

Andean Nations Seek U.S. Patent Protection for Native Medicines

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Colombia, Ecuador and Peru are turning the tables on U.S. trade negotiators accustomed to winning tough safeguards for drug patents by demanding similar protections for traditional therapies such as roots and leaves.

Demands for protections against what these nations call the misappropriation of traditional knowledge will be one of the most contentious issues during trade talks this week and next in Washington, Ecuadorian trade minister Jorge Illingworth and other officials say.

The demands threaten to create new problems for drugmakers, such as Merck Co. and Pfizer Inc., that are seeking to patent medicines, and to derail President George W. Bush's two-year effort to reach a trade agreement with the three nations.

"It's the law of unintended consequences," said Michael Gollin, founder of Public Interest Intellectual Property Advisors in Washington, which provides free legal counsel to poor countries in patent disputes. For years the U.S. has pushed these nations to strengthen their patent rules, he said, "and now the countries are learning to use these to their own advantage."

The Andean nations want "minor" protections for their native plants and the ways they are used, such as a rule requiring companies to inform indigenous tribes of any patent applications based on traditional knowledge and negotiate payment, according to Carlos Correa, a Buenos Aires-based consultant to those nations.

'Redirect the Rules'

"Existing rules protect things that are made in labs, not things taken from the wild or cultivated over generations," said Renee Marlin-Bennett, chairwoman of the Global Intellectual Property Project at American University in Washington. The proposed changes would "redirect the rules to rectify some of the embedded imbalance" between rich and poor, she said.

While it's difficult to quantify the magnitude of the issue, the nations are moving to catalog it. Peru's government created a commission on so-called biopiracy that has identified 10 plant species of local origin over which patents have been granted or applied for in the U.S., Europe or Japan, according to Manuel Ruiz Muller, director of the Lima-based patent association Programa de Asuntos Internacionales y Biodiversidad.

In 2001, South Hackensack, New Jersey-based Pure World Botanicals Inc. won a patent for an ingredient in the Peruvian plant maca and is now marketing it as a "natural Viagra." The Peruvian commission is preparing a legal challenge, Ruiz said.

'The Last Days'

Chris Kilham, a consultant for Avignon, France-based Naturex, which now owns Pure World, said the company's patents are legitimate. Still, he said Pure World erred in not sharing the patent rights with Peruvian communities.

“They didn't do anything illegal, but it really was the last days of a particular way of doing business,” said Kilham, a scientist who helped interest Pure World in maca. He was speaking in response to a request to the company for comment.

In 1988 the U.S. issued a patent to Austrian scientist Klaus Keplinger for an alkaloid that can treat tumors. The basis of that was a plant called *uncaria tomentosa*, or cat's claw, that Peruvians use to treat inflammation, according to a letter sent by the Sierra Club and other environmental groups to U.S. Trade Representative Rob Portman in July.

These examples are isolated but are likely to grow as more prospectors head to out-of-the-way destinations to search for new drug breakthroughs, Marlin-Bennett and others say.

The U.S. says it has investigated most of the frequently cited examples of biopiracy and found little supporting evidence.

'Significant Concerns'

The U.S. has “significant concerns” about the explicit notification proposal, and instead is offering compromises that will guard against patent abuses, a U.S. trade official said. The official, who spoke on condition of anonymity, declined to detail the compromises, saying the negotiations are ongoing.

“We all share the objective of having a patent system that works well,” said John Stubbs, a spokesman for the U.S. trade office.

Representatives of pharmaceutical companies such as New York-based Pfizer and Whitehouse Station, New Jersey-based Merck oppose acceding to the Andean nations' demands, saying their solution addresses a problem that doesn't exist.

“Right now there is no evidence of biopiracy,” said Mark Grayson, a spokesman for Pharmaceutical Research and Manufacturers of America in Washington, a lobbying and marketing group that represents drugmakers. “But negotiations are trade-offs, so if that is something they want, what are we going to get in return?”

Search for Agreement

If the countries can agree on an overall trade package, it is likely to include some new protections for indigenous medicines, Correa said. “These proposals are not extremely extravagant, and it's very difficult to argue against transparency obligations,” he said.

The U.S. has had considerable success in getting its trading partners to agree to provisions against the counterfeiting of drugs, pirating of movies and theft of other intellectual property. That includes recent accords with Central American nations and Chile.

The U.S. is pressing the Andean nations to keep drug testing data out of the hands of generic drugmakers for five years, allow the patenting of surgical procedures and provide extensions of patent terms in cases of "unreasonable delays" in approval.

The U.S. delayed consideration of the Central American Free Trade Agreement this year because Guatemala attempted to repeal a law that keeps pharmaceutical data under seal for five years. And an accord with Morocco has been held up for more than a year as the U.S. waits for that nation to set new intellectual property rules.

'More Effective Patents'

The Andean deal "has got to be stronger than what we got in Cafta," Grayson said. "We need more effective patents."

The Andean nations are resisting these demands unless they get something in return, making patent and medicine issues the hardest to resolve, Illingworth told reporters in a briefing Oct. 20.

In an illustration of how passionate the issue has become, Colombia's intellectual-property negotiators resigned their posts in protest in September, complaining that the Colombian trade ministry was likely to accede to U.S. political pressure.

U.S. and Andean negotiators began talks in Washington on Nov. 14 and are seeking to wrap up before Nov. 24, Thanksgiving Day in the U.S.

The Andean nations' demands for prior notification and negotiated payment have been picked up by India and Brazil, which want similar provisions written into a broader World Trade Organization agreement.

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