

IP Hotline

February 09, 2009

PREVENTION IS BETTER THAN CURE-CSIR MOVES TO PROTECT TRADITIONAL KNOWLEDGE IN EUROPE!

When Neil Armstrong said, “*This is one small step for man, one giant leap for mankind*” he set the pitch for concurring the moon. Now swap the word mankind with “protection of traditional knowledge” and you would gather the significance of this development. The European Patent Office (“EPO”) will now, prior to granting patents, consult an Indian database, the “Traditional Knowledge Digital Library”¹ (“TKDL”), that lists traditionally known drug formulations and contains a 24-million-page searchable database that translates text from Sanskrit, Urdu etc. into English, German, French, Spanish and Japanese. The Indian Council for Scientific and Industrial Research (“CSIR”) and EPO recently signed an access agreement to this effect which will likely result in at least 40 patent filings in Europe being rejected, which may have otherwise been successful.²

WHAT IS TRADITIONAL KNOWLEDGE?

World Intellectual Property Organization (“WIPO”), defines traditional knowledge as, “*tradition-based literary, artistic, or scientific works; performances; inventions; scientific discoveries; designs; marks, names, and symbols; undisclosed information; and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields*” This definition is inclusive of indigenous knowledge related to various categories like agricultural knowledge, medicinal knowledge, etc.³

NIP LITIGATION IN THE BUD

With the advent of globalization, intellectual property rights and their protection have become more and more important. The creation of monopolies often transgresses over the rights of others. One such right is the right of traditional knowledge. In India the Patents Act, 1970 does not allow traditional knowledge to be patented.⁴ India has long been trying to resolve the issue of foreign patent grants on products with medicinal values which form part of the traditional knowledge in India. The last decade or so has witnessed patents granted for turmeric and basmati by the United States Patent and Trademark Office (“USPTO”) and neem by the EPO which were ultimately successfully opposed by India based organizations like CSIR.

The EPO had granted a patent in 1995 to the United States Department of Agriculture (“USDA”) and the multinational corporation W.R. Grace for a fungicide derived from seeds of the Neem tree, a tree indigenous to the Indian subcontinent. Leading the campaign in the Neem case against the US multinational was the EU Parliament's Green Party, India-based Research Foundation for Science, Technology and Ecology (“RFSTE”) and the International Federation of Organic Agriculture Movements (IFOAM). The mainstay of RFSTE's challenge was that the fungicidal qualities of the Neem tree and its use had been known in India for over 2,000 years. The RFSTE contested that various parts of the Neem tree (bark, leaves, seeds, etc) had been used traditionally to make insect repellents, soaps, cosmetics, tooth cleaners and contraceptives. In addition, documented evidence was also presented by India which included research done by two scientists prior to 1995 on use of Neem for making several products including fungicide. This was used as prior art to revoke the patent granted to USDA and W.R. Grace. In addition to the Neem case and Turmeric case at the USPTO, a patent on a variety of Basmati rice and a number of patents on the different asanas or positions of yoga have been embroiled in long standing litigation. India scored a significant victory in the Basmati case by successfully contesting 15 out of the 20 claims of the patent.

Though technically another 2000 such existing patents based on traditional knowledge can be challenged, lack of financial and other resources is a deterrent. CSIR has therefore taken a step in the right direction with the TKDL. The TKDL will provide the EPO access to a larger database to identify prior art and reduce the transgression of rights in traditional knowledge mentioned above.

CONCLUSION

At the EPO, around 100 patent applications per year are related to such medicinal preparations based on traditional knowledge, but not all of them relate to subjects covered by TKDL. Moreover, critics have cautioned that the government should also think about negotiating access rights to the TKDL to private parties and other non-governmental entities. The Indian government is also in talks with the US Patents and Trademark Office, or USPTO, to extend the initiative to US.

This sharing of information with the EPO and hopefully with others will increase the cooperation between India and foreign patent offices and other organizations in a manner that has never happened before. This will undoubtedly lead to more protection of traditional knowledge and reduce litigation.

- Ranjana Adhikari & Vivek Kathpalia

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1. Visit <http://www.tkdI.res.in/tkdI/langdefault/common/home.asp?GL=Eng>. This is a collaborative project of CSIR and Department of Ayurveda Yoga & Naturopathy Unani, Siddha and Homeopathy (AYUSH).
2. "Ginger Can't Be Patented in Europe Now", February 6, 2009 <http://www.livemint.com/2009/02/05214415/Ginger-can8217t-be-patented.html>
3. Visit IPPro's database at http://www.ipproinc.com/usefulinformation_links.php?sub_id=54 to know more about "Traditional Knowledge".
4. Section 3 (p) The Patents Act, 1970 "an invention which, in effect, is traditional knowledge or which is an aggregation or duplication of known properties of traditionally known component or components", is not considered an invention under the Act."

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