------------

EXHIBIT NO. 2 FOR IDENTIFICATION  
Examination of: R. Sorenson

DATE: 22 Dec 04  
JEAN FISCHER, Verbatim Reporter  
Premiere Verbatim Reporting Ltd., Victoria, B.C.

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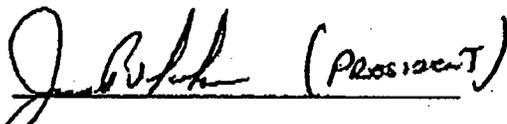
—page 2—

6. The Tester of the variety must not show or offer for sale or publicise varieties covered by this Agreement unless permission from the Owner of the variety exists.
7. The Owner of the variety allows the Tester of the variety, under this Agreement, to use their own propagation material to propagate a further agreed amount of plants of varieties covered by this Agreement for further testing on the written instruction of the Agent for the Owner.
8. If required the Tester will complete an evaluation as specified by Owner of both varieties listed in Appendix A upon completion of trial.
9. The Tester of the variety agrees not to use any variety covered by this Agreement in a breeding program before such a variety is offered for sale to the general public.
10. Varieties covered by this Agreement are shown in the attached Appendix.

DATE: March 11, 1999

DATE: 5/19/99

  
 PRIDE OF PLACE PLANTS INC.™

  
 SPRING VALLEY GREENHOUSE  
 INC.,

Per Pro Owner of Variety

Tester of Variety

MEMBER ASSOCIATIONS

Mallorder  
Gardening  
Association

BC Landscape &  
Nursery Trades

American Nursery &  
Landscape Association

Canadian Nursery  
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**APPENDIX 'A'**

*Common lower*

**CLEMATIS 'Pilu'™**

**DATE: March 11, 1999**

**DATE:** *5/19/99*

*[Signature]*  
 \_\_\_\_\_  
 PRIDE OF PLACE PLANTS INC.™

*[Signature] (President)*  
 \_\_\_\_\_  
 SPRING VALLEY GREENHOUSE  
 INC.,

**Per Pro Owner of Variety**

**Tester of Variety**

**MEMBER ASSOCIATIONS**

Mailorder  
Gardening  
Association

BC Landscape &  
Nursery Trades

American Nursery &  
Landscape Association

Canadian Nursery  
Trades Association



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 Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

**GROWERS MARKETING AGREEMENT**

**Between: Roseville Farms  
 3251 Ponkan Pines Road  
 Apopka, Florida U.S.A. 32712**

**And: Pride of Place Plants Inc.,™  
 674 Cromarty Ave.,  
 Sidney B.C., Canada V8L 5G6**

As you are aware, Pride of Place Plants Inc.™(POPP) has acquired the exclusive license to propagate and sell the variety, Clematis "Piilu"™in North America with the right to grant a sublicense to growers.

We hereby grant to you a non-exclusive license for the United States of America (the Territory) to propagate and sell the variety upon the following terms and conditions.

1. Each plant sold must bear a label containing the details of the plant protection obtained in North America in a format supplied to you by POPP.
2. Purchase (from P.O.P.P.) and use for distribution to end users promotional material supplied by Pride of Place Plants Inc.™
3. Sell each plant of the variety as a finished plant in a 1.5 litre minimum pot or the equivalent to a U.S. one gallon pot, *OR VARIOUS LARGER SIZES. PK*
4. Should your sales volume fall below 750 units in any calendar year then POPP reserve the right to change this Agreement. You would freely offer propagation and/or liner material to other growers at the accepted trade price.
5. This Marketing Agreement causes you to forward to Pride of Place Plants Inc.™ a royalty equal to 10% of the gross wholesale selling price in U.S. funds, or a minimum unit royalty of .75cents U.S. funds per unit, whichever is greater.

EXHIBIT NO. 3 FOR IDENTIFICATION  
 Examination of: R Sorenson  
 DATE: 22 Dec 04  
 JEAN FISCHER, Verbatim Reporter  
 Premiere Verbatim Reporting Ltd., Victoria, B.C.

**MEMBER ASSOCIATIONS**

Mailorder Gardening Association

BC Landscape & Nursery Trades

American Nursery & Landscape Association

Canadian Nursery Landscape Association



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 Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
 Clematis "Pilu"™

page 2

6. You will pay the royalty to us in semi-annual payments which will be accompanied by written statements disclosing the royalty due under this Agreement and will state the number of plants sold of the variety during the preceding six month period. Statements will be due on the 25<sup>th</sup> day of the months of July and January of each calendar year, covering the preceding six months terminating on June 30 and December 31 of each year.
7. In order that the royalty payable under this Agreement may be determined, you will:
  - a). keep records of all propagation and sales of plants of the variety sold by you
  - b). permit POPP, or it's authorized representatives, to inspect and examine your records.
8. The license granted by POPP to you for the variety, and your obligation to pay a royalty to POPP for the variety, will be reviewed every two years from the date of signing this Agreement.
9. The rights of either party to make a claim against the other in respect of any breach of any of the terms of this Agreement occurring prior to termination shall survive termination.
10. Any mutation, variant or sport of the variety of a unique or patentable quality discovered by you, is the property of Pride of Place Plants Inc.™, (the agent) and you must report to POPP it's existence. You may not propagate or sell any mutation, variant or sport.
11. You may not assign your interest in this Agreement without the prior written consent of POPP, such consent of POPP will not be unreasonably withheld.
12. This Agreement is governed by and construed in accordance the laws of the Province of British Columbia and the Federal Laws of Canada in effect therein.
13. This Agreement may not be modified, or amended, except by an instrument in writing signed by the parties to the Agreement.

---

MEMBER ASSOCIATIONS

Mallorder  
Gardening  
Association

BC Landscape &  
Nursery Trades

American Nursery &  
Landscape Association

Canadian Nursery  
Landscape Association



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Cont'd..... GROWERS MARKETING AGREEMENT  
 Clematis "Piiu"™

page 3

- 14. All disputes arising out of or in connection with this Agreement will be referred to and finally resolved by arbitration under the British Columbia Commercial Arbitration Act.
- 15. Each of the parties to this Agreement will execute and deliver such further documents and instruments and do all further acts and things as may be reasonably required to evidence, carry out and give full effect to this Agreement.
- 16. No waiver by any party to this Agreement of any defaults, breach or non-observance by the other party to this Agreement in respect of any covenant or term of this Agreement will operate as a waiver of that parties rights under this Agreement or affect the rights of that party in respect of any continuing or subsequent default, breach or non-observance.
- 17. This Agreement endures to the benefit of and is binding upon the parties to this Agreement and their heirs, executors, administrators, successors and assigns.

If the above terms are acceptable, please indicate your agreement by signing and returning to us the enclosed duplicate copy of this letter.

Yours truly,

Rick Sorenson.  
 Pride of Place Plants Inc.™

Accepted and agreed to this \_\_\_\_\_ day of Dec 2001

Authorized Signature

Roseville Farms

MEMBER ASSOCIATIONS

Mallorder Gardening Association

BC Landscape & Nursery Trades

American Nursery & Landscape Association

Canadian Nursery Landscape Association





*Fine new plant introductions*

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • www.prideofplaceplants.com • Email: rsorenson@pacflcoast.net

### GROWERS MARKETING AGREEMENT

Between: **Pepiniere L'Avenir**  
**209 Principale, l'Avenir,**  
**Quebec, Canada, JOC IBO**

And: **Pride of Place Plants Inc.,™**  
**674 Cromarty Ave.,**  
**Sidney B.C., Canada V8L 5G6**

As you are aware, Pride of Place Plants Inc.™ (POPP) has acquired the exclusive license to propagate and sell the variety, Clematis "Pillu"™ in North America with the right to grant a sublicense to growers.

We hereby grant to you a non-exclusive license for Canada (the Territory) to propagate and sell the variety upon the following terms and conditions.

1. Each plant sold must bear a label containing the details of the plant protection obtained in North America in a format supplied to you by POPP.
2. Purchase (from P.O.P.P.) and use for distribution to end users promotional material supplied by Pride of Place Plants Inc.™
3. Sell each plant of the variety as a finished plant in a 1.5 litre minimum pot or the equivalent to a U.S. one gallon pot.
4. Should your sales volume fall below 750 units in any calendar year then POPP reserve the right to change this Agreement. You would freely offer propagation and/or liner material to other growers at the accepted trade price.
5. This Marketing Agreement causes you to forward to Pride of Place Plants Inc.™ a royalty equal to 10% of the gross wholesale selling price in U.S. funds, or a minimum unit royalty of .75cents U.S. funds per unit, whichever is greater.

EXHIBIT NO. 4 FOR IDENTIFICATION  
 Examination of: R. Sorenson  
 DATE: 22 Dec 04  
 JEAN FISCHER, Verbatim Reporter  
 Premiere Verbatim Reporting Ltd., Victoria, B.C.

**Member Associations**

American Nursery & Landscape Association

BC Landscape & Nursery Trades

Canadian Nursery Landscape Association

Mailorder Gardening Association

Perennial Plant Association



*From new plant introductions*

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Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacifcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
Clematis "Pika"™

page 3

- 14. All disputes arising out of or in connection with this Agreement will be referred to and finally resolved by arbitration under the British Columbia Commercial Arbitration Act.
- 15. Each of the parties to this Agreement will execute and deliver such further documents and instruments and do all further acts and things as may be reasonably required to evidence, carry out and give full effect to this Agreement.
- 16. No waiver by any party to this Agreement of any defaults, breach or non-observance by the other party to this Agreement in respect of any covenant or term of this Agreement will operate as a waiver of that parties rights under this Agreement or affect the rights of that party in respect of any continuing or subsequent default, breach or non-observance.
- 17. This Agreement endures to the benefit of and is binding upon the parties to this Agreement and their heirs, executors, administrators, successors and assigns.

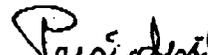
If the above terms are acceptable, please indicate your agreement by signing and returning to us the enclosed duplicate copy of this letter.

Yours truly,

  
Rick Sorenson  
Pride of Place Plants Inc.™

Accepted and agreed to this 17 day of April 2001

  
Authorized Signature

  
Pepiniere L'Avenir

MEMBER ASSOCIATIONS

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Cordwaing  
Association

BC Landscape &  
Nursery Trades

American Nursery &  
Landscape Association

Canadian Nursery  
Landscape Association



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Please Return**

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

**GROWERS MARKETING AGREEMENT**

**Between: Garden Import  
2 Essex Ave., Unit 5  
Thornhill Ontario L3T 3Y7**

**And: Pride of Place Plants Inc.,™  
674 Cromarty Ave.,  
Sidney B.C., Canada V8L 5G6**

As you are aware, Pride of Place Plants Inc.™(POPP) has acquired the exclusive license to propagate and sell the variety, Clematis "Piilu"™in North America with the right to grant a sublicense to growers.

We hereby grant to you a non-exclusive license for Canada (the Territory) to propagate and sell the variety upon the following terms and conditions.

1. Each plant sold must bear a label containing the details of the plant protection obtained in North America in a format supplied to you by POPP.
2. Purchase (from P.O.P.P.) and use for distribution to end users promotional material supplied by Pride of Place Plants Inc.™
3. Sell each plant of the variety as a finished plant in a 1.5 litre minimum pot or the equivalent to a U.S. one gallon pot.
4. Should your sales volume fall below 750 units in any calendar year then POPP reserve the right to change this Agreement. You would freely offer propagation and/or liner material to other growers at the accepted trade price.
5. This Marketing Agreement causes you to forward to Pride of Place Plants Inc.™ a royalty equal to 10% of the gross wholesale selling price in U.S. funds, or a minimum unit royalty of .75cents U.S. funds per unit, whichever is greater.

EXHIBIT NO. FOR IDENTIFICATION  
Examination of: R. Sorenson

DATE: 22 Dec '04  
JEAN FISCHER, Verbatim Reporter  
Premiere Verbatim Reporting Ltd., Victoria, B.C.

**MEMBER ASSOCIATIONS**

**Mailorder  
Gardening  
Association**

**BC Landscape &  
Nursery Trades**

**American Nursery &  
Landscape Association**

**Canadian Nursery  
Landscape Association**



674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
Clematis "Piilu"™

page 2

6. You will pay the royalty to us in semi-annual payments which will be accompanied by written statements disclosing the royalty due under this Agreement and will state the number of plants sold of the variety during the preceding six month period. Statements will be due on the 25<sup>th</sup> day of the months of July and January of each calendar year, covering the preceding six months terminating on June 30 and December 31 of each year.
7. In order that the royalty payable under this Agreement may be determined, you will:
  - a). keep records of all propagation and sales of plants of the variety sold by you
  - b). permit POPP, or it's authorized representatives, to inspect and examine your records.
8. The license granted by POPP to you for the variety, and your obligation to pay a royalty to POPP for the variety, will be reviewed every two years from the date of signing this Agreement.
9. The rights of either party to make a claim against the other in respect of any breach of any of the terms of this Agreement occurring prior to termination shall survive termination.
10. Any mutation, variant or sport of the variety of a unique or patentable quality discovered by you, is the property of Pride of Place Plants Inc.™, (the agent) and you must report to POPP it's existence. You may not propagate or sell any mutation, variant or sport.
11. You may not assign your interest in this Agreement without the prior written consent of POPP, such consent of POPP will not be unreasonably withheld.
12. This Agreement is governed by and construed in accordance the laws of the Province of British Columbia and the Federal Laws of Canada in effect therein.
13. This Agreement may not be modified, or amended, except by an instrument in writing signed by the parties to the Agreement.

---

MEMBER ASSOCIATIONS

Mailorder  
Gardening  
Association

BC Landscape &  
Nursery Trades

American Nursery &  
Landscape Association

Canadian Nursery  
Landscape Association



674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
 Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
 Clematis "Piilu"™

page 3

- 14. All disputes arising out of or in connection with this Agreement will be referred to and finally resolved by arbitration under the British Columbia Commercial Arbitration Act.
- 15. Each of the parties to this Agreement will execute and deliver such further documents and instruments and do all further acts and things as may be reasonably required to evidence, carry out and give full effect to this Agreement.
- 16. No waiver by any party to this Agreement of any defaults, breach or non-observance by the other party to this Agreement in respect of any covenant or term of this Agreement will operate as a waiver of that parties rights under this Agreement or affect the rights of that party in respect of any continuing or subsequent default, breach or non-observance.
- 17. This Agreement endures to the benefit of and is binding upon the parties to this Agreement and their heirs, executors, administrators, successors and assigns.

If the above terms are acceptable, please indicate your agreement by signing and returning to us the enclosed duplicate copy of this letter.

Yours truly,  
  
 Rick Sorenson  
 Pride of Place Plants Inc.™

Accepted and agreed to this 8 day of Feb 2001

  
 \_\_\_\_\_  
 Authorized Signature                      Garden Import

MEMBER ASSOCIATIONS

Mailorder Gardening Association

BC Landscape & Nursery Trades

American Nursery & Landscape Association

Canadian Nursery Landscape Association



**ORIGINAL COPY**  
**Please Return**

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

**GROWERS MARKETING AGREEMENT**

**Between: Hole's Greenhouses and Gardens Ltd.,**  
**101 Bellerose Dr.,**  
**St. Albert, Alberta, Canada T8N 8N8**

**And: Pride of Place Plants Inc.,™**  
**674 Cromarty Ave.,**  
**Sidney B.C., Canada V8L 5G6**

As you are aware, Pride of Place Plants Inc.™(POPP) has acquired the exclusive license to propagate and sell the variety, Clematis "Pillu"™ in North America with the right to grant a sublicense to growers.

We hereby grant to you a non-exclusive license for Canada (the Territory) to propagate and sell the variety upon the following terms and conditions.

1. Each plant sold must bear a label containing the details of the plant protection obtained in North America in a format supplied to you by POPP.
2. Purchase (from P.O.P.P.) and use for distribution to end users promotional material supplied by Pride of Place Plants Inc.™
3. Sell each plant of the variety as a finished plant in a 1.5 litre minimum pot or the equivalent to a U.S. one gallon pot.
4. Should your sales volume fall below 750 units in any calendar year then POPP reserve the right to change this Agreement. You would freely offer propagation and/or liner material to other growers at the accepted trade price.
5. This Marketing Agreement causes you to forward to Pride of Place Plants Inc.™ a royalty equal to 10% of the gross wholesale selling price in U.S. funds, or a minimum unit royalty of .75cents U.S. funds per unit, whichever is greater.

EXHIBIT NO. FOR IDENTIFICATION

Examination of: R. Sorenson

DATE: 22 Dec '04

JEAN FISCHER, Verbatim Reporter  
Premiere Verbatim Reporting Ltd., Victoria, B.C.

**MEMBER ASSOCIATIONS**

**Mallorder Gardening Association**

**BC Landscape & Nursery Trades**

**American Nursery & Landscape Association**

**Canadian Nursery Landscape Association**



674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
Clematis "Piihu"™

page 2

6. You will pay the royalty to us in semi-annual payments which will be accompanied by written statements disclosing the royalty due under this Agreement and will state the number of plants sold of the variety during the preceding six month period. Statements will be due on the 25<sup>th</sup> day of the months of July and January of each calendar year, covering the preceding six months terminating on June 30 and December 31 of each year.
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  - a). keep records of all propagation and sales of plants of the variety sold by you
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8. The license granted by POPP to you for the variety, and your obligation to pay a royalty to POPP for the variety, will be reviewed every two years from the date of signing this Agreement.
9. The rights of either party to make a claim against the other in respect of any breach of any of the terms of this Agreement occurring prior to termination shall survive termination.
10. Any mutation, variant or sport of the variety of a unique or patentable quality discovered by you, is the property of Pride of Place Plants Inc.™, (the agent) and you must report to POPP it's existence. You may not propagate or sell any mutation, variant or sport.
11. You may not assign your interest in this Agreement without the prior written consent of POPP, such consent of POPP will not be unreasonably withheld.
12. This Agreement is governed by and construed in accordance the laws of the Province of British Columbia and the Federal Laws of Canada in effect therein.
13. This Agreement may not be modified, or amended, except by an instrument in writing signed by the parties to the Agreement.

#### MEMBER ASSOCIATIONS

Mallder  
Gardening  
Association

BC Landscape &  
Nursery Trades

American Nursery &  
Landscape Association

Canadian Nursery  
Landscape Association



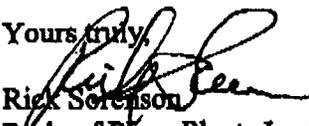
674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
 Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
 Clematis "Pillu"™

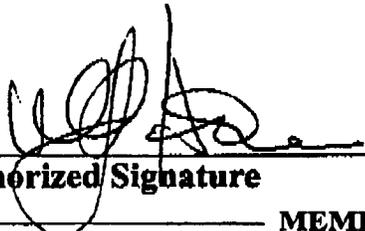
page 3

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- 16. No waiver by any party to this Agreement of any defaults, breach or non-observance by the other party to this Agreement in respect of any covenant or term of this Agreement will operate as a waiver of that parties rights under this Agreement or affect the rights of that party in respect of any continuing or subsequent default, breach or non-observance.
- 17. This Agreement endures to the benefit of and is binding upon the parties to this Agreement and their heirs, executors, administrators, successors and assigns.

If the above terms are acceptable, please indicate your agreement by signing and returning to us the enclosed duplicate copy of this letter.

Yours truly,  
  
 Rick Sorenson  
 Pride of Place Plants Inc.™

Accepted and agreed to this 12 day of April 2000

  
 Authorized Signature **Hole's Greenhouses and Gardens Ltd.,**

MEMBER ASSOCIATIONS

- Mailorder Gardening Association
- BC Landscape & Nursery Trades
- American Nursery & Landscape Association
- Canadian Nursery Landscape Association



*Fine new plant introductions*

**ORIGINAL COPY  
Please Return**

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacficcoast.net

**GROWERS MARKETING AGREEMENT**

**Between: Carolina Nurseries  
739 Gaillard Rd.,  
Moncks Corner, SC U.S.A. 29461-52110**

**And: Pride of Place Plants Inc.,™  
674 Cromarty Ave.,  
Sidney B.C., Canada V8L 5G6**

As you are aware, Pride of Place Plants Inc.™(POPP) has acquired the exclusive license to propagate and sell the variety, Clematis "Pillu"™in North America with the right to grant a sublicense to growers.

We hereby grant to you a non-exclusive license for the United States of America (the Territory) to propagate and sell the variety upon the following terms and conditions.

1. Each plant sold must bear a label containing the details of the plant protection obtained in North America in a format supplied to you by POPP.
2. Purchase (from P.O.P.P.) and use for distribution to end users promotional material supplied by Pride of Place Plants Inc.™
3. Sell each plant of the variety as a finished plant in a 1.5 litre minimum pot or the equivalent to a U.S. one gallon pot.
4. Should your sales volume fall below 750 units in any calendar year then POPP reserve the right to change this Agreement. You would freely offer propagation and/or liner material to other growers at the accepted trade price.
5. This Marketing Agreement causes you to forward to Pride of Place Plants Inc.™ a royalty equal to 10% of the gross wholesale selling price in U.S. funds, or a minimum unit royalty of .75cents U.S. funds per unit, whichever is greater.

EXHIBIT NO. 7 FOR IDENTIFICATION  
 Examination of R. Sorenson  
 DATE: 22 Dec '04  
 JEAN FISCHER, Verbatim Reporter  
 Premiere Verbatim Reporting Ltd., Victoria, B.C.

**MEMBER ASSOCIATIONS**

**Mallorder  
Gardening  
Association**

**BC Landscape &  
Nursery Trades**

**American Nursery &  
Landscape Association**

**Canadian Nursery  
Landscape Association**



674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
 Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
 Clematis "Piilu"™

page 2

6. You will pay the royalty to us in semi- annual payments which will be accompanied by written statements disclosing the royalty due under this Agreement and will state the number of plants sold of the variety during the preceding six month period. Statements will be due on the 25<sup>th</sup> day of the months of July and January of each calendar year, covering the preceding six months terminating on June 30 and December 31 of each year.
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12. This Agreement is governed by and construed in accordance the laws of the Province of British Columbia and the Federal Laws of Canada in effect therein.
13. This Agreement may not be modified, or amended, except by an instrument in writing signed by the parties to the Agreement.

MEMBER ASSOCIATIONS

Mailorder Gardening Association

BC Landscape & Nursery Trades

American Nursery & Landscape Association

Canadian Nursery Landscape Association



674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
 Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacficcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
 Clematis "Piilu"™

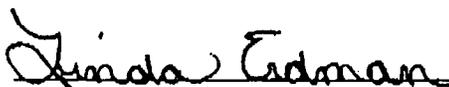
page 3

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- 17. This Agreement endures to the benefit of and is binding upon the parties to this Agreement and their heirs, executors, administrators, successors and assigns.

If the above terms are acceptable, please indicate your agreement by signing and returning to us the enclosed duplicate copy of this letter.

Yours truly,  
  
 Rick Sorenson  
 Pride of Place Plants Inc.™

Accepted and agreed to this 6<sup>th</sup> day of Feb 2001

 Director of New Product  
 Authorized Signature Carolina Nurseries Development

MEMBER ASSOCIATIONS

Mallorder  
 Gardening  
 Association

BC Landscape &  
 Nursery Trades

American Nursery &  
 Landscape Association

Canadian Nursery  
 Landscape Association



*Fine new plant introductions*

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674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

**GROWERS MARKETING AGREEMENT**

**Between: Clearview Horticultural Products  
5343-264th Street,  
Aldergrove B.C. V4W 1K4**

**And: Pride of Place Plants Inc.,™  
674 Cromarty Ave.,  
Sidney B.C., Canada V8L 5G6**

As you are aware, Pride of Place Plants Inc.™(POPP) has acquired the exclusive license to propagate and sell the variety, Clematis "Pillu"™ in North America with the right to grant a sublicense to growers.

We hereby grant to you a non-exclusive license for Canada (the Territory) to propagate and sell the variety upon the following terms and conditions.

1. Each plant sold must bear a label containing the details of the plant protection obtained in North America in a format supplied to you by POPP.
2. Purchase (from P.O.P.P.) and use for distribution to end users promotional material supplied by Pride of Place Plants Inc.™
3. Sell each plant of the variety as a finished plant in a 1.5 litre minimum pot or the equivalent to a U.S. one gallon pot.
4. Should your sales volume fall below 750 units in any calendar year then POPP reserve the right to change this Agreement. You would freely offer propagation and/or liner material to other growers at the accepted trade price.
5. This Marketing Agreement causes you to forward to Pride of Place Plants Inc.™ a royalty equal to 10% of the gross wholesale selling price in U.S. funds, or a minimum unit royalty of .75cents U.S. funds per unit, whichever is greater.

EXHIBIT NO: \_\_\_\_\_ FOR IDENTIFICATION  
 Examination of: P. Sorenson  
 DATE: 22 Dec '04  
 JEAN FISCHER, Verbatim Reporter  
 Premiere Verbatim Reporting Ltd., Victoria, B.C.

POP251

**MEMBER ASSOCIATIONS**

Mailorder Gardening Association

BC Landscape & Nursery Trades

American Nursery & Landscape Association

Canadian Nursery Landscape Association



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674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
Clematis "Piilu"™

page 2

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  - a). keep records of all propagation and sales of plants of the variety sold by you
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10. Any mutation, variant or sport of the variety of a unique or patentable quality discovered by you, is the property of Pride of Place Plants Inc.™, (the agent) and you must report to POPP it's existence. You may not propagate or sell any mutation, variant or sport.
11. You may not assign your interest in this Agreement without the prior written consent of POPP, such consent of POPP will not be unreasonably withheld.
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POP252

**MEMBER ASSOCIATIONS**

Mailorder Gardening Association

BC Landscape & Nursery Trades

American Nursery & Landscape Association.

Canadian Nursery Landscape Association



674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
Clematis "Piihu"™

page 3

- 14. All disputes arising out of or in connection with this Agreement will be referred to and finally resolved by arbitration under the British Columbia Commercial Arbitration Act.
- 15. Each of the parties to this Agreement will execute and deliver such further documents and instruments and do all further acts and things as may be reasonably required to evidence, carry out and give full effect to this Agreement.
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- 17. This Agreement endures to the benefit of and is binding upon the parties to this Agreement and their heirs, executors, administrators, successors and assigns.

If the above terms are acceptable, please indicate your agreement by signing and returning to us the enclosed duplicate copy of this letter.

Yours truly,   
Rick Sorenson.  
Pride of Place Plants Inc.™

Accepted and agreed to this 25<sup>th</sup> day of MAY 2000

  
\_\_\_\_\_  
Authorized Signature CLEARVIEW HORTICULTURAL PRODUCTS.

POP253

MEMBER ASSOCIATIONS

Mallorder Gardening Association

BC Landscape & Nursery Trades

American Nursery & Landscape Association

Canadian Nursery Landscape Association



*Finds new plant introductions*

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Please Return**

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

**GROWERS MARKETING AGREEMENT**

**Between: Zelenka Nursery Inc.,  
16127 Winans St.,  
Grand Haven, MI 49417-9636**

**And: Pride of Place Plants Inc.,™  
674 Cromarty Ave.,  
Sidney B.C., Canada V8L 5G6**

As you are aware, Pride of Place Plants Inc.™(POPP) has acquired the exclusive license to propagate and sell the variety, Clematis "Pilla"™ in North America with the right to grant a sublicense to growers.

We hereby grant to you a non-exclusive license for the United States of America (the Territory) to propagate and sell the variety upon the following terms and conditions.

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2. Purchase (from P.O.P.P.) and use for distribution to end users promotional material supplied by Pride of Place Plants Inc.™
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EXHIBIT NO. FOR IDENTIFICATION

Examination of: R. Sorenson

DATE: 22 Dec '04  
JEAN FISCHER, Verbatim Reporter  
Premiere Verbatim Reporting Ltd., Victoria, B.C.

POP254

**MEMBER ASSOCIATIONS**

Mallorder  
Gardening  
Association

BC Landscape &  
Nursery Trades

American Nursery &  
Landscape Association

Canadian Nursery  
Landscape Association



*Fine new plant introductions*

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
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Cont'd..... GROWERS MARKETING AGREEMENT  
Clematis "Piihu"™

page 2

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POP255

**MEMBER ASSOCIATIONS**

Mailorder Gardening Association

BC Landscape & Nursery Trades

American Nursery & Landscape Association

Canadian Nursery Landscape Association



674 CROMARTY AVENUE, SIONEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
Clematis "Piilu"™

page 3

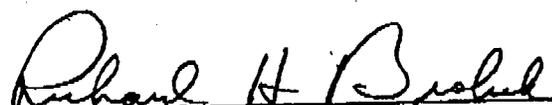
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- 17. This Agreement endures to the benefit of and is binding upon the parties to this Agreement and their heirs, executors, administrators, successors and assigns.

If the above terms are acceptable, please indicate your agreement by signing and returning to us the enclosed duplicate copy of this letter.

Yours truly,

  
Rick Sorenson  
Pride of Place Plants Inc.™

Accepted and agreed to this 2 day of Feb 2000

  
Authorized Signature Zelenka Nursery Inc.,

POP256

MEMBER ASSOCIATIONS

Mailorder Gardening Association

BC Landscape & Nursery Trades

American Nursery & Landscape Association

Canadian Nursery Landscape Association



Fine new plant introductions

ORIGINAL COPY  
Please Return

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

GROWERS MARKETING AGREEMENT

Between: Spring Valley Greenhouse Inc.,  
3242 Daansen Road Box 552  
Walworth, New York 14568-0552

And: Pride of Place Plants Inc.,™  
674 Cromarty Ave.,  
Sidney B.C., Canada V8L 5G6

As you are aware, Pride of Place Plants Inc.™(POPP) has acquired the exclusive license to propagate and sell the variety, Clematis "Piilu"™in North America with the right to grant a sublicense to growers.

We hereby grant to you a non-exclusive license for the United States of America (the Territory) to propagate and sell the variety upon the following terms and conditions.

1. Each plant sold must bear a label containing the details of the plant protection obtained in North America in a format supplied to you by POPP.
2. Purchase (from P.O.P.P.) and use for distribution to end users promotional material supplied by Pride of Place Plants Inc.™
3. Sell each plant of the variety as a finished plant in a 1.5 litre minimum pot or the equivalent to a U.S. one gallon pot.
4. Should your sales volume fall below 750 units in any calendar year then POPP reserve the right to change this Agreement. You would freely offer propagation and/or liner material to other growers at the accepted trade price.
5. This Marketing Agreement causes you to forward to Pride of Place Plants Inc.™ a royalty equal to 10% of the gross wholesale selling price in U.S. funds, or a minimum unit royalty of .75cents U.S. funds per unit, whichever is greater.

POPP will supply growers with 2 1/2" x 2 1/2" x 5" pots to sell  
into gallon + 2 gallon

EXHIBIT NO. 16 FOR IDENTIFICATION  
Examination of: R. Sorenson

DATE: 22 Dec 04  
JEAN FISCHER, Verbatim Reporter  
Premiere Verbatim Reporting Ltd., Victoria, B.C.

MEMBER ASSOCIATIONS -

Mailorder Gardening Association

BC Landscape & Nursery Trades

American Nursery Landscape Association

Landscape Association



*Fine new plant introductions*

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
Clematis "Pilu"™

page 2

- 6. You will pay the royalty to us in semi- annual payments which will be accompanied by written statements disclosing the royalty due under this Agreement and will state the number of plants sold of the variety during the preceding six month period. Statements will be due on the 25<sup>th</sup> day of the months of July and January of each calendar year, covering the preceding six months terminating on June 30 and December 31 of each year.
- 7. In order that the royalty payable under this Agreement may be determined, you will:
  - a). keep records of all propagation and sales of plants of the variety sold by you
  - b). permit POPP, or it's authorized representatives, to inspect and examine your records.
- 8. The license granted by POPP to you for the variety, and your obligation to pay a royalty to POPP for the variety, will be reviewed every two years from the date of signing this Agreement.
- 9. The rights of either party to make a claim against the other in respect of any breach of any of the terms of this Agreement occurring prior to termination shall survive termination.
- 10. Any mutation, variant or sport of the variety of a unique or patentable quality discovered by you, is the property of Pride of Place Plants Inc.™, (the agent) and you must report to POPP it's existence. You may not propagate or sell any mutation, variant or sport.
- 11. You may not assign your interest in this Agreement without the prior written consent of POPP, such consent of POPP will not be unreasonably withheld.
- 12. This Agreement is governed by and construed in accordance the laws of the Province of British Columbia and the Federal Laws of Canada in effect therein.
- 13. This Agreement may not be modified, or amended, except by an instrument in writing signed by the parties to the Agreement.

POP258

MEMBER ASSOCIATIONS

Mailorder Gardening Association

BC Landscape & Nursery Trades

American Nursery & Landscape Association

Canadian Nursery Landscape Association



*Fine new plant introductions*

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
Clematis "Piihu"™

page 3

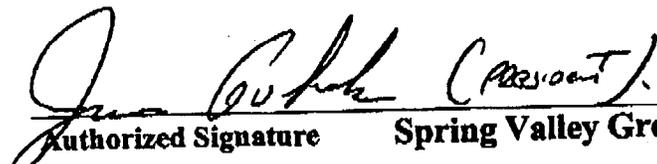
- 14. All disputes arising out of or in connection with this Agreement will be referred to and finally resolved by arbitration under the British Columbia Commercial Arbitration Act.
- 15. Each of the parties to this Agreement will execute and deliver such further documents and instruments and do all further acts and things as may be reasonably required to evidence, carry out and give full effect to this Agreement.
- 16. No waiver by any party to this Agreement of any defaults, breach or non-observance by the other party to this Agreement in respect of any covenant or term of this Agreement will operate as a waiver of that parties rights under this Agreement or affect the rights of that party in respect of any continuing or subsequent default, breach or non-observance.
- 17. This Agreement endures to the benefit of and is binding upon the parties to this Agreement and their heirs, executors, administrators, successors and assigns.

If the above terms are acceptable, please indicate your agreement by signing and returning to us the enclosed duplicate copy of this letter.

Yours truly,

  
Rick Sorenson.  
Pride of Place Plants Inc.™

Accepted and agreed to this 26 day of January 2000

  
Authorized Signature Spring Valley Greenhouse Inc.,

POP259

MEMBER ASSOCIATIONS

Mailorder  
Gardening  
Association

BC Landscape &  
Nursery Trades

American Nursery &  
Landscape Association

Canadian Nursery  
Landscape Association



ORIGINAL COPY  
Please Return

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

### GROWERS MARKETING AGREEMENT

Between: **Mori Nurseries Ltd.,  
R.R.#2 Niagara-on-the-Lake  
Ontario L0S 1J0**

EXHIBIT NO. \_\_\_\_\_ FOR IDENTIFICATION  
Examination of: R. Sorenson  
DATE: 22 Dec '04  
JEAN FISCHER, Verbatim Reporter  
Premiere Verbatim Reporting Ltd., Victoria, B.C.

And: **Pride of Place Plants Inc.,™  
674 Cromarty Ave.,  
Sidney B.C., Canada V8L 5G6**

As you are aware, Pride of Place Plants Inc.™(POPP) has acquired the exclusive license to propagate and sell the variety, Clematis "Piilu"™ in North America with the right to grant a sublicense to growers.

We hereby grant to you a non-exclusive license for Canada (the Territory) to propagate and sell the variety upon the following terms and conditions.

1. Each plant sold must bear a label containing the details of the plant protection obtained in North America in a format supplied to you by POPP.
2. Purchase (from P.O.P.P.) and use for distribution to end users promotional material supplied by Pride of Place Plants Inc.™
3. Sell each plant of the variety as a finished plant in a 1.5 litre minimum pot or the equivalent to a U.S. one gallon pot.
4. Should your sales volume fall below 750 units in any calendar year then POPP reserve the right to change this Agreement. You would freely offer propagation and/or liner material to other growers at the accepted trade price.
5. This Marketing Agreement causes you to forward to Pride of Place Plants Inc.™ a royalty equal to 10% of the gross wholesale selling price in U.S. funds, or a minimum unit royalty of .75cents U.S. funds per unit, whichever is greater.

#### MEMBER ASSOCIATIONS

POP260

Mallorder  
Gardening  
Association

BC Landscape &  
Nursery Trades

American Nursery &  
Landscape Association

Canadian Nursery  
Landscape Association



*Fine new plant introductions*

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
Clematis "Piilu"™

page 2

6. You will pay the royalty to us in semi- annual payments which will be accompanied by written statements disclosing the royalty due under this Agreement and will state the number of plants sold of the variety during the preceding six month period. Statements will be due on the 25<sup>th</sup> day of the months of July and January of each calendar year, covering the preceding six months terminating on June 30 and December 31 of each year.
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  - a). keep records of all propagation and sales of plants of the variety sold by you
  - b). permit POPP, or it's authorized representatives, to inspect and examine your records.
8. The license granted by POPP to you for the variety, and your obligation to pay a royalty to POPP for the variety, will be reviewed every two years from the date of signing this Agreement.
9. The rights of either party to make a claim against the other in respect of any breach of any of the terms of this Agreement occurring prior to termination shall survive termination.
10. Any mutation, variant or sport of the variety of a unique or patentable quality discovered by you, is the property of Pride of Place Plants Inc.™, (the agent) and you must report to POPP it's existence. You may not propagate or sell any mutation, variant or sport.
11. You may not assign your interest in this Agreement without the prior written consent of POPP, such consent of POPP will not be unreasonably withheld.
12. This Agreement is governed by and construed in accordance the laws of the Province of British Columbia and the Federal Laws of Canada in effect therein.
13. This Agreement may not be modified, or amended, except by an instrument in writing signed by the parties to the Agreement.

**MEMBER ASSOCIATIONS**

POP261

Mallorder  
Gardening  
Association

BC Landscape &  
Nursery Trades

American Nursery &  
Landscape Association

Canadian Nursery  
Landscape Association



674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
Phone: (250) 656-7963 • Fax: (250) 655-0306 • Email: rsorenson@pacificcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
Clematis "Piilu"™

page 3

- 14. All disputes arising out of or in connection with this Agreement will be referred to and finally resolved by arbitration under the British Columbia Commercial Arbitration Act.
- 15. Each of the parties to this Agreement will execute and deliver such further documents and instruments and do all further acts and things as may be reasonably required to evidence, carry out and give full effect to this Agreement.
- 16. No waiver by any party to this Agreement of any defaults, breach or non-observance by the other party to this Agreement in respect of any covenant or term of this Agreement will operate as a waiver of that parties rights under this Agreement or affect the rights of that party in respect of any continuing or subsequent default, breach or non-observance.
- 17. This Agreement endures to the benefit of and is binding upon the parties to this Agreement and their heirs, executors, administrators, successors and assigns.

If the above terms are acceptable, please indicate your agreement by signing and returning to us the enclosed duplicate copy of this letter.

Yours truly,

  
Rick Sorenson  
Pride of Place Plants Inc.™

Accepted and agreed to this 14 day of Feb 2000

  
Authorized Signature Mori Nurseries Ltd.,

POP262

MEMBER ASSOCIATIONS

Mailorder Gardening Association

BC Landscape & Nursery Trades

American Nursery & Landscape Association

Canadian Nursery Landscape Association



**ORIGINAL COPY  
Please Return**

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
 Phone: (250) 656-7963 • Fax: (250) 655-0306 • www.prideofplaceplants.com • Email: rsorenson@pacificcoast.net

**GROWERS MARKETING AGREEMENT**

Between: **Wayside Gardens**  
**1 Garden Lane**  
**Hodges, SC 29695-0001**

And: **Pride of Place Plants Inc.,™**  
**674 Cromarty Ave.,**  
**Sidney B.C., Canada V8L 5G6**

As you are aware, Pride of Place Plants Inc.™(POPP) has acquired the exclusive license to propagate and sell the variety, Clematis "Pillu"™ in North America with the right to grant a sublicense to growers.

We hereby grant to you a non-exclusive license for the United States of America (the Territory) to propagate and sell the variety upon the following terms and conditions.

1. Each plant sold must bear a label containing the details of the plant protection obtained in North America in a format supplied to you by POPP.
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5. This Marketing Agreement causes you to forward to Pride of Place Plants Inc.™ a royalty equal to .45cents (U.S. funds) per unit.

EXHIBIT NO. \_\_\_\_\_ FOR IDENTIFICATION  
 Examination of: 12 R. Sorenson  
 DATE: 22 Dec '04  
 JEAN FISCHER, Verbatim Reporter  
 Premiere Verbatim Reporting Ltd., Victoria, B.C.

**Member Associations**

**American Nursery & Landscape Association**

**BC Landscape & Nursery Trades**

**Canadian Nursery Landscape Association**

**Mallorder Gardening Association**

**Perennial Plant Association**

**TRADE SECRET/  
COMMERCIALY SENSITIVE**

*Pride  
of Place  
Plants* *Fine new plant introductions*

674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA

Phone: (250) 656-7963 • Fax: (250) 655-0306 • www.prideofplaceplants.com • Email: rsorenson@pacficcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
Clematis "Piilu"™

page 2

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Member Associations

American Nursery &  
Landscape Association

BC Landscape &  
Nursery Trades

Canadian Nursery  
Landscape Association

Mallorder Gardening  
Association

Perennial Plant  
Association



674 CROMARTY AVENUE, SIDNEY, BRITISH COLUMBIA V8L 5G6 CANADA  
 Phone: (250) 656-7963 • Fax: (250) 655-0306 • www.prideofplaceplants.com • Email: rsorenson@pacficcoast.net

Cont'd..... GROWERS MARKETING AGREEMENT  
 Clematis "Piilu"™

page 3

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If the above terms are acceptable, please indicate your agreement by signing and returning to us the enclosed duplicate copy of this letter.

Yours truly,

Rick Sorenson.  
 Pride of Place Plants Inc.™

Accepted and agreed to this 15<sup>th</sup> day of Oct 2003

  
 Authorized Signature

Wayside Gardens

Member Associations

American Nursery & Landscape Association

BC Landscape & Nursery Trades

Canadian Nursery Landscape Association

Mallorder Gardening Association

Perennial Plant Association

TRADE SECRET/  
 COMMERCIALY SENSITIVE

NEW!

PREMIUM

\$5.88

CLEMATIS  
from



GOLDEN TIARA™  
HOLLAND

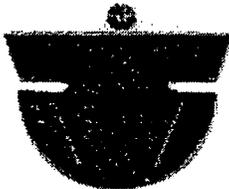


EXHIBIT NO. 13 FOR IDENTIFICATION  
Examination of: R. Sorenson  
DATE: 22 Dec '04  
JEAN FISCHER, Verbatim Reporter  
Premiere Verbatim Reporting Ltd., Victoria, B.C.

NEW!

**PREMIUM**

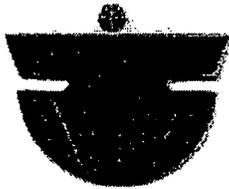
\$5.88

**CLEMATIS**  
*from*

round the World



**BLUE LIGHT™**  
**HOLLAND**



NEW!

PREMIUM

\$5.80

CLEMATIS  
*from*

Around the World



MARMORI™  
ESTONIA



NEW!

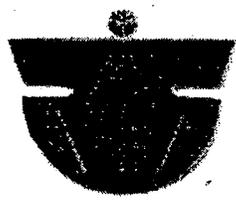
**PREMIUM**

\$5.88

*CLEMATIS*  
*from*



  
**PHILU™**  
**ESTONIA**



[HOME] [OUR PLANTS] [COMPANY PROFILE] [INQUIRIES] Pride of Place Plants Inc. T.M.

## OUR PLANTS

### Clematis 'Kivso' "Piilu"<sup>TM</sup> (Patens Groups)



*Clematis 'Kivso' "Piilu" <sup>TM</sup> (Patens Groups)*

A recent introduction from Estonia and the late plantsman / breeder Mr. Uno Kivistik from the former Soviet Union.

Clematis 'Kivso' "Piilu" <sup>TM</sup> is a deciduous climber to about 2 m or 6 ft., height.

A cross between Clematis Hagley Hybrid and Clematis mahrouyi. The leaves are ovate tapered and dark green.

Flowers first appear in May - June which are double to 7cm across, while the later blooms are single. The flowers are light purplish pink with an eye catching wide dark purplish-red bar. "Piilu" is considered a large flowering Clematis with numerous flowers on one year plants. I believe Clematis 'Kivso' "Piilu" <sup>TM</sup> is the very heaviest bloomer known at this time. Many Clematis bloom only near the top of the plant, leaving the bottom bare, but "Piilu" blooms top to bottom.

Reports from our Trial nurseries indicate "Piilu" started blooming in May and keeps blooming until October. Many clematis varieties have blooms that fade or shrink over time. "Piilu's blooms do neither, there are always blossoms present, unlike most Clematis cultivars "Piilu" does not take a mid-summer break.

Zone 3-8

Propagation prohibited except to licensed growers. Royalties from the sale of this fine cultivar are forwarded to Mr. Kivistik's wife and daughter.

Click here for a list of licensed growers for this plant.

Click for an enlarged image.

---

**INQUIRE ABOUT  
THIS ITEM**

Request more information about this item

**Return to CLIMBING VINES    Return to OUR PLANTS**

---

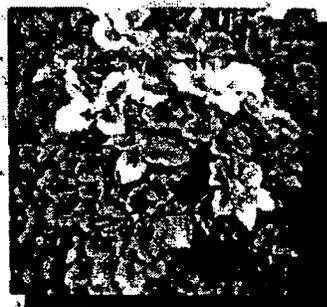
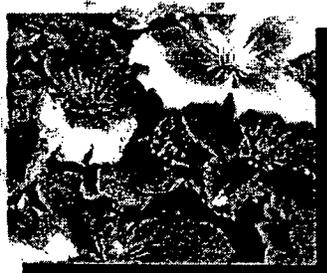
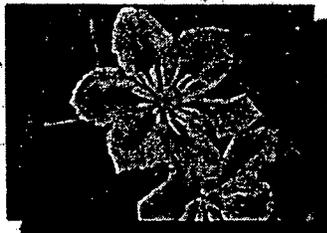
**Pride of Place Plants Inc. T.M.  
674 Cromarty Ave. Sidney British Columbia V8L 5G6 Canada  
Tel:250-656-7963 Fax: 250-655-0306**



## Available from these licensed growers

Please visit [www.icangarden.com/neweden](http://www.icangarden.com/neweden) for more information

Clematis 'Kivso' DDAF  
"Pillu"<sup>TM</sup>



**Cannor Nurseries Ltd.**  
48291 Chilliwack Central Road  
Chilliwack, BC V2P 6H3 Canada  
Phone: 604-795-5993  
Fax: 604-795-6148  
E-mail: [cannor\\_nurseries@telus.net](mailto:cannor_nurseries@telus.net)

**Carolina Nurseries Inc.**  
739 Galliard Road  
Moncks Corner, SC 29461-5201 U.S.A.  
Phone: 843-761-8181  
Fax: 843-761-4793  
E-mail: [kerdman@carolinanurseries.com](mailto:kerdman@carolinanurseries.com)

**Clearview Horticultural Products**  
5543-264th Street  
Aldergrove, BC V4W 1K4 Canada  
Phone: 604-856-6131  
Fax: 604-856-1457  
E-mail: [rob@clearviewhort.com](mailto:rob@clearviewhort.com)

**Garden Import**  
2 Essex Ave., Unit 5  
Thornhill, ON L3T 5Y7 Canada  
Phone: 1-800-339-8314 or 905-751-1950  
Fax: 905-881-3499  
E-mail: [flower@gardenimport.com](mailto:flower@gardenimport.com)

**Holes Greenhouses and Gardens**  
101 Belrose Drive  
St. Albert, AB T8N 8N8 Canada  
Phone: 780-419-6800  
Fax: 780-459-6042

**Mori Nurseries Ltd.**  
Rural Route #2  
Niagara-on-the-Lake, ON L0S 1J0 Canada  
Phone: 905-468-3217  
Fax: 905-468-7271  
E-mail: [mori@mornurseries.com](mailto:mori@mornurseries.com)

**Pepinière L'Avenir**  
209 Principale L'Avenir  
Quebec, QC J0C 1B0 Canada  
Phone: 819-394-2848  
Fax: 819-393-2332  
E-mail: [pepave@copocable.ca](mailto:pepave@copocable.ca)

**Roseville Farms**  
3251 Ponan Pines Road  
Apopka, FL 32712 U.S.A.  
Phone: 407-884-4559  
Fax: 1-800-370-9403 or 407-884-1650  
E-mail: [rosevil@aol.com](mailto:rosevil@aol.com)

**Spring Valley Greenhouse Inc.**  
3242 Dansen Rd., Box 552  
Walworth, NY 14568-0552 U.S.A.  
Phone: 315-497-9816  
Fax: 315-597-2704  
E-mail: [svalley@tymnet.com](mailto:svalley@tymnet.com)

**Tissues and Liners**  
13245 Woodinville Redmond Rd.  
Redmond, Sc 98052 U.S.A.  
Phone: 425-885-5050  
Fax: 425-861-5412  
E-mail: [andres@ustka@landinnursery.com](mailto:andres@ustka@landinnursery.com)

**Wayside Gardens**  
Garden Lane  
Hodges, SC 29695-0001 U.S.A.  
Phone: 800-846-1124  
Fax: 800-871-1124  
E-mail: [info@waysidegardens.com](mailto:info@waysidegardens.com)

**Willowbrook Nurseries**  
1000 Balfour Street  
Fenwick, ON L0S 1C0 Canada  
Phone: 905-892-5350  
Fax: 905-892-3790  
E-mail: [john@willowbrooknurseries.com](mailto:john@willowbrooknurseries.com)

**Zelenka Nurseries**  
16127 Winans St.  
Grand Haven, MI 49417-9636 U.S.A.  
Phone: 616-842-1367  
Fax: 616-842-0304  
E-mail: [zelenka@zelenkanursery.com](mailto:zelenka@zelenkanursery.com)



674 Cromarty Ave. · Sidney, British Columbia V8L 5G6 Canada · Phone: (250) 656-7963,  
Fax: (250) 655-0306 · E-mail: [rsorenson@pacificcoast.net](mailto:rsorenson@pacificcoast.net) · [www.prideofplaceplants.com](http://www.prideofplaceplants.com)



Clematis "Patens Group"

[HOME] [OUR PLANTS] [COMPANY PROFILE] [INQUIRIES] **Pride of Place Plants Inc. T.M.**

## OUR PLANTS

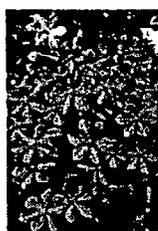
### Climbing Vines



#### **Pandorea pandorana 'Ruby Showers'™**

Pandoreas are an easy to grow native vine from eastern Australia. Pandorea pandorana is a vigorous ...

---



#### **Clematis Sprinkles™**

Discovered by Spring Valley Greenhouse, Inc. in Walworth, NY. Sprinkles has a unique 4-6" magenta ...

---



#### **Fallopia Pink Flamingo™**

A description of this item is forthcoming.

---



#### **Clematis Carnival™**

Discovered by Spring Valley Greenhouse, Inc. in Walworth, NY. Parentage General Sikorsky and Barbara ...

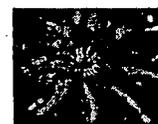
---



#### **Clematis Rose Konigskind™**

We have found the cultivar attached to be the longest blooming Clematis cultivar in our Climate. ...

---



#### **Clematis 'Marie Louise Jensen'™**

Clematis 'Marie Louise Jensen'™ Large blue six inch flowers with outstadning anthers that darken with ...

---



#### **Akebia quinata 'Amethyst Glow'**

A large climber reaching 25 to 30 ft. The leaves have five notched leaflets, and the flowers are fragrant. ...

---



#### **"Blue Light"™**

A large (10 cm to 12 cm flower) double sport from Clematis "Mrs. Cholmondeley", and a beautiful addition ...

---



**"Climador"<sup>TM</sup>**

Clematis 'Konigskind' P.P.A.F. "Climador"<sup>TM</sup> Clematis 'Konigskind' (child of a king) "Climador"<sup>TM</sup> ...

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**"Golden Tiara"<sup>TM</sup>®**

Clematis serratifolia 'Kugotia' Pat.P.P. 10952 "Golden Tiara" ® (Tangutica Group)

An ...

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**"Indian Summer"<sup>TM</sup>**

Campsis x tagliabuana 'Kudian' Pat.P.P. 13139 "Indian Summer" ®

Breeder: HJM Kujif ...

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**"My Angel"<sup>TM</sup>**

Clematis 'My Angel' (Tangutica group) Raised by plantsmen Mr. Wim Snoeijer. Introduced by J. Van ...

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**Akebia quinata bicolor**

A New Akebia for your Vine Section A large climber reaching 25 to 30 ft. The leaves have five notched ...

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**Clematis ' Patricia Ann Fretwell '<sup>TM</sup>**

Clematis ' Patricia Ann Fretwell '<sup>TM</sup> was developed by Mr. Barry Fretwell of Devon, England and named ...

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**Clematis 'Kivso' "Piilu"<sup>TM</sup> (Patens Groups)**

A recent introduction from Estonia and the late plantsman /

breeder Mr. Uno Kivistik from the former ...

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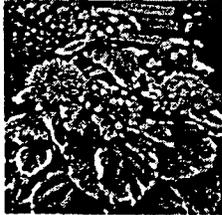
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**Pride of Place Plants Inc. T.M.**  
**674 Cromarty Ave. Sidney British Columbia V8L 5G6 Canada**  
**Tel:250-656-7963 Fax: 250-655-0306**

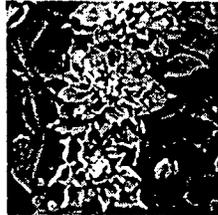


*Pride of Place*<sup>TM</sup>  
NEW PLANTS FROM AROUND THE WORLD

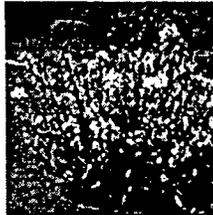
Offering commercial growers new varieties of woody plants, vines, perennials, conifers & small trees carefully selected from plant breeders around the world



FLOWERING SHRUBS



VINES



PERENNIALS



CONIFERS

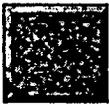
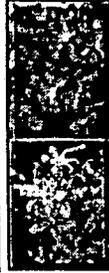


BROADLEAF  
EVERGREENS

WHAT WE DO (A new approach to plant marketing)  
OUR CULTIVARS | PLANT LICENSEES | CONTACT US  
NEWS RELEASES | NOTE TO THE GENERAL PUBLIC

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# New Eden

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<b>Collections</b>	
The Breeding Work of Charles Oliver	
The Barry Fretwell Collection	
The Kivistik Collection	
<b>Individual Plants</b>	
	Potentilla fruticosa 'Marob' 'Marion Red Robin'™
	'Carnival' p.p.a.f.
	GAURA lindheimeri 'Pink Lady'
	Clerodendrum bungei 'Pink Diamond'
	Clematis cultivar 'Hanadayori'
	Clematis 'Silmakavi' & Clematis 'Juuli'
	Clematis 'Minister' & Clematis 'Ruutel'

## Recent News - Update

By way of introduction, my name is Rick Sorenson and I am President/Owner of Pride of Place Plants Inc.,™. We represent plant breeders from throughout the world who are involved in the breeding of woody plants, vines, perennials, conifers, and small trees.

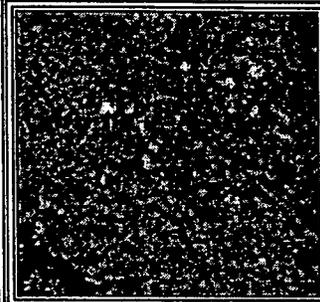
These individuals are generally small operators of wholesale nurseries from throughout the world, the one thing they all have in common is that their efforts originated with the criteria in mind to enhance the home gardeners, gardening experience.

Pride of Place Plants Inc.™, was established as a result of watching and understanding the industries that make their living by providing us with New Products The Automobile Industry, the Fashion Industry, the Hi-Tech Industries (medical, computer, telecom etc.,) the Music Industry and so on.

### Potentilla fruticosa 'Marob' "Marion Red Robin"™

Potentilla fruticosa 'Marob' "Marion Red Robin" t.m. PBR 0130 U.S.P.P. # 9321 was introduced to North America by our company 8 years ago. The cultivar was bred and is owned by Mr. Laddie deJong of Ireland. Mr. Adrian Bloom of Blooms of Bressingham (the agent for Potentilla' Red Ace' ) and I had discussed the potential of this plant for some time before it was decided to release it to the trade. The cultivar is smaller, and redder for longer than 'Red Ace' at both ends of the growing season.

Potentilla fruticosa 'Marob' "Marion Red Robin"™



Sectors of the horticultural industry have relied on New cultivars to enhance food production for example and the Rose growers, Bedding and Floral crop sector has indeed captured our attention.

The Nursery Industry, that is the growers of woody plants, be it flowering shrubs, perennial plants, vines, conifers or small trees seemed to have been left out of this promotional push to advance New Products.

Who's creating these New Cultivars and where are these people?

After divesting my interests in the daily operations of a Wholesale Nursery, a Garden Center and a Land Reclamation Company, I followed a strong viewpoint that the professional Nursery Trades could benefit from contact with plant breeders from throughout the world. They were producing products through carefully considered criteria with the best interests of the home gardener in mind, therefore creating a situation of success through breeding and creating an enhanced garden



Clematis 'Semu' &  
Clematis 'Ekstra'



Clematis 'Marmorì'  
& Clematis  
'Reiman'



Lavandula 'Hazel'  
™



Salvia 'Violet  
Minaret™



Lavandula  
stoechas 'Fairy  
Wings™



Lavandula  
pedunculata  
'Dedication'p.p.a.f.  
'Pukehou™



Cornus alba  
'Cream Cracker'  
™



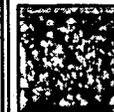
Lithodora diffusa  
'Star'



Gaura lindheimeri  
'Passionate Pink'  
™



Hydrangea  
macrophylla  
'Hanabi™



Gaura linheimeri  
'Blushing  
Butterflies™



Gaura linheimeri  
'Sunny  
Butterflies™



Gaura lindheimeri  
'Crimson  
Butterflies™

Clematis  
'Kivso'p.p.a.f.  
'Pillu™

experience.

The plants within the content of the ICanGarden.com web-site list are not to be intended as the extent of the New Plant Products that we will offer, only a list of plants we currently manage for Breeders in the North American marketplace. There will be more, and those that follow need to be and should be in the home gardens of North America.

We believe these cultivars will be important to the nursery trade and of great benefit to the home gardens of North America.

Sincerely  
Rick Sorenson  
Pride of Place Plants Inc.™

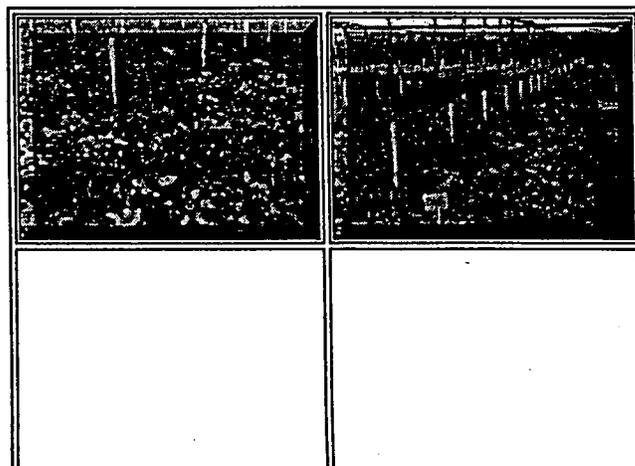
You can make a difference! Rarely does the wholesale producer of nursery plants grow and sell what the home gardener desires. It is because they may not know and we as the end users do not tell them.

At <http://www.ICanGarden.com>, we hope to launch a platform where you can make a difference. Each month we will show you a New Plant Introduction that was bred specifically with the home gardener in mind. Plants that have your garden experience as the main criteria for introduction. In most cases these plants are so new that few recognize their existence.

We will provide you with the names, location, phone and fax numbers and the e mail address of the wholesale nursery producers licensed to grow and market these Fine New Introductions. We encourage you to contact your nearest wholesale nursery from the list provided and prompt them to grow and distribute these New Products to your nearest local Garden Center outlet.

**News Release:**

These attached photo's were taken at Roseville Farms, April 26 / 02. Hopefully these attachments will give you a strong indication of what our goal is in selecting Clematis cultivars. The plants seen are very young, from Rooted cuttings at the beginning of 2002 to a 4 inch container in Flower and lots of them. In the photo's ,if you look at the cultivars surrounding the highlighted cultivars, you will see no flowers and in some cases no set buds. These cultivars highlighted are also compact ,hardy and easy to grow. The sell-through at the Retail Garden Center level will be increased by growing these cultivars and ones like these.





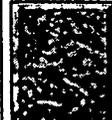
Clematis  
'Konigskind'  
P.P.A.F.  
"Climador"<sup>TM</sup>



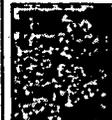
Lonicera  
'Novso'p.p.a.f.  
"Honey Baby"<sup>TM</sup>



Symphoricarpos  
Doorenbosii  
'Arisp'p.p.a.f.  
'Marleen'



Clematis  
serratifolia  
'Kugotia"<sup>TM</sup> P.P.A.F.  
"Golden Tlra"<sup>TM</sup>



Campsis "Indian  
Summer"<sup>TM</sup>



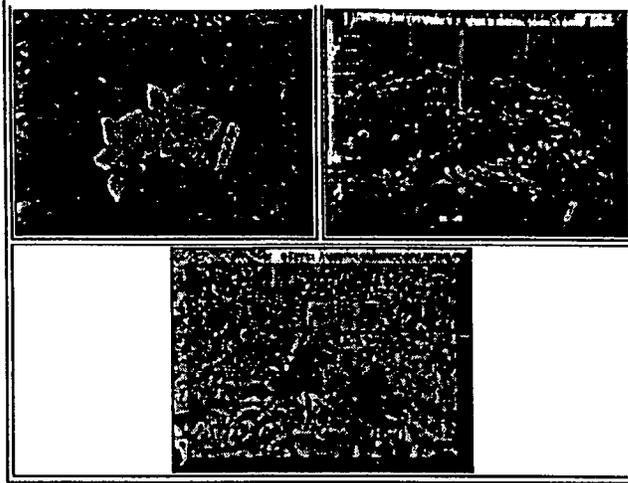
Clematis  
'Vanso'p.p.a.f.  
"Blue Light"<sup>TM</sup>



Clematis  
'Engelina'p.p.a.f.  
"My Angel"<sup>TM</sup>

International Clematis  
Society

last modified: 08/23/2003 09:35:46



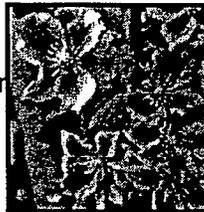
# New Eden Clematis "Piilu"™

Pride of Place Plants Inc.  
Fine New Plant Introductions  
674 Cromarty Ave.  
Sidney, B.C. V8L 5G6  
Phone: (250)656-7963 Fax: (250)655-0306  
Email: rsorenson@pacificcoast.net



Clematis 'Kivso' p.p.a.f. "Piilu"™ (Patens Group)  
(pronounced pie-loo)

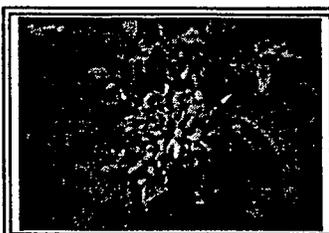
A recent introduction from Estonia and the late plantsman / breeder Uno Kivistik and Aili Kivistik from the former Soviet Union.



"Piilu" is a deciduous climber to about 2 m or 6 ft., height.

A cross between Clematis Hagley Hybrid and Clematis mahrouyi.

The leaves are ovate tapered and dark green.

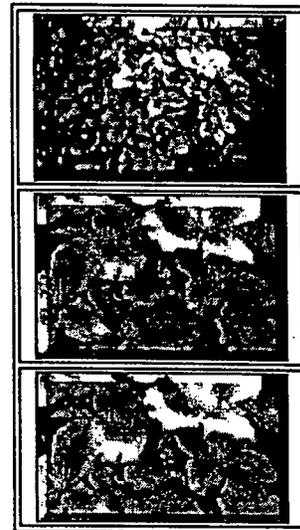


Did you know that the early flowers of Clematis "Piilu"™ were double? It seems, most were unaware of that fact. As an attachment I have included a very recent photo of "Piilu" in my Garden. The later flowers are single, but plentiful, lasting until late September. All of that, on a 4 to 5 ft. plant, who could ask for more.

Flowers first appear in May - June which are double to 7cm across, while the later blooms are single. The flowers are light purplish pink with an eye catching wide dark purplish-red bar. "Piilu" is considered a large flowering Clematis with numerous flowers on one year plants. I believe Clematis "Piilu" is the very heaviest bloomer known

at this time. Many Clematis bloom only near the top of the plant, leaving the bottom bare, but "Piilu" blooms top to bottom.

Reports from our Trial nurseries indicate "Piilu" started



Clematis 'Kivso' p.p.a.f. "Piilu"™

Carolina Nurseries Inc., Atten: Linda Erdman  
739 Gaillard Road Moncks Corner, S. Carolina  
U.S.A. 29461-5201

Phone # 843-761-8181 Fax # 843-761-4793  
Email [lerdman@carolinanurseries.com](mailto:lerdman@carolinanurseries.com)

Tissues & Liners, 13245 Woodinville Redmond  
Road, Redmond, Washington, U.S.A. 98052

Phone: 425-885-5050 Fax 425-861-5412 email:  
[adrejsuske@tandinurseries.com](mailto:adrejsuske@tandinurseries.com)

Pepiniere L'Avenir, 209 Principale L'Avenir,  
Quebec, Canada J0C 1B0

Phone 819-394-2848 Fax 819-393-2332 e mail  
[pepave@cgocable.ca](mailto:pepave@cgocable.ca)

Holes Greenhouses and Gardens, 101 Bellrose  
Drive, St. Albert, AB, Canada T8N 8N8

Phone 780-419-6800 Fax 780-459-6042  
Email: [info@holesonline.com](mailto:info@holesonline.com)

Mori Nurseries, R.R.#2, Niagara-on-the-Lake,  
ON, Canada L0S 1J0

Phone 905-468-3217 Fax 905-468-7271  
Email [mori@morinurseries.com](mailto:mori@morinurseries.com)

Roseville Farms, 3251 Ponan Road, Apopka,  
Florida, U.S.A. 32712

Phone 407-884-4559 Fax 1-800-370-9403 or 407-  
884-1650  
Email [rosevil@aol.com](mailto:rosevil@aol.com)

Spring Valley Greenhouses Inc., 3242 Dansen  
Rd., Box 552, Walworth, NY U.S.A. 14568-0552

Phone 315-597-9816 Fax 315-597-2704  
Email: [s\\_valley@lynnnet.com](mailto:s_valley@lynnnet.com)

Wayside Gardens, 1 Garden Lane, Hodges,

blooming in May and keeps blooming until October. Many clematis varieties have blooms that fade or shrink over time. "Piilu's blooms do neither, there are always blossoms present, unlike most Clematis cultivars "Piilu" does not take a mid-summer break.

Zone 3-8

Propagation prohibited except to licensed growers. Royalties from the sale of this fine cultivar are forwarded to Mr. Kivistik's wife and daughter.

South Carolina, U.S.A 29695-0001

Phone 800-845-1124 fax 800-871-1124

Email [info@waysidegardens.com](mailto:info@waysidegardens.com)

Willowbrook Nurseries, 935 Victoria RR. ER.,  
Fenwick, ON, Canada L0S 1C0

Phone 905-892-5350 Fax 905-892-3790

Email [john@willowbrooknurseries.com](mailto:john@willowbrooknurseries.com)

Zelenka Nurseries Inc. , 16127 Winans Street,  
Grand Haven, Michigan U.S.A. 49417-9636

Phone 616-842-1367 Fax 616 842-0304

Email [zelenka@zelenkanursery.com](mailto:zelenka@zelenkanursery.com)

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