

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) PVPA Docket No. 07-0138
)
Idaho Research Foundation,)
)
Applicant) **Remand Order**

Idaho Research Foundation applied for plant variety protection of the Western Russet potato under the Plant Variety Protection Act, as amended (7 U.S.C. §§ 2321-2582) [hereinafter the Plant Variety Protection Act]. Valley Tissue Culture, Inc., filed a protest asserting the Western Russet variety is not eligible for protection under the Plant Variety Protection Act. On March 1, 2007, the Commissioner, Plant Variety Protection Office [hereinafter the Commissioner], issued a decision upholding Valley Tissue Culture, Inc.'s protest and concluding the Western Russet variety is not eligible for protection under the Plant Variety Protection Act. In a petition dated April 3, 2007, Western Marketing, LLC, acting on behalf of Idaho Research Foundation, appealed the Commissioner's denial of plant variety protection to the Judicial Officer and requested a formal hearing pursuant to 7 C.F.R. § 97.300(d). Valley Tissue Culture, Inc., filed a response to Western Marketing, LLC's appeal, dated April 25, 2007, and Western Marketing, LLC, filed a reply, dated May 29, 2007.

On June 15, 2007, the Commissioner filed a motion for remand requesting remand of the instant proceeding for consideration of facts raised in affidavits attached to Western Marketing, LLC's May 29, 2007, reply. I provided Western Marketing, LLC, and Valley Tissue Culture, Inc., each with an opportunity to file a response to the Commissioner's motion for remand. On July 9, 2007, Western Marketing, LLC, filed a response to the Commissioner's motion for remand stating it did not object to the Commissioner's motion. On July 11, 2007, Valley Tissue Culture, Inc., filed a response to the Commissioner's motion for remand opposing the Commissioner's motion. I have considered all of the arguments in the Commissioner's motion for remand and Western Marketing, LLC's and Valley Tissue Culture, Inc.'s responses.

In order to provide the Commissioner an opportunity to weigh all the facts that may be relevant to the instant proceeding, I grant the Commissioner's motion for remand. For the foregoing reason, the following Order is issued.

ORDER

1. The Commissioner's March 1, 2007, decision upholding Valley Tissue Culture, Inc.'s protest and concluding the Western Russet variety is not eligible for protection under the Plant Variety Protection Act is vacated.

2. The instant proceeding is remanded to the Commissioner for consideration of facts asserted in affidavits attached to Western Marketing, LLC's May 29, 2007, reply; for consideration of any other evidence properly submitted to the Commissioner; and for the issuance of a decision upholding or denying Valley Tissue Culture, Inc.'s protest.

Done at Washington, DC

July 18, 2007

William G. Jenson
Judicial Officer