农业技术财产的保护
Protecting Ag-Biotech Assets



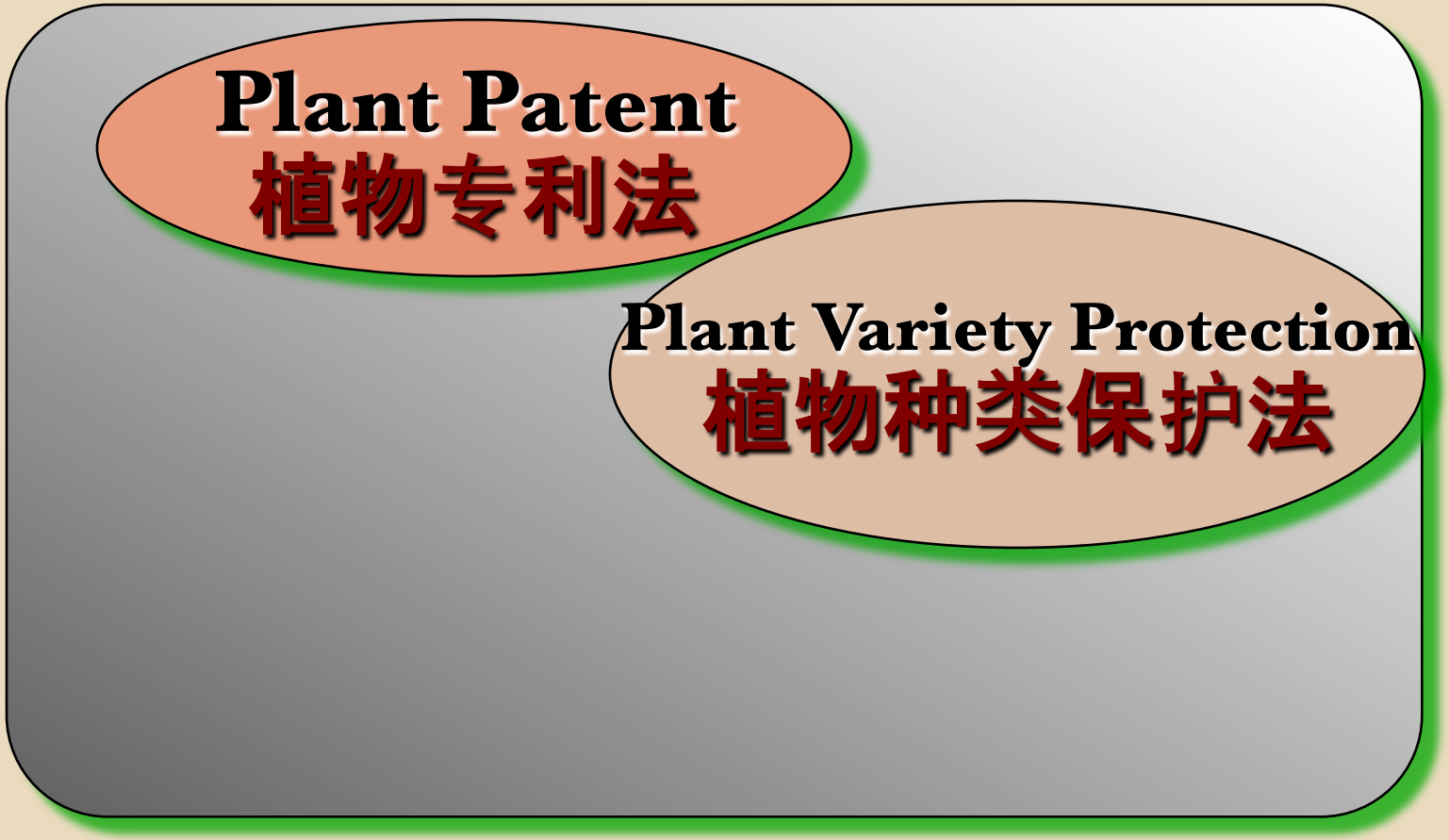
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Franklin Pierce Law Center, Concord, New Hampshire, USA!

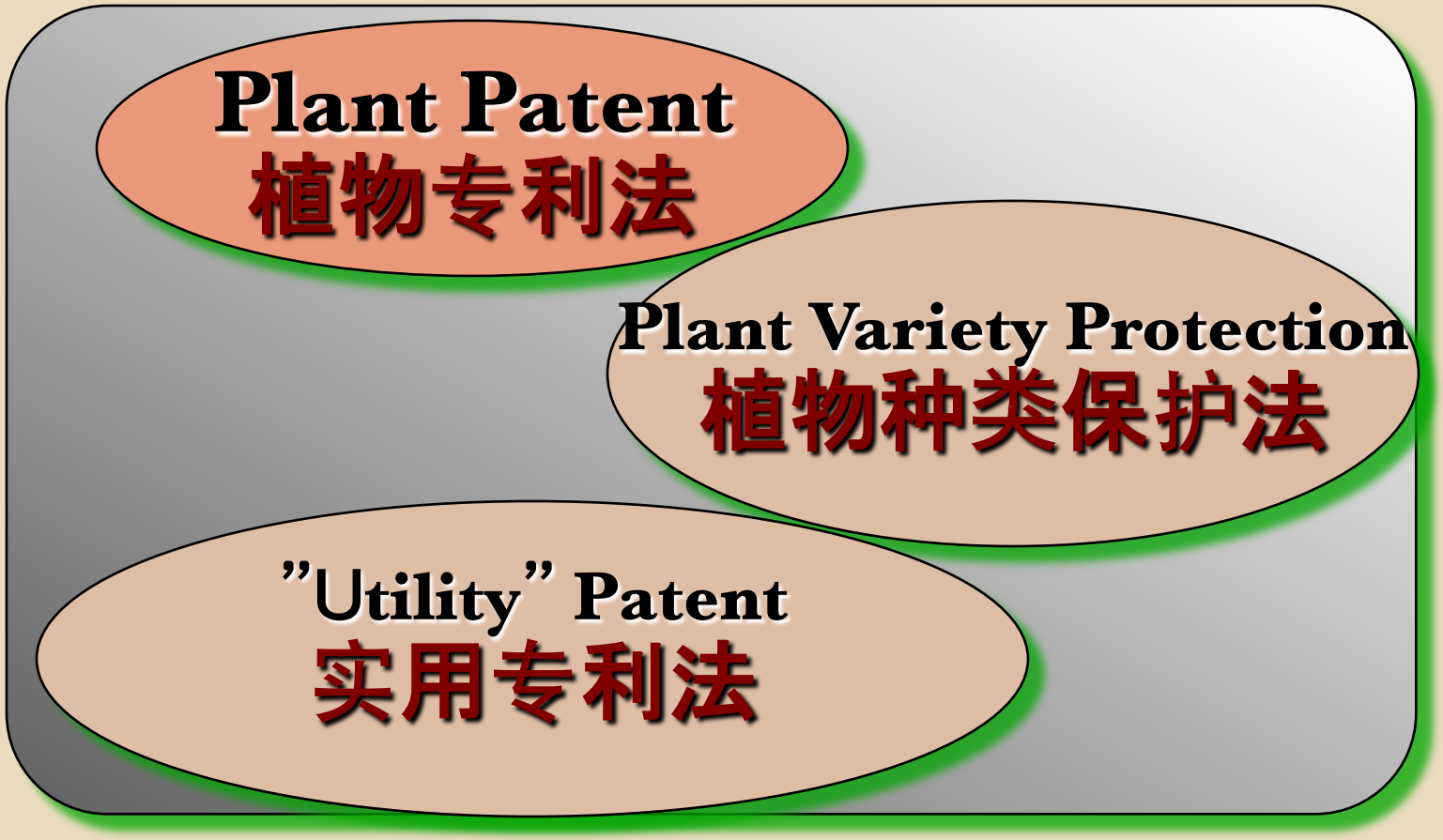
美国农业技术财产保护有几种?
What Are Ag-Biotech Assets in U.S.?

Plant Patent
植物专利法

美国农业技术财产保护有几种?
What Are Ag-Biotech Assets in U.S.?



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What Are Ag-Biotech Assets in U.S.?



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农业技术财产的保护
Protecting Ag-Biotech Assets

What is the asset? 什么财产权?

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农业技术财产的保护
Protecting Ag-Biotech Assets

What is the asset? 什么财产权??!

Who owns the asset? 财产权属于谁?

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农业技术财产的保护
Protecting Ag-Biotech Assets

- What is the asset? 什么财产权?!
- Who owns the asset? 财产权属于谁?
- What rights does the owner have? 财权人对于别人的约束力何如?

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农业技术财产的保护
Protecting Ag-Biotech Assets

What is the asset? 什么财产权?!

Who owns the asset? 财产权属于谁?

What rights does the owner have? 财权人对于别人的约束力何如?!

What is it worth? 值得多少?

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农业技术财产的保护
Protecting Ag-Biotech Assets

What is the asset? 什么财产权?!

Who owns the asset? 财产权属于谁?

What rights does the owner have? 财权人对于别人的约束力何如?!

What is it worth? 值得多少?!

Can I protect it? 可以保护吗?

Who owns the asset?
财产权属于谁?

Plant Patent
植物专利法

Nurseries
田圃业

Passed in 1930
1930年通过

What rights does the owner have?
财权人对于别人的约束力何如?

Plant Patent
植物专利

Asexual Propagation
无性繁殖

Flowers/Fruits
花卉／果业

What limits the owner's rights?
财权人对于别人的约束力有何限制?

Plant Patent
植物专利

Not Independent discovery
独立发现／发明

Must be "Distinct and New"
显著／新颖

Who owns the asset?
财产权属于谁?

种子产业
Seed Companies

Plant Variety Protection
植物种类保护法

Passed in 1970
1970年通过

Who owns the asset?
财产权属于谁?

Plants Protected since 1985
1985年案例

"Composition of Matter"
物质组成

"Utility" Patent
实用专利法

What rights does the owner have?
财权人对于别人的约束力何如?

Plant Variety Protection
植物种类保护法

Sexual Propagation/Hybrids
性繁殖／杂种

Seed Crops
谷物／蔬菜类

What limits the owner's rights?
财权人对于别人的约束力有何限制?

Plant Variety Protection
植物种类保护法

Saving Seed/Replanting
保存种子／再栽种

Research
专为科学研究而使用

What rights does the owner have?
财权人对于别人的约束力何如?

"Utility" Patent
实用专利法

Make, Use, Sell, Import
制造，使用，购买，进口

Anything "man-made"
任何"人造的"

What limits the owner's rights?
财权人对于别人的约束力有何限制?

"Utility" Patent
实用专利法

Novelty, Inventive Step
新颖性／发明性

Adequate Description
说明足以别人使用

What limits the owner's rights?
财权人对于别人的约束力有何限制?

"Utility" Patent
实用专利法

No PVP Limitations
无保存限制

No Research Exception
禁止别人为研究而使用

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U.S. Supreme Court
Pioneer v. J.E.M. (2001)

Important Case of Judicial Interpretation

重要司法解释

Can use all forms of protection for the same plant

一种植物／三种保护

金色稻子
"Golden Rice"

First Generation Genetic Engineering

第一代基因工程

Insect resistant, herbicide tolerant

防虫，耐药

金色稻子
"Golden Rice"

Second Generation Genetic Engineering

第二代基因工程

Insect resistant, herbicide tolerant

防虫，耐药

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品牌与商标
Brands and Trademarks

Consumer Brand Impression?

消费者对品牌的印象何如?

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品牌与商标强度
Brand/Trademark Strength

Conceptual strength
原有区别性

Commercial strength
广告造成的区别性

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商标管里功能 Trademark Management Function

Corporate Trademark Department公司内商标部门

Outside Trademark Counsel (Agent?) 公司外法律顾问(商标代理?)

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商标管理
Trademark Management

Trademark Search 商标检索

Trademark Selection and Design 商标选择与设计

Trademark Registration and Renewal 商标注册与重申

International Trademark Protection 国际商标保护

Trademark Licensing and Assignment 商标许可与授权

Check Company Trademark Use and Advertising
检查本公司的商标使用与广告

Police market for Infringing Uses 检查市场找到侵权与仿冒行为

Assist in Trademark Disputes 参与商标起诉与调停

Trademark Search 商标检索工具

- Internet search 网络检索 ("google.com")
- Online databases 网上商标数据库
- Trademark Search Services 商标检索服务机构
- Business Directories 工商名录
- Government Registries 国家商标注册

Trademark Search 商标检索内容

Trademark Clearance 商标查清

Marks Registered 已注册商标查清

Marks in Use 已在使用商标查清

Similar Goods/Services 类似商品/服务

Similar Trademarks 类似商标

Famous Trademarks 驰名商标

Different Goods/Services 异类商品/服务

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Trademark Registration and Renewal 商标注册与重申

- Trademark Applications商标申请
- Trademark Prosecution 商标申请审查程序答辩
- Foreign Counterpart Applications 涉外商标申请注册
- Trademark Oppositions 商标异议程序
- TM Cancellations 商标注册撤消

Trademark Licensing
商标许可

Legal formalities 考虑法律程序

Knowledge of Partner 许可对手

“知己知彼”

Ownership of Goodwill 商舆所有权

Control of the Licensee 控制许可人

“OEM” 原始设备制造

Contractual limitations 合同限度

Contractual limitations
许可/合同限度

Territorial/time restrictions

区性或期间限制

Production restrictions

出产量限制

Quality control/Use of trademark

质量管理/商标使用条件

Check Trademark Use/Advertising
检查本公司的商标使用与广告

- Legal/Marketing Relations法律/推销协调
- Company Manuals on Proper Trademark Use 公司内商标合适使用宣传
- Product labels 标签
- Packaging 包装
- Review of advertising by Legal Department Prior to Use 广告上市之前由法律部批准

Monitor market for Infringing Uses
监督市场找到侵权与仿冒行为

- Collect market information from:
- 搜集商场情报从:
- Sales force 推销员
- Distributors 分配者
- Wholesalers 批发者
- Retailers 零售者
- From customers 客户

Assist in Trademark Disputes
参与商标起诉与调停

- Deliberate or Innocent Infringer
- 故意侵权/头脑简单的侵权
- Notify infringer informally or with formal letter
- 通知侵权人
- UNLESS COUNTERFEITOR 除仿冒之外
- Cease and desist letter 警告禁止信笺
- Threaten with legal proceeding 以打官司为威胁
- Identify other infringed goods and contact owners
- 通知其他商标权被侵犯者
- Notify AIC or Customs 通知行政管理部门或海关
- Institute legal proceeding 打官司

Dealing with Counterfeits
对付仿冒

- Market information 商场情报
- Beginning an investigation
- 引起调查
- Notify authorities 通知官方
- Use trade associations
- 与共商会合作协调

Dealing with Counterfeits
对付仿冒

- Policy considerations 政策要考虑
- “zero tolerance” 打击所有仿冒
- “minor tolerance”宽容小喽罗
- “avoid offending customers” 无触动客户
- “attack high quality/ignore low quality counterfeits”
- 攻打高档, 忽略明显劣品

谢谢！

