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## Core Issues

### New Patents in the World of Apples

When one speaks of an “apple” and patentable technology in the same breath, thoughts naturally turn toward Silicon Valley and Steve Jobs’ storied company. Yet, in Wenatchee, Washington (the “Apple Capital of the World”), and the Yakima Valley, two new patents for apples and their propagation methods may rock the world of consumers and commercial orchardists.

#### The “WA 38” Apple Variety

The first is a new variety of apple known only by its patent title, an “Apple Tree Named ‘WA 38.’” A United States plant patent for this apple variety was issued on February 4 (U.S. PP24,210). Research work at Washington State University led to WA 38’s discovery. It is a cross between the patented Enterprise and Honeycrisp apple varieties.

WSU is applying for a trademark to brand this new apple variety, but WA 38 already comes with an extraordinary premarket buzz. Promotional materials proclaim that “WA 38 has no equal in today’s

**WSU is offering rights to grow WA 38 apple variety trees exclusively to Washington state growers. The first WA 38 trees will be available for planting in 2017, so don’t expect to be biting into this new apple variety anytime soon.**

marketplace — not Cripps Pink [aka the Pink Lady], not Jazz, and not even Honeycrisp.” Consumers rate WA 38’s taste, appearance and texture — after it had spent six months in controlled atmosphere storage — as exceeding that of the popular Gala apple.

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#### The Bibaum Tree Propagation Method

Behind the scenes in apple production, another patentable innovation may change the very landscape of orchards themselves. U.S. Patent No. 8,186,099 (“the ’099 patent”) is entitled “Method of Producing Propagating Material to Be Used in Tree Cultivations of Double-Trunk Type.”



The ’099 patent describes how to graft propagating materials onto rootstocks in order to create a double-trunk tree. More specifically, independent claim 13 covers a “pome fruit tree plant of double trunk type comprising a rootstock having two shoots grafted onto it, said shoots being grafted to grow vertically opposite each other.” The ’099 patent was issued in May 2012 and will be in force until October 2027.

The technique of creating a “twin leader” fruit tree is known in the industry as the patented “Bibaum” tree process. A bi-axis tree is formed by using a double graft with two chip buds at the same height as the rootstock. Two Italian orchardists invented this method for producing propagating material. The patent is owned by Mazzoni Nurseries, located in the South Tyrol region of Italy.

The advantages of the Bibaum tree process are illustrated by the author of *The English Apple Man* blog. In his blog post he states that upon visiting the inventors’ apple orchard, the “first impression is WOW!” He observed that a “clear and favourable benefit with the Bibaum tree is that it has a ‘calmer’ growth habit; e.g., unlike a standard tree where vegetative growth increases ‘year on year’ and needs carefully applied pruning to keep the tree in balance, the Bibaum tree with its ‘calmer’ nature required 20-25 percent less work than a standard tree.”

*The English Apple Man* left Mazzoni Nurseries wondering whether the Bibaum propagation method would render other orchard pruning and harvesting innovations, such as “fruit walls,” unnecessary. “Bibaum trees need far less pruning and can be pruned by hand more readily and at less cost than a mechanical pruner with more vigorous standard single leader trees.”

The question that remains: Will Washington apple growers be willing to pay a license fee to use the patented Bibaum propagation method?

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