

Action Alert

Wisconsin Farmers Union is encouraging members to leave a public comment on the USPTO inquiry of the public's views on the state of the experimental use exception to patent infringement.

Summary

The United States Patent and Trademark Office (USPTO), Department of Commerce, is interested in collecting the public's views on the current state of the common law experimental use exception and whether legislative action should be considered to enact a statutory experimental use exception.

USPTO is also looking for answers to 8 specific questions they have provided on this topic

How This Affects Farmers

Some have argued that the lack of a clear research exception to patent infringement has slowed the rate of scientific progress, especially regarding biological inventions. Many countries' intellectual property laws permit others to conduct research with patented materials, permit breeders to use patented plants in breeding, and/or do not grant patents on plant varieties. USDA's 2023 report, [More and Better Choices for Farmers](#), noted that restrictions on the use of plant varieties for research and breeding in the U.S. may be narrowing genetic diversity in agriculture and stifling competition. The report recommended the consideration of a research and breeding exemption for plant-related patents.

In Other Words

Small farmers should care about this proposed rule because it could expand their access to a wider variety of plant breeds, allowing them to choose crops better suited to their local conditions and needs. By supporting a research and breeding exemption for plant-related patents, small farmers can benefit from increased innovation, greater genetic diversity, and a more competitive agricultural market, ultimately enhancing their resilience and sustainability.

Bullet Points

- Small farmers could gain access to a wider variety of plant breeds, tailored to local conditions, if a research and breeding exemption for plant-related patents is enacted.
- Expanding research exemptions would promote innovation in agriculture, potentially leading to new crops that are more resilient, nutritious, or suited to diverse climates, benefiting both farmers and consumers.
- Consumers may see greater food variety and improved food security as increased genetic diversity in crops can lead to more sustainable agricultural practices.
- A more competitive agricultural market, driven by reduced patent restrictions, could lower costs for small farmers, allowing them to pass savings on to consumers.
- By supporting changes to patent laws, both consumers and small farmers can benefit from a more dynamic and equitable agricultural system that fosters resilience and sustainability.

Questions for Public Comment

When responding to the questions, please identify yourself and your interest in the U.S. patent system. If applicable, please indicate whether you fall within one or more of the following categories:

- (1) inventors, patent owners, or investors (e.g., venture capital, investment bank, fund, etc.);*
- (2) licensees or users of patented technology;*
- (3) entities that represent inventors or patent owners (e.g., law firms);*
- (4) recipients of demand letters concerning alleged patent infringement or accused infringers in a patent lawsuit;*
- (5) entities that represent accused infringers;*
- (6) government agencies or officials;*
- (7) academic or research institutions;*
- (8) intellectual property organizations or associations; and*
- (9) nonprofit organizations or advocacy groups.*

Commenters need not respond to every question and may provide relevant information even if not responsive to a particular question. Unless otherwise specified, the questions are in reference to the U.S. and/or to U.S. laws and regulations. The questions should not be interpreted as an indication that the USPTO has taken a position on or is predisposed to any particular views.

Questions:

- 1. Please explain how the current state of U.S. experimental use exception jurisprudence impacts investment and/or research and development in any field of technology, including, but not limited to: (a) quantum computing; (b) artificial intelligence; (c) other computer-related inventions; (d) agriculture; (e) life sciences (including prescription drugs and medical devices); and (f) climate-mitigation technologies.*
- 2. Do you believe there are any technologies that are negatively affected by the current state of experimental use exception jurisprudence in the United States? If yes, please identify which technologies and explain how you believe they are affected.*
- 3. Please explain what impact, if any, a statutory experimental use exception would have on the innovation and commercialization of new technologies including with respect to: (a) research and development; (b) ability to obtain funding; (c) investment strategy; (d) licensing of patents and patent applications; (e) product development; (f) sales, including downstream and upstream sales; (g) competition; and (h) patent enforcement and litigation.*
- 4. Has the current state of experimental use exception jurisprudence impacted decisions you have made with respect to filing, purchasing, licensing, selling, or maintaining patent applications and patents in the United States? If yes, please explain how.*
- 5. Please explain whether you believe the United States should adopt a statutory experimental use exception. In doing so, please identify your reasons, including by providing evidence and data to support your views.*
- 6. Please explain how a statutory experimental use exception, if any, should be defined. Please include specific limitations and restrictions you believe would be needed to ensure that patent rights are preserved.*
- 7. Please identify public policy reasons in support of maintaining the status quo or changing the experimental use exception in the United States.*

8. Please provide any additional recommendations on how best to enhance and facilitate experimental research on patented inventions in the United States.

Please leave a public comment at [Regulations.gov](https://www.regulations.gov) by following the link below

[Regulations.gov](https://www.regulations.gov)

If you need some additional information regarding leaving public comments watch this video created by WFU: [How to leave a public Comment](#)

Also check out these: [Tips for Submitting an Effective Public Comment](#)