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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

2002 MAR 21 P 1:58

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE

SKINNERS WHOLESAL NURSERIES, INC.,  
a Florida corporation,

Plaintiff,

STRICKEN per Order # 20

and placed on left side  
of file

vs.

CASE NO. 3:01-CV-814-J-25HTS

GROUNDWORKS OF PALM BEACH  
COUNTY, INC., a Florida corporation,  
DARL E. YOUNG, an individual and GEORGE  
P. NOTTINGHAM, an individual,

Defendants.

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE  
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FILED

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY JUDGMENT**

Plaintiff Skinners Wholesale Nurseries, Inc. ("Skinner"), by and through its undersigned counsel, sues Defendants Groundworks of Palm Beach County, Inc. ("Groundworks"), Darl E. Young ("Young") and George P. Nottingham ("Nottingham") and alleges the following:

**PARTIES**

1. Skinner is a Florida corporation having its principal business office located at 2970 Hartley Road, Suite 302, Jacksonville, Duval County, Florida.
2. Groundworks is a Florida corporation having its principal business office located at 8140 93rd Lane South, Boynton Beach, Florida 33437.

Filed Nunc Pro Tunc as of 3/21/02  
Per Order #22, Dated 5/3/02

**SCANNED**

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3. Young is a California citizen residing at 81880 Arus Avenue, Indio, California 92201.

4. Nottingham is a Florida citizen residing in Boynton Beach, Florida.

5. This is an action for a Declaratory Judgment concerning the invalidity of two United States Letters Patents. This court has original and exclusive jurisdiction pursuant to Title 28, United States Code, Sections 1331 and 1338(a) because this action arises under the Patent Laws of the United States (Title 35, United States Code, Section 1. *et seq.*) and pursuant to the Declaratory Judgment Act, Title 28, United States Code, Sections 2201 and 2202.

6. Defendant Groundworks is a Florida corporation transacting business throughout the Middle District of Florida and elsewhere in the State of Florida through, among other things, its marketing and selling of date palm trees.

7. Defendant Nottingham is a Florida resident. Nottingham transacts business throughout the Middle District of Florida and elsewhere in the State of Florida through, among other things, marketing and selling date palm trees under a license from Young and, upon information and belief, his grant of a sub-license to Groundworks for the marketing and selling of date palm trees within the Middle District of Florida.

8. Young is subject to jurisdiction in the Middle District because he: (a) operates, conducts, engages in, or carries on a business venture in this state and within this district; (b) has caused injury to Skinner out of an act or omission by Young outside the state while Young was engaged in solicitation or service activities within this state, and while date palm

trees manufactured or processed by Young were used or consumed in this state in the ordinary course of commerce, trade, or use; and (c) is engaged in substantial and not isolated activity within this state within the meaning of Section 48.193 (2), Florida Statutes (2001).

9. Venue for this action is proper in the Jacksonville Division of the Middle District of Florida pursuant to 28 U.S.C., Section 1391(b)(2) since a substantial part of the events or omissions giving rise to this complaint occurred within the Middle District of Florida.

### **FACTUAL BACKGROUND**

10. Skinner is in the business of providing nursery and landscape services. As part of its services, Skinner sells, delivers and installs date palm trees to areas located within the Middle and Northern Districts of Florida and in various other states.

11. Skinner receives its supply of date palm trees from several growers located in California, including Oasis Ranch Management, Inc. ("Oasis"). Prior to the shipment of date palm trees to Skinner, palm tree harvesters cut and clean the bark surface of the date palm trees to create a certain ornamental appearance. These palm tree harvesters have cut and trimmed date palm trees to create this ornamental appearance for several decades. The methods used to cut and trim the trees amount to no more than using the sharp end of a shovel or spade to remove fronds and frond stubs from the surface of the trees (the "Industry Methods"). The Industry Methods have been in use throughout the date palm tree industry since at least as early as the 1960's.

12. The records of the United States Patent and Trademark Office (“USPTO”) reflect the issuance of two United States Letters Patents to Young. These patents are identified as follows:

(a) United States Letters Patent Number 5,092,380 issued on March 3, 1992 and entitled, “Method of Cutting Fronds or Frond Stubs from a Date Palm Tree” (the ‘380 Patent), a copy of which is attached hereto and incorporated herein as part of Composite Exhibit “A”; and,

(b) United States Letters Patent Number 5,184,656 issued on February 9, 1993 and entitled, “Method of Cutting Frond Stubs from a Date Palm” (the ‘656 Patent), a copy of which is attached hereto and incorporated herein as part of Composite Exhibit “A”. (Collectively, the ‘380 Patent and the ‘656 Patent are referred to as the “Patents”).

13. In an attempt to remove the Industry Methods from the public domain, Young filed the applications for the Patents and claimed two of these oldest and most well known Industry Methods for cutting date palm trees with a shovel or spade.

14. On March 23, 1993 Young conveyed to Nottingham an exclusive interest in the Patents providing Nottingham exclusive rights use the Patents throughout the State of Florida. A copy of this agreement is attached hereto and incorporated herein as Exhibit “B.”

15. Nottingham is the President, Vice President and majority shareholder of Groundworks. Upon information and belief, Nottingham has conveyed a license to Groundworks for the marketing and selling of date palm trees throughout the State of Florida on Nottingham’s behalf.

16. Groundworks and Nottingham have asserted the Patents against Skinner thereby creating a justiciable controversy which is a cloud upon Skinner's business and which is interfering with and harming Skinner's business. These assertions of the Patents by Groundworks took place as follows:

(a) On November 10, 2000 Nottingham, on behalf of Groundworks, sent Skinner a letter advising that Groundworks had learned that Skinner was selling date palm trees cut and trimmed using the claimed methods of the Patents. The letter asserts that Groundworks would "aggressively defend the hard earned rights and benefits" of the Patents should Skinner fail to cease any infringing activities. A copy of this November 10, 2000 letter is attached hereto and incorporated herein as Exhibit "C."

(b) In late May or early June of 2001 Nottingham contacted Skinner by telephone to inquire whether Skinner intended to cease its activities. In this phone conversation, Nottingham again advised Skinner of the Patents and Groundwork's intent to bring a lawsuit. Skinner responded to this phone call with a letter to Groundworks, dated June 8, 2001, stating that the Patents were invalid and not infringed. A copy of this June 8, 2001 letter is attached hereto and incorporated herein as Exhibit "D."

(c) Nottingham contacted Skinner a third time on July 10, 2001 by telephone to advise that the Patents are enforceable and Groundworks intends to pursue the defense of the Patents against Skinner.

17. These assertions by Groundworks and Nottingham constitute explicit threats that have created a reasonable apprehension on the part of Skinner that it will face an infringement suit at an indeterminate time in the immediate future.

18. The Defendants have also made similar assertions against the several date palm tree growers located in California. Several of these growers are Skinner's suppliers. Over the past two decades, Young has threatened to sue many of the date palm tree growers for infringement of the claims of the two Patents. Upon information and belief, Young made threats to such persons even before any of the Patents issued. These threats have created a reasonable apprehension on the part of Skinner that its suppliers may submit to this intimidation and refuse to continue supplying Skinner with date palm trees.

19. Skinner's reasonable apprehension concerning its suppliers has been exacerbated by the fact that during the two to three months immediately prior to the filing of this suit, employees of Young under Young's direction and command appeared at Oasis during date palm harvests and photographed and videotaped the harvesting and trimming of date palm trees sold by Oasis to Skinner.

20. A submission by Skinner's suppliers to the Defendants' threats will result in an immediate and substantial injury to Skinner's business. Above and beyond any monetary loss, Skinner will lose a substantial portion of its customer base to Groundworks and others, as well as suffering irreparable injury to its goodwill and reputation for providing comparable products at the same levels and prices as those provided by Groundworks and Skinner's other competitors.

21. Based on Defendant's demands and threatened legal action, an actual controversy exists between the parties and forms the basis for Skinner's request for declaratory relief pursuant to 28 U.S.C. Section 2201.

22. The '656 Patent and the '380 Patent are invalid pursuant to Title 35, United States Code, Sections 102 and 103, and therefore unenforceable against Skinner or any of its date palm tree suppliers.

23. Skinner, pursuant 35 U.S.C., Section 282, states that the Patents are invalid on the following grounds:

(a) The alleged inventions of the '656 Patent and the '380 Patent were known or used by others in this country before the alleged invention thereof by Young;

(b) The alleged inventions of the '656 Patent and the '380 Patent were in public use or on sale in this country more than one year prior to the date of filing the application for each patent in the United States;

(c) Young did not himself invent the subject matter sought to be patented by the '380 Patent and the '656 Patent;

(d) Before the invention of the subject matter of the '656 Patent and the '380 Patent by Young, the alleged inventions were made in this country by another who had not abandoned, suppressed or concealed them;

(e) The differences between the subject matter of the '656 Patent and the '380 Patent and the prior art are such that the patented subject matter as a whole would have been

obvious at the time the alleged invention was made to a person having ordinary skill in the art to which the subject matter pertains; and,

(f) The USPTO improperly issued the '656 Patent and the '380 Patent without due consideration and without full and proper investigation and consideration of all the pertinent prior art.

24. The patents and publications relied upon as prior art, and persons relied upon as prior inventors or as having prior knowledge or as having previously used or offered the alleged invention for sale, including such patents, publications and persons as are presently known to Plaintiff, will be specified and notice thereof given to Defendants in accordance with Title 35, United States Code, Section 282.

**WHEREFORE**, Plaintiff Skinners Wholesale Nurseries, Inc. demands that judgment be entered against both of the Defendants as follows:

A. For a Declaration and Judgment that United States Letters Patent Number 5,092,380 and United States Letters Patent Number 5,184,656 and the claims thereof are invalid, void and therefore unenforceable and that it is the right of Skinner and its suppliers to continue their businesses without any further actions, threat or interference of any kind or nature by Groundworks and Young or anyone claiming through or under the Defendants on account of United States Letters Patent Number 5,092,380 and United States Letters Patent Number 5,184,656 or of any of the claims thereof or any alleged infringement thereof;

B. For a permanent injunction restraining and enjoining Young and Groundworks from asserting, threatening or otherwise relying upon United States Letters Patent Number



5,092,380 and United States Letters Patent Number 5,184,656 against Skinner or its customers or suppliers;

C. For a Declaration of Rights with respect to the rights of Skinner to continue in its business activities with both its customers and suppliers without interference or threats by Young or Groundworks;

D. For a judgment in favor of Skinner for its reasonable costs of this suit;

E. For a judgment that this is case be deemed exceptional pursuant to Title 35, United States Code, Section 285 and that Skinner accordingly be entitled to recover its actual attorneys fees; and,

F. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

By: \_\_\_\_\_

  
Gregory R. Sunny

Florida Bar No. 883654

Richard S. Vermut

Florida Bar No. 0086746

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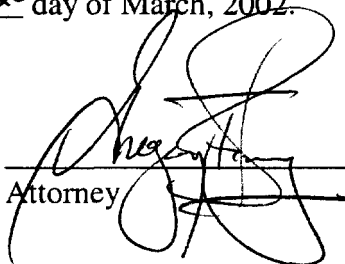
Jacksonville, Florida 32207

011-1-(904) 398-3911 (phone)

011-1-(904) 396-0663 (facsimile)

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing First Amended Complaint for Declaratory Judgment has been furnished to Frederick D. Page, Esq., Holland & Knight LLP, 50 N. Laura Street, Suite 3900, Jacksonville, Florida 32202 via facsimile transmission completed before 5:00 p.m. and U.S. Mail this 20<sup>th</sup> day of March, 2002.

  
\_\_\_\_\_  
Attorney



US005092380A

**United States Patent** [19]  
 Young

[11] **Patent Number:** 5,092,380  
 [45] **Date of Patent:** Mar. 3, 1992

- [54] **METHOD OF CUTTING FRONDS OR FROND STUBS FROM A DATE PALM TREE**
- [76] **Inventor:** Darl E. Young, 82849 Lexington Ave., Indio, Calif. 92201
- [21] **Appl. No.:** 676,260
- [22] **Filed:** Mar. 27, 1991

**Related U.S. Application Data**

- [63] Continuation-in-part of Ser. No. 562,913, Jul. 30, 1990, abandoned.
- [51] **Int. Cl.<sup>3</sup>** ..... B27B 1/00
- [52] **U.S. Cl.** ..... 144/363; 30/353; 47/1.01; 144/2 Z; 144/208 C; 144/340; 144/343
- [58] **Field of Search** ..... 30/353; 47/1.01; 294/2, 294/45, 54.5, 55; 144/2 Z, 208 C, 359, 363, 343, 340

[56] **References Cited**

**U.S. PATENT DOCUMENTS**

- 2,768,437 10/1956 Ronjan et al. .
- 2,813,278 11/1957 Stecher et al. .

**OTHER PUBLICATIONS**

- An advertisement for trees from the May 1990 issue of "Plant Finder Magazine" published by Betrock Information Systems.
- An advertisement for trees from the Jun. 1990 issue of "Plant Finder Magazine" published by Betrock Information Systems.
- An advertisement for trees from the Jul. 1990 issue of "Plant Finder Magazine" published by Betrock Information System.
- An advertisement for trees from the Feb. 1990 issue of "Plant Finder Magazine" published by Betrock Information System.
- An advertisement for trees from the Mar. 1990 issue of "Plant Finder Magazine" published by Betrock Information Systems.
- An advertisement for trees from the Apr. 1990 issue of "Plant Finder Magazine" published by Betrock Information Systems.
- An advertisement for trees from the Sep. 1991 issued of

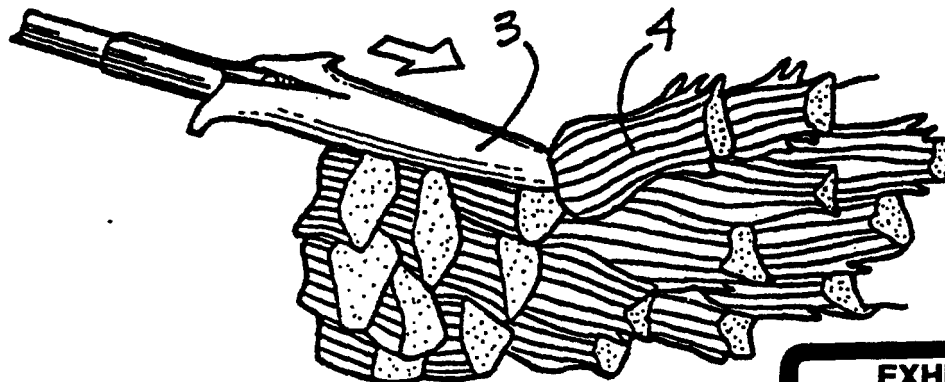
- "Southern Nurseryman's Digest" published by Betrock Information Systems.
- An advertisement for trees from the Jul. 1991 issue of "Plant Finder Magazine" published by Betrock Information Systems.
- An advertisement for trees from the Aug. 1991 issue of "Plant Finder Magazine" published by Betrock Information Systems.
- An advertisement for trees from the Sep. 1991 issue of "Plant Finder Magazine" published by Betrock Information Systems.
- An advertisement for trees from the Apr. 1991 issue of "Plant Finder Magazine" published by Betrock Information Systems.
- An advertisement for trees from the May 1991 issue of "Plant Finder Magazine" published by Betrock Information Systems.
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- An advertisement for trees from the Apr. 1990 issue of "Southern Nurseryman's Digest" published by Betrock Information Systems.
- An advertisement for trees from the May 1990 issue of "Southern Nurseryman's Digest" published by Betrock Information Systems.
- Article entitled Date Development, Handling, and Packing in the United States, Agricultural Handbook No. 482.
- Article entitled, Growing Dates in the United States, by Roy W. Nixon and J. B. Carpenter.

*Primary Examiner*—W. Donald Bray  
*Attorney, Agent, or Firm*—Christie, Parker & Hale

[57] **ABSTRACT**

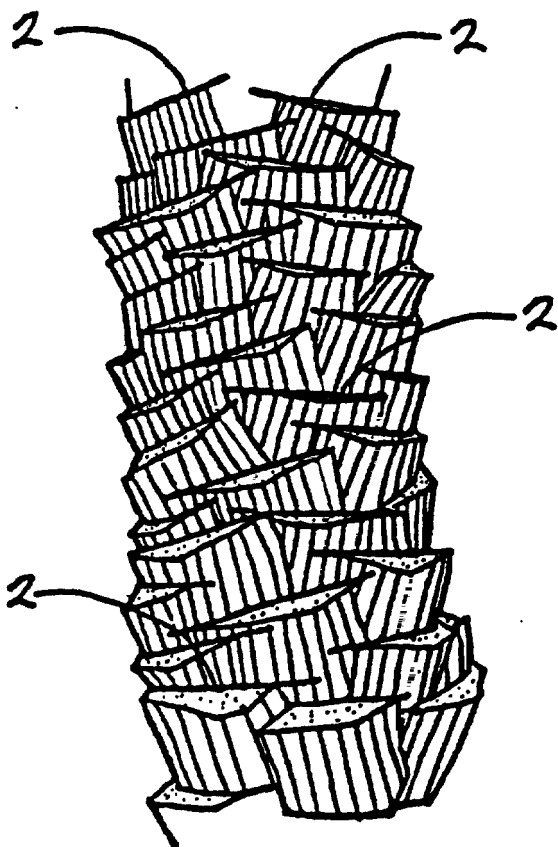
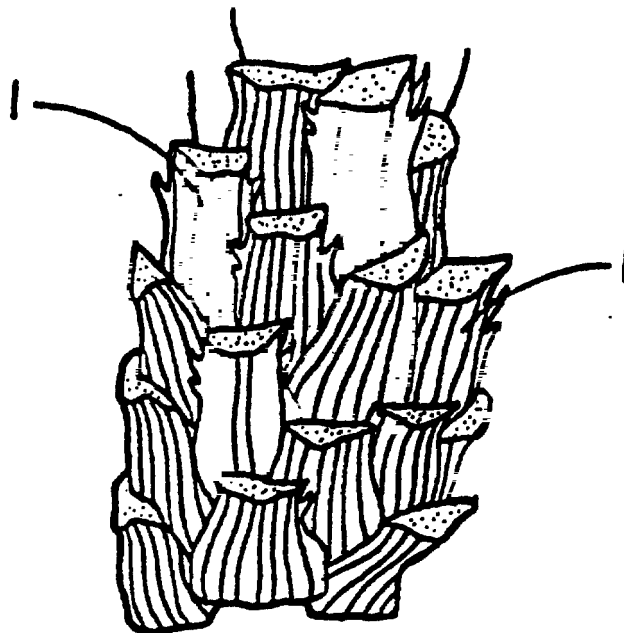
A method of cutting fronds and frond stubs of a date palm tree is described using a sharp, curved cutting tool with a rounded cutting edge which enables an attractive tree bark surface to be created.

**8 Claims, 5 Drawing Sheets**



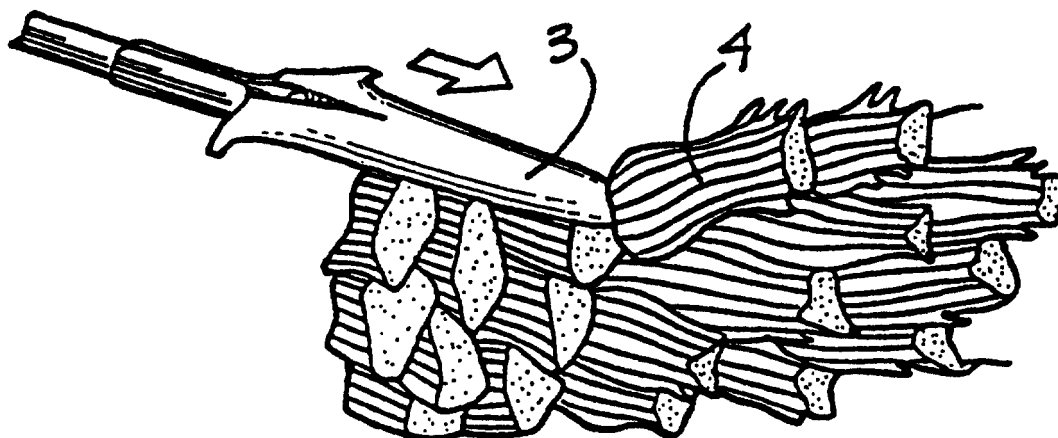
**EXHIBIT**  
 Composite  
 "A"  
 18 PAGES

*Fig. 1*

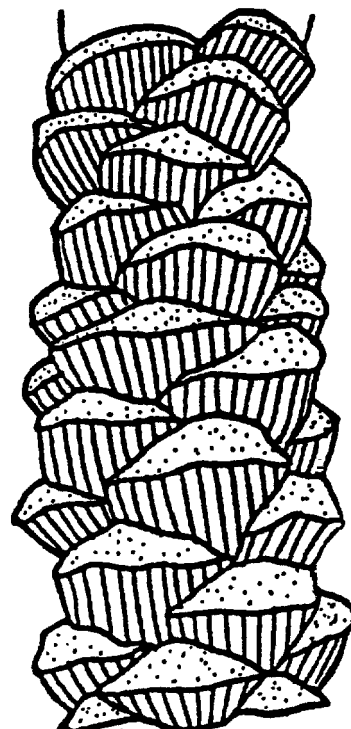


*Fig. 2*

*Fig. 3*



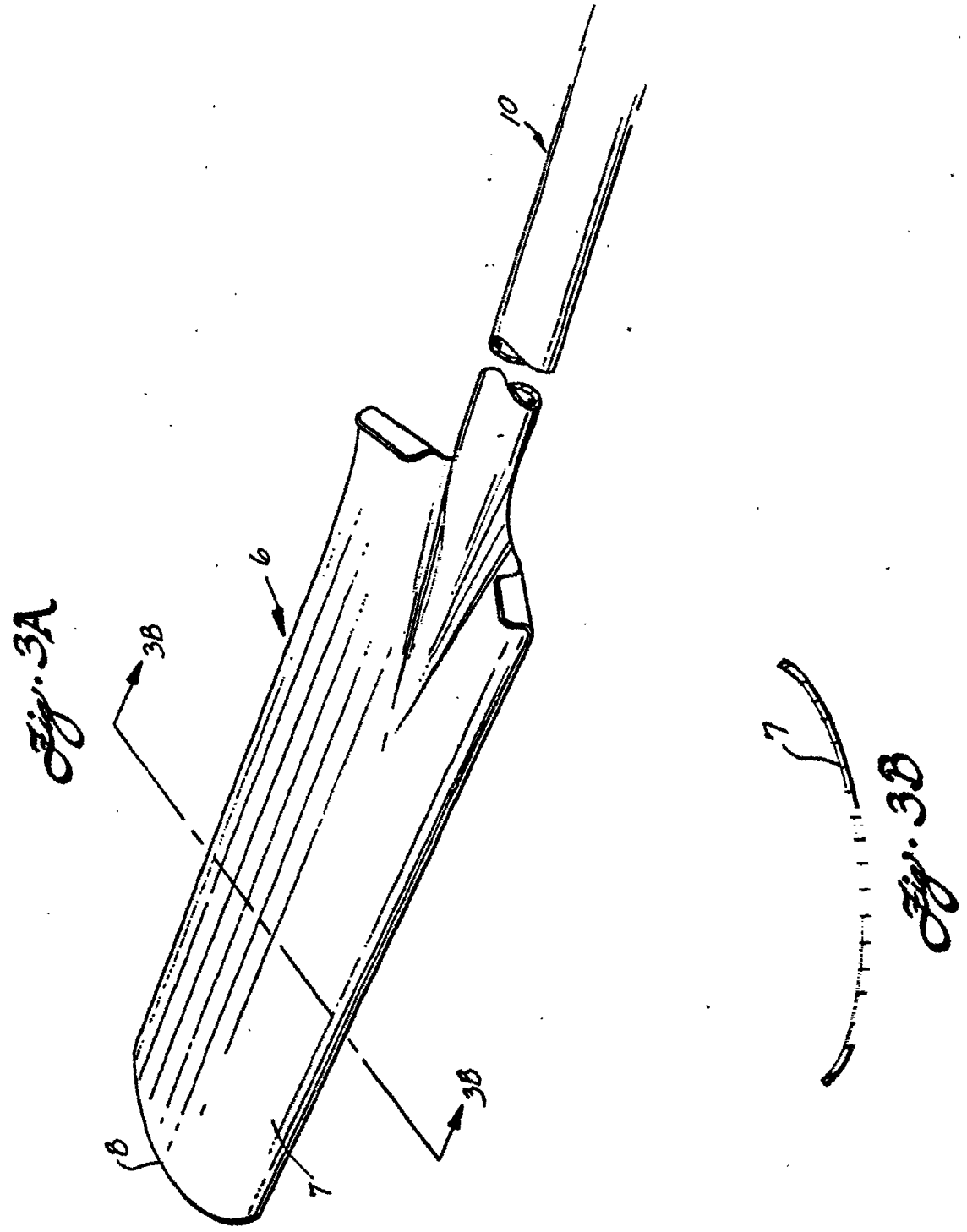
*Fig. 4*



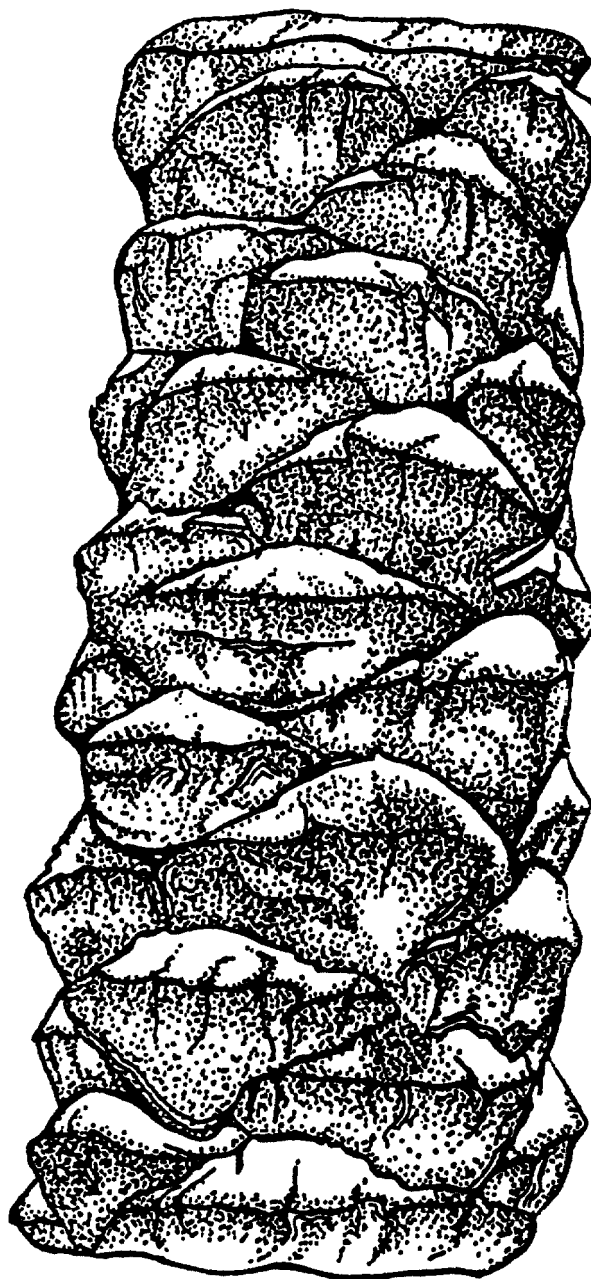
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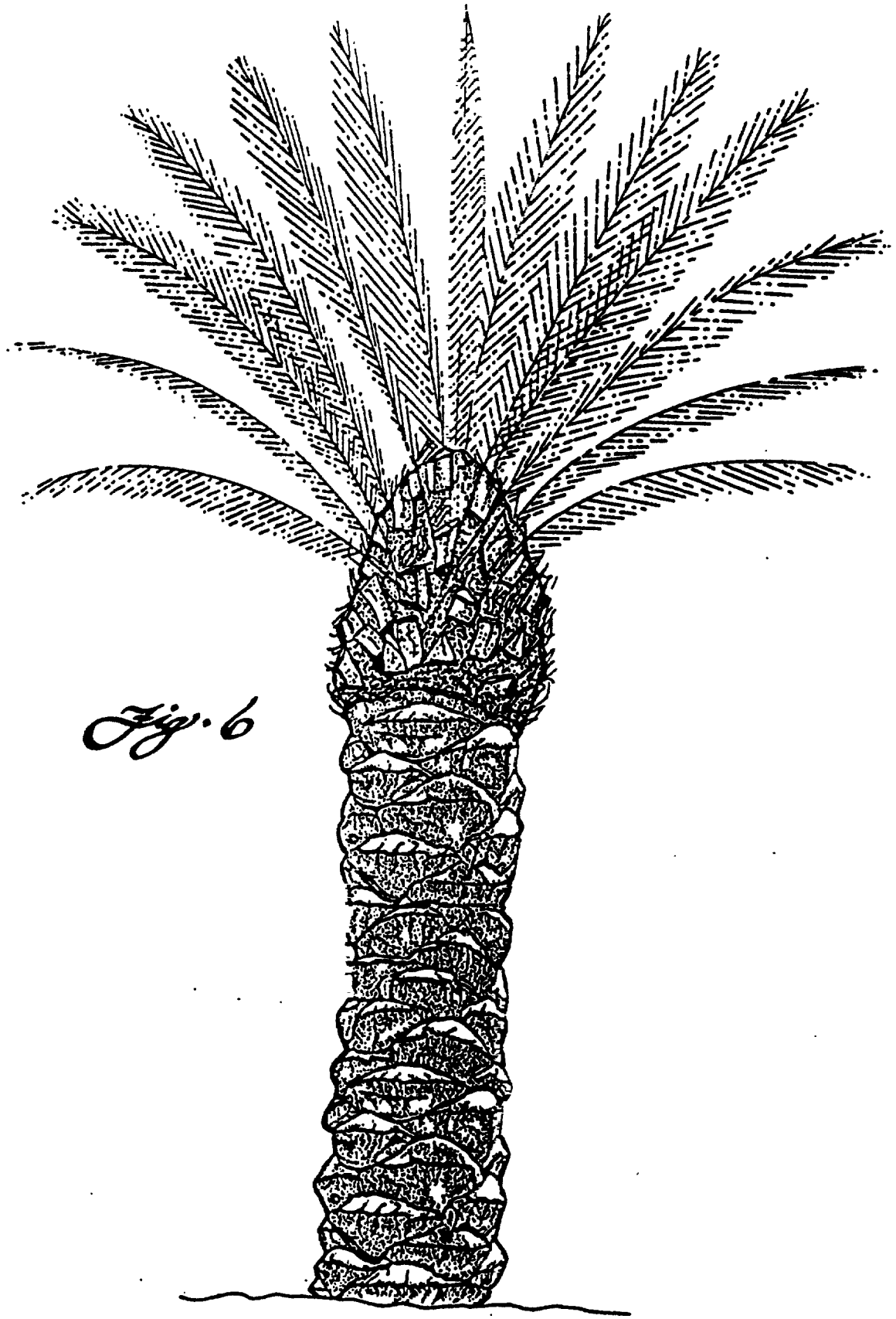
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Sheet 3 of 5



*Fig. 5*





*Fig. 6*



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## METHOD OF CUTTING FRONDS OR FROND STUBS FROM A DATE PALM TREE

### CROSS REFERENCE TO RELATED APPLICATIONS

This application is a continuation-in-part of patent application Ser. No. 07/562,913, now abandoned filed July 30, 1990 and is related to design patent application Ser. No. 07/676,722 filed on the same date hereof.

### BACKGROUND OF THE INVENTION

#### 1. Field of the Invention Process

This process involves the cleaning and shaping of the trunk of a date palm tree to prepare it for transplanting; more specifically to properly protect and bring out the true natural beauty of this exotic desert tree.

#### 2. Prior Art

Palm tree nurseries and landscapers dig around the root ball of a palm tree and gently lay the tree on the ground to prepare it for transplanting. The tree has many frond stubs (leaf stems) that have died and broken off. The rough, ragged look is not desirable.

For years the accepted procedure has been to use a chain saw to remove these old frond stubs. As the palm tree lay on the ground the operator would cut off these very wide stubs which often reaches 10" to 12" on a medium size tree with a trunk diameter of 18", many times cutting into the live wood of the tree's trunk and injuring the tree. The weight and power of the chain saw, as well as the odd positions that the saw has to be held in to remove the top, side and bottom stubs of the tree trunk by over cutting with the chain saw blade makes frond cutting difficult. Other landscapers have used circular saws, hand saws and bow saws with the same damaging result to the tree. Historically, this weakened the palm tree, and the resulting perpendicular cut to the tree trunk did not produce a natural looking weathered look. Even the name given this chain saw cut—"step cut"—implies an unnatural configuration. The very design of a flat saw blade makes nature's natural look difficult, if not to achieve impossible. These old procedures are still used today throughout the industry in the palm tree areas of the United States. For years a better tool or process was needed and sought after.

Spanish missionaries introduced the date palm tree into the Western hemisphere by planting date seeds around early missions. From this origin, the date palm, which is known botanically as "Phoenix Dactylifera L." has become a very important part of agricultural production in southwestern United States where a significant crop of date fruit is produced annually. Although date palm trees may be grown from seeds, primary production is by rooting offshoots that develop from axillary buds on the tree trunk, chiefly during the early years of the palm tree's life. Removal of the offshoots generally takes place after the tree has started to produce a second generation of offshoots. The size of the offshoots when ready for cutting generally varies from 40 to 100 pounds in weight and from 8 to 14 inches in diameter.

As a general rule, green leaves are not removed from an offshoot until it is cut from the parent palm tree unless the palm is crowded with offshoots. The leaves on the smaller offshoots are sometimes cut back close to the bud to retard growth. The cutting of an offshoot from the parent palm requires care and skill to avoid injury to either the offshoot or the host tree. A specially

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designed chisel with a rectangular cutting blade is generally used to cut the offshoot. The blade of the fool has one flat side and the other beveled so as to form three sharp cutting edges.

Another important use of the date palm tree in Southwestern United States has been as an ornamental. These trees which can grow quite tall generally obtain maximum leaf spread after 12 to 15 years of age. Frequently older palm trees retain more leaves than are needed either for fruit production or for an attractive appearance. As many as 180 green leaves have been counted on a single palm unpruned for six years. A considerable number of such leaves will be below the fruit bunches or will present a comparatively unattractive appearance where the tree is used for ornamental purposes. Furthermore, excess lower leaves may increase the relative humidity around the fruit bunches in mid summer, adversely affecting the fruit harvest. It also occurs that older leaves or fronds dry and die as the tree ages and may break off leaving unsightly stubs. This is especially undesirable where the tree is to be used for ornamental purposes. Dead or partly dead leaves may be removed at any convenient time but because of greater ease in cutting they are generally removed before becoming hard or drying.

In addition to the foregoing, it has also been recommended to remove the fronds of previous years growth to facilitate pollination and subsequent handling of fruit bunches. For this purpose, a sharp pruning knife with a long curved blade mounted on the handle is most frequently used. The curved blade is a planar surface resembling a curved end carpet cutting knife but of larger size. A cutting tool of this type used in the manner described simply results in a flat cut leaf edge.

As date palm trees become large and the fronds sturdy and strong, their removal is primarily accomplished by means of a chain saw. Although chain saw removal of fronds or stubs of fronds may be effective, it suffers from the disadvantages of leaving a frond stub cut surface which is unsightly and unattractive. Moreover, because of the toughness of the fronds, chain saw use requires frequent expensive replacement of the chain saw blades as they become dull or break.

The present invention provides a method of cutting date palm tree fronds or frond stubs which avoids the disadvantages of the techniques heretofore known and results in a date palm tree bark surface of unusually attractive appearance.

### SUMMARY OF THE INVENTION

The principal object of my new process is to trim off the palm tree frond stubs with a sharp curved tool. This curved cutting tool allows us to adjust the trimming of these wide frond stubs to conform to large or small diameter trees, creating a rounded natural look. By using a rounded cutting tool, i.e., a cutting tool with a convex cutting edge, we are able to remove the frond stub with an upward cutting motion, e.g., at about a 45° angle, which gives us a true natural weathered look while at the same time not cutting into and damaging the palm tree's live wood.

In accordance with a preferred embodiment of the present invention there is provided a method of cutting fronds or stubs of fronds from a date palm tree to produce an attractive bark surface which comprises providing a cutting tool having a frontally disposed cutting means and a rearwardly extending support for the cut-

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ting means. The cutting means has a concave planar surface terminating in a convex cutting edge. The frond or frond stub is cut by engaging it with the cutting edge of the cutting means with sufficient force to cut at least a portion of the frond or stub. The engagement is repeated, as necessary, following the curvature of the tree, to completely sever the frond or frond stub without damaging the live wood of the palm tree. The cutting tool, during engagement with the frond stub, is oriented with the concave planar surface facing downwardly. This results in formation of an attractive curved face on the tree bark surface. Cutting the fronds or frond stubs around the curvature of the tree also results in a natural climbing spiral growth of attractive appearance. The process does not damage the main trunk of the tree under the outer bark and a healthy and beautiful tree results.

### BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a schematic perspective view illustrating the bark appearance after the fronds have may have died and broken off by their weight and the wind;

FIG. 2 is a schematic perspective view illustrating the bark appearance after the frond stubs are cut with a chain saw, the old chain saw or "step cut" that is currently in use today, (FIG. 2 displays the many possible cuts into the tree's live wood by the chain saw);

FIG. 3 is a schematic perspective view illustrating the removal of a frond stub with a sharp round cutting edge conforming to the shape of the tree;

FIGS. 3A and 3B are, respectively, a perspective view of the preferred cutting tool illustrating the concave planar surface of the cutting tool terminating in a convex cutting edge, and a cross section of the cutting tool showing the concavity of the planar surface;

FIG. 4 is a schematic perspective view illustrating the tree bark surface after removal of the frond stub by the method of the invention and shows the completed tree displaying the upward spiral of this trees growth pattern without any damage to the tree's live wood;

FIG. 5 is a perspective view of a segment of the tree trunk showing the attractive appearance made possible by practicing the invention and FIG. 6 is a perspective view of the whole tree.

FIGS. 7 and 8 are photographs of date palm trees showing the appearance of the bark surface after the frond stubs are cut by the prior method and in accordance with the invention, respectively.

### DETAILED DESCRIPTION OF PREFERRED EMBODIMENT

The frond stubs of the date palm tree are most advantageously cut by removing the tree from the ground and laying it horizontally where it may be cleaned and prepared for shipment. A frond stub extends outward from the trunk of the tree bending upwards toward the top of the tree (FIG. 1). We proceed to cut and remove the stub, starting about four inches above the base of the stub where it joins the tree. We cut and remove the stub at an upwards angle of about 45° towards the top of the tree, following the curvature of the tree trunk (FIG. 3). The frond stub extends outwardly from the trunk of the tree bending towards the tree top. This can be seen in FIG. 1 where numeral 1 indicates the frond stubs of the tree bark surface. Prior to the present invention the frond stubs were cut using a chain saw with the results shown in FIG. 2 illustrating the flat unsightly cut surface 2 of the frond stub.

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Using a tool 3 with a round cutting edge, as seen in FIG. 3, the frond stub 4 shown therein is cut at least about four inches above the base of the stub where it joins the tree. The stub is cut by engaging it with the cutting tool with sufficient force to cut at least a portion of the frond or frond stub by an upward motion, preferably at an upward angle of about 45° toward the top of the tree, following around the curvature of the tree trunk. The frond stub is engaged with the cutting tool as many times as necessary to completely sever the frond from the tree trunk. Using the technique described, the frond and frond stub is severed without any damage to the live wood of the palm tree such as generally occurs using chain saws.

A preferred cutting tool is shown in FIGS. 3A and 3B. As can be seen, the cutting tool comprises a cutting means 6 and a rearwardly extending support 10 therefor. The cutting means has a concave planar surface 7 terminating in a convex cutting edge 8.

The tree bark appearance after cutting in accordance with the invention is shown schematically in FIG. 4, and as well as in FIGS. 5 and 6. As can be seen, practice of the method of the invention enables the palm tree's natural beauty to be brought out. The natural appearing climbing spiral growth of the date palm tree is shown beautifully and the tree becomes an attractive ornamental addition to the landscape.

The drawing of FIG. 2 shows the CHAIN SAW or "STEP CUT" debarking, or frond stub removal, traditionally used prior to the present invention to clean up palm trees when selling to a customer. The old system of some type of saw was used to cut the old stubs off. Because of the very wide frond base it is very easy to damage the living inner tree trunk. The smaller the tree, the more easily damage occurs because of the straight cut of the chain saw.

The appearance of the tree is only improved a little over the untrimmed portion of the tree by this chain saw trimming. For years this has been, and still is the standard of the industry.

Our round cutting tool allows us to reveal the natural beauty. Note that in both of the trees in the picture, the natural climbing spiral growth of this tropical tree is shown off very beautifully.

Further note that because of the curved cutting tool, as described, our new process does not damage the main trunk of the tree under the outer bark. A healthy and beautiful tree is the result of this new process.

It is apparent from the foregoing that various changes and modifications may be made without departing from the spirit of the invention.

Accordingly, the scope of the invention should be limited only by the appended claims wherein what is claimed is:

1. A method of cutting fronds or stubs of fronds from a date palm tree to produce an attractive bark surface comprising:

providing a sharp curved rounded cutting tool having a frontally disposed cutting means and a rearwardly extending support therefor, said cutting tool having a sharp round cutting edge;

engaging a frond to be cut with the sharp round cutting edge of said cutting tool with sufficient force to cut at least a portion of said frond and repeating said engagement as necessary, following the curvature of the tree, to completely sever the frond or frond stub without damaging the live wood of the palm tree.

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2. A method according to claim 1 wherein said frond or frond stub to be cut is engaged by the cutting edge with an upwardly directed cutting motion.

3. A method according to claim 2 wherein said upward cutting motion is at an angle of about 45 degrees toward the top of the tree.

4. A method according to claim 3 wherein said frond or frond stub is engaged at about four inches above the base of the frond or frond stub where it joins the tree.

5. A method of cutting fronds or stubs of fronds from a date palm tree to produce an attractive bark surface comprising:

providing a cutting tool having a frontally disposed cutting means and a rearwardly extending support therefor, said cutting means having a concave planar surface terminating in a convex cutting edge; engaging a frond to be cut with the cutting edge of said cutting means with sufficient force to cut at

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least a portion of said frond and repeating said engagement as necessary, following the curvature of the tree, to completely sever the frond or frond stub without damaging the live wood of the palm tree, said cutting tool being oriented with the concave planar surface facing downwardly during engagement with said frond.

6. A method according to claim 5 wherein said frond or frond stub to be cut is engaged by the cutting edge with an upwardly directed cutting motion.

7. A method according to claim 6 wherein said upward cutting motion is at an angle of about 45 degrees toward the top of the tree.

8. A method according to claim 7 wherein said frond or frond stub is engaged at about four inches above the base of the frond or frond stub where it joins the tree.

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US005184656A

**United States Patent** [19]  
**Young**

[11] **Patent Number:** **5,184,656**  
 [45] **Date of Patent:** **Feb. 9, 1993**

- [54] **METHOD OF CUTTING FROND STUBS FROM A DATE PALM**
- [76] **Inventor:** Darl E. Young, 82849 Lexington Ave., Indio, Calif. 92201
- [21] **Appl. No.:** 794,572
- [22] **Filed:** Nov. 19, 1991
- [51] **Int. Cl.<sup>5</sup>** ..... B27B 1/00; A01G 23/00
- [52] **U.S. Cl.** ..... 144/363; 30/353; 47/101; 47/8; 47/58; 144/2 Z; 144/208 C; 144/340; 144/343
- [58] **Field of Search** ..... 144/2 Z, 208 R, 208 C, 144/340, 343, 356, 363; 30/353; 294/2, 4 S, 54 S, 5 S; 47/1.01, 8, 58

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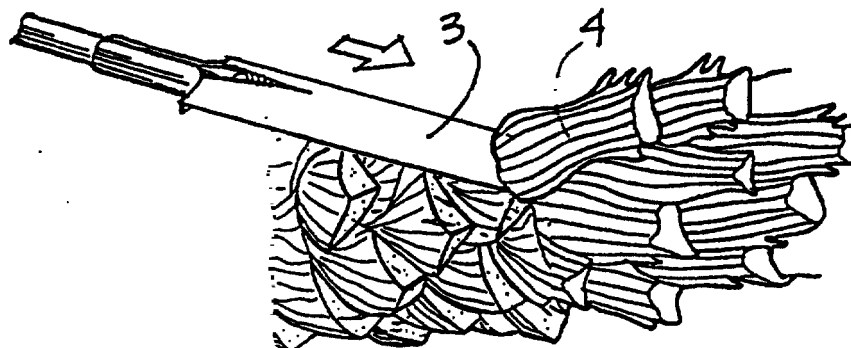
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- Article Entitled Date Development, Handling and Packing in the United States, Agricultural Handbook No. 482.
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*Primary Examiner*—W. Donald Bray  
*Attorney, Agent, or Firm*—Christie, Parker & Hale

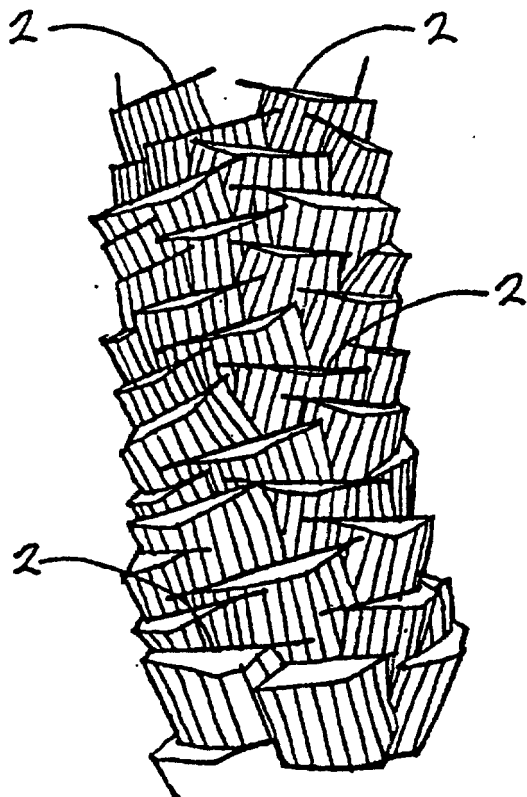
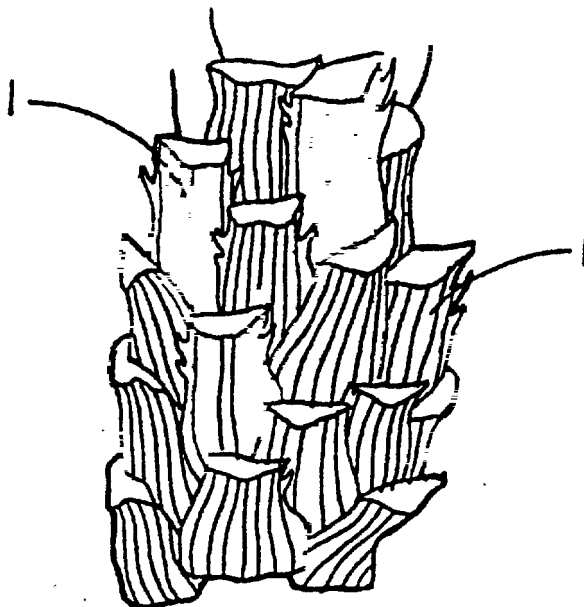
[57] **ABSTRACT**

A method of cutting frond stubs of a date palm tree to produce a palm bark surface free of pockets where water can collect and which reduces the possibility of pathogen intrusion and proliferation is described using a cutting tool with a sharp straight edge to produce a geometric shape.

**7 Claims, 5 Drawing Sheets**



*Fig. 1*



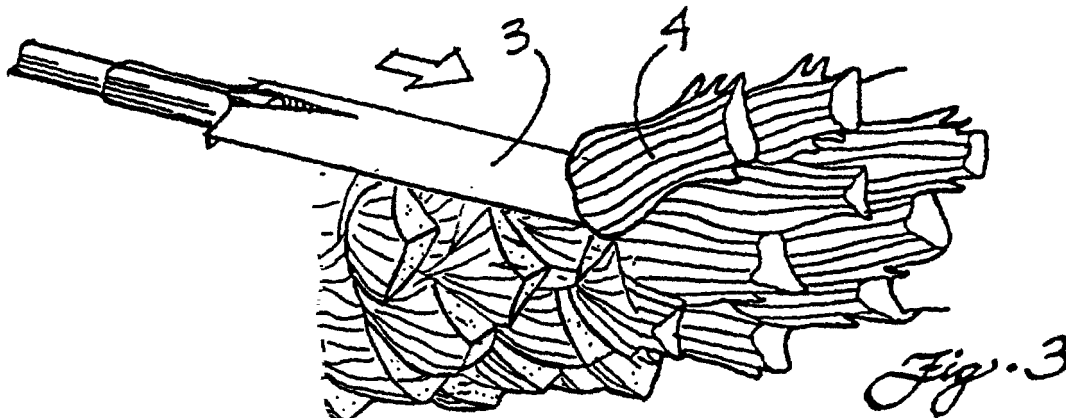
*Fig. 2*

U.S. Patent

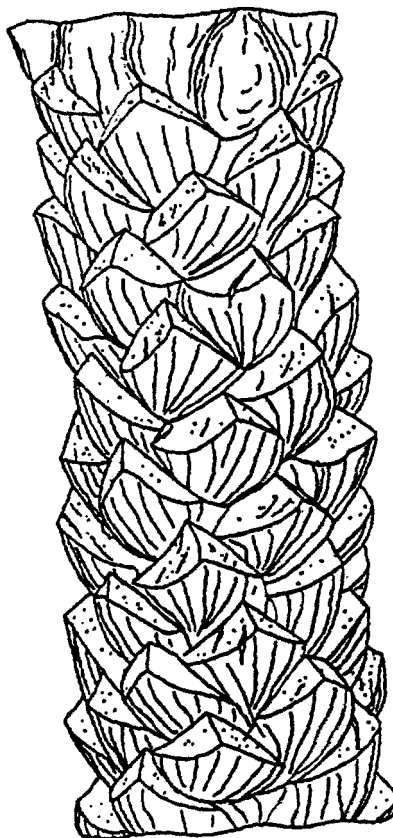
Feb. 9, 1993

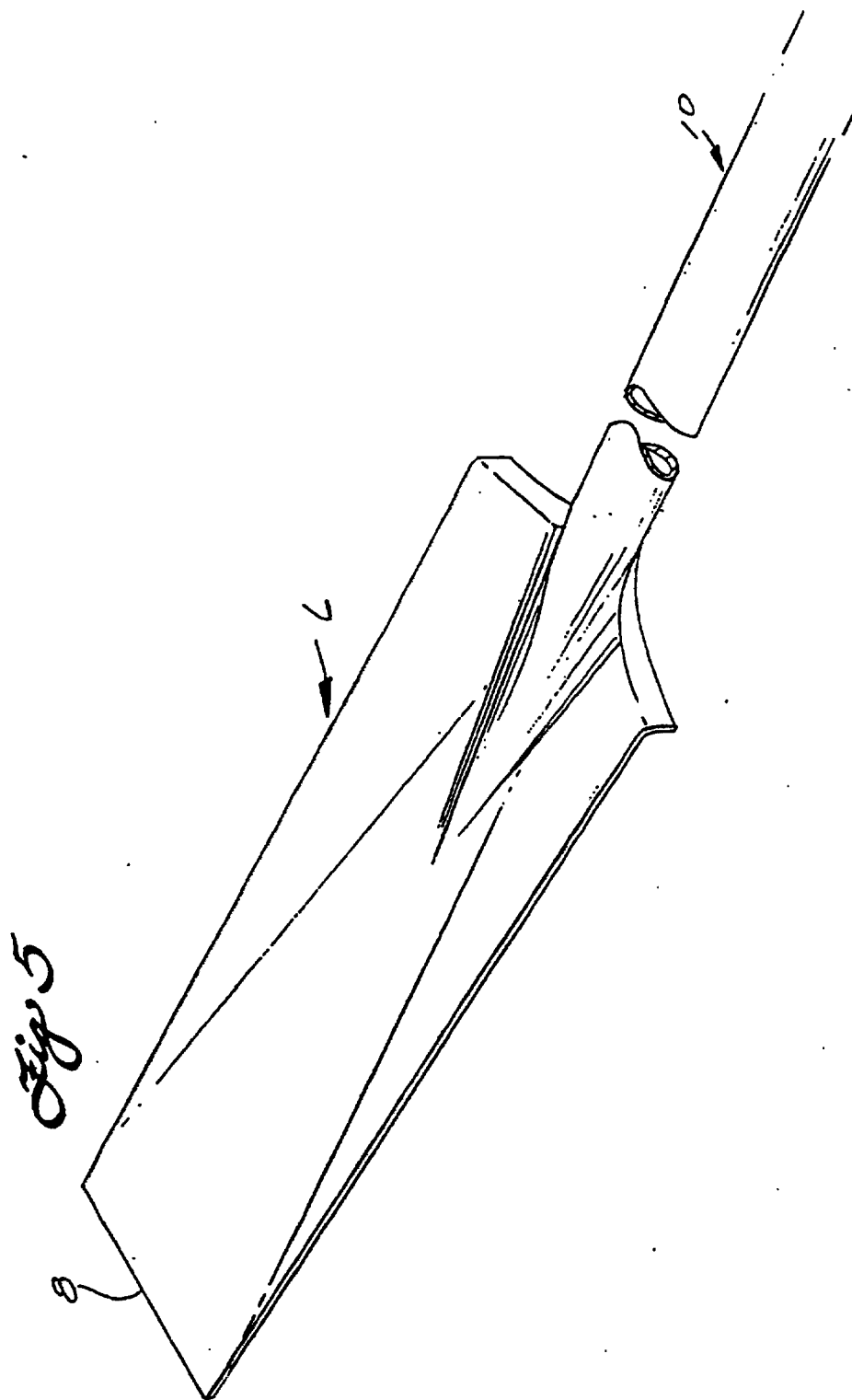
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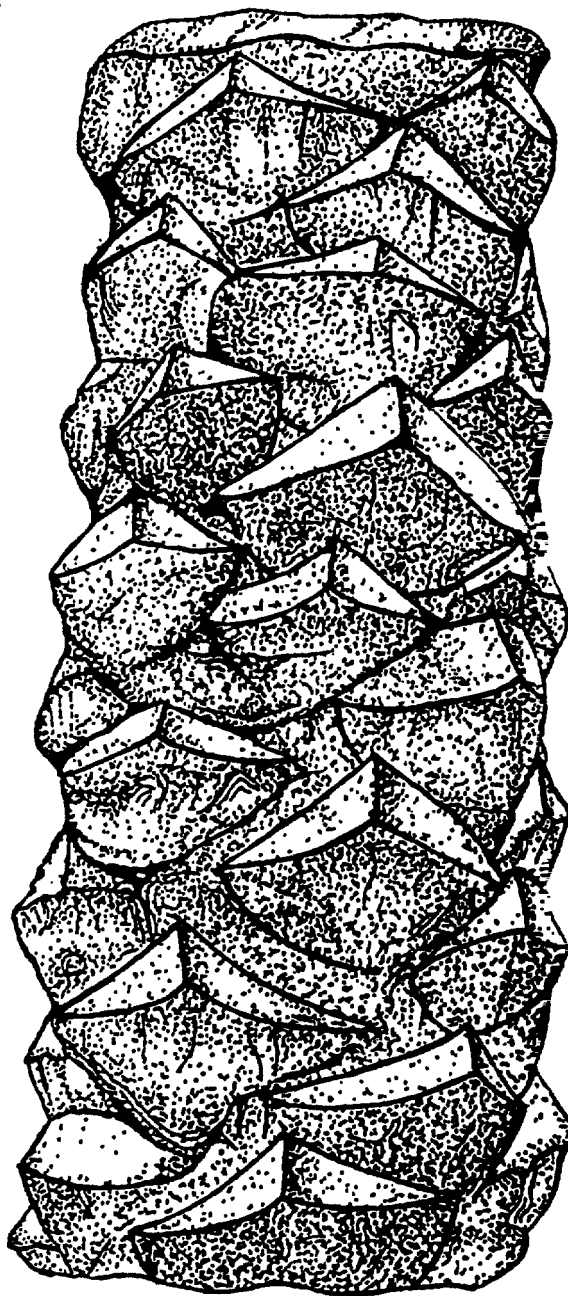


*Fig. 4*

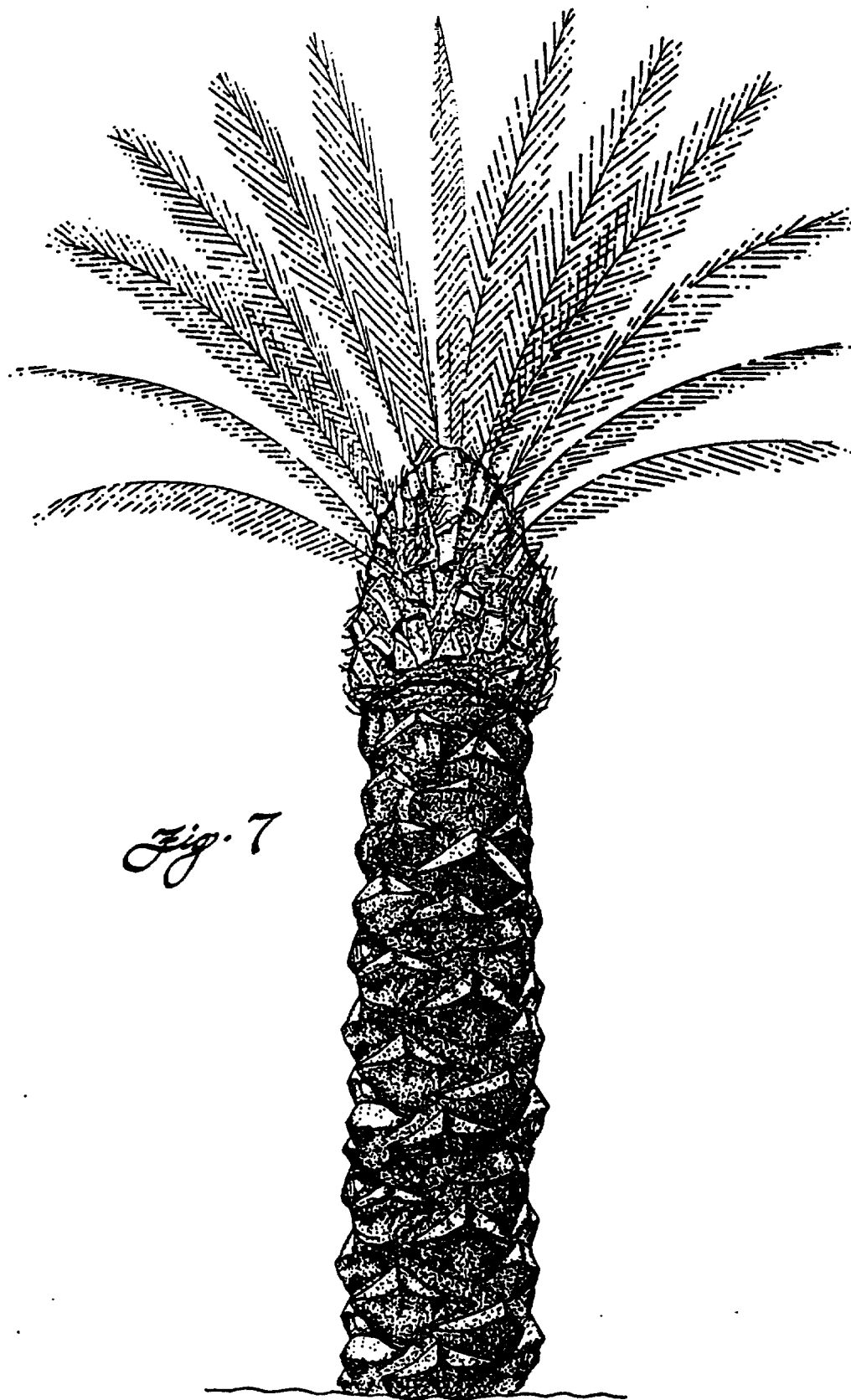




*Fig. 6*







*Fig. 7*

METHOD OF CUTTING FROND STUBS FROM A DATE PALM

CROSS REFERENCE TO RELATED APPLICATIONS

This application is related to U.S. patent application Ser. No. 07/562,913, now abandoned, filed Jul. 30, 1990, U.S. patent application Ser. No. 07/676,260, filed Mar. 27, 1991, now U.S. Pat. No. 5,092,380 design patent application Ser. No. 07/676,722, filed Mar. 27, 1991.

BACKGROUND OF THE INVENTION

1. Field of the Invention Process

This process involves the cleaning and shaping of the trunk of a date palm to prepare it for transplanting; more specifically to properly protect and bring out the true natural beauty of this exotic desert tree. Still more particularly, the invention involves cleaning and shaping the trunk of a date palm by a process which does not penetrate the fibrous exterior surrounding the vascular tissue or leave pockets in which water can collect.

2. Prior Art

Palm tree nurseries and landscapers dig around the root ball of a palm and gently lay it on the ground to prepare it for transplanting. The palm has many frond stubs (leaf bases) from fronds that have died and broken off. The rough, ragged look is not desirable.

For years the accepted procedure has been to use a chain saw to remove these old frond stubs, i.e., leaf bases. As the palm lay on the ground the operator would cut off these very wide stubs which often reaches 10" to 12" on a medium size palm with a trunk diameter of 18", many times cutting into the live wood of the palm's trunk, i.e., the fibrous exterior, and injuring the tree and exposing the vascular tissue to possible entry of pathogens which could kill the palm in a humid environment such as in Florida or near the coast. Furthermore, the weight and power of the chain saw, as well as the odd positions that the saw has to be held in to remove the top, side and bottom stubs of the palm trunk by over cutting with the chain saw blade makes cutting these leaf bases difficult. Other landscapers have used circular saws, hand saws and bow saws with the same damaging result to the palm. Historically, this also weakened the palm, and the resulting perpendicular cut to the palm trunk did not produce a natural appearing weathered look. Even the name given this chain saw cut—"step cut"—implies an unnatural configuration. The very design of a saw blade of this type makes nature's natural look difficult, if not impossible to achieve. These old procedures are still used today throughout the industry in the palm growing areas of the United States. For years a better tools and processes were needed and sought after.

Spanish missionaries introduced the date palm into the Western hemisphere by planting date seeds around early missions. From this origin, the date palm, which is known botanically as "Phoenix Dactylifera L." has become a very important part of agricultural production in southwestern United States where a significant crop of date fruit is produced annually. Although date palms may be grown from seeds, primary production is by rooting offshoots that develop from axillary buds on the tree trunk, chiefly during the early years of the palm tree's life. Removal of the offshoots generally takes place after the tree has started to produce a second generation of offshoots. The size of the offshoots when

ready for cutting generally varies from 40 to 100 pounds in weight and from 8 to 14 inches in diameter.

As a general rule, green leaves are not removed from an offshoot until it is cut from the parent palm unless the palm is crowded with offshoots. The leaves on the smaller offshoots are sometimes cut back close to the bud to retard growth. The cutting of an offshoot from the parent palm requires care and skill to avoid injury to either the offshoot or the host tree. A specially designed chisel with a rectangular cutting blade is generally used to cut the offshoot. The blade of the tool has one flat side and the other beveled so as to form three sharp cutting edges.

Another important use of the date palm in Southwestern United States has been as an ornamental. The date palm is also rapidly becoming a desirable ornamental in Florida. These palms which can grow quite tall generally obtain maximum leaf spread after 12 to 15 years of age. Frequently older palms retain more leaves than are needed either for fruit production or for an attractive appearance. As many as 180 green leaves have been counted on a single palm unpruned for six years. A considerable number of such leaves will be below the fruit bunches or will present a comparatively unattractive appearance where the palm is used for ornamental purposes. Furthermore, excess lower leaves may increase the relative humidity around the fruit bunches in mid summer, adversely affecting the fruit harvest and this problem is exacerbated in humid climates as in Florida. It also occurs that older leaves or fronds dry and die as the tree ages and may break off leaving unsightly stubs. This is especially undesirable where the tree is to be used for ornamental purposes. Dead or partly dead leaves may be removed at any convenient time but because of greater ease in cutting they are generally removed before becoming hard or drying.

In addition to the foregoing, it has also been recommended to remove the fronds of previous years growth to facilitate pollination and subsequent handling of fruit bunches. For this purpose, a sharp pruning knife with a long curved blade mounted on the handle is most frequently used. The curved blade is a planar surface resembling a curved end carpet cutting knife but of larger size. A cutting tool of this type used in the manner described simply results in a flat cut leaf edge.

As date palms become large and the fronds sturdy and strong, their removal is primarily accomplished by means of a chain saw. Although chain saw removal of fronds or stubs of fronds may be effective, it suffers from the disadvantages of leaving pockets in which water can collect and a frond stub cut surface which is unsightly and unattractive and causes wounds in the vascular tissue of the palm which allow subsequently developing pathogens access to the mere stem. Moreover, because of the toughness of the fronds, chain saw use requires frequent expensive replacement of the chain saw blades as they become dull or break.

The present invention provides a method of cutting the date palm leaf base, i.e, frond stub, which avoids the disadvantages of the techniques heretofore known and results in a date palm bark surface of unusually attractive appearance and which avoids the possibility of the type of injury that would allow entry of dangerous and damaging pathogens.

### SUMMARY OF THE INVENTION

The principal object of my new process is to trim off the palm tree fronds and frond stubs with a sharp straight cutting edge to produce a triangular shape and to create a desirable appearance without injuring the tree.

In my aforementioned prior patent applications I described a process which utilized a rounded cutting tool, i.e., a cutting tool with a convex cutting edge to sever the fronds and frond stubs.

It has now been discovered that it is also possible to use a cutting tool with a straight cutting edge to sever the fronds without injury to the fibrous exterior surrounding the vascular tissue of the tree and produce an attractive tree trunk. Although the final appearance of the tree trunk cut with a straight cutting edge is different, it is nonetheless also attractive and, moreover, also enables the frond stub to be severed in such a manner that no pocket is left on the palm bark surface in which water can collect.

By using a sharp edged cutting tool, e.g., a cutting tool with a straight cutting edge, we are able to remove the frond stub with a straight or direct cutting motion to produce a substantially linear sided, geometric shape without cutting through the palm tree's fibrous exterior and damaging the vascular tissue and without leaving a pocket or surface in which water can collect.

It has been determined by tests conducted in Florida that frond-removing cuts made horizontally, such as with a chain saw, leave a flat or other shaped fiber surface, referred to herein as a "pocket", exposed directly upward in which water can collect. The pocket collects water and consequently encourages the growth of a fungal wood rotting disease (identified as *Thielaviopsis Paradoxa*). This very damaging pathogen then enters the vascular tissue of the palm through the adjacent wound which is inadvertently created as a by-product of the use of any kind of saw. The wood rot begins at the periphery of the trunk at the point of the leaf base attachment and progresses inward. The stress caused by this disease encourages a secondary infestation by bark beetles. Several species of insects and nematodes have been found in samples.

It has been determined that the best long term solution is to properly cut all the leaf bases so that no water-collecting zone is formed. Where a substantially linear shaped surface appearance is desired, this is done by cutting the leaf base at an angle which is 30° to 70°, preferably 30° to 45°, from the trunk in a generally triangular shape. This angled cut allows water to run off rather than collect in the fibers. Further, by virtue of using a tool without saw teeth, such as in the present invention, the tool and process does not allow cuts into the vascular tissue.

Thus, cutting the palm in accordance with the invention is important to avoid the risk of damage caused by pathogens, as described.

In accordance with a preferred embodiment of the present invention there is provided a method of cutting stubs of fronds from a date palm to produce an attractive geometric bark surface that resists pathogen infestation. The method involves severing the frond stubs without penetrating the vascular tissue and without leaving a flat horizontal surface where water can collect. The preferred method comprises providing a cutting tool having a frontally disposed cutting means with a straight cutting edge. The term "straight cutting

edge" as used herein is intended to include serrated cutting edges. The frond stub is severed by engaging the stub with the cutting edge of the cutting means in a straight or direct cutting motion with sufficient force to sever at least a portion of the frond stub. The engagement is repeated, as necessary, to achieve the desired geometric shape and to completely sever the frond stub without damaging the vascular tissue of the palm following the circumference of the tree. The cutting tool, during engagement with the frond stub, is oriented with the straight cutting edge at an angle to achieve any desired geometric shape in the palm trunk surface. This results in formation of an attractive substantially linear sided geometric pattern, e.g., substantially triangular, on the palm bark surface. Cutting the frond stubs around the circumference of the tree can also be done in such a way to result in an attractive climbing geometrical spiral. The process does not damage the vascular tissue of the tree under the fibrous exterior and a healthy and beautiful palm results which resists pathogen infestation.

### BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a schematic perspective view illustrating the bark appearance after the fronds have may have died and broken off by their weight and the wind;

FIG. 2 is a schematic perspective view illustrating the bark appearance after the frond stubs are cut with a chain saw, the old chain saw or "step cut" that is currently in use today, (FIG. 2 displays the many possible cuts into the tree's fibrous exterior by the chain saw);

FIG. 3 is a schematic perspective view illustrating the removal of a frond stub with a sharp straight cutting edge;

FIG. 4 is a schematic perspective view illustrating the palm bark surface after removal of the frond stub by the method of the invention;

FIG. 5 is a perspective view of a presently preferred cutting tool illustrating the straight cutting edge of the cutting tool;

FIG. 6 is a perspective view of a segment of the palm trunk showing the attractive geometric appearance made possible by practicing the invention; and

FIG. 7 is a perspective view of the whole palm.

### DETAILED DESCRIPTION OF PREFERRED EMBODIMENT

When preparing date palms for ornamental use, the frond stubs of the date palm are most advantageously cut, i.e., severed by removing the palm from the ground and laying it horizontally where it may be cleaned and prepared for shipment. A frond stub extends outward from the trunk of the palm bending upwards toward the top of the palm (FIG. 1). We proceed to cut and remove the stub, starting about four inches above the base of the stub where it joins the palm. The stub is advantageously cut at an angle of about 30° to 70°, preferably 30° to 45°, towards the top of the palm on both sides of the frond stub following the circumference of the trunk of the palm to form a substantially triangular shape. The frond stub extends outwardly from the trunk of the palm bending towards the palm top. This can be seen in FIG. 1 where numeral 1 indicates the frond stubs of the palm bark surface. Prior to the present invention the frond stubs were cut using a chain saw.

Using a tool 3 with a straight cutting edge, as seen in FIG. 3, the frond stub 4 shown therein is severed at about four inches above the base of the stub where it

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joins the palm. The stub is cut by engaging it with the cutting tool in a direct or forward direction with sufficient force to sever at least a portion of the frond or frond stub by an upward motion, as aforesaid, preferably at an upward angle of about 30° to 70° toward the top of the palm, as shown, following around the circumference of the palm trunk. The frond stub is engaged with the cutting tool as many times as necessary to completely sever the leaf base from the palm trunk and produce the desired geometric shape. Using the technique described, the frond stub is severed without any damage to the vascular tissue of the palm such as generally occurs using chain saws and without leaving a water-collecting pocket.

A preferred cutting tool is shown in FIG. 5. As can be seen, the cutting tool comprises a cutting means 6 and a support 10 therefor, which may extend rearwardly as shown or sidewardly (not shown).

The palm bark appearance after cutting in accordance with this embodiment of the invention is shown schematically in FIG. 4, and as well as in FIGS. 6 and 7. As can be seen, practice of the method of the invention produces an attractive appearance. The climbing spiral growth of the date palm is shown beautifully and the palm becomes an attractive ornamental addition to the landscape.

Further note that the new process does not damage the fibrous exterior of the palm, nor cause wounds into the vascular tissue and a healthy and beautiful palm is the result.

It is apparent from the foregoing that various changes and modifications may be made without departing from the spirit of the invention. Accordingly, the scope of the invention should be limited only by the appended claims wherein

what is claimed is:

1. A method of cutting frond stubs from a date palm having a palm bark surface to reduce the possibility of pathogen infestation and damage therefrom comprising: providing a cutting tool with a sharp cutting edge;

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engaging each frond stub to be severed with the cutting edge of said cutting tool with sufficient force in a direction toward the palm to sever said frond stub without leaving a pocket in which water can collect and remain and without penetrating the vascular tissue beneath the fibrous exterior of the palm and repeating said engagement as necessary, following the circumference of the tree, to completely sever the frond stub.

2. A method according to claim 1 wherein said frond stub to be severed is engaged by the cutting edge with an upwardly directed cutting motion.

3. A method according to claim 2 wherein said cutting motion is at an angle of about 30° to 70° on each side of the frond stub.

4. A method according to claim 3 wherein said frond stub is engaged at about four inches above the base of the frond stub where it joins the palm.

5. A date palm produced by the method of claim 1 free of pockets on the palm bark surface in which water can collect and free of penetrations into the vascular tissue of the palm.

6. A method of cutting frond stubs from a date palm having a palm bark surface to reduce the possibility of pathogen infestation and damage therefrom comprising: providing a cutting tool with a sharp straight edge; engaging each frond stub to be severed with the straight edge of said cutting tool with an upwardly directed cutting motion at an angle of about 30° to 45° on each side of the frond stub with sufficient force to sever said frond stub and produce a substantially triangular shape and repeating said engagement as necessary, following the circumference of the tree, to completely sever the frond stub without penetrating the vascular tissue beneath the fibrous exterior of the palm.

7. A method according to claim 6 wherein said frond stub is engaged at about four inches above the base of the frond stub where it joins the tree.

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**EXCLUSIVE LICENSE AGREEMENT**

This Agreement is effective as of the 23<sup>rd</sup> day of March, 1993, by and between DARL E. YOUNG, 82849 Lexington Avenue, Indio, California 92201 and GEORGE NOTTINGHAM, 8140 93rd Lane South, Boynton Beach, Florida 33437.

WHEREAS DARL E. YOUNG is the owner of U.S. Patent No. 5,184,656, dated February 9, 1993, and U.S. Patent No. 5,092,380, dated March 3, 1992, and

WHEREAS GEORGE NOTTINGHAM desires to acquire an exclusive license for the State of Florida under the aforementioned U.S. patents and DARL E. YOUNG is willing to grant an exclusive license as aforesaid to GEORGE NOTTINGHAM;

NOW THEREFORE, for \$1.00 and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

DARL E. YOUNG grants to GEORGE NOTTINGHAM an exclusive license for the State of Florida only under U.S. Patent No. 5,184,656, dated February 9, 1993, and U.S. Patent No. 5,092,380, dated March 3, 1992, for the life of said patents, together with the right to bring suit and enforce said patents in the State of Florida in his own name and at his sole expense, including the right to receive and retain all damages, costs, etc. which may be awarded as a result of bringing suit to enforce said patents."

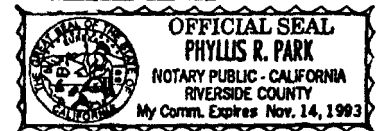
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate, each copy of which shall be deemed an original.

Darl E. Young  
DARL E. YOUNG

STATE OF California }  
COUNTY OF Riverside }

On March 23<sup>rd</sup>, 1993, before the undersigned, a Notary Public for the State and County aforesaid, personally appeared DARL E. YOUNG, personally known to me, or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within agreement, and acknowledged that he executed it.

Phyllis R Park  
NOTARY PUBLIC



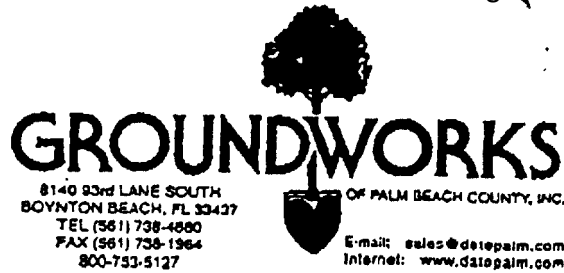
George Nottingham  
GEORGE NOTTINGHAM

STATE OF Florida }  
COUNTY OF Palm Beach }

On March 24<sup>th</sup>, 1993, before the undersigned, a Notary Public for the State and County aforesaid, personally appeared GEORGE NOTTINGHAM, personally known to me, or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within agreement, and acknowledged that he executed it.

Ann E Billings  
ANN E BILLINGS  
STATE OF FLORIDA NOTARY PUBLIC  
My Comm Exp 12/94  
BONDED

EXHIBIT  
"B"



**Certified Mail**  
**Return Receipt Requested**

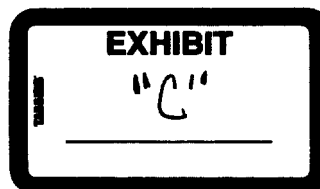
November 10, 2000

Mr. Russell Skinner  
Skinners Wholesale Nursery  
2970 Hartley Road – Suite 302  
Jacksonville, FL 32257

Dear Mr. Skinner,

Please be advised that we have received unsubstantiated reports from multiple sources asserting that certain individuals under your authority and direction have been utilizing a patented harvesting method trademarked as the *Classic Cut* to clean up some or all of the Phoenix Dactylifera palms you are currently selling. If this were actually true, it would represent an infringement of our patents and must stop immediately. As I said, these reports, though independent of each other, have not yet been substantiated by us but, the reports themselves require that I inform you in writing of our position. The *Classic Cut* harvesting method was developed and patented by Mr. Darl Young of W.D. Young and Sons in California. Mr. Young has assigned the rights to this patent to my firm for use in our marketing territories, inclusive of Florida as well as other geographical regions. Any unauthorized party whom is currently utilizing our patented method or selling Date palms that are prepared by unauthorized parties utilizing our patented method is infringing the patent and operating in violation of U.S. patent law.

Please be respectfully advised that it is our corporate policy to investigate possible patent infringements through observation and video surveillance and then to seek remedy under law should it be proven that said infringement is actually occurring. As you may not be aware of our patents, I am enclosing copies of both and trust that you will respect our rights under law going forward. We are not inclined towards litigation Mr. Skinner but we will aggressively defend the hard earned rights and benefits that our innovation and subsequent patents grant us.



Mr. Russell Skinner  
Skinner's Wholesale Nursery  
November 10, 2000  
Page Two

Please be further advised that the term *Classic Cut* is a registered trademark owned by W.D. Young and Sons and represents our unique and patented harvesting method.

Please act accordingly.

Respectfully Submitted,



Mr. George P. Nottingham  
President  
Groundworks of Palm Beach County Inc.

cc: Mr. Darl Young, W.D. Young and Sons



June 8, 2001

Mr. George P. Nottingham  
President  
Groundworks of Palm Beach County, Inc.  
8140 - 93rd Lane South  
Boynton Beach, FL 33437

Dear George:

As requested, I have contacted Richard Vermut, the patent attorney to whom I forwarded your letter of November 10, 2000 concerning the patent issues. Richard has investigated the patents and their claims. It appears that the patents you cite in your letter are not valid and Skinner Nurseries is not infringing on them.

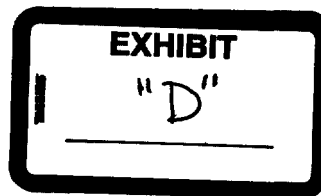
If you would like to continue this process, please give Richard a call at 904-346-5573.

Sincerely,

Russell R. Skinner  
President

RRS:sr

Copy: Richard S. Vermut, Esq.  
Rogers, Towers, Jones, Bailey, Gay



**PLEASE REPLY TO:**  
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2970 Hartley Road, Suite 302  
Jacksonville, Florida 32257  
Phone: 904-880-4344 · 888-881-4344  
Fax: 904-880-1778  
www.skinnernurseries.com

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