



News Release:
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Proctor's Gamble

Yellow Bean Patent Owner Sues 16 Farmers and Processors in US

How can monopoly patents threaten food security and the livelihoods of farmers? The controversial Enola bean patent demonstrates the abuses of intellectual property monopoly:

A US patent on a yellow bean variety has disrupted export markets for Mexican bean growers and is now wreaking havoc on small farmers and seed companies in the United States. The patent makes it illegal for unlicensed users in the United States to grow, sell, import, or use the proprietary yellow bean seeds.

Larry Proctor, the president of Pod-Ners seed company (Colorado, USA) and the owner of the controversial US patent on a yellow-colored bean variety, filed a lawsuit on 30 November 2001 against 16 small bean seed companies and farmers in Colorado, claiming that they are violating the patent by illegally growing and selling his yellow "Enola" bean. Proctor holds both a US Patent and a US Plant Variety Protection certificate on the Enola yellow bean.

"We were shocked to be accused of infringing Proctor's intellectual property," said Bob Brunner, President of Northern Feed & Bean, "We've been growing yellow beans from Mexico since 1997 – and they are not Proctor's Enola beans." Brunner told ETC group that his yellow bean seeds come from Sinaloa, Mexico.

Farmer and civil society organizations have condemned the Enola patent as a textbook case of biopiracy because Proctor readily admits that his proprietary bean seed originates from a bag of edible dry beans he purchased in Sonora, Mexico in 1994. In his 1997 application for plant variety protection, Proctor wrote, "The yellow bean, 'Enola' variety is most likely a landrace from the azufrado-type varieties" (which originate in Mexico).

The Enola bean patent is the focus of international controversy from Colorado to Cali. The patent is being legally challenged by an international plant breeding institute in Cali, Colombia, the International Center for Tropical Agriculture (CIAT). The challenge is supported by the United Nations Food and Agriculture Organization (FAO). CIAT and FAO have responsibility for holding crop seeds in-trust for the world's farming community. CIAT's gene bank holds more than 27,000 samples of *Phaseolus* (dry bean) seeds, and some 260 samples of yellow seeds. Although Proctor did not obtain bean seed from the Colombian gene bank, CIAT's legal challenge notes that six bean accessions found in its gene bank are "substantially identical" to claims made in Proctor's patent. CIAT and FAO officials are concerned that the Enola bean patent could obstruct CIAT's mission to freely distribute yellow beans and to keep these seeds in the public domain.

CIAT's legal challenge points out the yellow bean was "misappropriated" from Mexico, and violates Mexico's sovereign rights over its genetic resources, as recognized by the Convention on Biological Diversity.

Patent Challenge Stalled at US Patent and Trademark Office: It has been almost one year since CIAT filed its request for re-examination of the Enola bean patent. The PTO's decision has been stalled because Larry Proctor's lawyers have amended the original patent by filing 43 new claims! The PTO responded by merging the re-examination proceedings with the re-issue proceedings, thus complicating and delaying a final decision.

Action Needed Now!

Email campaigns targeting the US Patent & Trademark Office are rare. However, since there is no alternative avenue for civil society to register its concern, we urge you to send an email message or fax to the newly appointed director of the US PTO, urging him to give careful consideration to the re-examination of US Patent # 5,894,079 on a yellow bean of Mexican origin.

The Honorable James E. Rogan
Undersecretary of Commerce for Intellectual Property and Director of
the US Patent & Trademark Office

fax: (703) 305-8664

email: stephen.kunin@uspto.gov

Subject: Re-examination of US Patent #5,894,079 and its reissue patent application 09/773,303---

A sample message follows:

Dear Judge Rogan:

I am writing to urge you and your examiners to give the utmost attention and deliberation to the re-examination of US Patent #5,894,079 on a field bean cultivar named "Enola." The patent claims on the yellow bean fail to meet the statutory requirements of novelty and non-obviousness, and ignore prior art. The patent covers a bean variety of Mexican origin that is clearly based on the knowledge and resources of farmers and indigenous people. I respectfully urge you to cancel the patent and all of its claims.

Sincerely,

Your Name

For more information:

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The Action Group on Erosion, Technology and Concentration, formerly RAFI, is an international civil society organization headquartered in Canada. The ETC group (pronounced Etcetera group) is dedicated to the advancement of cultural and ecological diversity and human rights. www.etcgroup.org