

5-14-1999

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Guest Author

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## Recommended Citation

Guest Author. "Amazon Indigenous Leaders Hope Patent Challenge Will Safeguard Rights." (1999).  
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## **Amazon Indigenous Leaders Hope Patent Challenge Will Safeguard Rights**

*by Guest*

*Category/Department: Region*

*Published: 1999-05-14*

[The following article by Barbara J. Fraser is reprinted with the permission of Noticias Aliadas in Lima, Peru. It first appeared in the May 3, 1999, edition of the weekly publication Latinamerica Press.]

Wearing traditional ponchos, feathers and beads, and flanked by their wives and several environmental lawyers in business suits, two indigenous shamans filed a petition on March 30 in Washington, DC, to revoke a patent issued 13 years ago on their most sacred plant. Querubin Queta Alvarado, a Cofan shaman from Ecuador, and Antonio Jacanamijoy Rosero, an Inga elder from Colombia, presented the papers to the US Patent and Trade Office on behalf of indigenous groups throughout the Amazon Basin.

At issue is *Banisteriopsis caapi*, a vine known locally as yage, which, when combined with other ingredients, produces ayahuasca, a potent hallucinogen used by many Amazonian indigenous groups in religious rituals. In 1986, Loren Miller, a California resident, was granted a patent for the plant, which he called Da Vine.

Indigenous groups consider patenting their sacred plant a violation of their culture and religion and compare it to "patenting the Christian cross." "Our concern isn't so much a commercial one whether products derived from this plant can be marketed. It's also a cultural and spiritual question," said Antonio Jacanamijoy, son of one of the shamans and general coordinator of the Coordinadora de las Organizaciones Indigenas de la Cuenca Amazonica (COICA), based in Quito, Ecuador.

Lawyers, meanwhile, argue that the plant should not be patentable under US law. Indigenous leaders hope the case, which spans two continents and a maze of national and international legislation, will set a precedent for the handling of future patent requests. COICA, the legal advisers, and the US-based Coalition for Amazonian Peoples and their Environment, which joined forces to challenge the patent, say it is more than a case of one plant. In a letter accompanying the petition, David R. Downes, senior attorney of the Washington-based Center for International Environmental Law (CIEL), urged that traditional knowledge be taken into account in evaluating patent applications.

A person applying for a patent must prove the product is novel, so the process depends heavily on published information. Traditional knowledge of indigenous people, however, is passed orally from generation to generation and is largely unknown to the rest of the world. In addition, Downes said, patenting a plant that is "an important element of a widely held religious system" raises ethical questions.

Patents are meant to safeguard an inventor's investment and right to benefit from marketing an invention. A patent only protects the inventor's right to market the product in the country where the patent is granted. Plant patents were designed to protect flower and fruit growers who developed new varieties. The lawyers claim that existing, already identified plant varieties are not eligible for patents, and say the yage case underscores a flaw in the patent system. Experts say *Banisteriopsis caapi* grows throughout the Amazon and that the plant described in the patent matches descriptions of samples collected earlier by researchers. There is no evidence, they say, that the patent holder improved or modified the plant, which he grew from a cutting taken to the US from Ecuador.

As a result, Downes said, the patent is inconsistent with the law's intent. "It claims the plant is novel because the patent owner identified its medicinal characteristics, [but] the indigenous people in the Amazon have known for many generations the medicinal qualities of this plant," Downes said. In part, the case highlights problems that arise when two cultures collide. Indigenous societies tend to value collective or communal rights, while patent law, like most national legislation, emphasizes individual rights.

Complicating the matter is that indigenous cultures are based on oral tradition, while national legal systems depend on written laws. For centuries the Amazon Basin, with its many ethnic groups and rich biological diversity, has attracted the attention of prospectors from rubber tappers to gold miners to oil drillers. Indigenous leaders consider bioprospecting the collection of plant and animal samples from which marketable products, particularly pharmaceuticals, could be derived merely the newest wave. Without political clout or title to the territories they have traditionally inhabited, the small indigenous groups scattered throughout the Amazon tend to be swept aside by their countries' interest in export earnings from exploitation of natural resources.

"Unfortunately, indigenous peoples do not control the natural resources that exist in their territories because these resources have been declared patrimony of the state," said Rodrigo de la Cruz of the COICA legal team. "Biodiversity and genetic resources are also considered sovereign resources of the state." "The communities really have no legal control over these resources and are not allowed to take part when access contracts are signed," he said. "Even traditional knowledge, which belongs collectively to an indigenous people, has been considered a sovereign resource belonging to a state."

Indigenous leaders say they do not want to withhold knowledge about medicinal plants, for example that could benefit the world. "It isn't that indigenous peoples are against contributing to new research," de la Cruz said, "but traditional knowledge has been improperly usurped, and indigenous people have not benefitted from the activities generated by the research." No laws specifically govern bioprospecting. Several international agreements call for indigenous peoples to benefit from the use of resources found in their territories, but do not specify how this should be done. While some research organizations are exploring benefit-sharing arrangements, Jacanamijoy is skeptical.

"So far, we've had no favorable experience" with universities or pharmaceutical companies, he says. "The only solution is to organize ourselves and propose our own law that will allow us to defend ourselves." Above all, he says, indigenous communities must be educated about their rights. "A researcher befriends one of our taitas (elders), only it isn't the same kind of friendship that the taita

offers, but a friendship seen in economic terms," Jacanamijoy says. "The researcher gets all the information, and this constitutes the flight of our traditional knowledge. It's difficult to keep this from happening. We'd have to do consciousness- raising in every community."

In his book *Protecting What's Ours: Indigenous Peoples and Biodiversity*, David Rothschild of the Coalition for Amazonian Peoples and their Environment points out two major weaknesses of international agreements. First, long rounds of negotiation tend to produce watered-down language, urging only that "appropriate measures" be taken "whenever possible." In addition, while many countries may approve the language of an international treaty, the document is only binding on those whose governments actually ratify the agreement. Jacanamijoy adds that national legislation may render international agreements ineffective.

The Convention on Biological Diversity, he says, "is applied according to national legislation, and national laws often run counter to the proposals of indigenous peoples." Indigenous organizations say that several international agreements, particularly the International Labor Organization Convention 169 and the UN Convention on Biological Diversity, are steps in the right direction. Others, such as the 1994 Uruguay Round of the General Agreement on Tariffs and Trade (GATT), which addressed trade- related intellectual-property rights or TRIPs, do not take indigenous peoples into account.

Article 15 of Convention 169 protects "the rights of the peoples concerned to the natural resources pertaining to their lands (including) the right of indigenous peoples to participate in the use, management, and conservation of these resources." When the government retains ownership of resources, the convention calls for consulting the indigenous groups, adding, "The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities."

The UN Convention on Biological Diversity, approved at the 1992 Earth Summit in Rio de Janeiro, calls for countries to pass legislation to "respect, preserve, and maintain knowledge, innovations, and practices of indigenous and local communities" related to sustainable use of biological diversity.

Article 8(j) adds that countries should "encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices." A draft UN Declaration on the Rights of Indigenous People would give indigenous people "the right to the restitution of cultural, intellectual, religious, and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs." The same document would safeguard an indigenous groups' right to protect their medicinal plants, animals, and minerals, and recognize their "full ownership, control, and protection of their cultural and intellectual property." At the other end of the spectrum is the 1994 Uruguay Round accord. This international agreement on free trade allows member countries to protect plant varieties through patents or "an effective sui generis system," but the issue has received little attention in countries with indigenous populations.

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