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## **AYURVEDA: AN IP BASED APPROACH**

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### **Traditional Medical Knowledge: The Concept**

WHO defines traditional medicine as “the sum total of the knowledge, skills and practices based on the theories, beliefs and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health as well as in the prevention, diagnosis, improvement or treatment of physical and mental illnesses.” It serves the health needs of a vast majority of people in developing countries and is the only affordable treatment available to poor people as well as remote communities. Traditional medical knowledge is often associated with genetic resources. As an example, calanolides, compounds derived from the latex of *Calophyllum* trees found in the Malaysian rain forest are a potential treatment for HIV and certain types of cancer. Because genetic resources exist in nature and are not creations of the human mind, they cannot be protected directly as intellectual property. However they are subject to access and benefit sharing regulations. But these regulations need not always be the order of the day. For instance, in the case of captopril, a drug used to treat hypertension and heart failure, no benefits have flowed back to the indigenous Brazilian tribe that first used pit viper venom as an arrowhead poison.

### **International forums and Traditional Medical Knowledge**

WHO promotes the use of traditional medical knowledge for healthcare.<sup>i</sup> WIPO on the other hand is concerned with its protection in the IP sense. Specific reference needs to be made in this context of patents based on traditional Indian medicine that have included the use of turmeric for healing wounds, the anti fungal properties of neem and a diabetes medicine made from extract of jamun – all of which were subsequently revoked. Measures undertaken by WIPO also include changes to the PCT’s (Patent Cooperation Treaty) Minimum Documentation and the International Patent Classification so as to improve searches for “prior art” and prevent patents from being granted in error. It is worth mentioning in this context that WTO’s work on access to medicines is guided by the Doha Declaration on the TRIPS Agreement and Public Health.<sup>ii</sup>

## **Ayurveda – the science of life**

Ayurveda is a deep – rooted Indian recuperating framework which points essentially to advance well being as opposed to battle against illnesses. It is neither legends nor folklore, but is rooted in the tridosha principle that each person is born with a primary inherent characteristic that mainly determines his / her susceptibility to diseases and response to the prevailing external environment, diet and medication. Thus Ayurveda is a traditional medication framework that began in India 5000 years ago and is referenced as a sub-part of Atharvaveda.

### **Patents and Ayurveda**

Patents are the most important type of IP protection for medicines. But to obtain a patent, an invention must be novel, inventive and industrially applicable. Holders of traditional medical knowledge can face significant obstacles in satisfying these conditions- especially the requirements of novelty. Needless to say, it can be difficult to claim that a remedy involves an inventive step, in the light of the fact that herbal medicines typically comprise natural products in their raw form. Moreover, identifying how the claimed invention differs from prior art can also be problematic. However, there can be exceptions too. Instances include patents based on maca, a traditional Peruvian food and medicine first cultivated by the Incas as well as a patent based on kava, a medicinal plant first domesticated in Vanuatu. In China, patent law protects new traditional medicine based products and new uses of traditional medicine including herbal preparations. In the Indian context it needs to be confessed that current provisions of the patent law are obstructive in nature for getting patent on Ayurvedic medicines. The need of the hour is not to be satisfied with the notion “we check the patent” due to TKDL (Traditional Knowledge Digital Library) but to think in the direction of having a patent on the basis of Ayurvedic traditional knowledge in a modified form which must ensure placing patentable medicine in international commerce with evidence based claims of quality, safety and efficiency. It deserves to be highlighted that the process of extraction of active ingredients and product developments by using medicinal plants of Ayurveda as well as usages of these with new purposes are very much patentable subject matter in the national law.

### **Trademarks and Ayurveda**

Trademarks protect distinctive signs such as words, phrases, symbols and designs that identify the source of a product. By registering trademarks companies can protect their brand identity, prevent counterfeit products and foster consumer trust. In the context of traditional

medical knowledge, trademarks have been used to market products such as Truong Son Balsam, a balm of medical plants from Viet Nam. In the context of Ayurveda, established brands like Patanjali, Dabur and Kottakkal Arya Vaidya Sala have successfully leveraged trademark protection to build their reputation. However, trademarks do not prohibit third parties from using traditional knowledge without the mark or under a different mark.

### **Geographical Indications and Ayurveda**

Geographical Indications can provide a legal mechanism to protect products that have specific qualities, reputation or characteristics attributed to a particular region. As with trademarks, GIs can be used only to protect products based on traditional medical knowledge and not the knowledge itself. Moreover they cannot protect against the same use of the knowledge that is not associated with a place. Some examples of medicinal plants with GI tags are Green Cardamom from Alleppey and Nilgiri Tea from Tamil Nadu. Similarly saffron from Jammu & Kashmir is highly regarded for its medicinal properties including its use in treating migraine. GIs can also help promote sustainable agriculture practices and protect the regions that are essential to Ayurvedic medicinal plant supply chains. However, in the Indian context, it needs to be emphasized that the main hurdle stopping Ayurvedic treatments and massages to be bestowed with the GI tag is that they are services and GI tags are only provided for goods. There are numerous countries such as Azerbaijan, Bahrain, Croatia and Singapore that have legislations for the provisions of the GI tag for services as well as goods. India can also adopt a GI protection regime on similar lines.

### **Trade Secrets and Ayurveda**

A trade secret is information not generally known or reasonably discoverable through which an IP holder can obtain some economic advantage. India does not have a separate legislation for trade secret protection. Trade secrets are protected in our country primarily through contract law. Section 27 of the Contract Act provides a remedy and prohibits a person from releasing any information obtained during employment or through a contract. It is worth mentioning in this context that the National Innovation Bill, 2008 was an effort to create a legislation with respect to protection of confidential information, however it was not tabled in the Parliament. In the context of Ayurveda, studies from the field suggest that the industry is actively indulging in trade secrecy despite the fact that the contribution of the current legal mechanism in this regard is minimal. In fact, there are two broad areas where trade secrets exist

in Ayurveda – one with respect to the raw materials used and another vis-a-vis the processes involved in the manufacture of proprietary medicines.

### **Sui Generis Systems and Ayurveda**

Some countries have adopted special sui generis laws and measures to protect traditional medical knowledge. For example, Thailand's Act on Protection and Promotion of Traditional Thai Medicinal Intelligence protects formulae of traditional Thai drugs and texts on traditional Thai medicine. China also has a specific legislation to protect traditional medicine which includes massages and treatments namely The Law of the People's Republic of China on Traditional Chinese Medicine, 2016. India however does not have any such legislation. Perhaps the need of the hour is to come up with such a law to actively promote traditional medical knowledge in general and Ayurveda in particular.

### **Conclusion**

Ayurveda, India's ancient system of medicine has seen a significant rise in global popularity as a wellness trend. India's IP laws – in particular the Trademarks Act 1999 – provide strong support for protecting Ayurvedic products, but there is a long way to go. Future directions for IP in Ayurveda could include – but in no way be limited to- expanding GI registrations and leveraging technology for IP enforcement. The latter will no doubt comprise of digital tools such as block chain technology which can help trace the supply chain of ayurvedic products ensuring transparency and authenticity at every stage of production. As Ayurveda continues to expand, effective use of IPR will be crucial in building its brand value, nay safeguarding its legacy.

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<sup>i</sup> WHO fact sheet No.134 "Traditional Medicine"

<sup>ii</sup> [www.wto.org/english/tratop\\_e/trips\\_e/who\\_wipo\\_wto\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/who_wipo_wto_e.htm)