



India-Trade/ Patent Denial Boosts Foes of Bio-Piracy

September 5, 1997

NEW DELHI - Inter Press Service via Individual Inc.: India's successful challenge of a U.S. patent on the use of turmeric for healing has been a shot in the arm for Indian activists campaigning to protect indigenous knowledge from bio-pirates in the first world.

After a complex legal battle, the U.S. Patents and Trademarks Office ruled on Aug. 14 that a patent for turmeric issued to the University of Mississippi Medical Center in December 1993 was invalid because it was not a novel invention.

The patent was contested by India's Council for Scientific and Industrial Research (CSIR), which combined scientific evidence with legal savvy to take on the university.

Says an excited R. A. Mashelkar, director-general of the CSIR, "This success will enhance the confidence of the people and help remove fears about India's helplessness on preventing bio-piracy and appropriation of inventions based on traditional knowledge."

The turmeric patent was just one of the hundreds that the North has claimed by ignoring indigenous and existing knowledge. According to Vandana Shiva, a global campaigner for a fair and honest intellectual property rights system, patents on a wide variety of other native plants should be revoked.

This can be done if laws are changed to ensure protection against bio-piracy, activists say, because "chasing every patent based on traditional knowledge will involve huge expenses and efforts," according to farm scientist Devinder Sharma.

Under World Trade Organization (WTO) rules, patents are provided for inventions that qualify for their novelty, non-obviousness, and utility. The turmeric patent failed to satisfy the criteria of novelty as turmeric paste has been used to treat wounds and stomach infections for centuries by Indians.

It is the WTO which has to protect indigenous knowledge, argues Sharma, who says, "Governments of developing countries cannot chase and challenge every

indigenous knowledge-based product patent. Patent laws need to be changed and the onus of proof reversed, and companies should make it clear that the patent they are seeking is not based on traditional wisdom."

Suman Sahai of the New Delhi-based Gene Campaign would like the government

to use the turmeric case "to press the North to reform its own laws governing intellectual property rights, instead of pressuring the South to change its laws."

Vandana Shiva points out that "examples of bio-piracy make it clear that it is not just Indian patent laws that need to be changed. American laws also need to be changed to fit into a fair and honest global intellectual property rights system."

To back up her point she cites the case of Thailand, which prepared draft legislation allowing Thai healers to register traditional medicines. It was challenged by the U.S Department of State, which said,

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"such a registration system could...hamper medical research into these compounds."

"If we get a ruling in our favor, the problem of bio-piracy will be solved. If the WTO does not respond, it will show the WTO's bias towards the powerful countries," Shiva wrote in The Hindu newspaper on Aug. 31.

Because two-thirds of the world's plant species -- at least 35,000 of which are estimated to have medicinal value -- are in the developing countries, Sharma says the North is determined to keep its business edge over the South.

The U.S. is more obsessed with getting India to comply with the Trade-Related Intellectual Property Rights (TRIPs) Agreement. The reason for this, according to Sharma, is to protect the U.S. biotechnology industry from sharing the benefits with countries from which they draw the plant and animal genetic resources.

Sharma says that this contravenes the Convention on Biological Diversity, but the U.S. has made it clear that it has no intentions of abiding by the regulations.

It is in India's interest, activists say, that the government revise the 1970 Indian Patent Act to recognize "prior art" or existing knowledge, which both Indian and U.S. laws are silent on. This would protect traditional wisdom in agriculture and horticulture.

"For a start, India must declare its ownership over its own biological wealth," suggests Sahai. "This must be followed with intense lobbying for institutionalizing a dispute redressal mechanism conforming to the Convention on Biological Diversity."

Vandana Shiva says that the WTO must be approached to press the U.S. to change its patent laws to ensure protection against bio-piracy. "The WTO should stop the U.S from attempting to undo the implementation of the Biodiversity Convention by countries that have ratified it. The protection of biodiversity and indigenous knowledge is an international legal obligation and this commitment needs to be upheld by all multilateral bodies."

The loopholes in the U.S. patent laws were first exposed by Mangla Rai, deputy director-general of the Indian Council for Agricultural Research who is credited with successfully challenging a cotton patent granted to U.S seed giant Agracetus.

"There is no doubt that (U.S.) patent laws are full of shortcomings which the transnationals have a penchant for exploiting," Rai told IPS. "The patent drawn on turmeric shows just how flawed the U.S law is."

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