ETC Group
News Release
14 July 2009
www.etcgroup.org

Enola Patent Ruled Invalid: Haven't we Bean here before? (Yes, yes, yes, yes and yes.)

On July 10, 2009, the United States Court of Appeals for the Federal Circuit ruled that U.S. patent 5,894,079 (the "Enola" bean patent), which claims a yellow bean of Mexican origin, is invalid because none of the patent claims meet the criterion of non-obviousness. The case has been closely watched by civil society groups concerned about biopiracy, the patenting of life and the corporate control of food production. The Court's clear 7-page decision argues that anyone interested in reproducing or improving Mexican yellow beans would have done exactly what the "inventor" Larry Proctor did: "plant the beans, harvest the resulting plants for their seeds, planting the latter seeds, and repeat the process two more times."[1] The decision concludes with an appeal to "common sense" in upholding a previous rejection of the patent by the Board of Patent Appeals.

"What makes absolutely no sense is that an invalid patent was allowed to stand for more than a decade – that's half the lifespan of a patent!" argues Kathy Jo Wetter of ETC Group. "Furthermore, although farmers and seed companies on both sides of the border have been denied lucrative markets for ten years, they will not be compensated."

Almost a decade ago, ETC Group (then RAFI) denounced the Enola bean patent, granted April 13, 1999, as predatory on the knowledge and genetic resources of indigenous peoples and farming communities, the true innovators of Mexico's yellow beans. ETC Group requested that the UN Food and Agriculture Organization (FAO) and the Consultative Group on International Agricultural Research (CGIAR) investigate the "Mexican bean biopiracy" as a likely violation of a 1994 Trust Agreement ensuring that designated crop germplasm would be kept in the public domain and off-limits to intellectual property claims. The Colombia-based International Center for Tropical Agriculture (CIAT, a CGIAR center), with support from FAO, filed an official challenge at the end of 2000. The U.S. Patent & Trademark Office reexamined the patent and, in late 2003, issued the first of *four* rejections. Two "final" rejections came in 2005, when the patent was six years old. The patent owner appealed, and the Board of Patent Appeals ruled the patent invalid again in April 2008 – Enola's patentability had now been rejected four times. It was this ruling that the patent owner was trying to overturn in the

1 The Court of Appeals' decision In Re Pod-ners, L.L.C., can be downloaded here: http://www.cafc.uscourts.gov/dailylog.html

latest, the fifth and presumably the last, review of the Enola case.

Soon after he won his patent in 1999, Larry Proctor of Colorado, USA, charged that Mexican farmers were infringing his rights by selling yellow beans in the United States and shipments were stopped at the border. Proctor also sued seed companies and farmers selling or growing the Mexican yellow bean in the United States. "The patent system enabled a holder of an unjust patent to monopolize markets for a decade – farmers and small seed companies can't wait ten years for a patent challenge to be decided," says Silvia Ribeiro from ETC Group's office in Mexico. "A system that favors patent holders at the expense of the common good and takes more than a decade to right an obvious wrong should be considered broken beyond repair."

For more on the long, painful and colorful history of the patenting of Mexico's yellow bean in the United States, see ETC Group's archive at http://www.etcgroup.org/en/archives.html and search for "enola."

For more information:

Kathy Jo Wetter (Durham, NC, USA) kjo@etcgroup.org
Phone: +1 919 688 7302

Silvia Ribeiro (Mexico City) silvia@etcgroup.org
Phone: 011 52 5555 6326 64

Diana Bronson (Montreal, Canada) diana@etcgroup.org
Phone: +1 514 273 6661; cell +1 514 629 9236

Molly Kane (Ottawa, Canada) molly@etcgroup.org
Phone: +1 613 241 2267; cell +1 613 261 8580