

New legal decision against bean pirate

July 2009



A US citizen who claimed he had "invented" a new bean, and took out a patent on the yellow "Enola" variety has once again had his claim defeated in the courtroom. But despite the result, the case raises important questions about the effectiveness of biopiracy laws, and their ability to adequately protect small farmers.

On 10th July, the U.S. Court of Appeals for the Federal Circuit ratified the decision made by the United States Patent and Trademark Office ([USPTO](#)) and again ruled in favor of Latin American farmers—the true owners of the bean—represented by CIAT.

This new ruling confirms, for the fifth time, what CIAT has demonstrated since the controversial patent was granted in 1999—that the bean in dispute, known by Mexicans as *Mayocoba* or "sulphured bean" because of its yellow color, is an ancestral legacy from Peru. CIAT, a not-for-profit organization located in Palmira, Colombia, safeguards the world's largest bean collection—more than 35,000 varieties.

The alleged "inventor" of the bean in question is Larry Proctor, who christened it "Enola" in homage to its wife. For USPTO it is simply patent no. 5,894,079. But the incorrect patent has stood for nearly half the life of a legitimate patent (20 years), which begs the question, did Proctor really lose?

The story began in 1994 when Proctor purchased a package of yellow beans in Mexico and planted them on his farm in Montrose County, Colorado. Two years later, he filed for an exclusive monopoly patent in the country. In April 1999 Proctor was granted the patent, which gave him the right to exclusively use the bean for 20 years. He immediately brought legal suits against two Mexican companies that were exporting the bean to the United States as well as 16 companies and farmers of Colorado, alleging that they were violating his rights.

CIAT decided to file a formal request for the re-examination of the controversial patent. This action was endorsed by the Consultative Group on International Agricultural Research ([CGIAR](#)) and the Food and Agriculture Organization of the United Nations ([FAO](#)).

"From the beginning we had doubts about two fundamental points of the patent: the bean had not been improved nor was there novelty," said Daniel Debouck, CIAT specialist in genetic resources and head of the Center's Germplasm Bank.

The 15 initial claims made by Proctor were refuted by CIAT with scientific evidence. The Center labeled what Proctor had done as an "expropriation" of the bean from Mexican farmers and a violation of Mexico's sovereign rights over its genetic resources, as recognized by the United Nations Convention on Biological Diversity.

In 2003, USPTO failed in favor of CIAT, but Proctor's lawyers immediately presented another action of review enclosing 43 new points demanding that the patent be respected.

During all this time, Proctor enforced his patent. According to sources of the Mexican government, at a certain time, the owner of the patent demanded that he be paid US\$0.6 for each pound of yellow bean sold in the United States, causing the exports of that product from Mexico to the United States to collapse.

Since then, the legal dispute has been slow and on five occasions USPTO has ruled in favor of CIAT, the last time being on 30 April 2008, when the controversial patent was revoked. However, Proctor again resorted to a superior instance: the Court of Appeals for the Federal Circuit.

Last 10 July, this Court ratified USPTO's decision. But will this be definitive? Within the United States legal system, Proctor can appeal before the maximum instance, the Supreme Court, but experts believe that he will again lose. "He does not have the bases to refute the evidence provided by CIAT," says Debouck.

All this has generated concern among the Center's scientists, who fear that this precedent could endanger the public access to the germplasm of many plant species safeguarded by CIAT and other research centers through an agreement with FAO and which belongs to mankind.

"This case continues to send strong messages to Latin America so we are on the alert against the biopiracy," said Ruben Echeverría, CIAT Director General. "Similar situations have already occurred and, in light of this, it is our responsibility to protect developing countries. CIAT will continue to frustrate the action of pirates," he added.

In an interesting twist. If Proctor does decide to take his case to the Supreme Court, it could coincide with the term of Supreme Court hopeful Sonia Soromayor, a lawyer of Hispanic decent, which could make for an interesting showdown.

Contact:

- Daniel Debouck (d.debouck@cgiar.org), Head, Genetic Resources Unit, CIAT.
Phone: +57 (2) 4450000 (ext. 3039).
- Neil Palmer (n.palmer@cgiar.org), Public Awareness Officer, CIAT.
Phone: +57 (2) 4450000 (ext. 3008).