



MEDICAL METHODS FOR PATENT PROTECTION AND ALTERNATIVE CURATIVE METHODS

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ABSTRACT

The patent system contributes to human prosperity by promoting the progress of science and technology. India is highly renowned in the world for its traditional curative methods like Ayurveda, naturopathy, unani medicine, etc., Ayurveda medicines requires protection under the intellectual property rights. Under such a scenario this articles examine the possibility and necessity of bringing medical methods under the scope of patentable subject methods.

Keywords: - Medical Methods, Curative Methods

INTRODUCTION

Patent are only one type of intellectual property right (IPR), a term given to a number of quite different legal right each concerned with the safeguarding of intangible such as concepts, technology and good will. In the field of technology, the most to relevant IPR's are confidential information and patents. One approach to categorizing such protection is by its aim in the most general sense, what people are seeking to protection by means of IPR's are either ideas and invention, information and data, or names and reputation.

What are patents

Article 27 (1) of the agreement on trade related aspects of Intellectual Property (TRIPS), to which most countries of the world are party, imposes on such countries an obligation by which patents shall be available for any invention, whether products or process, in all the fields of technology, provided that they are new involve an inventive step and are capable of industrial application. It then goes on to set various minimum criteria with which such patent system must comply, for example as to term which must be at least 20 years from application, and as to those activities of third parties against which patents can be asserted.

Changing patent Regime

The enactment of patent law in 1970 led to the growth of pharmaceutical Industry in India. Under the provision of this Act, patents are granted for the process used in the manufacturing of drugs and pharmaceuticals. The incorporation of guidelines into the existing provisions of the Act further refresh and development activities in India. The new provisions added to the Act by way of amending 2003-2005 changed the scope of the patent law's by incorporating various new concepts like national treatment, exclusive rights, mailbox applications and also the owner of the patents to the alleged infringer.

A patent system contributes to human prosperity by promoting the progress of science and technology. It ensures progress by providing incentives to invent, disclose, invest and design around. These incentives assure invention, innovation and efficient use of inventions, owing to the advantages offered by the patent system, the scope of patentable matter has been ever expanding. Its tentacles have spread to every conceivable field of science and technology. The United States Supreme Court has given on unlimited scope to patentable subject matter by pronouncing that "everything under the sun made by man is patentable". In addition to the traditional inventions, today's patentable subject matter includes computer software, business methods, gene sequences, protein sequences, etc. Efficient use of the patent system by developed countries for economic development has inspired developing countries like India, Brazil, china and others towards in their legal system.

Though the patent system has proved to be every useful in promoting the progress of science and technology, its scope has not been extended to methods of medical treatment. Most nations have excluded medical methods from the scope of patentable subject matter by taking into account the ethics inherent in the practice of medicine. This has deprived medical methods of the rapid development provided by the patent system to other field. Under such a scenario this article examines the possibility and necessity of bring medical methods under the scope of patentable subject matter.

Law relating to medical method of patents

The Agreement on TRIPS is a part of the Marrakesh Agreement signed by various nations establishing the world Trade organization. This agreement aims at bringing about uniformity and harmonizing intellectual property laws.

In India Chapter 2 of the Indian patent Act lays down a list of inventions that are not patentable. All

inventions those are not palatable. All inventions or discoveries listed under section 3 of chapter 2 are not inventions within the meaning of the patent Act and are therefore not patentable. Section 3(1) states that any process for the medical surgical, curative, prophylactic or other treatment of human being or any process for a similar treatment of animals or plants to render them free of disease or to increase their economic value or that of their products is not patentable.

This provision rules out the patentable of methods used for treatment of human beings, animals and plants. In order to fall outside the scope patentability the methods should be for Medical, surgical, prophylactic, curative or other treatment. By including the words “or other treatment” after prophylactic, this clause has been given a wide scope which means that any methods for any sort of treatment shall be considered to be unpatentable under the Indian Law. Thus, India has a very strong exclusion clause for medical methods.

Ayurvedic Regime

The drugs and therapeutic system of Ayurveda and traditional and indigenous knowledge of Ayurveda are a part of the Indian heritage is a part of the Indian heritage. Ayurveda is one of the most popular medical systems practiced in India along with other methods such as Unani, sidda, Homopathy, Yoga etc. Ayurveda has taken its roots from the experience of the indigenous people and their expertise in use of the local botanical resources to cure their ailments, it is a study and use of the medical plants, which are available plentifully in some parts of the country.

Protection of Ayurveda and IPR law

The classical ayurveda drugs and medicines are produced by utilizing of the expertise of the indigenous people having the traditional knowledge. The knowledge is the intellectual property. It has to be protected from unauthorized use. The patent offices of USA, UK, Australia, ect, are granting the patent rights on ayurvedic drugs and medicines to the applicants without verifying of traditional knowledge of the countries like India. They have granted the patents for turmeric, neem and basmati. The knowledge belonging to turmeric, neem and basmati, are in the public domain for years and derived from the traditional knowledge of the indigenous people. The government has forced to fight against the grant of patents of turmeric, neem and basmati and is successful in the effort.

CONCLUSION

Ayurveda Medicines requires protection under the intellectual property right against the risks of infringement and unauthorized use. Ayurveda requires protection against the grant of patents of the medicinal plants as it depends upon the plants kingdom and biodiversity. The product on the new inventions of

ayurvedic drugs, which are based upon the existing drugs varies from category to category, i.e., medicine-the protection of the classical drugs and medicines differs, from the method of protecting the patented and proprietary medicines. Indian government in particular should seriously consider allowing medical methods to be patented

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