

COSMIC CRISP™ WA 38

## A Case Study in Commercialization

### OVERVIEW

As the first crop of more than 600,000 WA 38 trees are being readied for growers, Washington State University is working to protect the state's new apple, both at home and abroad.

The newest product of WSU's tree fruit breeding program, WA 38, is under the COSMIC CRISP™ brand. Trees will be released to the first group of Washington growers in spring 2017. Additionally, over 5 million trees are budded for contracts for delivery in 2018.



The pathway to commercialization was a textbook case of University-industry collaboration. WSU and the WTFRC established advisory committees to inform each step of the supply chain. It all began with the Cultivar Licensing Committee that guided propagation and distribution efforts and valuable advice for the remainder of the effort. Proprietary Variety Management (PVM) was engaged to interface IP management between the University and licensees. They also created a marketing advisory committee composed of any marketing desk in Washington that desires to participate as well as a marketing standards committee composed of representatives of growers and the marketing desks.

While sales of WA 38 trees are limited to Washington growers for at least the first decade, WSU is already taking steps to protect the new variety in International markets.

### PROTECTING WA 38 IN THE U.S. AND INTERNATIONALLY

WSU currently holds a *U.S. Patent* for the WA 38 apple as well as the fruit tree itself. U.S. patents are a form of intellectual property (IP), which allow for 20 years of exclusive rights in the U.S. before the invention becomes freely available to the public. The COSMIC CRISP™ trademark is the brand associated with WA 38 apples, trees, and other related apples products. Trademarks don't expire so long as the brand is continually used.

"IP rights protect your investment," said Albert Tsui, a patent attorney and business development specialist with the College of Agricultural, Human and Natural Resource Sciences at WSU. "Without IP protection, the owner loses the ability to manage the quality and marketing of the variety in domestic and foreign markets," added Tsui.

IP laws vary throughout the world and the U.S. does not have the authority to regulate the use of US issued patents on an international scale. To safeguard WA 38 against unauthorized international use, WSU must seek IP in the form of trademarks, patents, and Plant Breeders Rights in foreign countries as well as the U.S.

Importantly, applications for these protections *must* be in place within 6 years of the first offer of sale. WSU has until 2020 to seek foreign IP protection. “That doesn’t give us a lot of time, given quarantine requirements for international importation, and the possibility of setbacks such as disease or bad weather,” Tsui said.

## PROCESS OF SECURING INTERNATIONAL IP

To obtain international IP rights for WA 38, several requirements must be met, including quarantine hurdles, establishing growth characteristics in native soils, and navigating the regulatory process for commercialization.

This past summer, the University began this lengthy process by submitting cuttings (a total of ten buds) from COSMIC CRISP™ in a European plant health center for quarantine. These trees will be tested for their ability to grow in various soils and environments as well as resistance to native diseases – data that are a critical aspect of the process for filing foreign patents and trademarks.

“We are sending budwood, not trees,” said Tsui, who also noted that the plant health center is not a commercial entity and barred from selling fruit. “By taking these initial steps for IP protection, we can say proudly, this is Washington’s apple, and that consumers will get a product that’s recognizable and has consistent quality throughout the world; ultimately, it’s something growers can be proud of.”

## PROTECTING GROWERS IN WASHINGTON STATE

Tsui reminds Washington growers that they are still very much first in line to buy WA 38 trees. The 10 year exclusive rights for growers in North America is firmly in place. Furthermore, any meaningful foreign production is not expected to be commercially viable until around 2025. “Even if a Washington grower wasn’t selected in the initial drawing, they’re still going to be able to buy WA 38 trees years before a grower in the foreign market,” he said.

In addition to time requirements, there will be territorial restrictions with foreign licensees that dictate where the fruit can be exported. Presently, there are no plans for allowing *any* importation into North America. Future considerations would only be contemplated after full consultation with the Washington State Marketing Advisory Committee.

Another significant question relates to enforcing licenses in the United States and abroad. Each variety has a unique, DNA sequence or genetic footprint. A leaf sample can be collected and “fingerprinted” in a matter of days. This allows for rapid identification of leaf trees suspected of being in violation of a license.

## SALIENT POINTS

As the process of securing international protections for WA 38 moves forward, it is important to remember:

- IP protection must be secured in individual countries; they are not covered by U.S. law.
- Must fulfill foreign Patent filings by 2020.
- The consequence of not seeking foreign IP protection: WA 38 will become public domain (free) material in the foreign jurisdictions.
- Without brand protections, COSMIC CRISP™ could vary widely from grower-to-grower, losing uniformity, flavor, texture and market appeal.

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