

Chapter 28

Analysis of International Patent Applications for Inventions Like Traditional Herbal Medicines

Pankaj Kumar

IIS (Deemed), India

Ameeta Sharma

IIS (Deemed), India

ABSTRACT

Numerous applications have been filed for patents based on bio-inventions in the Indian patent office. Although there is not any international patent, there is a system of international patent applications whereby the applicant may designate name of countries where they wish to file application for patents nationally. According to international patent classification, the concern class for such a patent applications is A61K36/00. More particularly, the international class (IC) A61K36/00 relates to medicinal preparations of undetermined constitution containing material from algae, lichens, fungi or plants, or derivatives thereof (e.g., traditional herbal medicines). International applications filings under patent cooperation treaty (PCT) for patent purposes can be accessed at the Patentscope (patent search tool of WIPO). All international patent applications for such TK-based inventions have been accessed online at Patentscope using the classification code A61K36 for this study.

INTRODUCTION

Patents are exclusive rights granted to inventors that prevent others from making, using, selling or importing the patented invention, for a term of at least 20 years. The criteria for granting patents are novelty, inventiveness and industrial applicability. Now days patents are considered barometer of scientific research & development of a person or country.

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RESEARCH QUESTIONS

Whether patent applications for bio-inventions based on traditional knowledge considered for patentability criteria as being the traditional knowledge per se considered part of public domain and lacking novelty.

Whether the applicant and inventors in such patent applications are from the indigenous societies maintaining such knowledge since time immemorial?

What are the trends of filing such applications for patents?

What are the top applicants, top inventors, top years of such publications in the subject?

LITERATURE REVIEW

Herbal drugs are gaining worldwide prominence due to their distinct advantages. Developing countries have started exploring the ethno-pharmacological approach of drug discovery and have begun to file patents on herbal drugs. The expansion of R&D in Indian herbal research organizations and presence of manufacturing units at non-Indian sites is an indication of the capability to develop new products and processes. The present study attempts to identify innovations in the Indian herbal drug sector by analyzing the patenting trends in India, US and EU (Sahoo et al., 2011) .

With the emergence and re-emergence of infectious diseases and development of multi-drug resistance, there is a dire need to find newer cures and to produce more drugs and vaccines in the pipeline. To meet these increasing demands biomedical researchers and pharmaceutical companies are combining advanced methods of drug discovery, such as combinatorial chemistry, high-throughput screening and genomics, with conventional approaches using natural products and traditional knowledge (Gupta et al., 2005) .

Ayurveda is getting its due recognition as a rationale system of medicine worldwide despite the fact that medical and scientific fraternity of the globe has very strong opposite opinion regarding safety and efficacy of Ayurvedic medicines. Meanwhile, provisions of Intellectual Property Rights under World Intellectual Property Organization (WIPO) and Patents have attracted many individuals and organizations to explore possibilities of commercial benefits with Ayurvedic traditional knowledge. Although rules are not favoring to grant a patent on prior published knowledge, biopiracy managed grant of Patent on knowledge of Ayurvedic medicinal plants which has been successfully checked with references of data base of Traditional Knowledge Digital Library (TKDL). Current provisions of the Patent law of India are obstructive in nature for getting patent on Ayurvedic medicines. If we have to invite researchers from basic science to ensure quality, safety and efficacy of Ayurvedic medicines, there is an urgent need to amend laws of patent with pragmatic promotional policies. This will encourage more patents on numerous pharmaceutical, nutraceutical and cosmaceutical products based on Ayurveda. As every action of today's world is based on economic criteria so why stakeholders of Ayurveda should be deprived of it.

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