



“Wartmongers” Thwarted as Bumpy Pumpkin Patent Goes Flat

Last month, [ETC Group reported on a patent application](#)¹ under examination at the US Patent & Trademark Office (USPTO) in which Siegers Seed Company of Holland, Michigan, claimed invention of a “warted pumpkin...wherein the outer shell includes at least one wart...” On February 13, the USPTO put its 9-page verdict in the mail,² rejecting all of the application's 25 claims.

“The good news is that the USPTO rejected all claims in the warty pumpkin patent application,” says Silvia Ribeiro from ETC Group's Mexico office. “And also that in her decision, the patent examiner cited a catalogue from Seed Savers Exchange – a non-profit organization that preserves and distributes heirloom seeds. Seed catalogue entries demonstrated the pre-existence of warty pumpkins well before Siegers Seed's so-called invention. Thousands of years before that of course, indigenous peoples domesticated pumpkins and, no doubt, there have been bumpy ones since then.”

“The bad news,” says ETC's Kathy Jo Wetter, “is that the USPTO's rejection is 'non-final,' which means the applicant can make amendments to the claims and try for a monopoly patent again.”

It can take years for a “non-final rejection” to become final. In the reexamination of the Enola bean patent (U.S. patent 5,894,079, granted in 1999, which claimed a bean variety of Mexican origin), the USPTO's rejection remained in non-final limbo for one and a half years (December 2003-April 2005) before the Office issued the first of two “final” rejections. The patent owner appealed the ruling and the patent is still under dispute,³ so farmers in Mexico and bean sellers north and south of the border continue to be shut out of markets.

“The USPTO can act like a lousy partner in a dysfunctional relationship – a relationship that should end but painfully drags on and on,” continues Wetter. “We hope that Siegers Seed recognizes that no matter how much the USPTO is willing to string them along, there is no merit to their monopoly claims and it's time to move on. Unlike the Enola bean, the warty pumpkin looks like it won't have a life beyond the patent application stage and we should all plant some warty pumpkin seeds to celebrate.”

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¹ ETC Group, “Message to USPTO: Squash the Patent on Bumpy Pumpkins; there's plenty of prior (w)art,” 2 February 2009, http://www.etcgroup.org/en/materials/publications.html?pub_id=721

² You can download the USPTO decision from this page using Application No. 11999153:
<http://portal.uspto.gov/external/portal/pair>

³ See ETC Group, “Hollow Victory: Enola Bean Patent Smashed At Last (Maybe),” 29 April 2008, available on the Internet: http://www.etcgroup.org/en/materials/publications.html?pub_id=683