

TREES IN COURTS: BIOPIRACY AND THE SYSTEMATIC ENCLOSURE OF NATURE IN EUROPEAN LEGAL ORDER

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Abstract

"We are so dependent on plants that we do everything we can not to think about them," wrote neurobiologist Stefano Mancuso in Brilliant Green. This article argues that western law has elevated that psychological avoidance into a structural principle: the natural — understood as biological resources in their native state and as traditional knowledge — is not the object of legal protection in the usual sense of the term. It is the legal order's constitutive exception.

Through six case studies spanning intellectual property and environmental law, the article traces a single logic at work across seemingly unrelated fields. A pine tree fibre, a neem remedy, a rainforest plant, a mandarin variety, an apple trade mark, an ancient forest: each entered a courtroom with a story, with a struggle to exist, to be seen. In each case, the legal order applied the same enclosure philosophy: dependence converted into ownership, relation into control, living diversity into certified uniformity.

The article argues that biopiracy, agricultural monopolisation, and conservatory isolation are not anomalies or abuses of the system. They are its coherent expressions. Across patent law, plant variety law, trade mark law, and environmental law, the same architecture is at work: the natural is permitted to exist only after transformation — only once it has been isolated, certified, registered, or enclosed. The certified uniformity of crops, the monopolisation of varieties through contractual strategies or through the evergreening of the commercial trade mark, and the museum-like conservatory isolation of virgin forests are faces of the same coin.

Before a plant can be protected by law, it must first cease to be natural.

Keywords: *biopiracy, plant variety rights, evergreening, traditional knowledge, enclosure of nature.*

1. Introduction

A significant proportion of agricultural land used for major crops in Europe and the United States is currently cultivated with industrially improved varieties and hybrids.¹ This near-total dominance of production, legally subjected to rigid criteria of genetic homogeneity and stability, has led, according to FAO reports,² to a situation where just nine species now account for over 60% of total global agricultural output. As far back as 1997, the same reports indicated that more than 75% of historical plant genetic diversity had been eroded.³

Writing about our relation with the vegetal world, plant neurobiologist Stefano Mancuso observed that dependence on plants generates a form of willful blindness „we are so dependent on plants that we make every effort not to think about them. Perhaps we do not want to remember that our survival is bound to the vegetal world — because that would make us feel weak. How could we still call ourselves the masters of the universe?“⁴ We suggest that law participates in that blindness — and systematizes it....

Within the European legal order, and by extension in the broader Western legal tradition, the natural -- understood both in its biological dimension and in the form of traditional knowledge -- is configured as an exception subject to a regime of tolerance or conversion. Biological resources and ancestral knowledge are, paradoxically, disregarded in terms of their capacity to generate exclusive rights in their native state; they receive legal recognition only in a hybrid form -- after undergoing a process of technical transmutation in a laboratory.

This dynamic reveal that there is no structural contradiction between "protecting" the biodiversity of ancient forests and guaranteeing commercial exclusivity over monocultures in intensive fruit orchards. They

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² USDA, Economic Research Service (ERS). Based on the official USDA ERS report, as of 2025, over 90% of U.S. corn, upland cotton, and soybean acres are planted with genetically engineered varieties.

³ Food and Agriculture Organization of the United Nations, The Third Report on the State of the World's Plant Genetic Resources for Food and Agriculture (Rome: FAO, 2025).

⁴ See <https://www.fao.org/4/v1430e/V1430E02.htm>, last consulted 01.06.2026.

⁵ Stefano Mancuso and Alessandra Viola, *Brilliant Green: The Surprising History and Science of Plant Intelligence*, Island Press, Washington DC, 2015 (originally published as *Verde Brillante*, Giunti Editore, Florence, 2013), p.38.

represent, in reality, two sides of the same coin in European law, in which "protection" has become an autonomous concept⁵. While for monocultures "protection" means an aggressive commercial monopoly based on variety protection titles, in the case of biodiversity and ancient forests it translates into isolation, prohibition of use, and the enclosure of the resource. This isolation of the plant element manifests either through the establishment of strict reserves or through ex situ storage in seed banks.

Biopiracy is therefore not an accident of the system but a direct expression of this isolation of the natural and the exclusive validation of the synthetic product. Contemporary international treaties have not eliminated the phenomenon; instead, they have found means to institutionalize, through mechanisms of public and private law, the legal appropriation of natural elements.

This article aims to show how the legal order uses legal fictions to confine the natural to the logic of enclosure, of exception.

2. The Pine - the Patenting of Nature

The exclusion of the "natural" from the scope of patents has its origins, in the Western legal space, in the classical distinction between a discovery of the laws of nature and an industrial invention susceptible to practical application. In the nineteenth century and the early twentieth century, Western legal systems maintained a firm barrier: the basic elements of the living world, unchanged by human intervention, belonged to the public domain. The rationale was both philosophical and pragmatic -- no private entity should control the fundamental structures of life. Nevertheless, the pressure exerted by the chemical and pharmaceutical industries forced a redefinition of the terms "manufacture" or "composition of matter", creating breaches through which elements isolated from nature began to be assimilated to artificial chemical substances.

2.1. The Case of Ex parte Latimer

A landmark moment in the development of this doctrine is the decision of the United States Patent Office in the case of Ex parte Latimer⁶ of 1889. The patent application concerned fibres extracted from the needles of *Pinus australis*, which displayed exceptional qualities for textiles. The US Commissioner of Patents, Benton J. Hall, rejected the application, offering reasoning that has become a classic of intellectual property law: "A contrary ruling would result in granting to one inventor the exclusive use of one species of fiber, and so on, successively, patents might be obtained upon the fibres of the various trees of the forest and the plants of the earth which, because being natural products, are no more the subjects of patents when eliminated from their surroundings than wheat which has been cut by some new method of reaping can be patented as wheat cut by such a process."⁷ This decision established the "products of nature" doctrine.

This doctrine subsequently evolved from a strict prohibition on the privatisation of natural elements into a legal regime that permits their patenting once they are manipulated or extracted in a laboratory. In the United States, the shift occurred through the courts in 1980, through the landmark decision of the Supreme Court in *Diamond v. Chakrabarty*.⁸ The Court held that a bacterium genetically modified to break down crude oil was no longer a simple product of nature but a human creation. The decision classified living matter within the categories of "manufactures" and "compositions of matter", opening the way for the patenting of any element modified by human intervention.

In Europe, the transformation began with decisions of the European Patent Office -- in the *Ciba-Geigy* case of 1983,⁹ which permitted the patenting of chemically treated seeds -- and was completed by Directive 98/44/EC of the European Union.¹⁰ This legislative act reinterpreted the limits of the European Patent Convention¹¹ of 1973 and introduced the "isolation" rule. Article 3(2) of Directive 98/44/EC expressly provides: "An element isolated from the human body or otherwise produced by means of a technical process, including the sequence

⁵ Alina Mihaela Conea, *To Bee Or Not To Be! Define And Defend In CJEU Environmental Case-Law, Challenges of the Knowledge Society*, Editura Universitatii Nicolae Titulescu, 2023.

⁶ U.S. Patent Office, *Ex parte Latimer*, 1889 C.D. 123, 46 O.G. 1638.

⁷ Available at <https://patentlyo.com/media/docs/2012/05/1889decommrpat123-ex-parte-latimer.pdf>, last consulted 01.06.2026.

⁸ Supreme Court of the United States, *Diamond v. Chakrabarty*, 447 U.S. 303, 100 S. Ct. 2204, 65 L. Ed. 2d 144 (1980).

⁹ European Patent Office, Board of Appeal, *Ciba Geigy*, T 0049/83, 26 July 1983, ECLI:EP:BA:1983:T004983.19830726.

¹⁰ Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, OJ L 213, 30 July 1998, pp. 13-21.

¹¹ European Patent Convention (EPC), adopted in Munich on 5 October 1973.

or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element."¹² This rule is reflected identically through Rule 27(a) of the Implementing Regulations of the EPC.¹³ Accordingly, through the legal fiction of "isolation" and "laboratory purification", the natural element ceases to be regarded as a component of nature and becomes a patentable technological invention. The natural as such remains an unpatentable exception -- but only until it crosses the threshold of the laboratory, at which point it is validated and absorbed into the market.

3. The Neem Tree - Patenting the Natural from Anywhere

An analysis of biopiracy requires an illustration of the tensions between three major global legal instruments: the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),¹⁴ the Convention on Biological Diversity (CBD),¹⁵ and the Nagoya Protocol.¹⁶

The TRIPS Agreement, adopted as Annex 1C to the Marrakesh Agreement¹⁷ establishing the World Trade Organization (WTO) on 15 April 1994, promotes a mercantilist philosophy based on private exclusive rights. Article 27(1) of TRIPS obliges Member States to make patents available for any inventions -- whether products or processes -- in all fields of technology, provided they are new, involve an inventive step, and are capable of industrial application. Although Article 27(3)(b) permits the exclusion from patentability of plants and animals, it requires the protection of micro-organisms and microbiological processes. TRIPS does not recognise orally transmitted traditional knowledge as prior art unless it is recorded in written databases accessible under Western standards.

By contrast, the Convention on Biological Diversity,¹⁸ adopted at Rio de Janeiro on 5 June 1992, reintroduces the principle of state sovereignty over biological resources. Article 15(1) of the CBD provides that states have sovereign rights over their own natural resources and that access to genetic resources is subject to prior informed consent.¹⁹ Article 8(j) of the CBD obliges states, subject to national legislation, to respect, preserve, and maintain the knowledge, innovations, and practices of indigenous and local communities.

To operationalise these principles, the Nagoya Protocol on access to genetic resources and the fair and equitable sharing of benefits arising from their utilisation was adopted in 2010. It is incorporated into EU law through Regulation No 511/2014 on compliance measures for users from the Nagoya Protocol.²⁰ Nonetheless, rather than halting biopiracy, this framework institutionalises it: if a corporation obtains the necessary administrative authorisations and concludes an access contract with a state authority, the appropriation and patenting of indigenous communities' knowledge become entirely legal. International and European law thus do not protect the natural against private appropriation; they merely regulate the financial flow of that appropriation.

3.1. The Neem Tree Case (EP 0436257)

The neem tree (*Azadirachta indica*), used for centuries in India in Ayurvedic medicine and as a natural pesticide, was at the centre of one of the most resonant legal disputes in the history of intellectual property. In 1994, the American company W.R. Grace and the United States Department of Agriculture obtained from the European Patent Office patent EP 0436257 for a method of controlling fungi on plants, based on a hydrophobic extract of neem oil.

¹¹ European Parliament and Council of the EU, Directive 98/44/EC, OJ L 213, 1998, pp. 13-21.

¹² European Patent Office, Implementing Regulations to the Convention on the Grant of European Patents, Rule 27.

¹³ WTO, Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Marrakesh, 15 April 1994, UNTS vol. 1869, p. 299.

¹⁴ United Nations, Convention on Biological Diversity (CBD), Rio de Janeiro, 5 June 1992, UNTS vol. 1760, p. 79.

¹⁵ Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, opened for signature 29 October 2010, 3008 UNTS 3 (entered into force 12 October 2014).

¹⁶ WTO, Marrakesh Agreement Establishing the World Trade Organization, Marrakesh, 15 April 1994, UNTS vol. 1867, p. 3.

¹⁷ Convention on Biological Diversity, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993).

¹⁸ United Nations, Convention on Biological Diversity, 1992, Art. 15(1).

¹⁹ For the CJEU's interpretation of international agreements to which the European Union is a party, see Popescu, Roxana-Mariana, *Competențele Curții de Justiție a Uniunii Europene în materia controlului realizat cu privire la acordurile internaționale la care Uniunea Europeană este parte*, Universul Juridic, Bucharest, 2025.

²⁰ European Parliament and Council of the EU, Regulation (EU) No 511/2014 of 16 April 2014 on compliance measures for users from the Nagoya Protocol, OJ L 150, 20 May 2014, pp. 59-71.

Following a legal challenge mounted by a coalition including the European Parliament's Green Group, India's Research Foundation for Science, Technology and Ecology, and the International Federation of Organic Agriculture Movements, the EPO Opposition Division completely revoked the patent. The central argument was a violation of Article 54 of the EPC regarding lack of novelty, demonstrating that the fungicidal properties of the neem tree constituted prior art well known to the public in India. In 2000, the EPO Opposition Division revoked the patent. The holder filed an appeal, but the Technical Board of Appeal of the EPO dismissed the appeal by its Decision of 8 March 2005 in case T 0416/01 (Neem oil/W.R. Grace),²² definitively confirming the annulment of the patent for lack of novelty. Although the patent was annulled, this case exposed the structural vulnerability of the system: had laboratory technique introduced a minor modification to the stability of the chemical compound, the patent would have remained valid, despite the therapeutic effect being one known from generation to generation.

4. The Couachi Tree (*Quassia amara*) - Biopiracy Justified

To convert a biological resource into private property, the law employs a subtle legal fiction: biochemical reductionism. In its natural state, the plant and its use by communities are regarded as diffuse phenomena, lacking juridical and economic rigour. The moment a laboratory isolates a specific molecule, that molecule is declared to have been extracted from natural chaos. From a legal standpoint, isolation severs the causal link with the environment and the community of origin, creating a *tabula rasa* upon which a patent right may be constructed.

A contemporary case in the European space concerns the Couachi tree (*Quassia amara*), a medicinal plant from French Guiana. The French Research Institute for Development (IRD) obtained in 2015 European patent EP 2459203 for the identification of the active molecule Simalikalactone E (SkE), isolated from the leaves of the plant, as a remedy against malaria. The researchers identified the anti-malarial properties after conducting interviews with local indigenous and Creole communities, who used an infusion of *Quassia amara* in a traditional manner.

A legal opposition was filed before the EPO by associations protecting indigenous rights, arguing that the patent violated Articles 54 (novelty) and 56 (inventive step) of the EPC, constituting a direct appropriation of traditional knowledge without consent and without any real inventive contribution, given that the extract used precisely the same solvents (water or alcohol) that local people employed in their domestic preparations. Nonetheless, in February 2018, the EPO Opposition Division rejected the principal opposition and maintained the patent in a modified form, holding that the isolation of the active compound and its precise dosage constituted a scientific contribution distinct from raw traditional use.²³ The decision confirmed the orientation of the European legal order: traditional knowledge is treated as a mere raw premise, an unprotected exception in the absence of the laboratory filter.

The *de facto* consequence is that jurisprudence finds the validity of a biotechnological patent to be unaffected even if the biological resources were obtained illegally or unethically from a territory.

5. The Mandarin - the Exclusion of Traditional Agriculture

While pharmaceutical biotechnology uses the patent system, agriculture and horticulture use a dedicated *sui generis* system: the International Convention for the Protection of New Varieties of Plants²⁴ (the UPOV Convention, adopted in Paris in 1961 and revised in 1972, 1978, and 1991). This international framework is directly reflected in European Union law through Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights.²⁵ Unlike traditional farmers, whose seeds and local varieties evolve dynamically and are heterogeneous, legal systems based on the UPOV Convention impose strict uniformity. This legal regime drastically limits the farmer's exemption, restrictively provided for in Article 14 of Regulation No 2100/94,

²¹ European Patent Office, Technical Board of Appeal 3.3.02, Decision of 8 March 2005 in case T 0416/01, *Neem tree/W.R. GRACE & CO.*, EPO Boards of Appeal, 2005.

²² European Patent Office, Opposition Division, Decision of 21 February 2018 regarding patent EP 2459203, *Institut de Recherche pour le Developpement*.

²³ UPOV, International Convention for the Protection of New Varieties of Plants of 2 December 1961, as revised in 1972, 1978, and 1991, UNTS vol. 1861, p. 281.

²⁴ Council of the EU, Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, OJ L 227, 1 September 1994, pp. 1-30.

prohibiting in principle the free use of seeds saved from one's own harvest for propagation and the exchange of planting material, if these interfere with a protected variety. Replacing traditional crop varieties with commercial, high-yielding varieties during recent decades is one of the main drivers of the decline in farmland and crop diversity.²⁶

5.1. The EU Catalogue and DUS Criteria as an Epistemic Barrier

In the legal architecture of the European agricultural sector, the regulation of plant reproductive material is governed by a fundamental restrictive principle: to be able to cultivate or plant for commercial purposes, the variety used must be mandatorily registered in the EU Common Catalogues ("EU Catalogue").²⁷ This instrument constitutes a strict administrative market authorisation functioning as a commercial passport for seeds and seedlings. Unlike the plant variety right administered by the Community Plant Variety Office (CPVO) under Regulation No 2100/94, which is an optional intellectual property title intended to secure an economic monopoly for the breeder, registration in the Catalogue is a mandatory procedure.²⁸ No one may place on the market, sell, or introduce plant material on a wide scale if it is not registered in the Catalogue.

This mandatory conditionality transforms the Common Catalogue into an absolute barrier to the free use of genetic resources in agriculture. For admission to this list, any new variety must pass the rigid technical DUS tests (Distinctness, Uniformity, Stability), designed to serve biotechnological standardisation and intensive industrial agriculture. This requirement demands that plants be perfectly uniform and stable from one generation to the next -- criteria that complex biological structures cannot naturally meet without severe laboratory modification or selection.

The principal controversy of this structure lies in the direct exclusion of traditional seeds -- those that are, in fact, "natural". From a biological perspective, these natural (ancient) varieties are valuable precisely because of their great genetic diversity, variability, and capacity to adapt to the environment -- characteristics that cause them to fail structurally at the uniformity tests. The legal order has introduced special regimes, such as "conservation varieties" and "amateur varieties". Although these subcategories permit registration under relaxed DUS criteria, they are subject to severe limitations: the cultivation and marketing of conservation varieties is geographically restricted to their historical region of origin, while varieties intended for amateurs may only be packaged in minute quantities. Consequently, the system's logic remains intact: the natural is an exception.

Equally, to receive Community legal protection from the CPVO, a plant variety must cumulatively meet the criteria established in Articles 7, 8, and 9 of Regulation No 2100/94: distinctness, uniformity, and stability (the DUS criteria -- Distinctness, Uniformity, Stability). These criteria operate as an insurmountable epistemic and legal barrier against traditional agriculture. Local plant varieties and landrace populations developed by communities exhibit high genetic variability and dynamic adaptation over time, and are automatically rejected by the legal system because they are not sufficiently "uniform" and "stable" in the technical sense of the Regulation.

At the level of the European Union, this dynamic goes beyond the mere sphere of granting intellectual property rights; it becomes a public policy of exclusive promotion and regulation of industrial crops to the detriment of traditional varieties. Through Council Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material,²⁹ the European legal order establishes a restrictive market regime. Under Article 9, propagating material of fruit plants (including the genus *Citrus*, of which the mandarin is a member) may not be marketed within the European Union unless the variety is officially registered. The direct legal consequence is a de facto prohibition on the commercial cultivation of traditional varieties. European law thus validates exclusively the artificially created industrial variety suited to monoculture, transforming traditional varieties into a commercial illegality and marginalizing actual agricultural biodiversity.

²⁵ Ficiciyan, Anoush Miriam; Loos, Jacqueline; Tscharnke, Teja, 'Better performance of organic than conventional tomato varieties in single and mixed cropping', *Agroecology and Sustainable Food Systems*, vol. 46, no. 4, 2022, pp. 491-509.

²⁶ Council of the EU, Directive 2002/53/EC of 13 June 2002 on the common catalogue of varieties of agricultural plant species, OJ L 193, 20 July 2002, pp. 1-11, art. 4.

²⁷ For a detailed analysis of how the internal market's commercial regime enforces standardization and the elimination of non-tariff barriers exclusively for approved products, see Fuerea, Augustin, *Dreptul Uniunii Europene: Principii, actiuni, libertati*, Universul Juridic Publishing House, Bucharest, 2016.

²⁸ Council of the EU, Directive 2008/90/EC of 29 September 2008 on the marketing of fruit plant propagating material and fruit plants intended for fruit production, OJ L 267, 8 October 2008, pp. 8-22.

5.2. The Nadorcott Case (C-176/18)

The coercive force of these protection titles is illustrated in the case *Club de Variedades Vegetales Protegidas v. Adolfo Juan Martinez Sanchis* (Case C-176/18).³⁰ The litigation centred on the interpretation of Article 13 of Regulation (EC) No 2100/94, in the context of the unauthorised exploitation of the mandarin variety "Nadorcott". A Spanish grower had purchased and planted seedlings of this variety during the provisional protection period -- the interval between the publication of the application for a plant variety right and the formal grant of the title. The legal issue was whether the plant variety right holder could retroactively bring an infringement action in respect of harvested material (the fruit) obtained after the grant but derived from plants put in the ground during the procedural transitional phase.

By its judgment of 19 December 2019, the CJEU refused to endorse a trend towards the absolute expansion of the right of exclusivity. The Court held that during the provisional protection period the holder does not enjoy a right to prohibit (*ius prohibendi*) but only a prerogative to "equitable remuneration".³¹ The Court limited cascading control over the fruit, conditioning the sanctioning of infringement of harvested material on proof that the holder had no reasonable opportunity to exercise primary rights over the propagating material. This restrictive approach drew severe criticism,³² being viewed as a barrier to the pro-monopoly current championed by the biotechnology industry.

6. The Apple - Biological Monopoly through Contractual Control and Branding

6.1. The Limits of Contractual Control -- the Greenstar Kanzi Case (C-140/10)

The crucial precedent in the attempt by major consortia to extend the biological monopoly beyond the strict limits of the plant variety right was established in the case *Greenstar Kanzi* (C-140/10, 2011).³³ The litigation concerned the apple variety "Nicoter", marketed under the protected trade mark "Kanzi". The breeder Better3Fruit had granted an exclusive licence to Nicolai for the marketing of trees of the protected variety. The contract imposed a strict obligation: Nicolai could only sell the trees if the purchaser first signed a cultivation and marketing agreement for the fruit. Nicolai disregarded this clause and sold trees to the grower Hustin without requiring the signature of the agreement. Hustin subsequently sold the harvested apples to the trader Goossens. In the interim, Nicolai's licence had been terminated, and the new exclusive licensee, Greenstar Kanzi Europe, brought an action against Hustin and Goossens for infringement of the plant variety right.

Referred for a preliminary ruling, the CJEU refused to confer on rights holders an instrument of absolute control. The Court clarified that a licence does not constitute an absolute and unconditional consent to placing goods on the market. Article 27(2) of Regulation No 2100/94 allows the rights holder to invoke their rights against a licensee who breaches the contract, meaning that downstream acquirers cannot automatically invoke exhaustion of the right. The CJEU nonetheless held that not every contractual breach blocks exhaustion of the right. The rights holder may take action against downstream third parties only if the licensee breached a clause directly relating to the essential features of the plant variety right (such as geographic limits, duration of the licence, or volume of production). A purely commercial breach does not vitiate consent to placing the goods on the market. Moreover, subjective elements -- such as the good faith or ignorance of the downstream acquirer -- play no role in the assessment of infringement.

6.2. The Evergreening Strategy -- the Pink Lady Case and the Cripps Pink Saga

The failure of the contractual strategy in Kanzi propelled a more sophisticated trend: the superimposition of the plant variety right upon trade mark law in order to artificially extend the monopoly beyond the legal term -- a phenomenon known as evergreening. The apple variety "Cripps Pink" was developed in 1973 by John Cripps

²⁹ CJEU, Judgment in Case C-176/18, *Club de Variedades Vegetales Protegidas v. Adolfo Juan Martinez Sanchis*, ECLI:EU:C:2019:1130, para. 42.

³⁰ Annsley Merelle Ward, 'The Nadorcott Case - Shifting the plant variety paradigm from a proprietary to a liability rule', *The IPKat* (blog), 27 April 2020, available at <https://ipkitten.blogspot.com/2020/04/guestpost-nadorcott-case-shifting-plant.html>, last consulted 01.06.2026.

³¹ Wurtenberger, Gert, 'The Nadorcott case: The ECJ specifies the scope of the provisional protection period for Community plant variety rights', *Journal of Intellectual Property Law & Practice*, vol. 15, no. 4, Oxford University Press, Oxford, 2020, pp. 239-242.

³² CJEU, Case C-140/10, *Greenstar Kanzi Europe NV v. Jean Hustin and Jo Goossens*, ECLI:EU:C:2011:677, Judgment of 20 October 2011.

within the Western Australian Department of Agriculture (WAAA). The CPVO granted the Community plant variety right for "Cripps Pink" in 1997 and for "Cripps Red" (marketed as "Sundowner") in 1998, with protection set to expire in 2027 and 2028 respectively, upon the completion of the 30-year period provided for in Regulation No 2100/94 for fruit tree varieties. WAAA, as holder of the plant variety right, licensed its commercial rights in Europe, while Apple and Pear Australia Limited (APAL) administers the "Pink Lady" trade mark in most of the world and Star Fruits Diffusion holds marketing rights in Europe. The consortium registered the verbal trade mark "Pink Lady" at EUIPO, conditioning the sale of fruit on compliance with quality standards and the payment of perpetual royalties.³⁴ Through massive marketing, the official botanical name "Cripps Pink" was reduced to a subsidiary element in consumer perception. The mechanism of economic captivity is thus constructed: upon the expiry of the plant variety right, independent fruit growers may freely cultivate trees of the "Cripps Pink" variety, but cannot sell the fruit under the only name recognised by consumers. The temporary biological monopoly is converted into a perpetual commercial monopoly through the endlessly renewable trade mark.³⁵

This strategy generated three major legal confrontations. In Case C-226/15 P (2016),³⁶ the CJEU maintained robust protection for the earlier "Pink Lady" trade mark, providing the consortium with an instrument of indefinite control over distribution networks even in the declining phase of biological protection.

In Case T-112/18 (2019),³⁷ Pink Lady America LLC -- the North American trade mark holder, with interests adverse to WAAA -- sought annulment of the Community plant variety right on grounds of lack of commercial novelty, claiming the variety had been distributed in Australia before the novelty bar date of 29 August 1989. The General Court dismissed the action, finding that the applicant had not discharged its burden of proving WAAA's knowledge or consent to commercial exploitation of those early transfers.

In Case T-159/24 (2025),³⁸ Teak Enterprises Pty Ltd -- whose variety "Barnsby" had been declared an essentially derived variety of "Cripps Pink" by WAAA in 2020, thus blocking its commercialisation without consent -- filed a new nullity application based on qualitatively different evidence: statements from independent growers showing that WAAA had distributed biological material before 1989 without restriction, suggesting an implicit consent to commercial exploitation. After the CPVO Board of Appeal found "serious doubts" as to novelty in January 2024, WAAA challenged that finding. The General Court dismissed the appeal on 24 September 2025, confirming that implicit consent to sale may destroy commercial novelty and ordering the CPVO to conduct a full examination on the merits.

The evolution from the Kanzi case (2011) to the epilogue of Cripps Pink (2025) illustrates the constant effort of rights holders to perpetuate biological control through the superimposition of legal instruments, but also the resistance of the European courts, which limit these extensions through the rigorous application of novelty conditions and the limits of consent to commercial exploitation. The natural -- the plant variety, the harvested fruit, the traditional variety -- is not the starting point of the legal system but the exception by reference to which the system defines itself.

7. Ancient Trees - Conservation as Enclosure

The interpretation of the concept of "conservation" in European law has shifted from a paradigm of dynamic silvicultural management to a strict standard of non-intervention and isolation of the plant element. The case *Commission v. Poland (Bialowieza Forest, C-441/17)*³⁹ represents a symbolic conflict between national sovereignty over natural resources and the requirements of EU environmental law. In the years 2016-2018, Poland tripled the volume of logging operations in this UNESCO site, justifying the need to combat a bark beetle infestation. The CJEU ruled that Poland was in breach of the Habitats Directive (92/43/EEC) and the Birds

³³ UPOV, Explanatory Notes on Acts in Respect of Harvested Material Under the 1991 Act of the UPOV Convention, UPOV/EXN/HRV/1, UPOV Publishing, Geneva, 2013, p. 5.

³⁴ Jocelyn Bosse, 'General Court decision doesn't fall far from the Board of Appeal's tree on validity of apple plant variety rights', The IPKat (blog), 26 September 2025, available at <https://ipkitten.blogspot.com/2025/09/general-court-decision-doesnt-fall-far.html>, last consulted 01.06.2026.

³⁵ CJEU, Case C-226/15 P, Apple and Pear Australia Ltd and Star Fruits Diffusion v. EUIPO, ECLI:EU:C:2016:382, Judgment of 9 June 2016.

³⁶ General Court of the EU, Case T-112/18, Pink Lady America LLC v. Community Plant Variety Office (CPVO), ECLI:EU:T:2019:642, Judgment of 24 September 2019.

³⁷ General Court of the EU, Case T-159/24, Western Australian Agriculture Authority (WAAA) v. Community Plant Variety Office (CPVO), ECLI:EU:T:2025:723, Judgment of 24 September 2025.

³⁸ European Commission v. Republic of Poland (Bialowieza Forest), Case C-441/17, ECLI:EU:C:2018:255.

Directive (2009/147/EC) and ordered the immediate cessation of felling, including that "justified" on phytosanitary grounds.

Beyond the rhetoric of ecological victory, the Court's solution conceals a profound operation of enclosure of the forest ecosystem. Precisely stated, protection in the sense of EU law means absolute isolation, not active management. Under Article 6(2) of the Habitats Directive (92/43/EEC),⁴⁰ Member States must take "appropriate measures" to avoid the deterioration of habitats. In the Białowieża case, the Court held that any human activity -- including phytosanitary felling -- is incompatible with the Natura 2000 status, insofar as the management plan has not demonstrated the *sine qua non* necessity of the activity. Through this extensive interpretation of the negative obligation ("not to deteriorate"), the Court transformed a conservation directive into a mandate for isolation.

The parallel regime of Directive 1999/105/EC on forest reproductive material reinforces this dynamic: only officially certified, selected genetic material may be marketed for reforestation, favouring artificial uniformity of forest stock. The paradox and conflict are only apparent. In reality, the underlying logic displays the same treatment of the natural as a tolerated exception within frameworks imposed by "conservation" (isolation).

8. Conclusions

The legal histories of the pine, the neem tree, the Couachi tree, the mandarin, the apple, and the ancient forests reveal a profound structural reality: the Western and European legal order does not protect nature in its organic, dynamic, or traditional dimension, but treats it as an exception to be coercively administered or technologically reconverted. The process follows a clear logic.

The natural resource and the traditional knowledge associated with it are initially stripped of intrinsic legal value through conceptual neutralization. Biodiversity is conserved statically - through absolute prohibitions or isolated in gene banks - a fact that blocks communities' access to its natural biological use.

In parallel, through the fiction of biochemical isolation in the laboratory or through the rigid standardisation of criteria in monocultures, the same resources are extracted from the common domain, technically atomised, and reintroduced into the economic circuit in the form of patented inventions or protected varieties. International treaties, from TRIPS to the Nagoya Protocol, provide precisely the bureaucratic screen through which this appropriation is legalized under the guise of symmetrical benefit-sharing procedures.

Through the exclusion of local varieties via the strict mechanism of the EU Common Catalogues, legislation effectively declares the commercial marginality of dynamic biodiversity. Farmers are legally compelled to adopt patented, pure, and uniform genetic lines, eliminating *in situ* diversity from cultivation. Although special regimes exist, they are subject to severe geographic and quantitative restrictions that reduce them to an ornamental role relative to the dominant industrial production. The exception exists, but it confirms the structural rule: dynamic nature is marginally tolerated, not integrated into the center of the system.

The biotechnological patenting of traditional knowledge constitutes a mechanism for the extraterritorial extension of normative jurisdiction, operating through the reclassification of resources from under the territorial sovereignty of a third state. Legal scholarship has documented the consequences of this mechanism: through the TRIPS Agreement, intellectual property titles obtained in developed states may in practice block the capacity of countries of origin to valorise internationally products derived from their own ancestral genetic heritage.

The cases analysed also reveal nuanced resistance in jurisprudence. These are, however, the judicial exceptions that affected parties must obtain through considerable effort, before systems designed on a different underlying logic. Resistance exists, but its burden always falls on those who defend the natural, not on those who privatise it.

In this conceptual architecture, biopiracy and legal manipulation in horticulture do not represent accidents or violations of the spirit of the law, but the natural expression of the transformation of the natural into a technocratic, private, and controlled asset. The certified uniformity of crops, the monopolisation of varieties through contractual strategies or through the evergreening of the commercial trade mark, and the museum-like conservatory isolation of virgin forests are faces of the same coin. They belong to the same logic that refuses to nature the quality of partner in a relationship of coexistence, accepting it exclusively as raw material regimented in global legal circuits.

³⁹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, pp. 7-50.

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