

Patenting Traditional Medicine

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INTRODUCTION

Traditional medicines (TM)¹ can form the basis of modern pharmaceuticals. Depending upon national laws, it is possible to protect TM with patents. For instance, a US patent can be issued that derived information or even genetic resources from the TM of another country. This has raised criticism from a number of different perspectives. Most notably there is a perceived conflict between traditional knowledge (TK) structures and patent law. Some question if TM is even an intellectual property (IP) right. There are a number of proposals to protect TM using other forms of IP rights, such as geographical indications and trade secret law. These issues are far from settled, and can have strong political overtones. Before going further, however, TM will be considered in the light of other IP rights.

TM has been a source for pharmaceuticals for a long time. Aspirin is a good example. The ancient Egyptians used willow leaves as an analgesic and anti-inflammatory drug. The Classical world was also familiar with the healing properties of this plant. Hippocrates (460 – 370 BC) recommended the use of extracted juice from the bark of the white willow to suppress pain and fever. It was only in 1828 that the extract of willow bark was purified. In 1859 the chemical structure was identified. The drug was mass produced shortly thereafter. Bayer registered the compound on 1 February 1899 under the name of Aspirin. The ‘a’ stood for acetyl, and the ‘spir’ for *Spiraea ulmaria*, the plant from which the drug had first been isolated. Today it is the most popular analgesic in the world, and new discoveries are ongoing.² In the case of aspirin, the TK that helped researchers to find the active ingredient was thought at the time to be in the public domain. If aspirin were patented in recent decades, there would no doubt be litigation over who supplied the TK. Other examples of drugs derived from natural

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1 According to the World Health Organization, the term traditional medicine refers to: “health practices, approaches, knowledge and beliefs incorporating plant, animal and mineral based medicines, spiritual therapies, manual techniques and exercises, applied singularly or in combination to treat, diagnose and prevent illness or maintain well being.” World Health Organization Fact Sheet No. 134 <http://www.who.int/mediacentre/factsheets/fs134/en/print.html> (last visited Sept. 5, 2006).

2 See generally DIAMOND JEFFREYS, ASPIRIN: THE REMARKABLE STORY OF A WONDER DRUG (2004), for a general discussion of the history of aspirin.