FICCI-WIPO
INTERNATIONAL CONFERENCE ON TRADITIONAL KNOWLEDGE
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USING EXISTING IP SYSTEM FOR THE PROTECTION OF TK AND TCE’S

INDIAN POSITION

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Traditional Knowledge and Traditional cultural Expression

- Part of the living heritage of India
  - Associated with biological resources
    - Medicinal, agricultural
  - Integral part of the art and culture of the communities
    - Art, music, performances
    - Cultural products and practices

- Potential wealth creation for communities
  - Scope for commercial exploitation

- Bio-piracy extensive misappropriation
  - Need for prevention

**Patent Law requirements:**
- Patentable subject matter: Product/Process (not excluded s. 3,4)
- Novelty, capable of industrial application, Inventive step (standard of Phosita)

How TK/TCE satisfy these requirements and qualify for Protection? (Disclosed/undisclosed)

**Defensive protection granted under Patent Act Section 3**

Disclosure Requirements:
- Grounds of opposition
- Grounds for revocation

- How disclosure requirement trigger ‘Benefit sharing’?
- Biological Diversity Act? Permission of NBA—where is PIC of TK holder

Limitations !!
- Only defensive
- No positive rights!
- Cannot prevent misappropriation

Utility Models? Thai Model?

Joint Owners?
Examples

Varieties of Alcoholic beverages
• Ayurveda: like:
  • sarkara, gowda (sugar based wine)
  • Mardvika (dry grapes) (fruit based)
  • Sura, (cereal based water + flour, jaggery)
• Vibhitaka sura (Varuni, Madhuka)
• Madya (flowers of madhuka)
• Sukta (vinegar)

BEVERAGES WITH MEDICINAL VALUES

Cure of SNAKE-BITE
using of seven plant species effectively in tribal dominated districts of MP and Chattisgarh. Out of 34 species generally used
SUJEN rice beer of Assam (socio-cultural life of Deori tribe)

Hyderabad fish medicine?

Issue of patenting of yoga mats, devices, other Apparatus to increase efficiency of practice Of yoga asanas !!
Protection of Microorganism/microbe and the processes of fermentation

– Common fermented cereal
  • Idli, Dosa, Dhokla, Kinema (used in Darjeeling Hill region=from soyabean)---fermented rice and ambali, fermented vegetable foods, fermented milk foods, fermented fish foods (Ngari, Hentak, Tungtap==Manipur, Meghalaya)

– Fermented beverages
  • Soor (Himalayan tradition) (Apple, pears, peach, rice barley, finger millet used as materials for preparation)
  • Jhara (rice beer)
  • Tchang (by sikkim people) (fermented millet)
  • Palm wine or toddy
  • Jackfruit wine (Nagaland, Tripura)
  • Zutho (unhulled rice grains for fermentation)
  • Fenny (coconuts, fruit pulp of cashew)

[source: Traditional Fermented products by Indian folks and IPR, S Sekar & S. Mariappan, IJTK Vol 6(1) Jan 2007]
Patents

Even where patentable, COST of acquisition may deter

Also, the duration will be Limited

Alternative of Trade Secret Protection?
Can the ambit of National Innovation Bill 2008 Be widened to incorporate TK/TCE?

Helps in protecting Undisclosed TK that is Technological and of economic value
Copyright Protection

Folk tales, poems
Theatrical works
Pictorial, fabrics
Carpets, pottery,
Ceramics, sculpture
Carvings

Yoga: book, CDs,
DVDs on yoga (not
Yoga asana per se)

ORIGINAL EXPRESSION
in
Literary, Dramatic
Musical, Artistic
works

Sound record
cinematograph
Performance
broadcast

In TCE: Issues of
Originality, Fixation, Duration, fixation
Individual rights, fair use &
Economic focus

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**Whether TCE?**

<table>
<thead>
<tr>
<th>1. Traditional handicrafts of Gond Tribes of Vidarbha</th>
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<tbody>
<tr>
<td>Wood carving skills:</td>
</tr>
<tr>
<td>Pog-gota (tobacco-box)</td>
</tr>
<tr>
<td>carved out of shivan tree</td>
</tr>
<tr>
<td>Moond == solid trunk of Salai tree carved in chain like structure used during marriage.</td>
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<tr>
<td>Bamboo craft</td>
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<th>2. Hira potters in lower Brahmaputra valley of Assam</th>
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<tr>
<td>women potters practicing pottery without wheel!</td>
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<td>Have seven stages of pottery manufacturing technique</td>
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</table>

- Gond and Korku tribes of Vidarbha = preparation of musical instruments, such as flutes, drums
- Paintings, Dance cultures
- Artefacts, etc in different Parts of India

Madubani
Article 15 (4) Berne Convention.

In the case of the unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.... (b) Countries of the Union which make such designation under the terms of this provision shall notify the director general [of WIPO] by means of a written declaration giving full information concerning the authority so designated.

- Creative contribution by community to be recognized
- Conferment of community rights in Exceptional cases
- Expand the scope of moral rights
- Limit the scope of derivative works, if based on TCE
- Role of copyright societies + cooperative societies

Can TCE be Protected As unpublished work

But Question of Individual Rights u/BC

If so,
Trade Mark and Trade Name

Trade mark

Be
A mark
Distinctive
Use in trade
Graphical representation

Certification Marks

Goods and services
Offered by
TCE holders
May utilize TM
Industrial Designs

Features of shape, configuration
Pattern, ornamentation
Applied to article
Appeal solely to the eye

TCE
Like utilitarian crafts
Receptacles, leather, wood,
Other articles

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Geographical Indication and TK/TCE

**Common factors:**

- Collective ownership
  - (collective traditions and a collective decision-making)
- Evolves over a period of time
- Low technology intensive
- Associated with region/territory
- Associated with producers/holders
- Longer protection possible (10+)
- Use of traditional practice provides economic benefits
- Protects and rewards tradition
- Any association of persons or producers or any organization or authority established by or under any law for the time being in force representing the interest of the producers of concerned goods

Mysore Agarbathi (incense sticks)
Geographical Indication and TK/TCE

Registered GIs:

More in Textiles and Handicrafts
Followed by Agricultural and Horticultural products

Limited Industrial, consumer goods, food
Geographical Indication and TK/TCE

- Traditional Knowledge in products not protected by GI

- GI – social cost v. social benefit?

- TK based product may not meet PRODUCT-PLACE OF ORIGIN-QUALITY TRIANGLE

Creation of good will and reputation For TK Comm. is difficult
Thanks
for your kind attention

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