



THE COUACHI PLANT

A CASE HISTORY OF

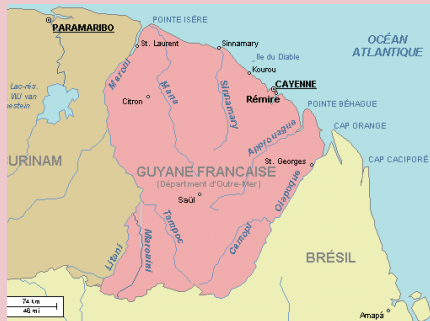
BIOPIRACY



In 2015, France Libertés – Danielle Mitterrand Foundation filed an opposition to the European Patent Office against a patent belonging to a French public research institute called Institut de Recherche pour le Développement (IRD).

The patent in question concerns the antimalarial properties of the plant Quassia Amara. The medicinal properties of this plant were identified in French Guiana thanks to local traditional knowledge. This is a clear case of biopiracy.

By this patent, the research institute appropriated traditional knowledge and did not recognize the contribution of the indigenous and local populations to the research. In 2018, the European Patent Office (EPO), competent to assess the case, surprisingly confirmed the patent as valid. This decision shows how little the rights of indigenous peoples are being respected. France Libertés – Danielle Mitterrand Foundation appealed this decision which, we hope, will be reversed.



French Guiana is a former colony of France located in the north of South America.

Today, it is a French overseas territory, and its inhabitants theoretically have the same rights and obligations as any other French citizen.

Despite this, access to public services (education, health, water supply, transport, etc.) is still very weak, even precarious or non-existent depending on the region.

French Guiana territory is 97% covered by the Amazon rainforest, and it is considered the most biodiverse area within European states.

ETHNOBOTANICAL SURVEYS ON TRADITIONAL MEDICINE IN FRENCH GUIANA

In the early 2000s, researchers from the Institut de Recherche pour le Développement, a French public research center, visited French Guiana. They questioned Indigenous and local persons about the traditional medicine they use to fight malaria.

The information provided by the inhabitants enabled the institute to identify a plant, the

couachi (*Quassia amara*), and to isolate from its leaves an active molecule useful for the treatment of malaria.

The researchers named this molecule Simalikalactone E (SkE), and proceeded to claim exclusivity to the patent. Thus denying to the local and indigenous populations any rights to its potential profitability.



The couachi

The couachi (scientific name : *Quassia amara*) is a small tree growing naturally in French Guiana.

Native Americans use this plant in traditional medicine, especially to treat fevers and fight against malaria.

A PATENT THAT EXCLUDES INDIGENOUS PEOPLES

Indigenous Peoples in French Guiana

In French Guiana six Indigenous Peoples resisted European colonization and continue today to maintain their identity and fight for their rights. They are the Kali'na, the Lokono, the Paykweneh, the Teko, the Wayana-Apalai and the Wayãpi.

However, the French State does not recognize them as «Indigenous Peoples» but simply as «local communities», and no collective or territorial rights are granted to them.



Nature rights. Photographer : Julien Ansault

In March 2015, the research institute obtained from the European Patent Office (EPO) the grant of the patent n° 2443126 entitled «Simalikalactone E and its use as a medicine».

This patent offers the institute a monopoly of exploitation to «its discovery», namely the antimalarial properties of the molecule SkE extracted from the plant *Quassia Amara*.



This patent provides the institute the right to forbid anyone to exploit any treatment against malaria that includes the molecule in question.

Thus, the very people who contributed to this research could be banned from exploiting their own traditional medicine.

« *This patent application is nothing but the spoliation of our knowledge, it denies our Amerindian cultures.*

Bénédicte Fjeke,
President of the Customary
Council of Chiefs of French
Guiana.

Native people are hence doubly dispossessed: first, they are not recognized as the inventors of the discovery, since only researchers from the institute appear as such in the patent grant. Secondly, they are excluded from any economic exploitation of their own traditional knowledge.

Early 2000s
ethnobotanical surveys
on traditional medicine
in French Guiana

March 2015
the French institute
*Institut de Recherche
pour le Développement*
is granted the patent
n° 2443126 entitled
« Simalikalactone E and
its use as a medicine »

October 2015
France Libertés brought
an action against the
granting of the patent

February 2018
oral proceeding
before the European
Patent Office (EPO),
which rejected France
Libertés' arguments
and confirmed the
granting of the patent

December 2018
France Libertés appeals
against the decision
of the EPO

2019-2020
awaiting decision
by the EPO

2000

2015

2018

2019

OPPOSITION AGAINST A BIOPIRATED PATENT

Indigenous peoples must be recognized as legitimate rights-holders, including to their cultural heritage used for scientific projects.


In order to fight against this unlawful appropriation of traditional knowledge, France Libertés filed in 2015 a case against this French institute patent. The Foundation questioned the legality of the patent before the European Patent Office, through a procedure called «opposition» (*see the box*).

The argument resides on the facts that the researchers used traditional knowledge long known by Guianian people. Therefore, there is no novelty or inventive step, the two essential criteria for the granting of a patent. Falsely claiming to be the only inventors of this product, they deny the contribution of Indigenous and local people.

In addition, the research institute did not obtain the free, prior and informed consent of the Indigenous and local communities of French Guiana whose members participated in the research. Nor was there established any agreement for the fair and equitable sharing of the benefits arising from the exploitation of the patent. Yet these are two essential rights recognized in the Convention on Biological Diversity and the Nagoya Protocol.




After two years of proceedings, the European Patent Office decided to maintain the French institute IRD patent on the antimalarial properties of the couachi. More than a decade after the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, time has come for intellectual property organizations to consider these rights in the study of patent applications.



We do not oppose the exploitation of an industrial drug to treat malaria based on our traditional knowledge. We would be proud to have contributed to global health. But for that, our rights must be respected and our contributions must be recognized.

Bénédicte Fjeke,
President of the Customary
Council of Chiefs of French
Guiana



At the end of 2018, with the help of the Great Customary Council of Indigenous and Bushinenge Population, France Libertés appealed the decision of the EPO maintaining the patent in favor of the French institute. The decision should be rendered within two years.

Opposition proceedings before the European Patent Office (EPO)

The EPO offers third parties the opportunity to oppose any European patent grant that does not meet certain criteria (for example, the invention is not new, or it does not involve an inventive step) or requirements (for example, the patent does not disclose the invention clearly and completely), in accordance with Article 100 of **the European Patent Convention**.

To oppose a patent, the interested third party must file an application before the EPO within nine months of the grant of the patent.

At the end of the opposition proceedings, the patent is revoked, maintained, or maintained in a modified form.



Created by Danielle Mitterrand in 1986, France Libertés is a non-profit NGO, granted special consultative status to the United Nations Economic and Social Council. It defends human rights and the commons, and contributes to the construction of a more inclusive and supportive world.

In this context, the Foundation supports the actions of Indigenous Peoples to promote and guarantee their rights, and to build public awareness of their traditional knowledge and world-views. Among the many actions carried out by the Foundation is the fight against biopiracy.

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