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Morality of Patenting Living Organism

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In last week's article I challenged two propositions put forward by Anatole Krattiger in his abstract in the introductory booklet for the Pontifical Academy of Sciences' Study Week on GM food. Firstly, I questioned his assertion that "the value of patents cannot be disputed, and secondly, that patents are a "tool to foster innovation." What really amazed me was that, given that he would be speaking at an event organised by the Pontifical Academy of Sciences, he never raised any question about the morality of patenting living organisms.

In an earlier article I pointed out that, until recently, it was not possible to patent living organisms. The decisive change came in the 1970s when corporations began a legal campaign to patent crops. Initially, requests to patent living organisms were rejected by the US Patent and Trademark Office (PTO). However, in a landmark case, *Diamond vs Chakrabarty*, in June of 1980, the U.S. Supreme Court in a five-to-four majority, decided that life was patentable. The ruling stated that the "relevant distinction was not between living and inanimate things, but whether living products could be seen as "human-inventions".¹

One cannot exaggerate the momentous nature of this decision. It constitutes a break with the way most cultures have viewed life down through the ages. The philosophical, ethical and legal basis on which the decision was reached is at variance with most of the cultural, moral and religious traditions of the planet.

The lawyer Andrew Kimbrell believes that the US Supreme Court's decision has "transformed the status of the biotic (life) community from a common heritage of the earth to the private preserve of researchers and industry". He points out that the ruling has set the stage for increasing competition among multinationals, as they vie for ownership and control of the planet's gene pool, patenting everything that lives, breathes and moves.²

Global corporations, spearheaded by the giant agribusiness company Cargill, which is not even a public company, lobbied governments to incorporate the U.S. position on patenting of life forms into the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) which concluded in 1994. The resulting GATT Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) obligated all GATT signatories to adopt minimum intellectual property standards for plants, animals, micro-organisms and biological material, including genes.

According to Nobel prize winning economist, Joseph Stiglitz, "TRIPs reflected a triumph of corporate interests in the United States and Europe over the broader interests of billions of people in the developed world. It was another instance in which more weight was given to profits than to other basic values – like the environment or life itself."³ Stiglitz also dismisses Krattiger's claim that patents promote economic growth. "However, the contention that stronger intellectual rights always boost economic performance is not in general correct. It is an example of how special interests – those who benefit from stronger intellectual property rights – use simplistic ideology to advance their causes."⁴ Patents create monopolies. According to Stiglitz, "the inefficiencies associated with monopoly power in the use of knowledge are particularly serious, because knowledge is what economists call a "public good"; everybody potentially can benefit from it; there is cost of usage."⁵ The importance of the "common good" in Catholic Social Teaching rests on a similar understanding, that promoting caring communities is essential for human well-being. Once again, the fact that the Pontifical Academy of Sciences provided a platform for such right wing ideology on patents is deplorable.

¹ Andrew Kimbrell, *The Body Shop*, Harper, San Francisco, 1993, page 193

² Kimbrell, op.cit. p. 200.

³ Joseph Stiglitz, 2006, *Making Globalization Work*. Penguin Books, London, page 105.

⁴ Ibid page 106

⁵ Ibid 109, 110.

Also in a previous article in this paper I pointed out that Patenting life is a fundamental attack on the understanding of life as interconnected, mutually dependent and a gift of God. It opts instead for an atomized, isolated understanding of life. The Bible also recognizes that humans are companions and stewards of other creatures in the community of the living (Gen 2:15-17). God settles the 'man' in the Garden and invites him to cultivate it and care for it. Certain limits are put on man's use of the natural world. God cautioned humans: "You may eat indeed of all the trees in the garden. Nevertheless, of the tree of knowledge of good and evil you are not to eat, for on that day you eat it you shall surely die" (Gen 2:16-17). In his encyclical on social justice, *Sollicitudo Rei Socialis*, Pope John Paul II interprets the Genesis 2:16-17 text as placing limitations on human misuse of the natural world. We don't and should never claim to own nature. This is God's prerogative, not ours.