



## The Pelargonium Patent Challenges

Very few patents have been filed on the medicinal use of pelargonium. However, three patents have been granted to Germany-based Schwabe Pharmaceuticals based on two pelargonium species – pelargonium sidoides and pelargonium reniforme – making Schwabe the most important actor in this field. Schwabe specialises in phytomedicines and produces, inter alia, alcohol extracts from the roots of the pelargoniums in syrup form, under the brand name Umckaloabo. Umckaloabo is successfully sold in Europe as a natural medicine for the treatment of respiratory tract infections such as bronchitis and common coughs and colds.

Two Pelargonium-patents granted to Schwabe are being challenged upon the instruction of the Alice Community by the African Center for Biosafety (ACB) together with the Berne Declaration (for Patent EP 1 429 795) and the ACB together with Funeka Nkayi, a member of the Alice Community in South Africa (for Patent EP 1 651 244). Legal support for both challenges is provided by Prof. Fritz Dolder of Switzerland. Both patents are seen as an illegitimate and illegal monopolisation of a genetic resource from Southern Africa and traditional knowledge of the communities in the Eastern Cape Province of South Africa.

Patent EP 1 429 795

### **METHOD FOR PRODUCING EXTRACTS OF PELARGONIUM SIDOIDES AND/OR PELARGONIUM RENIFORME**

Publication date: 23.6.2004

Granted: 13.6.2007

#### **What is the main claim?**

A procedure (Percolation and Mazeraton) for the production of an excerpt from Pelargonium with an aqueous-ethanol solvent (10-92% ethanol).

The invention claimed is a very common extraction method in the phytomedicine sector. Water/Ethanol is a main solvent for extractions of the active ingredients and other properties of interest. This broad patent gives Schwabe Pharmaceuticals, over the next 20 years, the exclusive right in the countries that are parties to the European Patent Convention (EPC) to make, sell, or import/export the active ingredients of the pelargonium root that have been extracted by water and alcohol .

The African Centre for Biosafety and the Berne Declaration have on 10 March 2008, filed a challenge to this patent, supported by affidavits filed by a member from the Alice Community, Milile Rwexu, and a biologist from South Africa, Dr William Stafford. In this objection, the EPO is asked to fully revoke the patent.

#### **The main grounds of the objection can be summarised as follows:**

a) Pursuant to Articles 1, 8(j), 15 and 16 CBD prior informed consent has to be obtained from the traditional knowledge holders and the provider countries prior to accessing genetic resources and its associated traditional knowledge. Additionally, Schwabe is required to share the commercial and other benefits with the providers of the resources and the traditional knowledge on mutually agreed terms.



Since there is no evidence that Schwabe has complied with any of these rules, the patent is in contradiction with Article 53 of the European Patent Convention, which bans patents that are contra bonos mores or contrary to ordre public.

b) As the patent allows Schwabe to control the entire trade with the main product (extracts, tinctures) of two *Pelargonium* species (*p.sidoides* and *p.reniforme*), the patent has the same effect as a patent covering a plant variety.

Hence, the patent on the main method of producing extracts from two species of *pelargonium* is a clever way by Schwabe of circumventing Article 53 of the EPC, which explicitly bans patents on plant varieties.

c) The subject matter of the patent, consisting of a simple method to produce *Pelargonium* root extracts, lacks novelty (Article 54 EPC) and inventive step (Article 56 EPC), since it can be qualified to simply repeat standard textbook processes in phytochemistry and phytomedicine. It also lacks novelty, since it duplicates extraction methods in current practice with the Alice and other communities since time immemorial.

EP1651244

### **USE OF EXTRACTS FROM ROOTS OF PELARGONIUM SIDOIDES AND/OR PELARGONIUM RENIFORME**

Publication Date: 3.5.2006

Granted: 29.8.2007

#### **What is the main claim?:**

Use of extracts from roots of *Pelargonium* for the manufacture of a medicament for the treatment of AIDS and associated infections.

This patent claims exclusive use of *P. sidoides* and *P. reniforme* for treating AIDS and AIDS-related diseases. The AIDS related diseases include a vast number of bacterial, viral, and parasitic infections and inflammations; including TB, all respiratory tract infections, sexually transmitted diseases, etc. This patent precludes everyone in the European Union and contracting States to the EPC from using the two species of *Pelargonium* for AIDS and opportunistic diseases such as TB, bronchitis, and various other infections and inflammation.

The African Centre for Biosafety and Funeka Nkayi, a representative of the Alice Community in South Africa will file a challenge to this patent in May 2008 supported by affidavits. In this objection, we have asked the EPO to fully revoke the patent.

#### **The main grounds of the objection can be summarised as follows:**

a) The use of *pelargoniums* for treatment of HIV and associated diseases lacks novelty (Art. 54 EPC), and the subject matter of all claims altogether lack inventive step (Article 56 EPC). The fact that the medical practitioners of Alice community have been using *Pelargonium* since time immemorial to treat a wide spectrum of viral and bacterial infections and inflammation and, since its discovery in the 1980s, also for AIDS therapy constitutes highly relevant prior art. This traditional knowledge constitutes traditional intellectual property of the



Alice community, has been for time immemorial in the South African public domain, and therefore cannot be monopolised by an individual company.

b) Pursuant to Articles 1, 8(j) CBD prior informed consent has to be obtained from the traditional knowledge holders prior to accessing traditional knowledge. Consequently, Schwabe was required to share the commercial and other benefits with the holders of the knowledge on mutually agreed terms. Since there is no evidence that Schwabe has complied to any of these rules, the patent is in contradiction with Article 53 a) of European Patent Convention, which bans patents that are contrary to ordre public.

c) Furthermore, the alleged AIDS therapy is disclosed in the specification of the patent in an extremely summary way and therefore does not comply with the rules requiring sufficient disclosure of the subject matter of the invention (Art. 83 EPC).

### **More Pelargonium Patents**

There is a third patent granted to Schwabe in respect of the use of Pelargonium. The claims include the treatment and/or prophylaxis of disease related behavioural changes and post-viral fatigue syndrome (EP 1 684 775, granted 26.3.2008). In January 2008, Schwabe filed a fourth patent with the European Patent Office (EP 1 878 434; on the use of an extract from Pelargonium for the treatment for certain bacterial infections). This patent is still pending. Another patent, by the Swiss Company Divapharm (on the use of Pelargonium in combination with Plantago for the preparation of medicament for the treatment of pharyngitis) has been published by the European Patent Office in September 2007 but has not been granted.

*Note: This Fact-Sheet is partly based on “Knowledge not for sale: Umckaloabo and the Pelargonium patent challenges” – a briefing paper by the African Center for Biosafety (May, 2008)*