

Patents on plants, seeds, and living organisms. A look at the current situation and debate in India

In many respects, India represents an important stage upon which to observe the debate over the issue of „Patents On Life“ and its influence on development.

First of all, in the past India has had many different—negative—experiences with unlawful patents—also referred to as biopiracy—on plants and seeds.¹ In order to protect itself from biopiracy in the future, India has started a program designed to digitally record their traditional knowledge. It is intended to catalogue the medicinal, cosmetic, or otherwise commercially valuable properties and active ingredients of India’s flora and fauna. In 2002, the Conservation of Biodiversity Act was approved, establishing the legal framework for such a program.

Secondly, India plays an important role—based on the experiences mentioned above, among other reasons—in the international negotiations over trade-related aspects of intellectual property rights at the WTO (TRIPs Agreement). For example, India works to see that patent applicants obligatorily specify the origin of the genetic resources over which they seek legal rights. This is vitally important both to prevent unlawful patents and to give indigenous communities the chance to share in the profits made from the patenting of various products.

And last but not least, India is an clear example of the way in which a robust pharmaceutical and biotech industry was able to develop specifically because patents on life—i.e., protection of intellectual property—were ruled out in the area of healthcare. Today, India is an important supplier of generic medications.

At the end of last year, however, the country approved two important changes of the law that have drastically altered the politics surrounding the patentability of living organisms. The “Seed Bill” and the “Amendment’s to India’s Patent Law” have been harshly criticized by many civil society organizations.

¹ In the mid-1990s, a patent was granted in the USA for the spice/medicinal plant curcuma. This plant has, however, been a mainstay of Ayurvedic medicine for hundreds of years. After the Indian government lodged a complaint at the U.S. Patent Office, the patent was finally revoked.

Patents granted to the US firm Rice Tec for Basmati rice also made huge waves in 1997. Not only did the company claim a patent on the basic, genetic raw material itself, it also claimed the name “Basmati” for its American rice—a name that had until then solely been used to denote rice from the Punjab (India/Pakistan). Due to worldwide protest by civil society organizations, as well as the pleas of the Indian government, 15 out of the 20 original patents were denied in August 2001.

The company Monsanto received a patent from the European Patent Office for a variety of wheat that was based on crossbreeding with the Indian wheat type “Nap Hal.” Due to the objections of environmental and farmer’s organizations, this patent was also denied.

The most well known examples are surely the patents of multiple private businesses on the Indian neem tree whose oil can be used both as a remedy and as a fungicide. In this case as well, it took years of court battles until May of last year when a group rallying around the Indian activist Dr. Vandana Shiva finally succeeded in forcing a verdict that led the European Patent Office to deny the patents.

The above examples highlight patents that were obviously unlawful. However, the path that led to their rejection was long and, most of all, very expensive. And in every case, it was possible to prove, for example, that the plants in question originated in India and that their properties had long been known and used.

The revision to the patent law has primarily been criticized because it no longer rules out patents on living organisms, even in the area of food and healthcare, as it had before. Such developments are visible in the area of agriculture, particularly the way in which genetically modified agricultural plants, like cotton, have been introduced. Due to the revision, genetically modified plants have become patentable in India as well.³

The "Seed Bill" prescribes a "National Seed Register" in which all commercially traded seed varieties are to be registered. The requirements for this kind of registration are defined in such a way so as to prevent the registration of traditional, indigenous seed varieties. However, this measure endangers the practice of many farmers, going back hundreds of years, of developing their own seeds and exchanging them among themselves.⁴ For, although this practice of exchange has not been banned, the selling of unregistered seeds has been effectively prohibited. In this way, the "Seed Bill" makes it likely that, in the long term, the trade of seeds will strictly be the affair of large seed companies.

Farmer's organizations, in particular, have put up strong resistance to those developments which strip them of control over seeds. They view themselves as confronting a creeping "process of disappropriation."

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² Vandana Shiva: "WTO, Patents on Lifeforms and Amendments in India's Patent Law." ZNET, 07.04.05

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⁴ To this date, control of seeds still lies in the hands of the farmers: They produce 80 percent of the seeds in India (Devinder Sharma, GRAIN, 2005).