

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 Act 1970

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

Examples

Varieties of Alcoholic beverages

- Ayurveda: like:
- sarkara, gowda (sugar based wine)
- Mardvika (dry grapes) (fermented)
- Sura, (cereal based) water, wheat flour, jaggery)
- Vibhitaka sura (Varuni, Madhu)
- Madya (flowers of madhu)
- 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

• UJEN rice beer of Assam (social cultural life of Deori tribe)



Hyderabad fish medicine?

Issue of patenting of yoga mats, devices, or 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?



ONF ON TK

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)

copyright

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

ramakrishna



Whether TCE ?

1. Traditional handicrafts of Gond Tribes of vidarbha

Wood carving skills:
Pog-gota (tobacco-box)
carved out of shivan tree

Moond ==solid trunk of
Salai tree carved in chain
like structure used during
marriage.

Bamboo craft

2. Hira potters in lower Brahmaputra
valley of Assam □ women potters
practicing pottery without wheel !
Have seven stages of pottery
manufacturing technique

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

Copyright Protection for TCE ?

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

Geographical Indication and TK/TCE

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

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++)

Protects and Rewards Tradition

Use of traditional Practice provides Economic benefits



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



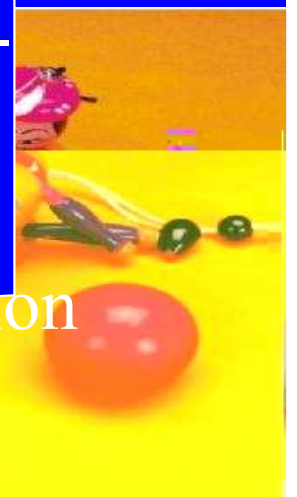
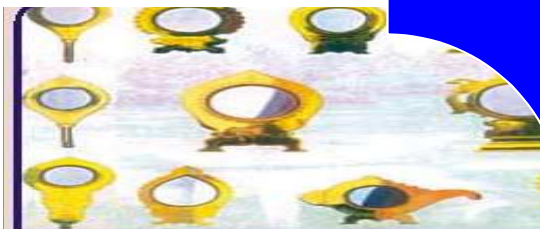
Mysore Agarbathi (incense sticks)



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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