Next they'll try to patent Ayahuasca (they already did)

The Ugly Saga of the Bean Biopirate

By Elyssa Pachico

In the summer of 1999, Rebecca Gilliland was sure she was about to make her first million, and it was all thanks to a thin-skinned, oblong and brightly gold-colored bean.

"Once you've tasted mayocoba beans, there's nothing like it," Gilliland says, the owner of a small fruit and vegetable business in Rio Rico, Arizona. "It doesn't taste like pinto beans, it doesn't taste like black beans. It absorbs the flavor of whatever it's cooked with and the result is absolutely delicious."

Gilliland's produce company could barely keep up with customer demand for the mayocoba, importing about six millions pounds from Mexico and shipping in bulk to cities as far away as Los Angeles and Chicago. But that was before she opened a letter mailed from Red Beard Bean Co., another small produce business based in Delta, Colorado. The mayocoba, Gilliland learned in shock, was no longer hers to sell.

"We received notification that these guys had placed a patent on the bean, and that it was illegal for us to keep them in the market," she says. "I absolutely thought it was a joke. All I could think was I grew up eating this bean in Mexico, and now these guys are telling me they invented it. It was like, are you kidding me?"

The mayocoba case is the latest in a long string of patent piracies within the last decade that have enraged independent farmers and seed breeders from Mexico to India. Patenting inventions like herbicide-resistant cotton or high-protein maize has proved enormously successful for multinational biotechnology giants like Monsanto and DuPont. Likewise, the allure of easy royalties is increasingly tempting other "biopirates" to claim ownership of crops that aren't their inventions at all, and have been harvested by indigenous farmers for centuries.

The patent on mayocoba – No. 5,894,079 – was successfully filed in April 1999 by Larry Proctor, a Colorado native who affectionately dubbed the bean "enola," after his wife's middle name. He first bought a package of "enolas" during a trip to Mexico in 1994, when the bright yellow color caught his eye while he was wandering through a local market.

With a thumbs-up from the U.S. Patent & Trademark Office, Proctor now had the power to essentially block Mexican farmers from exporting mayocoba into the U.S.A., insisting they pay him 6 cents per pound in royalties. Sixteen other U.S.-based seed companies and farms, including Gilliland's Tutuli Produce business, were promptly slapped with lawsuits for supposed patent infringement. Intellectual property laws meant that farmers could not plant or re-plant the yellow beans without first paying Proctor licensing fees. If unchallenged, the patent could stand for up to the next twenty years.

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"It was like the whole thing came crashing down on us," said Gilliland, who, with a huge inventory of beans in stock, was unable to sell any of it. Instead of the $1 million that she'd envisioned, her profit off the mayocobas that year was four cents. "And the damage was done in Mexico," she adds. "There are a lot of farmers there who don't have the money to grow tomatoes or corn or things like that. It's all about beans. And here's this guy with this ridiculous patent saying, I invented this bean and you're stealing it from me."

The "enola" fiasco caught the attention of watchdog farmers' rights groups. In December 2000, a public seed bank and research center based in Colombia, known as CIAT, filed a challenge against the patent on behalf of farmers. It took eight years before the U.S. Patent & Trademark Office finally ruled that it had erred in Proctor's favor, a decision that was upheld on July 10, 2009, by the U.S. Court of Appeals of the Federal Circuit.

Proctor was able to successfully file his patent by pointing to the mayocoba's intense yellow color, claiming that he had successfully bred this innovation himself through years of careful selection. By combing through the 28,000 dry bean seeds stored in CIAT's gene bank, scientists found a different story: there were at least six yellow beans that were virtually genetically identical to Proctor's.

"We were able to prove that particular, intense yellow color was existing in bean varieties in the United States and northern Mexico long before the patent application," said Dr. Daniel Debouck, a geneticist at CIAT. "There was no real novelty there."

It hasn't been the first time that entrepreneurs have sought legal protections for agricultural "novelties" that aren't anything new. RiceTec, a Texan company, has tried to patent various strains of Indian basmati and Thai jasmine rice, to great protest from the Indian government. There have been other unsuccessful attempts: to patent a biotechnological process involving turmeric; also a diabetes remedy using rose apple tree *(Syzygium jambos)* extract that Indian peasants have known of for centuries; also, of all things, ayahuasca, an Amazonian jungle vine used in shamanic rituals (also these days a thriving tourist business) that causes visions as well as some unpleasant physical side-effects.

These kinds of abuses, along with Monsanto's effort to patent all genetically modified soybeans grown anywhere in the world, has led Kathy JoWetter, a representative from ETC Group, an environmental rights organization, to call the patent system "broken, on both sides of the Atlantic."

"It's up to countries to decide what is the best [patenting] system for them," says Debouck. "You can have one country where it's all about plant breeders' rights, and another where it's all about protecting utility patents." What matters, he said, is that patent offices stop granting rights on crops that can already be found in public seed banks, and instead protect

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novel crop varieties when they're precisely that: novel. "What is very important for creativity and for the continuing success of any patent system is that the protection offices are granting right to true innovations."

But, as the "enola" bean case has demonstrated, when it comes to patent laws, it's rarely the small farmers who are protected. "Mexican and U.S. farmers who suffered damages as a result of this unjust monopoly will never be compensated for their losses," says another representative from ETC Group, Silvia Ribeiro, regarding the mayocomo case. "Patent law has no mechanism to compensate farmers and indigenous peoples who are victimized by predatory patent abuses."

Complicating matters is the fact that even when individuals like Proctor or multinationals like Monsanto demand total control over their seeds, not even a Big Brother-like "gene police" would be able to regulate something as tiny and highly transportable as a handful of beans. Gilliland says that Proctor told customs agents at the U.S.-Mexico border to inspect her bean shipments from Mexico. "It caused all kinds of trouble to our company, everybody always checking every single thing, constantly," she says.

Public research centers like CIAT are also increasingly considering operating like private seed companies – that is, charging a royalty for the use of a transgenic seed developed within the center.

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Such strategies become more and more necessary as national governments pull funding from places like CIAT. And with biotechnology research in universities increasingly geared toward supporting private interests, public centers may be the only place left where research could actually respond to the needs of poor farmers.

So, what kind of patent system could protect small-scale farmers and breeders like Gilliland from biopiracy, but also help fund public research centers trying to develop pro-poor agricultural technologies? One possible solution: patent everything already inside the public seed banks, but then don't charge royalties. CIAT's parent company, a public gene bank known as CGIAR, manages a vault with about 600,000 seeds – and if those 600,000 seeds already had patents, biopirates would have no legitimacy in claiming they'd "invented" something that, in fact, already existed.

While it is still possible that Proctor may decide to take his case to the Supreme Court, for some, like Gilliland, whatever happens now to the mayocoba is sure to resonate with small-scale farmers across the globe.

"The customers want the beans," she says. "People have been eating them for thousands of years, you know. How can you come in and say you own something like that?" **CP**

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