

The statutory protection of TCM appears to offer an alternative in cases where scientific techniques are not integrated into TCM. There is apparently no need to fully characterize the drug, beyond being a stable mixture. The main focus is on clinical effectiveness. This form of protection appears to be much easier and less expensive to obtain than a patent. The Chinese example, however, shows that patent protection for TCM is still widely used and is growing in popularity. There is no doubt wide scale public acceptance of patents that a statutory system would find hard to match.

3. *A Database of Traditional Chinese Medicine?*

While southeast Asian countries such as India are enthusiastic about the establishment of database protection of TM, China does not seem to be moving in that direction. It is possible that given their current level of protection, via patents and the regulation of 1992, there is adequate protection and there is no need for a database. On the other hand, there are a number of factors that make a TCM database a very different undertaking from southeast Asia. One of the most obvious factors is language. For instance, China, Korea and Japan have a partially shared history in the development of TM. The result is that there can be the same formula titles used for traditional remedies, yet these will be pronounced differently in all three countries. It is difficult to communicate precise information about some aspects of TM given this level of uncertainty.¹⁷⁹ The titles of TCM as expressed in Chinese characters have an ideographic meaning as distinct from a phonetic one as in an alphabetic system. When Chinese characters are translated into English directly – without explanation – a scientist would not understand their meaning. Many words indicate not only specific herbal materials and effectiveness but also expressions familiar only to Chinese culture. The problem is particularly acute with remedies involving multi-herb formulations.¹⁸⁰

A recent attempt to classify TCM into a database involved seven distinct groups of information: 1. A systematic botanical description; 2. Herbal formulae with bibliography; 3. Diseases or symptoms treated; 4. Traditional processing methods to remove toxic ingredients; 5. Chemical structures of ingredients; 6. Safety and toxicity data; and 7 Clinical reports of interactions with western drugs.¹⁸¹ While some of this information is relevant only when using these drugs, other aspects are essential when determining prior art for the purposes of a patent. Items 1-5 are essential, while safety items 6 and 7 are less of a concern at that stage. The authors did note that they had particular difficulty in translating the titles of the formulae as well as interpreting the symptoms and diseases as they were described in the literature.

While several of these issues arise for any proposed TM database, it appears that the situation for TCM and similar systems make preparing such a database difficult and

179 See J. Park, H.J. Lee & E. Ernst, *What's in a name? A systematic review of the nomenclature of Chinese medical formulae* 30 AM J CHIN MED 419 (2002).

180 See M.Q. Zhang, *A treatise on the standardization of prescription's name*, in EXPERTS MEETING FOR THE STANDARDIZATION OF TITLES OF CHINESE PRESCRIPTIONS 33, 39 (I.M. Chang ed. 1996).

181 Yeong-Deug Yi & Il-Moo Chang, *An Overview of Traditional Chinese Herbal Formulae and a Proposal of a New Code System for Expressing the Formula Titles* 1 EVIDENCE-BASED COMPLEMENTARY AND ALTERNATIVE MEDICINE (eCAM) 125 (2004).