

Traditional Knowledge & Biopiracy: The Peruvian Maca Root

Overview

Name:	The National Institute for the Defense of Competition and Intellectual Property (INDECOPI)	Object of Protection:	Traditional Knowledge Genetic Resources
Organization Type:	Government	Instrument of Protection:	Patent Infringement / Litigation
Industry:	HealthCare, Genetic Resources	Focus:	IP Management, Biopiracy
Country:	Peru		

Background

Maca root is an herbaceous, perennial, cultivated crop that is native to the Andes in Peru. Maca plants have medicinal values that include increasing libido, stamina, fertility, and alleviating insomnia. The maca market is large market for Peru. According to INDECOPI’s report on maca, the Commission for the Promotion of Exports (PROMPEX) indicates that maca exports have grown in the U.S. from \$1,056,287 in 1998 to \$3,016,240 in 2002. The main markets are Japan, with almost 50% of maca exports, the United States, Venezuela and Hungary. In 2002, 13,557 metric tons of maca extracts were exported to the U.S., valued at \$ 863,094. That was one of the largest exports of Peru after flours, dust, and microchalking.

For centuries, the people in the Andes have been using the maca root for its medicinal properties and now maca is exported around the world. The Peruvian people’s use of maca for medicinal purposes is an example of traditional knowledge.

Traditional Knowledge and Biopiracy

Traditional knowledge (TK) is the long-standing traditions and practices of indigenous peoples and communities. These traditions and practices passed on from generation to generation can include different aspects of a particular culture, including the arts and farming techniques. In many developing countries TK includes knowledge of medicinal herbs and plants passed on for generations. One major problem for developing countries is the misappropriation of TK, known as biopiracy. The continued biopiracy of TK in many developing countries has resulted in some countries establishing task forces to focus on this issue. Peru established the National Anti-Biopiracy Commission to develop ways to identify, prevent, and avoid acts of biopiracy. Concern about possible biopiracy of the maca root is one reason why Peru created this task force.

IP Strategy to Overcome Biopiracy Issues

The National Institute for the Defense of Competition and Intellectual Property (INDECOPI) is a Peruvian government agency charged with the responsibility of market promotion and protection of consumer rights, as well as ensuring honest competition while protecting all forms of intellectual property. INDECOPI discovered that there were over 100 patents directed to inventions related to Peruvian indigenous plants, the maca root or that included maca derivatives in the patent claims.

The Peruvian Working Group, headed by INDECOPI, with the help of PIIPA's *pro bono* assistance volunteer (the US firm of Sterne Kessler Goldstein and Fox, PLLC in Washington DC "SKGF") decided to first focus on U.S. patents directed to extracts of maca plants. In particular, the U.S. patents prevented Peruvian farmers from exporting maca extracts to the U.S. The Working Group's strategy was to first challenge the validity of the patents to clear the way for Peruvian farms to export maca and maca products into the U.S. as well as other countries. If this strategy for challenging the U.S. patents worked, challenges to other patents issued in other countries would follow. In fact, the Working Group would use the same information gathered for the challenge of the U.S. patents for any other patent challenges.

The Working Group and PIIPA's *pro bono* assistance volunteer SKGF worked with scientists and maca exporters to assemble published documentation on maca preparation and the use of maca prior to the filing dates of most of the patents in question. The Working Group intended to use this data to assist in invalidating certain of the issued patents.

An alternative strategy that INDECOPI used to confront the alleged biopiracy of maca was to negotiate an agreement with one of the companies that owned one patent at issue. Contract terms included paying higher prices to maca farmers and building a dental center in the maca producing area. However, INDECOPI and the company never finalized the agreement.

Business Results/IP Solution

In 2002, the working group also filed an opposition to an EU patent application with the European Patent Office. The EU patent application related to one of the issued U.S. patents. In 2010, the EPO rejected the European patent application, in part due to the documents provided by INDECOPI and the Working Group, which showed prior use. Currently, the National Anti-Biopiracy Commission will submit a request for reexamination of the related patent granted in the U.S. based on the rejection of the European patent as an argument.

PIIPA assisted INDECOPI by devising the strategies to deal with the U.S. patent cases. When asked about PIIPA's assistance, Begoña Venero, formerly of INDECOPI, who worked closely with PIIPA during preparations for the reexamination process, stated that the "*assistance from PIIPA's IP Corps has been priceless.*"

Current and Future Issues to Address

One major problem that INDECOPI has is its inability to quantify the overall financial damage incurred because of the patents on the economy surrounding maca products. Although INDECOPI can provide an accurate estimation for Peru's maca exports, currently, there is no way for INDECOPI to access accurate sales information for the patented products. The patented products sold by the foreign patent holders have potentially cut into Peru's maca market share. Having an accurate account of the economic impact the patented products have on Peru's maca market would assist in any negotiating licensing terms and litigation.

Sources, References, and Related Links

- ◆ [Peruvian Maca and Allegations of Biopiracy, Encognitive.com](#)
- ◆ [The National Institute for the Defense of Competition and Intellectual Property \(INDECOPI\)](#)
- ◆ [Intellectual Property and Human Development: Current Trends and Future Scenarios \(Chap. 4\)](#)
- ◆ [Jorge Goldstein, Ph.D., Sterne Kessler Goldstein and Fox, PLLC](#)
- ◆ [Andres Valladolid of the National Anti-Biopiracy Commission, INDECOPI](#)