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## **Enola Bean Patent Challenged**

*International Center for Tropical Agriculture (CIAT)  
Upholds FAO Trust Agreement and UN Biodiversity  
Convention by Challenging US Patent on Mexico's Yellow Bean*

“This patent has caused great economic hardship for farmers in northern Mexico, and we welcome attempts to overturn it,” said Miguel Tachna Felix, spokesman for the Agricultural Association of Rio Fuerte in Sinaloa, Mexico which represents 22,000 farmers in northern Mexico. Felix is referring to a legal challenge of a US patent on a yellow bean of Mexican origin.

On 20 December 2000 the International Center for Tropical Agriculture (CIAT – based in Cali, Colombia) filed a formal request for re-examination of US patent no. 5,894,079 – also known as the yellow bean or “Enola bean” patent -- at the US Patent & Trademark Office in Washington, DC. CIAT is one of 16 international research centers supported by the Consultative Group on International Agricultural Research (CGIAR) – the world’s largest network of developing country agricultural researchers. CIAT’s gene bank holds more than 27,000 samples of *Phaseolus* (dry bean) seeds, among other crop species.

“CIAT’s action strikes a blow against biopiracy and protects the integrity of designated germplasm, which it holds in-trust for the world’s farming community,” observes Hope Shand of RAFI, “The legal challenge is a very positive step,” said Shand. Joachim Voss, Director General of CIAT, and his staff have energetically pursued the patent challenge, which is also supported by the Food and Agriculture Organization of the United Nations (FAO).

Almost one year ago, RAFI denounced the yellow bean patent as “Mexican bean biopiracy” and demanded that the patent be legally challenged and revoked. RAFI formally requested that FAO and the CGIAR investigate the patent as a likely violation of their 1994 Trust agreement that obliges them to keep designated crop germplasm in the public domain and off-limits to intellectual property claims. (For further background, please see “Mexican Bean Biopiracy,” RAFI Geno-Types, 15 January 2000.)

The Enola bean patent is especially controversial because its owner, Larry Proctor, the president of a Colorado (USA) based seed company, POD-NERS, purchased yellow bean seeds in Mexico in 1994, and filed for an exclusive monopoly patent less than two years later. Proctor won a US patent in April 1999 and subsequently brought legal suits against two companies that were selling Mexican yellow beans in the US, claiming that the beans infringed his monopoly patent.

According to Miguel Tachna Felix, “We had been exporting this yellow bean (Mayocaba) and others to the United States for over four years when POD-NERS

received their patent -- based on erroneous claims. When they got the patent they sent a letter to all the importers of Mexican beans in the United States, warning that this bean was their property and that if they planned to sell it they would have to pay royalties to POD-NERS. For us, this meant an immediate drop in export sales, over 90%, which affected us tremendously. And it wasn't only one bean variety, but also others, because it created fear among bean importers," explained Felix.

CIAT's official request for re-examination of US Patent No. 5,894,079, which includes a letter of support from RAFI, refutes all of the patent's 15 claims as invalid. CIAT charges that the claims fail to meet the statutory requirements of novelty and non-obviousness, and ignore prior art widely available in the literature. The challenge is especially critical of the patent's claim of exclusive monopoly on any *Phaseolus vulgaris* (dry bean) having a seed color of a particular shade of yellow, pointing out that "it will make a mockery of the patent system to allow statutory protection of a color *per se*." Although the patent owner did not obtain his yellow beans from CIAT's gene bank, the patent challenge notes that CIAT maintains some 260 bean samples with yellow seeds, and 6 accessions are "substantially identical" to claims made in US patent 5,894,079.

CIAT's patent challenge also points out that the yellow bean was "misappropriated" from Mexico, and violates Mexico's sovereign rights over its genetic resources, as recognized by the Convention on Biological Diversity.

Miguel Tachna Felix of the Agricultural Association of Rio Fuerte and other farmers in northern Mexico are hopeful that the legal challenge will go beyond a single patent to stop biopiracy and life patenting: "Our farmers have suffered great economic losses, but what really matters to us is that this legal challenge establishes a precedent to prevent similar injustices, so that it won't be possible to continue patenting public germplasm, the patrimony of all humanity, and that it will prevent these materials from being patented by anyone."

The US Patent & Trademark Office is expected to make a ruling on the patent challenge within 3 months.

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RAFI (the Rural Advancement Foundation International) is an international civil society organization based in Canada. RAFI is dedicated to the conservation and sustainable use of biodiversity, and to the socially responsible development of technologies useful to rural societies. RAFI is concerned about the loss of agricultural biodiversity, and the impact of intellectual property on farmers and food security.