

September 8, 2003

41792

Mr. Christopher Adkins  
Case Serial #: 76378772  
2900 Crystal Drive  
Arlington, VA 22202-3514

Dear Mr. Adkins:

This letter is concerning the trademarking of tobacco varietal name K 326, registration number 2666400. As you know, Cross Creek Seed has entered into a civil action in the US District Court in Greensboro, NC with F.W. Rickard Seeds over trademark infringement of this tobacco variety. Earlier this year, Cross Creek Seed petitioned to the Trademark Appeals Board to have the trademark removed. The board's ruling was that the case would be suspended until the outcome of the District Court case was handed down. This now puts Cross Creek Seed in quite a quandary. Until the Trademark Appeals Board reverses the trademark status on the varietal name K 326, Cross Creek Seed is in a confused position.

As early as November of 2002, I spoke with you on the phone concerning the likelihood of the tobacco varietal name K 326 being trademarked. You assured me then that K 326 was a varietal name and that it both would not and could not be trademarked. To my surprise, F.W. Rickard Seeds filed a law suit against Cross Creek Seed over trademark infringement because you allowed the variety K 326 to be trademarked on December 24, 2002. Since then, Cross Creek Seed has spent 10's of thousands of dollars in lawyer fees both in the District Court in NC and with the Trademark Appeals Board's filings and rulings. All of this harm has come at the simple oversight of, to my understanding, simple guidelines to follow in the trademark registration process of such items as varietal and cultivar names.

On August 28, 2003 I contacted you on the phone, and we spoke about this situation. You told me that you had made a "mistake", and that the trademark registration would be overturned because you found K 326 to be a varietal name. Also during that conversation, you informed me that K 326 was not the only varietal name that F.W. Rickard Seeds was seeking to trademark. You stated that those varietal names were not trademarked because they are just that....varietal names. This comes from §§ 1, 2 and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052 and 1127. You informed me that the varietal name K 326 was sent to you first to be trademarked and that it was done so mistakenly because you didn't look in the right place at first. Since then, you have found the proper location to find K 326 listed as a varietal name.

Enclosed with this letter you should find the reasoning that the tobacco variety K 326 should not have been trademarked. The attachments will take you step by step through the Trademark offices own web page to show that this is an unfair, unjust and illegal trademark set forth by the rules that govern the Trademark offices registration process.

09-12-2003

U.S. Patent & TMO/c/TM Mail RcptDt. #74

September 8, 2003

From this letter I am requesting only two things from you and the Trademark office:

- 1) A letter stating that a mistake was made by the trademark office on the registration of the varietal name K 326 and that it will be overturned because of the rules stated under the varietal and cultivar section of the TMEP.
- 2) In this letter provide a list of the other varietal names that were not registered because of their status as such... varietal names.

Mr. Adkins, while this may not be the usual steps taken by the trademark office, I believe it is the least one could do for this erroneous situation that we all find ourselves in at this point due to an oversight by the trademark office. I am not requesting the overturning of the trademark at this time, merely the letter stating a mistake was made in the registration of the trademark. While speaking with you over the phone, you were as shocked as I was with how far this issue has gotten with the court problems now. Please do the right thing and send the letter soon.

On a closing note, I find it awfully *funny* on the trademark application for K 326 that the first date of use is listed "at least as early as May 26, 1984". Of course they say "at least" because K 326 received its P.V.P. certificate on March 26, 1984. They know this fully because they purchased the P.V.P. themselves and admit to this date in court. It is just another way for them to try and muddy the waters and cloud the minds.

Respectfully,



Sam Baker  
927 Hatley-Burriss Road  
Stanfield, NC 28163  
(704) 485-3167

cc: Mrs. Angela Wilson  
Mrs. Sharon Marsh  
Mr. Thomas Holt, Attorney

Enclosures

September 2, 2003

The enclosures take you step by step through the TM office's own web page. It starts you out in the TMEP Chapter 1200 listing 1202.12 Varietal and Cultivar Names. Each place you see highlighted is a link on your web page that you are to click on. Follow the links highlighted and you will get to the final page which clearly shows that K 326 is a varietal name that should have never been trademarked.

Respectfully,

*Sam Baker*

Sam Baker

## TMEP Chapter 1200 Substantive Examination of Applications

### 1202.12 Varietal and Cultivar Names (Examination of Applications for Seeds and Plants)

Varietal or cultivar names are designations given to cultivated varieties or subspecies of live plants or agricultural seeds. They amount to the generic name of the plant or seed by which such variety is known to the public. These names can consist of a numeric or alphanumeric code or can be a "fancy" (arbitrary) name. The terms "varietal" and "cultivar" may have slight semantic differences but pose indistinguishable issues and are treated identically for trademark purposes.

Subspecies are types of a particular species of plant or seed that are members of a particular genus. For example, all maple trees are in the genus *Acer*. The sugar maple species is known as *Acer saccharum*, while the red maple species is called *Acer rubrum*. In turn, these species have been subdivided into various cultivated varieties that are developed commercially and given varietal or cultivar names that are known to the public.

If the examining attorney determines that wording sought to be registered as a mark for live plants or agricultural seeds comprises a varietal or cultivar name, the examining attorney must refuse registration, or require a disclaimer, on the ground that the matter is the varietal name of the goods and does not function as a trademark under §§1, 2 and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052 and 1127. See *Dixie Rose Nursery v. Coe*, 131 F.2d 446, 55 USPQ 315 (D.C. Cir. 1942), cert. denied 318 U.S. 782, 57 USPQ 568 (1943); *In re Hilltop Orchards & Nurseries, Inc.*, 206 USPQ 1034 (TTAB 1979); *In re Farmer Seed & Nursery Co.*, 137 USPQ 231 (TTAB 1963); *In re Cohn Bodger & Sons Co.*, 122 USPQ 345 (TTAB 1959). Likewise, if the mark identifies the prominent portion of a varietal name, it must be refused. *In re Delta and Pine Land Co.*, 26 USPQ2d 1157 (TTAB 1993) (Board affirmed refusal to register DELTAPINE, which was a portion of the varietal names Deltapine 50, Deltapine 20, Deltapine 105 and Deltapine 506).

A varietal or cultivar name is used in a plant patent to identify the variety. Thus, even if the name was originally arbitrary, it "describe[s] to the public a [plant] of a particular sort, not a [plant] from a particular [source]." *Dixie Rose*, 131 F.2d at 447, 55 USPQ at 316. It is against public policy for any one supplier to retain exclusivity in a patented variety of plant, or the name of a variety, once its patent expires. *Id.*

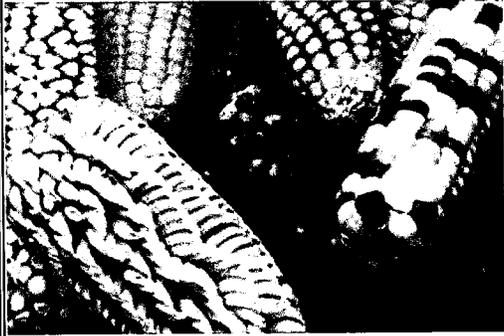
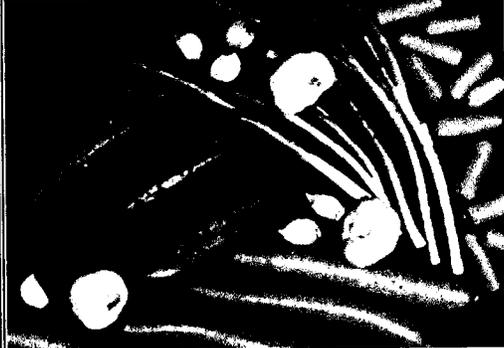
Market realities and lack of laws concerning the registration of varietal and cultivar names have created a number of problems in this area. Some varietal names are not attractive or easy to remember by the public. As a result, many arbitrary terms are used as varietal names. Problems arise when trademark registration is sought for varietal names, when arbitrary varietal names are thought of as being trademarks by the public, and when terms intended as trademarks by plant breeders become generic through

public use. These problems make this a difficult area for the examining attorney in terms of gathering credible evidence and knowing when to make refusals.

Whenever an application is filed to register a mark containing wording for live plants or agricultural seeds, the examining attorney must inquire of the applicant whether the term has ever been used as a varietal name, and whether such name has been used in connection with a plant patent, a utility patent, or a certificate for plant variety protection. See 37 C.F.R. §2.61(b). **The examining attorney should also undertake an independent investigation of any evidence that would support a refusal to register, using sources of evidence that are appropriate for the particular goods specified in the application (e.g., laboratories and repositories of the United States Department of Agriculture, plant patent information from the United States Patent and Trademark Office, a variety name search of plants certified under the Plant Variety Protection Act listed at [www.ars-grin.gov/npgs/searchgrin.html](http://www.ars-grin.gov/npgs/searchgrin.html)).**

# National Plant Germplasm System

[Home](#) | [Collections](#) | [Search GRIN](#) | [Request Germplasm](#) | [pcGRIN](#) | [Crop Germplasm Committees](#) | [Repository Home](#)

	<p>Accession Area Queries</p> <p>Crop Science Registration</p> <p>Plant Variety Protection</p> <p>Taxonomic Queries</p> <p>Research Crops and Descriptor/Evaluation</p> <p>Data Queries</p>	
---	---	--

[Plants](#) | [Animals](#) | [Microbes](#) | [Invertebrates](#) | [NGRAC](#)

This web server is maintained by the Database Management Unit (DBMU) of the National Germplasm Resources Laboratory (NGRL), Plant Sciences Institute (PSI), Beltsville Agricultural Research Center (BARC), Agricultural Research Service, U.S. Department of Agriculture.

- Availability of the System
- Privacy Policy
- USDA Nondiscrimination Statement
- Accessibility Statement

| [USDA](#) | [ARS](#) | [BA](#) |

This document maintained by [dbmu@ars-grin.gov](mailto:dbmu@ars-grin.gov)  
 Last updated: 21 February 2002

## Plant Variety Protection Office

Status of Certification (Sept. 2, 2003)

Search by PV Number/Variety Name

Search by Applicant or Owner Name

or Select a Crop:

<u>Agrotricum</u>	<u>Cucumber</u>	<u>Potato</u>
<u>Alfalfa</u>	<u>Dahlia</u>	<u>Primrose, cape</u>
<u>Alkaligrass, weeping</u>	<u>Daisy, blackfoot</u>	<u>Primrose, evening</u>
<u>Artichoke</u>	<u>Daisy, english</u>	<u>Pumpkin</u>
<u>Ashitaba</u>	<u>Delphinium</u>	<u>Radish</u>
<u>Aster, china</u>	<u>Dogstail, crested</u>	<u>Radish, fodder</u>
<u>Atra paspalum</u>	<u>Eggplant</u>	<u>Rape</u>
<u>Bahiagrass</u>	<u>Endive</u>	<u>Reed canarygrass</u>
<u>Barley</u>	<u>Fennel</u>	<u>Rescuegrass</u>
<u>Basil</u>	<u>Fescue, chewings</u>	<u>Rice</u>
<u>Bean, field</u>	<u>Fescue, creeping</u>	<u>Rye</u>
<u>Bean, garden</u>	<u>Fescue, hard</u>	<u>Ryegrass (lolium x hybridum)</u>
<u>Bean, lima</u>	<u>Fescue, idaho</u>	<u>Ryegrass, annual</u>
<u>Bean, mung</u>	<u>Fescue, meadow</u>	<u>Ryegrass, perennial</u>
<u>Beet</u>	<u>Fescue, red</u>	<u>Safflower</u>
<u>Beet, garden</u>	<u>Fescue, sheep</u>	<u>Sainfoin</u>
<u>Beet, sugar</u>	<u>Fescue, tall</u>	<u>Salicornia</u>
<u>Bentgrass, colonial</u>	<u>Festulolium</u>	<u>Sesame</u>
<u>Bentgrass, creeping</u>	<u>Flaccidgrass</u>	<u>Shallot</u>
<u>Bentgrass, red top</u>	<u>Flax</u>	<u>Snapdragon</u>
<u>Bentgrass, velvet</u>	<u>Florida fingergrass</u>	<u>Sorghum</u>
<u>Bermudagrass</u>	<u>Foxtail, creeping</u>	<u>Sorghum-sudangrass</u>
<u>Bermudagrass (f1)</u>	<u>Gamagrass, eastern</u>	<u>Soybean</u>
<u>Bluegrass, annual</u>	<u>Gazania</u>	<u>Spinach</u>
<u>Bluegrass, glaucantha</u>	<u>Hair-grass, crested</u>	<u>Spruce</u>
<u>Bluegrass, kentucky</u>	<u>Hardinggrass</u>	<u>Squash</u>
<u>Bluegrass, rough</u>	<u>Kikuyu grass</u>	<u>St. augustinegrass</u>
<u>Bluegrass, supina</u>	<u>Kleingrass</u>	<u>Steirodiscus</u>
<u>Bluestem, big</u>	<u>Kochia</u>	<u>Stevia</u>
<u>Brachiaria x</u>	<u>Laurisagrass</u>	<u>Stock, common</u>
<u>Broccoli</u>	<u>Lawngrass, japanese</u>	<u>Sunflower</u>
<u>Broccoli (f1)</u>	<u>Lentil</u>	<u>Sunflower (f1)</u>
<u>Broccoli raab</u>	<u>Lespedeza, chinese</u>	<u>Sweetpea</u>
<u>Brome, short</u>	<u>Lespedeza, striate</u>	<u>Swiss chard</u>
<u>Bromegrass, smooth</u>	<u>Lettuce</u>	<u>Tanden, festulolium</u>
<u>Bromegrass, sweet</u>	<u>Lobelia, annual</u>	<u>Teff</u>
<u>Bromegrass, thready</u>	<u>Lovegrass, weeping</u>	<u>Thistle</u>
<u>Buckwheat</u>	<u>Lupin</u>	<u>Timothy</u>
<u>Buffalograss</u>	<u>Manna grass</u>	<u>Timothy, turf</u>
<u>Buffelgrass</u>	<u>Marigold</u>	<u>Tobacco</u>

---

**Tobacco PVP Accessions**

---

7200022 to 8700057  
8700120 to 200100291

**Plant Variety Protection Office**  
USDA-AMS, Beltsville, MD  
[Home Page](#)

---

**USDA - ARS - GRIN**

---

---

**Tobacco Listings between 7200022 and 8700057**


---

<b>PVP No.</b>	<b>Variety/Name</b>	<b>Applicant</b>	<b>Status</b>	<b>Status Date</b>
7200022	<b>Coker 347</b>	Novartis Seeds, Inc.	Certificate Expired	10/27/1993
7200023	<b>Coker 411</b>	Novartis Seeds, Inc.	Certificate Expired	10/27/1993
7200051	<b>Speight's G-33</b>	Speight Seed Farms, Inc.	Certificate Expired	04/11/1994
7200140	<b>Speight G-140</b>	Speight Seed Farms, Inc.	Certificate Expired	04/11/1994
7400007	<b>Speight G-15</b>	Speight Seed Farms, Inc.	Certificate Expired	04/11/1994
7400035	<b>McNair 944</b>	Novartis Seeds, Inc.	Certificate Expired	03/18/1994
7500030	<b>McNair 1040</b>	McNair Seed Company	Application Abandoned	11/18/1975
7500065	<b>Speight G-23</b>	Speight Seed Farms, Inc.	Certificate Expired	04/11/1994
7600004	<b>Coker 86</b>	Novartis Seeds, Inc.	Certificate Expired	10/27/1993
7800008	<b>Coker 48</b>	Novartis Seeds, Inc.	Certificate Expired	09/20/1995
7900035	<b>Speight G-70</b>	Speight Seed Farms, Inc.	Certificate Expired	06/14/1996
7900040	<b>Speight G-52</b>	Speight Seed Farms, Inc.	Certificate Expired	03/11/1997
7900118	<b>Speight G-58</b>	Speight Seed Farms, Inc.	Certificate Expired	02/26/1999
8000060	<b>McNair 373</b>	Northrup King Company	Application Abandoned	12/29/1980
8100048	<b>Coker 51</b>	Novartis Seeds, Inc.	Certificate Expired	02/18/2000
8200001	<b>K399</b>	Novartis Seeds, Inc.	Certificate Expired	07/15/2000
8200038	<b>N77</b>	Newton Seed, Inc.	Application Withdrawn	03/30/1982
8200046	<b>N126</b>	Newton Seed, Inc.	Application Withdrawn	03/30/1982
8300056	<b>Coker 176</b>	Novartis Seeds, Inc.	Certificate Expired	09/29/2001
8300070	<b>K326</b>	Novartis Seeds, Inc.	Certificate Expired	03/26/2002
8500025	<b>Speight-G-80</b>	Speight Seed Farms, Inc.	Certificate Issued	04/30/1986
8500040	<b>Coker 206</b>	Novartis Seeds, Inc.	Certificate Issued	04/30/1986
8700040	<b>K394</b>	F.W. Rickard Seeds, Inc.	Certificate Issued	08/31/1987
8700049	<b>Coker 371 Gold</b>	F.W. Rickard Seeds, Inc.	Certificate Issued	09/30/1987
8700057	<b>Speight G-108</b>	Speight Seed Farms, Inc.	Certificate Issued	08/31/1987

**Plant Variety Protection Office**  
 USDA-AMS, Beltsville, MD  
[Home Page](#)

---

**USDA - ARS - GRIN**

---

September 8, 2003

Mr. Christopher Adkins  
Case Serial #: 76378772  
2900 Crystal Drive  
Arlington, VA 22202-3514

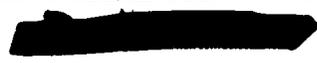
Dear Mr. Adkins:

This letter is concerning the trademarking of tobacco varietal name K 326, registration number 2666400. As you know, Cross Creek Seed has entered into a civil action in the US District Court in Greensboro, NC with F.W. Rickard Seeds over trademark infringement of this tobacco variety. Earlier this year, Cross Creek Seed petitioned to the Trademark Appeals Board to have the trademark removed. The board's ruling was that the case would be suspended until the outcome of the District Court case was handed down. This now puts Cross Creek Seed in quite a quandary. Until the Trademark Appeals Board reverses the trademark status on the varietal name K 326, Cross Creek Seed is in a confused position.

As early as November of 2002, I spoke with you on the phone concerning the likelihood of the tobacco varietal name K 326 being trademarked. You assured me then that K 326 was a varietal name and that it both would not and could not be trademarked. To my surprise, F.W. Rickard Seeds filed a law suit against Cross Creek Seed over trademark infringement because you allowed the variety K 326 to be trademarked on December 24, 2002. Since then, Cross Creek Seed has spent 10's of thousands of dollars in lawyer fees both in the District Court in NC and with the Trademark Appeals Board's filings and rulings. All of this harm has come at the simple oversight of, to my understanding, simple guidelines to follow in the trademark registration process of such items as varietal and cultivar names.

On August 28, 2003 I contacted you on the phone, and we spoke about this situation. You told me that you had made a "mistake", and that the trademark registration would be overturned because you found K 326 to be a varietal name. Also during that conversation, you informed me that K 326 was not the only varietal name that F.W. Rickard Seeds was seeking to trademark. You stated that those varietal names were not trademarked because they are just that....varietal names. This comes from §§ 1, 2 and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052 and 1127. You informed me that the varietal name K 326 was sent to you first to be trademarked and that it was done so mistakenly because you didn't look in the right place at first. Since then, you have found the proper location to find K 326 listed as a varietal name.

Enclosed with this letter you should find the reasoning that the tobacco variety K 326 should not have been trademarked. The attachments will take you step by step through the Trademark offices own web page to show that this is an unfair, unjust and illegal trademark set forth by the rules that govern the Trademark offices registration process.

  
09-12-2003

U.S. Patent & TMOtc/TM Mail RcptDt. #74

September 8, 2003

From this letter I am requesting only two things from you and the Trademark office:

- 1) A letter stating that a mistake was made by the trademark office on the registration of the varietal name K 326 and that it will be overturned because of the rules stated under the varietal and cultivar section of the TMEP.
- 2) In this letter provide a list of the other varietal names that were not registered because of their status as such... varietal names.

Mr. Adkins, while this may not be the usual steps taken by the trademark office, I believe it is the least one could do for this erroneous situation that we all find ourselves in at this point due to an oversight by the trademark office. I am not requesting the overturning of the trademark at this time, merely the letter stating a mistake was made in the registration of the trademark. While speaking with you over the phone, you were as shocked as I was with how far this issue has gotten with the court problems now. Please do the right thing and send the letter soon.

On a closing note, I find it awfully *funny* on the trademark application for K 326 that the first date of use is listed "at least as early as May 26, 1984". Of course they say "at least" because K 326 received its P.V.P. certificate on March 26, 1984. They know this fully because they purchased the P.V.P. themselves and admit to this date in court. It is just another way for them to try and muddy the waters and cloud the minds.

Respectfully,



Sam Baker  
927 Hatley-Burris Road  
Stanfield, NC 28163  
(704) 485-3167

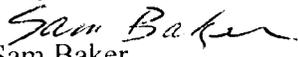
cc: Mrs. Angela Wilson  
Mrs. Sharon Marsh  
Mr. Thomas Holt, Attorney

Enclosures

September 2, 2003

The enclosures take you step by step through the TM office's own web page. It starts you out in the TMEP Chapter 1200 listing 1202.12 Varietal and Cultivar Names. Each place you see highlighted is a link on your web page that you are to click on. Follow the links highlighted and you will get to the final page which clearly shows that K 326 is a varietal name that should have never been trademarked.

Respectfully,

  
Sam Baker

## TMEP Chapter 1200 Substantive Examination of Applications

### 1202.12 Varietal and Cultivar Names (Examination of Applications for Seeds and Plants)

Varietal or cultivar names are designations given to cultivated varieties or subspecies of live plants or agricultural seeds. They amount to the generic name of the plant or seed by which such variety is known to the public. These names can consist of a numeric or alphanumeric code or can be a "fancy" (arbitrary) name. The terms "varietal" and "cultivar" may have slight semantic differences but pose indistinguishable issues and are treated identically for trademark purposes.

Subspecies are types of a particular species of plant or seed that are members of a particular genus. For example, all maple trees are in the genus *Acer*. The sugar maple species is known as *Acer saccharum*, while the red maple species is called *Acer rubrum*. In turn, these species have been subdivided into various cultivated varieties that are developed commercially and given varietal or cultivar names that are known to the public.

If the examining attorney determines that wording sought to be registered as a mark for live plants or agricultural seeds comprises a varietal or cultivar name, the examining attorney must refuse registration, or require a disclaimer, on the ground that the matter is the varietal name of the goods and does not function as a trademark under §§1, 2 and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052 and 1127. See *Dixie Rose Nursery v. Coe*, 131 F.2d 446, 55 USPQ 315 (D.C. Cir. 1942), cert. denied 318 U.S. 782, 57 USPQ 568 (1943); *In re Hilltop Orchards & Nurseries, Inc.*, 206 USPQ 1034 (TTAB 1979); *In re Farmer Seed & Nursery Co.*, 137 USPQ 231 (TTAB 1963); *In re Cohn Bodger & Sons Co.*, 122 USPQ 345 (TTAB 1959). Likewise, if the mark identifies the prominent portion of a varietal name, it must be refused. *In re Delta and Pine Land Co.*, 26 USPQ2d 1157 (TTAB 1993) (Board affirmed refusal to register DELTAPINE, which was a portion of the varietal names Deltapine 50, Deltapine 20, Deltapine 105 and Deltapine 506).

A varietal or cultivar name is used in a plant patent to identify the variety. Thus, even if the name was originally arbitrary, it "describe[s] to the public a [plant] of a particular sort, not a [plant] from a particular [source]." *Dixie Rose*, 131 F.2d at 447, 55 USPQ at 316. It is against public policy for any one supplier to retain exclusivity in a patented variety of plant, or the name of a variety, once its patent expires. *Id.*

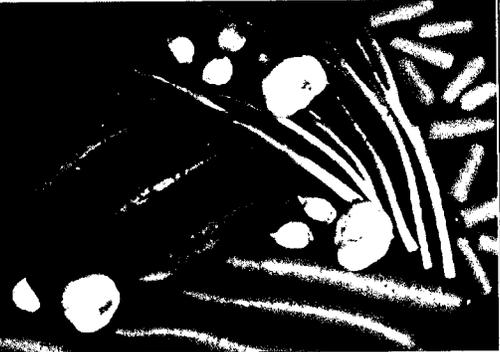
Market realities and lack of laws concerning the registration of varietal and cultivar names have created a number of problems in this area. Some varietal names are not attractive or easy to remember by the public. As a result, many arbitrary terms are used as varietal names. Problems arise when trademark registration is sought for varietal names, when arbitrary varietal names are thought of as being trademarks by the public, and when terms intended as trademarks by plant breeders become generic through

public use. These problems make this a difficult area for the examining attorney in terms of gathering credible evidence and knowing when to make refusals.

Whenever an application is filed to register a mark containing wording for live plants or agricultural seeds, the examining attorney must inquire of the applicant whether the term has ever been used as a varietal name, and whether such name has been used in connection with a plant patent, a utility patent, or a certificate for plant variety protection. See 37 C.F.R. §2.61(b). **The examining attorney should also undertake an independent investigation of any evidence that would support a refusal to register, using sources of evidence that are appropriate for the particular goods specified in the application (e.g., laboratories and repositories of the United States Department of Agriculture, plant patent information from the United States Patent and Trademark Office, a variety name search of plants certified under the Plant Variety Protection Act listed at [www.ars-grin.gov/npgs/searchgrin.html](http://www.ars-grin.gov/npgs/searchgrin.html)).**

# National Plant Germplasm System

[Home](#) | [Collections](#) | [Search GRIN](#) | [Request Germplasm](#) | [pcGRIN](#) | [Crop Germplasm Committees](#) | [Repository Home](#)

	<p>Accession Area Queries</p> <p>Crop Science Registration</p> <p>Plant Variety Protection</p> <p>Taxonomic Queries</p> <p>Research Crops and Descriptor/Evaluation</p> <p>Data Queries</p>	
---	---	--

[Plants](#) | [Animals](#) | [Microbes](#) | [Invertebrates](#) | [NGRAC](#)

This web server is maintained by the Database Management Unit (DBMU) of the National Germplasm Resources Laboratory (NGRL), Plant Sciences Institute (PSI), Beltsville Agricultural Research Center (BARC), Agricultural Research Service, U.S. Department of Agriculture.

- [Availability of the System](#)
- [Privacy Policy](#)
- [USDA Nondiscrimination Statement](#)
- [Accessibility Statement](#)

| [USDA](#) | [ARS](#) | [BA](#) |

This document maintained by [dbmu@ars-grin.gov](mailto:dbmu@ars-grin.gov)  
Last updated: 21 February 2002

## Plant Variety Protection Office

Status of Certification (Sept. 2, 2003)

Search by PV Number/Variety Name

Search by Applicant or Owner Name

or Select a Crop:

<u>Agroticum</u>	<u>Cucumber</u>	<u>Potato</u>
<u>Alfalfa</u>	<u>Dahlia</u>	<u>Primrose, cape</u>
<u>Alkaligrass, weeping</u>	<u>Daisy, blackfoot</u>	<u>Primrose, evening</u>
<u>Artichoke</u>	<u>Daisy, english</u>	<u>Pumpkin</u>
<u>Ashitaba</u>	<u>Delphinium</u>	<u>Radish</u>
<u>Aster, china</u>	<u>Dogstail, crested</u>	<u>Radish, fodder</u>
<u>Atra paspalum</u>	<u>Eggplant</u>	<u>Rape</u>
<u>Bahiagrass</u>	<u>Endive</u>	<u>Reed canarygrass</u>
<u>Barley</u>	<u>Fennel</u>	<u>Rescuegrass</u>
<u>Basil</u>	<u>Fescue, chewings</u>	<u>Rice</u>
<u>Bean, field</u>	<u>Fescue, creeping</u>	<u>Rye</u>
<u>Bean, garden</u>	<u>Fescue, hard</u>	<u>Ryegrass (lolium x hybridum)</u>
<u>Bean, lima</u>	<u>Fescue, idaho</u>	<u>Ryegrass, annual</u>
<u>Bean, mung</u>	<u>Fescue, meadow</u>	<u>Ryegrass, perennial</u>
<u>Beet</u>	<u>Fescue, red</u>	<u>Safflower</u>
<u>Beet, garden</u>	<u>Fescue, sheep</u>	<u>Sainfoin</u>
<u>Beet, sugar</u>	<u>Fescue, tall</u>	<u>Salicornia</u>
<u>Bentgrass, colonial</u>	<u>Festulolium</u>	<u>Sesame</u>
<u>Bentgrass, creeping</u>	<u>Flaccidgrass</u>	<u>Shallot</u>
<u>Bentgrass, red top</u>	<u>Flax</u>	<u>Snapdragon</u>
<u>Bentgrass, velvet</u>	<u>Florida fingergrass</u>	<u>Sorghum</u>
<u>Bermudagrass</u>	<u>Foxtail, creeping</u>	<u>Sorghum-sudangrass</u>
<u>Bermudagrass (f1)</u>	<u>Gamagrass, eastern</u>	<u>Soybean</u>
<u>Bluegrass, annual</u>	<u>Gazania</u>	<u>Spinach</u>
<u>Bluegrass, glaucantha</u>	<u>Hair-grass, crested</u>	<u>Spruce</u>
<u>Bluegrass, kentucky</u>	<u>Hardinggrass</u>	<u>Squash</u>
<u>Bluegrass, rough</u>	<u>Kikuyu grass</u>	<u>St. augustinegrass</u>
<u>Bluegrass, supina</u>	<u>Kleingrass</u>	<u>Steirodiscus</u>
<u>Bluestem, big</u>	<u>Kochia</u>	<u>Stevia</u>
<u>Brachiaria x</u>	<u>Laurisagrass</u>	<u>Stock, common</u>
<u>Broccoli</u>	<u>Lawnglass, japanese</u>	<u>Sunflower</u>
<u>Broccoli (f1)</u>	<u>Lentil</u>	<u>Sunflower (f1)</u>
<u>Broccoli raab</u>	<u>Lespedeza, chinese</u>	<u>Sweetpea</u>
<u>Brome, short</u>	<u>Lespedeza, striate</u>	<u>Swiss chard</u>
<u>Bromegrass, smooth</u>	<u>Lettuce</u>	<u>Tanden, festulolium</u>
<u>Bromegrass, sweet</u>	<u>Lobelia, annual</u>	<u>Teff</u>
<u>Bromegrass, thready</u>	<u>Lovegrass, weeping</u>	<u>Thistle</u>
<u>Buckwheat</u>	<u>Lupin</u>	<u>Timothy</u>
<u>Buffalograss</u>	<u>Manna grass</u>	<u>Timothy, turf</u>
<u>Buffelgrass</u>	<u>Marigold</u>	<u>Tobacco</u>

---

**Tobacco PVP Accessions**

---

7200022 to 8700057  
8700120 to 200100291

**Plant Variety Protection Office**  
USDA-AMS, Beltsville, MD  
Home Page

---

**USDA - ARS - GRIN**

---

---

**Tobacco Listings between 7200022 and 8700057**

<b>PVP No.</b>	<b>Variety/Name</b>	<b>Applicant</b>	<b>Status</b>	<b>Status Date</b>
7200022	<b>Coker 347</b>	Novartis Seeds, Inc.	Certificate Expired	10/27/1993
7200023	<b>Coker 411</b>	Novartis Seeds, Inc.	Certificate Expired	10/27/1993
7200051	<b>Speight's G-33</b>	Speight Seed Farms, Inc.	Certificate Expired	04/11/1994
7200140	<b>Speight G-140</b>	Speight Seed Farms, Inc.	Certificate Expired	04/11/1994
7400007	<b>Speight G-15</b>	Speight Seed Farms, Inc.	Certificate Expired	04/11/1994
7400035	<b>McNair 944</b>	Novartis Seeds, Inc.	Certificate Expired	03/18/1994
7500030	<b>McNair 1040</b>	McNair Seed Company	Application Abandoned	11/18/1975
7500065	<b>Speight G-23</b>	Speight Seed Farms, Inc.	Certificate Expired	04/11/1994
7600004	<b>Coker 86</b>	Novartis Seeds, Inc.	Certificate Expired	10/27/1993
7800008	<b>Coker 48</b>	Novartis Seeds, Inc.	Certificate Expired	09/20/1995
7900035	<b>Speight G-70</b>	Speight Seed Farms, Inc.	Certificate Expired	06/14/1996
7900040	<b>Speight G-52</b>	Speight Seed Farms, Inc.	Certificate Expired	03/11/1997
7900118	<b>Speight G-58</b>	Speight Seed Farms, Inc.	Certificate Expired	02/26/1999
8000060	<b>McNair 373</b>	Northrup King Company	Application Abandoned	12/29/1980
8100048	<b>Coker 51</b>	Novartis Seeds, Inc.	Certificate Expired	02/18/2000
8200001	<b>K399</b>	Novartis Seeds, Inc.	Certificate Expired	07/15/2000
8200038	<b>N77</b>	Newton Seed, Inc.	Application Withdrawn	03/30/1982
8200046	<b>N126</b>	Newton Seed, Inc.	Application Withdrawn	03/30/1982
8300056	<b>Coker 176</b>	Novartis Seeds, Inc.	Certificate Expired	09/29/2001
<del>8300070</del>	<del>N326</del>	<del>Novartis Seeds, Inc.</del>	<del>Certificate Expired</del>	<del>03/26/2002</del>
8500025	<b>Speight-G-80</b>	Speight Seed Farms, Inc.	Certificate Issued	04/30/1986
8500040	<b>Coker 206</b>	Novartis Seeds, Inc.	Certificate Issued	04/30/1986
8700040	<b>K394</b>	F.W. Rickard Seeds, Inc.	Certificate Issued	08/31/1987
8700049	<b>Coker 371 Gold</b>	F.W. Rickard Seeds, Inc.	Certificate Issued	09/30/1987
8700057	<b>Speight G-108</b>	Speight Seed Farms, Inc.	Certificate Issued	08/31/1987

**Plant Variety Protection Office**  
 USDA-AMS, Beltsville, MD  
 Home Page

---

**USDA - ARS - GRIN**

---

September 8, 2003

Mr. Christopher Adkins  
Case Serial #: 76378772  
2900 Crystal Drive  
Arlington, VA 22202-3514

Dear Mr. Adkins:

This letter is concerning the trademarking of tobacco varietal name K 326, registration number 2666400. As you know, Cross Creek Seed has entered into a civil action in the US District Court in Greensboro, NC with F.W. Rickard Seeds over trademark infringement of this tobacco variety. Earlier this year, Cross Creek Seed petitioned to the Trademark Appeals Board to have the trademark removed. The board's ruling was that the case would be suspended until the outcome of the District Court case was handed down. This now puts Cross Creek Seed in quite a quandary. Until the Trademark Appeals Board reverses the trademark status on the varietal name K 326, Cross Creek Seed is in a confused position.

As early as November of 2002, I spoke with you on the phone concerning the likelihood of the tobacco varietal name K 326 being trademarked. You assured me then that K 326 was a varietal name and that it both would not and could not be trademarked. To my surprise, F.W. Rickard Seeds filed a law suit against Cross Creek Seed over trademark infringement because you allowed the variety K 326 to be trademarked on December 24, 2002. Since then, Cross Creek Seed has spent 10's of thousands of dollars in lawyer fees both in the District Court in NC and with the Trademark Appeals Board's filings and rulings. All of this harm has come at the simple oversight of, to my understanding, simple guidelines to follow in the trademark registration process of such items as varietal and cultivar names.

On August 28, 2003 I contacted you on the phone, and we spoke about this situation. You told me that you had made a "mistake", and that the trademark registration would be overturned because you found K 326 to be a varietal name. Also during that conversation, you informed me that K 326 was not the only varietal name that F.W. Rickard Seeds was seeking to trademark. You stated that those varietal names were not trademarked because they are just that...varietal names. This comes from §§ 1, 2 and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052 and 1127. You informed me that the varietal name K 326 was sent to you first to be trademarked and that it was done so mistakenly because you didn't look in the right place at first. Since then, you have found the proper location to find K 326 listed as a varietal name.

Enclosed with this letter you should find the reasoning that the tobacco variety K 326 should not have been trademarked. The attachments will take you step by step through the Trademark offices own web page to show that this is an unfair, unjust and illegal trademark set forth by the rules that govern the Trademark offices registration process.



09-12-2003

U.S. Patent & TMOtc/TM Mail RcptDt. #74

September 8, 2003

From this letter I am requesting only two things from you and the Trademark office:

- 1) A letter stating that a mistake was made by the trademark office on the registration of the varietal name K 326 and that it will be overturned because of the rules stated under the varietal and cultivar section of the TMEP.
- 2) In this letter provide a list of the other varietal names that were not registered because of their status as such... varietal names.

Mr. Adkins, while this may not be the usual steps taken by the trademark office, I believe it is the least one could do for this erroneous situation that we all find ourselves in at this point due to an oversight by the trademark office. I am not requesting the overturning of the trademark at this time, merely the letter stating a mistake was made in the registration of the trademark. While speaking with you over the phone, you were as shocked as I was with how far this issue has gotten with the court problems now. Please do the right thing and send the letter soon.

On a closing note, I find it awfully *funny* on the trademark application for K 326 that the first date of use is listed "at least as early as May 26, 1984". Of course they say "at least" because K 326 received its P.V.P. certificate on March 26, 1984. They know this fully because they purchased the P.V.P. themselves and admit to this date in court. It is just another way for them to try and muddy the waters and cloud the minds.

Respectfully,



Sam Baker  
927 Hatley-Burris Road  
Stanfield, NC 28163  
(704) 485-3167

cc: Mrs. Angela Wilson  
Mrs. Sharon Marsh  
Mr. Thomas Holt, Attorney

Enclosures

September 2, 2003

The enclosures take you step by step through the TM office's own web page. It starts you out in the TMEP Chapter 1200 listing 1202.12 Varietal and Cultivar Names. Each place you see highlighted is a link on your web page that you are to click on. Follow the links highlighted and you will get to the final page which clearly shows that K 326 is a varietal name that should have never been trademarked.

Respectfully,

*Sam Baker*

Sam Baker

## TMEP Chapter 1200 Substantive Examination of Applications

### 1202.12 Varietal and Cultivar Names (Examination of Applications for Seeds and Plants)

Varietal or cultivar names are designations given to cultivated varieties or subspecies of live plants or agricultural seeds. They amount to the generic name of the plant or seed by which such variety is known to the public. These names can consist of a numeric or alphanumeric code or can be a "fancy" (arbitrary) name. The terms "varietal" and "cultivar" may have slight semantic differences but pose indistinguishable issues and are treated identically for trademark purposes.

Subspecies are types of a particular species of plant or seed that are members of a particular genus. For example, all maple trees are in the genus *Acer*. The sugar maple species is known as *Acer saccharum*, while the red maple species is called *Acer rubrum*. In turn, these species have been subdivided into various cultivated varieties that are developed commercially and given varietal or cultivar names that are known to the public.

If the examining attorney determines that wording sought to be registered as a mark for live plants or agricultural seeds comprises a varietal or cultivar name, the examining attorney must refuse registration, or require a disclaimer, on the ground that the matter is the varietal name of the goods and does not function as a trademark under §§1, 2 and 45 of the Trademark Act, 15 U.S.C. §§1051, 1052 and 1127. See *Dixie Rose Nursery v. Coe*, 131 F.2d 446, 55 USPQ 315 (D.C. Cir. 1942), cert. denied 318 U.S. 782, 57 USPQ 568 (1943); *In re Hilltop Orchards & Nurseries, Inc.*, 206 USPQ 1034 (TTAB 1979); *In re Farmer Seed & Nursery Co.*, 137 USPQ 231 (TTAB 1963); *In re Cohn Bodger & Sons Co.*, 122 USPQ 345 (TTAB 1959). Likewise, if the mark identifies the prominent portion of a varietal name, it must be refused. *In re Delta and Pine Land Co.*, 26 USPQ2d 1157 (TTAB 1993) (Board affirmed refusal to register DELTAPINE, which was a portion of the varietal names Deltapine 50, Deltapine 20, Deltapine 105 and Deltapine 506).

A varietal or cultivar name is used in a plant patent to identify the variety. Thus, even if the name was originally arbitrary, it "describe[s] to the public a [plant] of a particular sort, not a [plant] from a particular [source]." *Dixie Rose*, 131 F.2d at 447, 55 USPQ at 316. It is against public policy for any one supplier to retain exclusivity in a patented variety of plant, or the name of a variety, once its patent expires. *Id.*

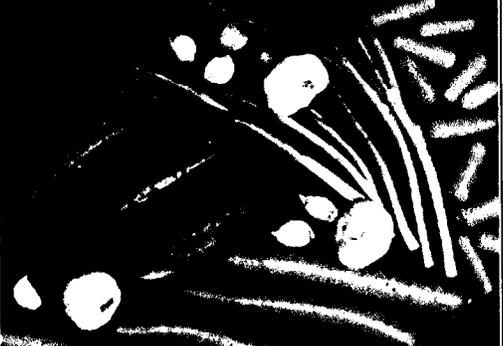
Market realities and lack of laws concerning the registration of varietal and cultivar names have created a number of problems in this area. Some varietal names are not attractive or easy to remember by the public. As a result, many arbitrary terms are used as varietal names. Problems arise when trademark registration is sought for varietal names, when arbitrary varietal names are thought of as being trademarks by the public, and when terms intended as trademarks by plant breeders become generic through

public use. These problems make this a difficult area for the examining attorney in terms of gathering credible evidence and knowing when to make refusals.

Whenever an application is filed to register a mark containing wording for live plants or agricultural seeds, the examining attorney must inquire of the applicant whether the term has ever been used as a varietal name, and whether such name has been used in connection with a plant patent, a utility patent, or a certificate for plant variety protection. See 37 C.F.R. §2.61(b). The examining attorney should also undertake an independent investigation of any evidence that would support a refusal to register, using sources of evidence that are appropriate for the particular goods specified in the application (e.g., laboratories and repositories of the United States Department of Agriculture, plant patent information from the United States Patent and Trademark Office, a variety name search of plants certified under the Plant Variety Protection Act listed at [www.ars-grin.gov/npgs/searchgrin.html](http://www.ars-grin.gov/npgs/searchgrin.html)).

# National Plant Germplasm System

[Home](#) | [Collections](#) | [Search GRIN](#) | [Request Germplasm](#) | [pcGRIN](#) | [Crop Germplasm Committees](#) | [Repository Home](#)

	<p>Accession Area Queries</p> <p>Crop Science Registration</p> <p>Plant Variety Protection</p> <p>Taxonomic Queries</p> <p>Research Crops and Descriptor/Evaluation</p> <p>Data Queries</p>	
---	---	--

[Plants](#) | [Animals](#) | [Microbes](#) | [Invertebrates](#) | [NGRAC](#)

This web server is maintained by the Database Management Unit (DBMU) of the National Germplasm Resources Laboratory (NGRL), Plant Sciences Institute (PSI), Beltsville Agricultural Research Center (BARC), Agricultural Research Service, U.S. Department of Agriculture.

- [Availability of the System](#)
- [Privacy Policy](#)
- [USDA Nondiscrimination Statement](#)
- [Accessibility Statement](#)

| [USDA](#) | [ARS](#) | [BA](#) |

This document maintained by [dbmu@ars-grin.gov](mailto:dbmu@ars-grin.gov)  
 Last updated: 21 February 2002

## Plant Variety Protection Office

Status of Certification (Sept. 2, 2003)

Search by PV Number/Variety Name

Search by Applicant or Owner Name

or Select a Crop:

<u>Agrotricum</u>	<u>Cucumber</u>	<u>Potato</u>
<u>Alfalfa</u>	<u>Dahlia</u>	<u>Primrose, cape</u>
<u>Alkaligrass, weeping</u>	<u>Daisy, blackfoot</u>	<u>Primrose, evening</u>
<u>Artichoke</u>	<u>Daisy, english</u>	<u>Pumpkin</u>
<u>Ashitaba</u>	<u>Delphinium</u>	<u>Radish</u>
<u>Aster, china</u>	<u>Dogstail, crested</u>	<u>Radish, fodder</u>
<u>Atra paspalum</u>	<u>Eggplant</u>	<u>Rape</u>
<u>Bahiagrass</u>	<u>Endive</u>	<u>Reed canarygrass</u>
<u>Barley</u>	<u>Fennel</u>	<u>Rescuegrass</u>
<u>Basil</u>	<u>Fescue, chewings</u>	<u>Rice</u>
<u>Bean, field</u>	<u>Fescue, creeping</u>	<u>Rye</u>
<u>Bean, garden</u>	<u>Fescue, hard</u>	<u>Ryegrass (lolium x hybridum)</u>
<u>Bean, lima</u>	<u>Fescue, idaho</u>	<u>Ryegrass, annual</u>
<u>Bean, mung</u>	<u>Fescue, meadow</u>	<u>Ryegrass, perennial</u>
<u>Beet</u>	<u>Fescue, red</u>	<u>Safflower</u>
<u>Beet, garden</u>	<u>Fescue, sheep</u>	<u>Sainfoin</u>
<u>Beet, sugar</u>	<u>Fescue, tall</u>	<u>Salicornia</u>
<u>Bentgrass, colonial</u>	<u>Festulolium</u>	<u>Sesame</u>
<u>Bentgrass, creeping</u>	<u>Flaccidgrass</u>	<u>Shallot</u>
<u>Bentgrass, red top</u>	<u>Flax</u>	<u>Snapdragon</u>
<u>Bentgrass, velvet</u>	<u>Florida fingergrass</u>	<u>Sorghum</u>
<u>Bermudagrass</u>	<u>Foxtail, creeping</u>	<u>Sorghum-sudangrass</u>
<u>Bermudagrass (f1)</u>	<u>Gamagrass, eastern</u>	<u>Soybean</u>
<u>Bluegrass, annual</u>	<u>Gazania</u>	<u>Spinach</u>
<u>Bluegrass, glaucantha</u>	<u>Hair-grass, crested</u>	<u>Spruce</u>
<u>Bluegrass, kentucky</u>	<u>Hardinggrass</u>	<u>Squash</u>
<u>Bluegrass, rough</u>	<u>Kikuyu grass</u>	<u>St. augustinegrass</u>
<u>Bluegrass, supina</u>	<u>Kleingrass</u>	<u>Steirodiscus</u>
<u>Bluestem, big</u>	<u>Kochia</u>	<u>Stevia</u>
<u>Brachiaria x</u>	<u>Laurisagrass</u>	<u>Stock, common</u>
<u>Broccoli</u>	<u>Lawngrass, japanese</u>	<u>Sunflower</u>
<u>Broccoli (f1)</u>	<u>Lentil</u>	<u>Sunflower (f1)</u>
<u>Broccoli raab</u>	<u>Lespedeza, chinese</u>	<u>Sweetpea</u>
<u>Brome, short</u>	<u>Lespedeza, striate</u>	<u>Swiss chard</u>
<u>Bromegrass, smooth</u>	<u>Lettuce</u>	<u>Tanden, festulolium</u>
<u>Bromegrass, sweet</u>	<u>Lobelia, annual</u>	<u>Teff</u>
<u>Bromegrass, thready</u>	<u>Lovegrass, weeping</u>	<u>Thistle</u>
<u>Buckwheat</u>	<u>Lupin</u>	<u>Timothy</u>
<u>Buffalograss</u>	<u>Manna grass</u>	<u>Timothy, turf</u>
<u>Buffelgrass</u>	<u>Marigold</u>	<u>Tobacco</u>

---

**Tobacco PVP Accessions**

---

7200022 to 8700057  
8700120 to 200100291

**Plant Variety Protection Office**  
USDA-AMS, Beltsville, MD  
Home Page

---

**USDA - ARS - GRIN**

---

---

**Tobacco Listings between 7200022 and 8700057**


---

<b>PVP No.</b>	<b>Variety/Name</b>	<b>Applicant</b>	<b>Status</b>	<b>Status Date</b>
7200022	<b>Coker 347</b>	Novartis Seeds, Inc.	Certificate Expired	10/27/1993
7200023	<b>Coker 411</b>	Novartis Seeds, Inc.	Certificate Expired	10/27/1993
7200051	<b>Speight's G-33</b>	Speight Seed Farms, Inc.	Certificate Expired	04/11/1994
7200140	<b>Speight G-140</b>	Speight Seed Farms, Inc.	Certificate Expired	04/11/1994
7400007	<b>Speight G-15</b>	Speight Seed Farms, Inc.	Certificate Expired	04/11/1994
7400035	<b>McNair 944</b>	Novartis Seeds, Inc.	Certificate Expired	03/18/1994
7500030	<b>McNair 1040</b>	McNair Seed Company	Application Abandoned	11/18/1975
7500065	<b>Speight G-23</b>	Speight Seed Farms, Inc.	Certificate Expired	04/11/1994
7600004	<b>Coker 86</b>	Novartis Seeds, Inc.	Certificate Expired	10/27/1993
7800008	<b>Coker 48</b>	Novartis Seeds, Inc.	Certificate Expired	09/20/1995
7900035	<b>Speight G-70</b>	Speight Seed Farms, Inc.	Certificate Expired	06/14/1996
7900040	<b>Speight G-52</b>	Speight Seed Farms, Inc.	Certificate Expired	03/11/1997
7900118	<b>Speight G-58</b>	Speight Seed Farms, Inc.	Certificate Expired	02/26/1999
8000060	<b>McNair 373</b>	Northrup King Company	Application Abandoned	12/29/1980
8100048	<b>Coker 51</b>	Novartis Seeds, Inc.	Certificate Expired	02/18/2000
8200001	<b>K399</b>	Novartis Seeds, Inc.	Certificate Expired	07/15/2000
8200038	<b>N77</b>	Newton Seed, Inc.	Application Withdrawn	03/30/1982
8200046	<b>N126</b>	Newton Seed, Inc.	Application Withdrawn	03/30/1982
8300056	<b>Coker 176</b>	Novartis Seeds, Inc.	Certificate Expired	09/29/2001
8300070	<b>K326</b>	Novartis Seeds, Inc.	Certificate Expired	03/26/2002
8500025	<b>Speight-G-80</b>	Speight Seed Farms, Inc.	Certificate Issued	04/30/1986
8500040	<b>Coker 206</b>	Novartis Seeds, Inc.	Certificate Issued	04/30/1986
8700040	<b>K394</b>	F.W. Rickard Seeds, Inc.	Certificate Issued	08/31/1987
8700049	<b>Coker 371 Gold</b>	F.W. Rickard Seeds, Inc.	Certificate Issued	09/30/1987
8700057	<b>Speight G-108</b>	Speight Seed Farms, Inc.	Certificate Issued	08/31/1987

**Plant Variety Protection Office**  
 USDA-AMS, Beltsville, MD  
[Home Page](#)

---

**USDA - ARS - GRIN**

---