

India wins landmark patent battle

India has won a 10-year-long battle at the European Patent Office (EPO) against a patent granted on an anti-fungal product, derived from neem.

EPO initially granted the patent to the US Department of Agriculture and multinational WR Grace in 1995.

But the Indian government successfully argued that the medicinal neem tree is part of traditional Indian knowledge.

The winning challenge comes after years of campaigning and legal efforts against so-called "bio-piracy".

Leading the campaign in the neem case was the EU Parliament's Green Party, India-based Research Foundation for Science, Technology and Ecology (RFSTE) and the International Federation of Organic Agriculture Movements (IFOAM).

"Denying the patent means upholding the value of 'traditional' for millions of [people] not only in India but throughout the South. The free tree will stay free," said RFSTE director, Dr Vandana Shiva.

"This victory is the result of extremely long solidarity. It is a victory of committed citizens over commercial interests and big powers."

Ancient knowledge

A challenge was first mounted against the patent when it was granted in 1995. In 2000, it was victorious, but the US multinational mounted an appeal. On Tuesday this week, that appeal was lost.

The backbone of RFSTE's challenge was that the fungicide qualities of the neem tree and its use had been known in India for over 2,000 years.

The neem derivatives have also been used traditionally to make insect repellents, soaps, cosmetics, tooth cleaners and contraceptives.

In 1995, WR Grace patented neem-based bio pesticides, including Neemix, for use on food crops. Neemix suppresses insect feeding behavior and growth in more than 200 species of insects.



The neem provides a popular traditional tooth cleaner

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Linda Bullard, IFOAM

But the EPO agreed that the process for which the patent had been granted had actually been in use in India for many years.

Under normal circumstances, a patent application should always be rejected if there is prior existing knowledge about the product.

But in the United States, "prior existing knowledge" is only recognized if it is published in a journal - not if it has been passed down through generations of oral and folk traditions.

"We are deeply gratified that through our case the EPO has recognized the intellectual achievements of the South," said Linda Bullard, former president of IFOAM.

"We were able to establish that traditional knowledge systems can be a means of establishing 'prior art' and thus used to destroy claims of novelty and inventiveness.

"This historic precedent must be further developed and transposed into overall international frameworks so that this type of theft is no longer possible."