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Patenting the Avocado: A California Story with a Classic Recipe

"Earth & Table" Law Reporter

Guacamole and chips are the ultimate in Super Bowl Sunday comfort food nowadays. During the Panthers/Broncos game, the California Avocado Commission tweeted its own commentary, offering recipes that paired avocados with food and beverage products being featured in advertising campaigns.^[1]

Avocados quintessentially define California cuisine. Yet, they are a relative newcomer to the Golden State. Aztec culture favored avocados, but it wasn't until 1871 that Judge R.B. Ord, of Santa Barbara, successfully grew them from trees he obtained from Mexico.^[2]

Much earlier in the vast machinations of the Columbian food exchange, the personal physician of England's King Charles II described the avocado in 1672 as one of the "most rare and pleasant fruits of [Jamaica]. It nourisheth and strengtheneth the body, corroborating the spirits and procuring lust exceedingly."^[3]

Perhaps babies were conceived on Super Bowl Sunday because of the avocado's aphrodisiacal qualities!

The California mother of all avocados—the Hass avocado—is the subject of [U.S. Plant Patent 139](#) granted in August 1935. This article tells its story. Recent avocado patent developments are also highlighted and a classic recipe for *Avocado San Andreas* may whet your mental palate.

Deep Avocado History



Scientists trace that the first known human consumption of avocados to archeological sites in the Puebla State of Mexico dating back to approximately 8000-7000 B.C.[\[4\]](#)

Spanish conquistadores confronted avocados early in their conquests of Mexico and Central and South America. Fernando de Oviedo (1478-1557) describes avocados he encountered along the coast of Columbia:

“In the center of the fruit is a seed like a peeled chestnut. And between this and the rind is the part which is eaten, which is abundant, and is a paste similar to butter and of very good taste.[\[5\]](#)

European sailors called avocados *midshipman's butter* because they liked to spread it on their hardtack biscuits.[\[6\]](#)

Fuerte Avocados First Take Hold

Avocados received their first real PR boost from Henry Huntington, the nephew of Collis Huntington, one of the "Big Four" who formed and owned the Central Pacific Railroad and ushered in California's first gilded age in the late 19th century. Henry himself formed the Pacific Electric Railway, an interurban railway serving the greater Los Angeles area.

Served an avocado at Los Angeles's Jonathan Club (which began serving them in 1907), Huntington was so enamored of its taste that he pocketed some seeds as a gift from the chef. They were planted at his San Marino estate, now the site of the Huntington museum, library and botanical gardens.[\[7\]](#) Those avocado "trees are considered that last surviving members of California's first commercial avocado grove."[\[8\]](#)

The first avocado to take hold commercially in California was the Fuerte avocado. *Fuerte* means "vigorous" in Spanish. It too came from Mexico. It is so named because it was the only avocado tree to survive Los Angeles' great freeze of 1913. The Fuerte avocado became an early mainstay of California's avocado industry.

Formed in 1924, the California Avocado Grower's Exchange proved instrumental in creating distribution channels and quality standards for this odd-looking fruit.[\[9\]](#)

Hass Avocados Then Take Over

About 90% of the nation's avocado crop currently comes from California, with about half of this being grown in San Diego County.[\[10\]](#) Hass avocados account for about 95% of all avocado production in California.[\[11\]](#) What accounts for this Hass avocado hegemony?

It all started out as a mistake. Rudolph Hass, a postman and hobby farmer, purchased avocado seedlings in the 1920s in order to grow two

acres of Lyon variety avocado trees. The Lyon variety itself originated in Hollywood, California, from a seed planted in 1908.[\[12\]](#)

Hass planted what would become the mother of all such avocado trees in the spring of 1926 in a grove in La Habra Heights. Hass wanted to use the seedling as a rootstock on which to graft other avocado tree buds. But the grafts wouldn't take. Hass then planned to cut down the tree, but his children convinced him to keep it, as they preferred the taste of its avocados to other more popular varieties.[\[13\]](#) The Hass avocado emerged from this lucky chance seedling.

The '139 patent—it expired in 1952—describes the Hass plant patent claim as follows:

The variety of avocado tree herein described characterized by its summer ripening, medium-sized fruits, of purple color having a leathery skin which is thin for a Guatemalan, and borne on long stems [*sic* stems], with a small tight seed and with creamy flesh of excellent color and nutty flavor, smooth with no fibre and butter-like consistency.

Hass entered into an agreement with H.H. Brokaw of Whittier, California, to grow and propagate his avocado trees, splitting the tree sale income between them (Hass 25%/Brokaw 75%). Despite significantly higher prices per tree than the more common Fuerte variety, the demand for Hass avocado trees would lead to near yearly sellouts of Brokaw's nursery stocks.[\[14\]](#)

After 76 years, the Hass mother avocado tree succumbed to root rot in 2002.[\[15\]](#) The '139 patent states that the "original tree is a Guatemalan seedling of unknown parentage." To this day, no one really knows what variety of seedling produced the Hass avocado.

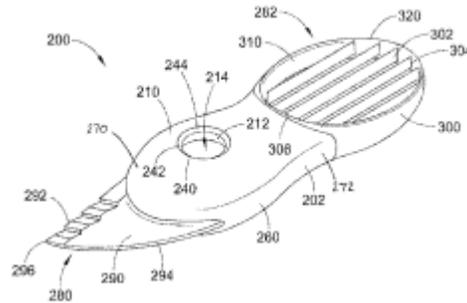
A bronze plaque is now the only reminder of where the Hass mother tree once spread her roots.[\[16\]](#)

Recent Avocado Patenting Developments

Innovative research in avocado groves continues, much of it funded through University of California research institutions.

Two recent plant patents issued in March 2014 are illustrative of a basic avocado production issue—root rot. Both patents claim new avocado cultivars that are more resistant to root rot caused by the fungus *Phytophthora cinnamomi*, which attacks and kills the feeder roots of avocado trees. See [U.S. Plant Patent Nos. 24278](#) (entitled "Avocado Variety Named 'Uzi'") and [24279](#) ("Avocado Rootstock Named 'Steddom'").

Avocados also spawn a market for kitchen gadgets. A recent example is [U.S. Patent No. 8,726,799](#), entitled an "avocado pitting device." It issued on May 20, 2014. A patent drawing shows the following:



This gadget appears to be marketed as the OXO Good Grips 3-in-1 Avocado Slicer.



Consumer reviews are mixed for this device. Its knife and pit-capturing portions appear to work well, but the slicing apparatus can be a hit or miss operation.[\[17\]](#)

The "World's Healthiest Foods" website notes that greatest phytonutrient concentrations in avocados occur next to the skin.[\[18\]](#) To make sure you don't lose this portion of the avocado when you slice it, a "nick and peel" technique is recommended:

[T]he best method is what the California Avocado Commission has called the "nick and peel" method. In this method, you actually end up peeling the avocado with your hands in the same way that you would peel a

banana. The first step in the nick-and-peel method is to cut into the avocado lengthwise, producing two long avocado halves that are still connected in the middle by the seed. Next you take hold of both halves and twist them in opposite directions until they naturally separate. At this point, remove the seed and cut each of the halves lengthwise to produce long quartered sections of the avocado. You can use your thumb and index finger to grip the edge of the skin on each quarter and peel it off, just as you would do with a banana skin. The final result is a peeled avocado that contains most of that dark green outermost flesh, which provides you with the best possible phytonutrient richness from the pulp portion of the avocado.^[19]

Avocado San Andreas

In her *West Coast Cook Book* (1952), Helen Evan Brown observes that avocados "are a favored first course on the West Coast." "But as for cooking the fruit, all experts agree that it is ruinous. Not only does the magnificent flavor of the avocado disappear entirely, a distasteful one takes its place." Adding avocados to cooked dishes just before serving them, however, is okay. Warming does them no harm.^[20]

If you really want to liven up your next dinner party, consider preparing Helen Brown's classic recipe for "Avocado San Andreas." Serve ripe avocados on the half shell and accompany each with a whole lime, cut in half for easy squeezing. Pass around a decanter of light rum and let each guest squeeze the lime and pour the rum over the avocado in an amount he or she thinks is "most judicious."^[21] Your party will be off to a quick splash in no time! Bon Appetit!

^[1] See <http://www.thepacker.com/news/avocado-commission-tweets-super-bowl-ads>.

^[2] Helen Evans Brown, *West Coast Cook Book* (1952), p. 190. This cookbook is a mid-20th century gem, and led to a close friendship between Helen and James Beard—the reigning king of American gastronomy—that lasted until Helen's passing in 1964. James Beard's culinary correspondence with Helen Brown is the subject of *Love and Kisses and a Halo of Truffles: Letters to Helen Evans Brown* (1995).

^[3] See <http://whatscookingamerica.net/avacado.htm>.

^[4] H. Chen, *et al.*, "Tracing the Geographic Origins of Major Avocado Cultivars," *Journal of Heredity* 100(1): 56-65 (September 8, 2008).

^[5] See fn. 2.

^[6] *Id.*

[7] See fn. 2.

[8] See

<http://www.huntington.org/webassets/templates/general.aspx?id=17082>.

[9] See fn. 7.

[10] See <http://www.californiaavocado.com/the-california-difference>.

[11] See <http://articles.latimes.com/2003/sep/07/local/me-avocado7>.

[12] See <http://ucavo.ucr.edu/avocadovarieties/VarietyFrame.html>.

[13] See fn. 11.

[14] See fn. 12.

[15] See <https://www.avocadocentral.com/about-hass-avocados/hass-mother-tree>.

[16] See fn. 11.

[17] See <http://www.amazon.com/OXO-Grips-Avocado-Slicer-Green/product-reviews/B0088LR592>.

[18] See

<http://www.whfoods.com/genpage.php?tname=foodspice&dbid=5>.

[19] *Id.*

[20] See fn. 2, p. 191

[21] See fn. 2, p. 111.