Overview of Protection of Traditional Medicine & GRs in China

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Outline

I. Overview of Protection of TM In China

II. Legislation and Policy Developing of TM and GRs in China
I. Overview of Protection of TM In China

- What is TM (Traditional Medicine)?
- Laws and Regulations relating to TM in China
- Intellectual Property Right system of protecting TM in China
What is Traditional Medicine?

• These experiences accumulated by people during their preventing or treating many kinds of diseases for a long period in past times.
Characters of TM

- Long history

- accumulated experience

- Some is disclosed and codified, some is not
International treaties of Intellectual Property China joined

1. WIPO Convention 1980.6.3
2. Paris Convention 1985.3.19
3. Madrid Agreement (Marks) 1989.10.4
5. Universal Copyright Convention 1992.10.30
6. Rome Convention 1993.4.3
8. Budapest Treaty 1995.7.1
9. UPOV (the International Union for the Protection of New Varieties of Plants) 1999.4.23
10. Agreement on Trade-related Intellectual Property 2001.11
Laws and Regulations concerning TM that Chinese National People’s Congress had approved

- Trademark Law (1983, 2001)
- Copyright Law (1990, 2001)
- Law against Unfair Competition (1993)
- Regulations on Customs Protection of IPRs (1995)
- Regulations on the Protection of New Plant Varieties (1997)
- Regulations on Administrative Protection for Pharmaceuticals (1993)
- Drug Administration Law (2001)
National Laws and regulations relevant to TM

• The Constitution of the P.R.China
• Regulations on TCM (Traditional Chinese Medicine) of the P.R.China
• The Pharmaceutical administration law of the P.R.China
• Regulations of the P.R.China on the protection of TCM varieties
• Medical practice law
• Regulations on the administration of medical institution
Intellectual Property Right system of protecting TM in China

- Protections of TM out of public domain and the innovation of TM by existing IPR system
  - as trade secret
  - by patent system
  - by Trademark, service marks, commercial names and design
  - as Geographical Indications
  - by Copyright
  - by new varieties of plants right
Intellectual Property Right system of protecting TM in China

- Protections of the codified TM by existing IPR system
  --Geographic indication
  --Trademark (can protect old name of TCM enterprises)
  --Product Design Patent
Disadvantages in protection of TM by existing IPR system

• Unclear active components of traditional products and clear claim requirement
• International standard to evaluate patent application of TM
• Permitting traditional products to enter the international market
• TM knowledge and public domain
Compensatory approach for the sold product of TCM in China

- Regulations of the People’s Republic of China on the protection of Chinese traditional medicine varieties
II. Legislation and Policy
Developing TM and GRs in China

• Legislation of specific protection of TM in progress
  --From 2005, started the legislation of specific protection of TM, Responsible by State administration of TCM of P.R.China;
  --Government shows great concern and attaches more importance to
  --In Oct.2009, made a draft of TM Law (as sui generis); the chapter of protection of TMK and TCM culture
  --then entered into the legislation plan of legislative Affairs Office of the State Council of P.R. China.
II. Legislation and Policy
Developing TM and GRs in China

• The third amended patent law had entered into force on October 1st, 2009
  -- Requirement of disclosing direct and original source of genetic resource in patent application
  -- privide the definition of the genetic resource in the context of the patent law
Conclusion

• TM may be protected by the following aspects in China
  – Using existing IPR system
  – By The Convention on Biological Diversity
  – Establishing *sui generis* system for TMK
THE END

Thank you for your attention!