applies. TM will continue to be difficult to patent in India. The Amendment lists what are not inventions:

> the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.[85]

The principal Act of 1970 has a similar provision, but it does not specifically consider an invention to be a new use of a known substance that results in enhancement of the 'known efficacy.' While case law will have to be developed, this appears to be favorable to patenting some TM. However, given that the US has a huge pharmaceutical market, there have been instances where Indian TM has been patented in America.

2. *Tumeric*

In 1995, the US patent office granted a patent (5,401,504) for tumeric (*Curcurma longa*) for the 'invention' of wound healing. The applicants were a team of two scientists (expatriate Indians) from the University of Mississippi. The plant was well known in India for both culinary use and as a traditional medicine. Greeks and Romans also knew it for its medical properties. The Council of Scientific and Industrial Research in India challenged the patent. It was invalidated[86] for lack of novelty by the USPTO, who cited prior art in Indian TK. This is the earliest example of a successful challenge to a patent based on TK.[87]

3. *Indian Bio-Diversity Act*

As a result of several cases dealing with the purported infringement of TK, the First Inter-Ministerial Committee on Protection of Rights of Holders of Indigenous Knowledge was convened in New Delhi.[88] The Committee focused primarily on protection and explored possibilities for future legislation. This meeting gave impetus to the Biological Diversity Act 2002,[89] which specifically addresses TK. Broadly, it seeks to regularize access to genetic materials on the one hand, while protecting TK on the other. It provides for more centralized decision-making. Chapter 3 of the Act gives exclusive rights to the Central government in the form of the National Biodiversity

85 *Id.* at § 3.
86 See Reexamination Certificate B1 (3500th) (Apr. 21, 1998) (cancelling claims in U.S. Patent No. 5,401,504).
87 See Graham Dutfield, *Trade Related Aspects of Traditional Knowledge*, 33 CASE W. RES. J. INT'L. L. 239 (2001).
88 See Srividhya Ragavan, *Protection of Traditional Knowledge,* 2 MINN. INTELL. PROP. REV. 1, n. 272 (2001), for a discussion of the minutes.
89 Biological Diversity Act 2002. English text of Act is available on http://grain.org/brl_files/india-biodiversityact-2002.pdf (last visited Sept 1, 2006).