

How Apple Plant Patents Liberated the American Palate

LEGAL PERSPECTIVE FROM PAUL D. SWANSON

The autumn harvest of apples is fully upon us, with new varieties of apples filling up grocery store shelves and storage bins in controlled atmospheric warehouses. An advent of newly patented apples promise to dazzle our taste buds.

It was not always so. As a reminder, I recently bit (too deeply) into a nice-looking Red Delicious apple. A sickly-sweet mash with leathery skin fragments remained unchewed until I could race to the nearest bathroom, spit it out and flush it down.

Inducing gag reflexes is hardly a way to build a market for edible produce. Yet, a yawning taste chasm emerged in the latter 20th century as apple growers and grocery store chains foisted an increasingly indigestible apple on the American populace. Put more colorfully, it was rammed down our throats, per Tom Burford, author of *Apples of North America* (2013).

Downfall of the Red Delicious Apple

Red Delicious apples did not begin their varietal life in the pits. It originated in the 1880s “as a round, blushed fruit of surpassing sweetness” named the Hawkeye. It won a taste competition sponsored by Stark Brothers Nurseries. “My, that’s delicious,” the company president observed after his first bite.

Apple purveyors loved the Red Delicious apple because it displayed so well on their fresh produce shelves. By the 1940s, it had become America’s darling. Its deep red, thicker skin hid blemishes and bruising — to a fault as it turned out. As its “genes for beauty were favored over those for taste, the skins grew tough and bitter around sugar-soaked flesh.” It became “the largest compost maker in the country” as shoppers bought them only to discard them in the trash.¹

Honeycrisp to the Flavor Rescue

In the 1980s, apple breeders at the University of Minnesota (and elsewhere) began applying for patents on apples for the consumption qualities, rather than their color. The original Honeycrisp patent issued in 1990 represents a breakthrough in the taste/texture of an apple. The patent explains that the “fruit of this variety has exceptionally crisp and juicy

flavor and mild aroma” and “has been rated superior to the McIntosh, Haralson, Honeygold, Delicious and Keepsake by sensory evaluation panels”

Similarly, a plant patent issued for the Cripps Pink apple issued in 1992 — trademarked as the Pink Lady® — notes that the apple exhibits “the excellent fruit quality (high sugar, juicy flesh, thin skin and aromatic flavor) of both of its parent varieties, i.e., the Lady Williams and Golden Delicious.”

As these newly patented varieties gained market traction, Red Delicious stocks went tumbling down. A clue to their demise is evident in the plant patents issued for its offshoot varieties in the 1980s.

A patent entitled “Spur-Type Red Delicious Apple Tree” concentrates solely on the early red coloring of the apple. Nary a word is mentioned regarding apple flavor or texture. Nada. A moribund apple industry, especially in Washington state, banked on uniform color to propel the shopper’s purchasing decision.

Nowadays, much of the current, dwindling crop of Red Delicious apples is destined for export markets, especially Asian ones, where the color red symbolizes good luck, joy and happiness. In other word, it has become a fancy adornment, not meant for eating, just viewing.



In an era characterized by federal government gridlock and dysfunction, our plant patent system offers a healthy counterpoint. New apple varieties — such as the up and coming SweeTango® — undermined a grower/distributor imposed Red Delicious hegemony, reviving the truly scrumptious taste of apples in our present time. ■

¹See S. Yager, “The Awful Reign of the Red Delicious: How the worst apple took over the United States and continues to spread,” at 4/6, published in *The Atlantic* (September 10, 2014), available online, <https://www.theatlantic.com/health/archive/2014/09/the-evil-reign-of-the-red-delicious/379892/>.



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