

NEEM PATENT REVOKED BY EUROPEAN PATENT OFFICE

by Chakravarthi Raghavan

Geneva, 11 May 2000 -- The European Patent Office (EPO) which administers patents under the European Patent Treaty has acted to revoke a patent granted earlier to a fungicide derived from the Indian medicinal tree, Neem.

The challenge to the patent had been made at the Munich office of the EPO by three groups: the EU Parliament's Green Party, Dr. Vandana Shiva of the India-based Research Foundation for Science, Technology and Ecology, and the International Federation of Organic Agriculture Movements.

The three had demanded the invalidation of the patent among others on the ground that the fungicide qualities of the neem and its use has been known in India for over 2000 years, and for use to make insect repellents, soaps, cosmetics and contraceptives.

In accepting the challenge and revoking the patent, the four-member panel of the EPO at Munich had agreed that the patent amounted to bio-piracy and that the process for which the patent had been granted had been actually in use in India from time immemorial.

Dr.Shiva said in a statement that the successful challenge had implications for other cases of bio-piracy as well as for amendments to the Indian patent law (to comply with the WTO).

Shiva said the ruling upheld indigenous innovation by communities against false claims of innovation and novelty by corporations. The successful challenge has come after six years of campaigning and legal challenges against patents granted jointly to the US Department of Agriculture and the US TNC, W.R.Grace.

A number of environmental groups and Third World institutions have been campaigning against the WTO and its TRIPS, and the way patents are granted, without there being any 'invention' or 'novelty' but merely claims of 'discovery', and how this is leading to bio-piracy of the developing world and its resources for transnational corporate profits.

An Indian government challenge in the United States led to the revocation of a patent on another Indian plant, turmeric, whose medicinal qualities have been known for centuries. That challenge was accepted as a result of India showing that the knowledge had been found in the Indian pharmacopoeia.

In the United States, prior existing knowledge to deny a patent is accepted in terms of publication in any journal, but not of knowledge known and available in oral or folk traditions.

This narrow view of prior knowledge has been responsible for any number of patents for processes and products derived from biological material, or their synthesis into purer crystalline forms.

In the United States, neem seeds and their potent insecticidal extract, azadirachtin, have been the subject of continuing biotech research and grant of patents.

The US funds and grants have been made available also for tissue culture of the azadirachtin, to obviate the need for extracting it from the neem seeds, which are seasonal.

An US Company, AgriDyne has received two US patents for bioprocessing of neem for bioinsecticidal products. The first patent is for a refining process that removes fungal contaminants found in extracts from the neem seed, and is used in the manufacture of technical-grade azadirachtin, and in the production of AgriDyne's neem-based bioinsecticides. The second patent is for a method of producing stable insecticide formulations containing high concentrations of azadirachtin.

The US TNC, W.R. Grace has patents for neem-based biopesticides, including

Neemix for use on food crops. Neemix suppresses insect feeding behaviour and growth in more than 200 species of insects.

In New Delhi, the Indian Minister for Science and Technology, Dr. Murli Manohar Joshi welcomed the EPO decision and said that the revocation of patent had been on the issue of bio-piracy and this should lead to a better protection of India's heritage of traditional knowledge.

A Third World Network expert group on Implementing TRIPS, recommended in 1998 that developing countries to apply a broad concept of 'prior art' to ensure that patents are granted to actually 'new' inventions, and to stick to the need of novelty of the process itself as a condition of granting a patent. The developing countries were also advised to deny patents for new uses of a known product or process, including second use of a medicine or for incremental additions to get a new patent on a prior one.

The expert group advised developing countries to define and interpret 'novelty' according to generally accepted concepts, namely, any prior disclosure whether written or not destroys novelty. Knowledge like use of medicinal plants diffused within a local or indigenous community should also be deemed prior art and patent denied.

And writing such a rule into their legislation would prevent patenting of knowledge or materials developed by and diffused within local or indigenous communities.

But while this may help prevent an indigenous knowledge being pirated, patents claimed, and monopoly over production, use or imports, it does not seem to be sufficient to prevent such misuse and piracy abroad, except by mounting individual challenges. (SUNS4667)

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