



ETC Group
News Release
29 April 2008
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Hollow Victory: Enola Bean Patent Smashed At Last (Maybe)

The infamous Enola bean patent, first denounced by ETC Group eight years ago as a textbook case of biopiracy, was struck down yesterday (April 29, 2008) by the U.S. Patent & Trademark Office in Washington, D.C. One of the most controversial plant patents in history, the effort to defeat it was unprecedented because it involved the United Nations and international plant breeding institutes.

“Many people are calling the PTO’s decision to reject the Enola bean patent a victory, but we’re inclined to call it a travesty,” said Hope Shand of ETC Group. “In essence, the U.S. patent system allowed the owner of a flagrantly unjust patent to legally monopolize markets and destroy competition – for close to half the 20-year patent term. And even now the patent owner could still appeal through the federal court system!” said Shand.

“Worse still, Mexican and U.S. farmers who suffered damages as a result of this unjust monopoly will never be compensated for their losses. Patent law has no mechanism to compensate farmers and indigenous peoples who are victimized by predatory patent abuses,” adds Silvia Ribeiro of ETC Group’s office in Mexico City.

According to ETC Group, the eight-year patent challenge is, above all, an indictment of the patent system’s ability to “correct” patent abuses. The request for re-examination of the patent was filed in December 2000. The U.S. Patent & Trademark Office declared its preliminary rejection of the patent three years later. Using a series of bureaucratic delays and diversions, the patent owner was allowed to legally extend his exclusive monopoly on a Mexican bean variety for over 8 years.

“We’ve seen protracted patent battles before. It was just last year that the European Patent Office struck down Monsanto’s species-wide patent on all genetically modified soybeans – but it took an appeal and 13 years,” said Kathy Jo Wetter of ETC Group. “The patent system is broken on both sides of the Atlantic,” she adds.

Background

The Enola bean patent holds a special place in the “biopiracy hall of shame” because the patented yellow bean was proven to be genetically identical to an existing Mexican bean variety.¹ That’s not surprising, because the patent owner, Larry Proctor, first got his hands on the yellow bean when he bought a bag of beans in Mexico. After securing his monopoly patent, Proctor accused Mexican farmers of infringing the patent (U.S. patent number 5,894,079) by selling yellow beans in the U.S. As a result, shipments of yellow beans from Mexico were stopped at the U.S./Mexican border, and Mexican farmers lost lucrative

markets. In 2001 Proctor filed lawsuits against 16 small bean seed companies and farmers in the U.S., again charging patent infringement.

Intergovernmental Patent Challenge

In January 2000 ETC Group (then as RAFI) denounced the Enola bean patent as “Mexican bean biopiracy” and demanded that the patent be legally challenged and revoked. ETC Group requested that the Food and Agriculture Organization and the Consultative Group on International Agricultural Research (CGIAR) investigate the patent as a violation of the CGIAR’s 1994 Trust agreement that obliges them to keep designated crop germplasm in the public domain and off-limits to intellectual property claims.

Agreeing with ETC Group, the Colombia-based International Center for Tropical Agriculture (CIAT, a CGIAR center), with support from FAO, filed an official challenge of the predatory Enola bean patent in Washington, D.C. “We commend CIAT and FAO for taking this action, and for sticking with the 8-year patent challenge,” said Pat Mooney of ETC Group. “Joachim Voss, CIAT’s former director general, deserves special recognition for leading the patent challenge,” notes Mooney.

ETC Group warns that egregious monopoly patent claims on seeds, genes and traits are by no means a thing of the past. In the midst of a deepening world food crisis, with climate chaos as the backdrop – predatory patenting is a greater threat than ever. Please stay tuned.

The Enola Bean Patent Reexamination Saga

13 April 1999: Larry Proctor wins US Patent No. 5,894,079, “field bean cultivar named enola”

15 January 2000: ETC Group denounces the enola bean patent as technically invalid and morally unacceptable <http://www.etcgroup.org/article.asp?newsid=31>

20 December 2000: Request for Reexamination of US patent 5,894,079 (issued 13 April 1999) filed by CIAT <http://www.etcgroup.org/article.asp?newsid=96>

30 November 2001: Proctor sues 16 small bean seed companies and farmers in Colorado for infringing his patent <http://www.etcgroup.org/article.asp?newsid=282>

02 December 2003: USPTO’s reexamination results in “Non Final” Rejection of Patent

02 June 2004: Proctor submits 400+ page amendment to “Non Final” Rejection

14 April 2005: USPTO issues “Final Rejection” of Patent

14 October 2005: Proctor submits Request for Continued Examination of Patent

21 December 2005: and issues another “Final Rejection” of Patent

http://www.etcgroup.org/en/materials/publications.html?pub_id=41

29 April 2008: USPTO’s Board of Patent Appeals affirms the patent examiner’s decision regarding the rejection of all standing claims in the Patent

????? – Will Larry Proctor appeal through the U.S. Federal Court system?

For more information:

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¹ L. Pallottini, J. Kami, G. Barcaccia, P. Gepts, *The Genetic Identity of a Patented Yellow Bean*, a paper presented at the American Society of Agronomy Annual Meeting, Denver, November 2-5, 2003. The official results were published in the May/June 2004 issue of *Crop Science*, Pallottini et al., “The Genetic Anatomy of a Patented Yellow Bean,” *Crop Science*, 44:968–977 (2004).