

The Problem With Biopiracy In Peru

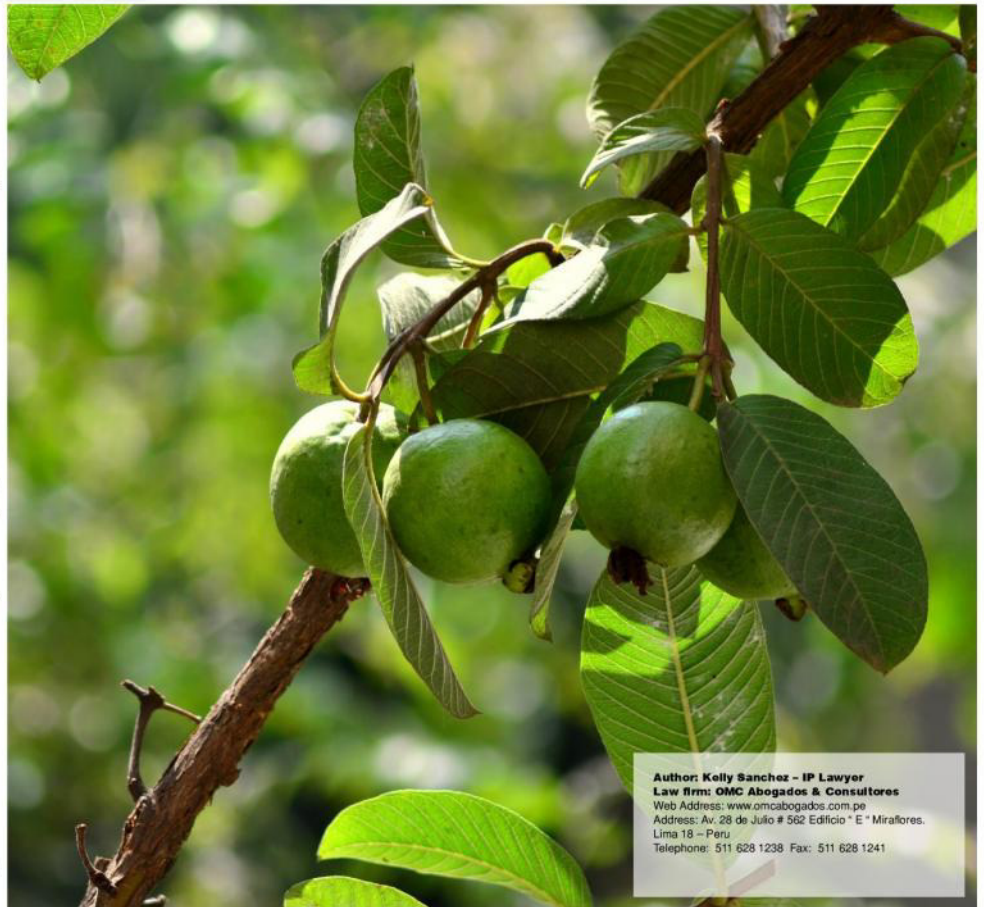
Peru, as one of the countries with the greatest biodiversity in the world, has been fighting since a long time ago against one of the problems that most affect both safety of our products and native and emblematic resources as well as the ancestral knowledge of indigenous people, the Biopiracy.

The Biopiracy is defined as the unauthorized, illegal and irregular access and use of biological resources and their components or the associated traditional knowledge, for their application in research and development of new products. This practice is especially evidenced when a third party, through patents of invention,

seeks to achieve a direct or indirect appropriation of these resources and knowledge, without the prior informed consent of the country of origin of the resource or indigenous people that is the holder of the rights of the knowledge, respectively, and without providing any kind of compensation to such country or indigenous people.

Currently, the National Commission Against Biopiracy, created on May 1, 2004 and chaired by the National Institute for the Defense of Competition and Protection of Intellectual Property - INDECOP, is the Institution in charge of promotion, protection and defense of biological resources and traditional knowledge in our country. To this date, the Commission has identified 33 cases of biopiracy in the world related to biological resources of Peruvian origin, which 18 of them have been resolved favorably our country.

According to the information handled by the Commission, Peru has 4,400 native vegetable species, of which 1,200 have medical uses, this is the reason why it is not surprising that most of the cases of biopiracy found in the world are related to patent applications of pharmaceutical compositions.



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Although it is true that technically no country can patent a plants or vegetable species, because they belong to nature and man has only discovered them, if these are manipulated or after investigations certain special properties are discovered, the protection through patents of invention or the like, such as the vegetable varieties, is feasible.

Since ancient times, native and indigenous people of Peru have known how to take advantage and use the multiple medicinal properties of vegetable species, knowledge that has been transmitted from generation to generation and has been enriched over the years. For the pharmaceutical companies, this traditional knowledge means a huge saving in research and investment, because the companies will know which species are the most useful and which can be developed into new medicines.

For example, among the cases that the National Commission against Biopiracy has been defending abroad, there is a patent application filed before the Philippine Intellectual Property Office called "A composition for enhancing male libido", a pharmaceutical composition comprising the combination of extracts from plants such as "Maca", "Huanarpo Macho" and "Chuchuhuasi", vegetables species that natives have always considered as an aphrodisiac and have been used for the treatment of sexual dysfunction in men. It is clear that this is a patent based on biological native resources and on a traditional knowledge and since the applicant does not have any authorization for

their use, a biopiracy act is being committed.

Similarly, before the State Intellectual Property Office of the People's Republic of China, the National Commission against Biopiracy has submitted oppositions against patent applications for a product whose composition contains extracts of "Maca" and "Cistanche", which are used as energizers, and a product composed of the extract peels of the "sacha inchi", for treating hypertension. Also the Commission has achieved that a patent filed before the Japanese Patent Office for the use of "yacón", a plant that grows in the Andes region and used to treat diabetes, is declared as abandoned.

These cases, among others, only evidence the seriousness of the problem, when the use of the patents of invention, which should be the legal way to protect an earned right as the result of a hard work and research, becomes an illegal way of exploitation of natural resources that are part of the culture of a country.

The Traditional knowledge owned by indigenous peoples is a form of human creativity whose legal recognition and protection should not be less compared with other new intellectual property objects, as they were at the time, the vegetable varieties or the software. However, this does not mean that the use of this knowledge should be forbidden, because it is a very valuable contribution to science, but its use must be legal and benefit the sustainable development of the country and even more of the indigenous people.

