Kotala Himbutu: Success of indirect action

3/4/02

By Jagath Gunewardene

Many recurrent and persistent problems have a critical point which arouses public interest and concern greatly, often leading to some positive actions. Sri Lanka awoke to the problem of bio-piracy with the detection of large consignments of Kotala Himbutu (Salacia reticulata) intended to be exported to Japan and the disclosure of patents that covered the anti-diabetic compounds of this species. Unlike India, which considers bio-piracy a national problem, the attitude of many authorities in Sri Lanka was lukewarm. At the same time, the vested interests behind bio-piracy even tried to justify it. The only decisive action was taken by the Forest Department which prohibited all large scale export of Kotale Himbutu parts..

Even this action was criticized by some who tried to show that it would deprive the country of valuable foreign exchange. What they do not want to be revealed was that it was these patents that precluded us from earning the due amounts of foreign exchange by preventing us from exporting any value-added anti-diabetic product made from Kotala Himbutu. The patent monopolies further deprives us from even selling the raw material at a competitive price because the patent monopolies prevent all others from making similar products.

This move of the Forest Department of not allowing the exports was seen by us as a clever and successful indirect action. A patent holder can get profits only if the product can be made in sufficient quantities. This needs raw materials in required amounts. If the raw material source dries up, the patent not only becomes meaningless, but also a burden to the company. This is because it is necessary to pay annual fees to maintain a patent. It is therefore possible to counteract a patent by withholding raw materials which is all the more successful in cases where there are no alternate suppliers. This method is employed to defeat an opponent who has the edge by depleting the resources instead of direct confrontation and is a 'war strategy 'known as "taking the firewood from under the cauldron".

Two periodic checks on patent databases showed that this strategy had indeed worked quite successfully as we believed. (The Island 09.05.2001). The two Japanese patents that covered anti-diabetic properties of Kotala Himbutu were not available in the list for more than an year. These two are JP 9301882 titled "Anti-diabetic agent and its production" and JP 11049692 titled "Antidiabetic agent and food product containing the same". These two patents, assigned to Morishita Jintan of Japan, directly transgressed our rights to make any value-added anti-diabetic agent using Kotale Himbutu. Therefore, the abandonment of these patents will restore our rights.

The same searches revealed three new patents relating to Salacia species. One of these, the Japanese patent JP 200152744 is titled "Confectioneries and breads containing Salacia oblonga and their production" is issued to Tsuchiya Shinji who is also the inventor. The purpose is to make edible confectioneries and breads containing S. oblongata as a diet and healthy food capable of suppressing the level of blood sugar without adversely affecting health and improving the health of diabetes patients. The confectioneries are made by mixing wheat flour with the powder made from stems of S. oblongata. A dose of 1 to 300 grammes of S. oblongate powder can be added to 100 grammes of flour. Such food items fell into the category of "dietic" or "health" foods that are used by those who want to consume the usual amount of food without getting fat or obese as well as by diabetic patients.

The second is the Japanese patent JP 2001149038 titled "Salacia food material and method for producing the same and food containing the food material". The inventor is Uchino Keijiro and is assigned to Kyoto Eiyo Kagaku Kenkyusho of Japan. This patent deals with improving the acceptability of foods and other preparations containing Salecia. It says that the fishy or woody taste can be removed by roasting material with embryo buds and the flavour can be improved. It deals with improving the flavour of parts of S. reticulata, S. prinsides and S. oblonga. These two patents do not cover any particular active ingredient and do not have any impact on making anti-diabetic medicines.

The third patent is WO 0172316 of 04.10.2001 titled "Ayurvedic composition for diabetes". The inventor and assignee of it is Mr. Victor Hettigoda. This is the first instance where a Sri Lankan has registered a patent for a medicinal preparation at the World Intellectual Property Office (WIPO). The Patent Co-operation Treaty application numbered PCT/IB 00/00405 has 95 designated countries including Sri Lanka, India, U.S.A. and Japan. This application has been filed from the International Bureau office of WIPO rather than from the National Intellectual Property Office of Sri Lanka.

This patent covers a composition that comprises Kotala Himbutu, Cinnamon (Cinnemomum Zeylanicum), Jak (Artocarpus heterophyllus), Gammalu (Pterocarpus marsupium) and Rasa Kinde (Tinospara cordifolia). The parts used in the composition are leaf and bark of jak, bark of cinnamon, roots and stems of kotala himbutu, infusion of the stems of rasa kinda and the red latex of gammalu.

The composition is used to treat high blood sugar and diabetes mellitus. The patent claims that the preparation is based on Ayurvedic teachings but improved upon and had proven to be effective through clinical experiments at the Siddhalepa Ayurveda Hospital.

The invention in this particular patent is covered by eight claims. It covers only the composition containing all five ingredients. The claims have a very narrow scope. The original claims that could have covered a composition comprised of three of the five ingredients have been amended. Therefore, this patent has no impact on a preparation using one of the materials, nor on a composition containing up to four of the ingredients. It also has no impact on a composition that have less than five of the ingredients, together with one or more additional ingredients. This patent will not interfere with the traditional anti-diabetic use of these ingredients, nor will it prevent or cause problems to others who may be developing new preparations using one or more of these ingredients. This is in contrast to those Japanese patents and U.S. patent that covered a particular use of a single ingredient that severely restricts our room for manoeuvre.

This patent is the only example we can cite on the parallel course of action advocated by us. That is, we should encourage and provide all necessary assistance to local inventors and scientists to work on and improve upon our traditional knowledge in the use of medicinal plants and compositions to bring out new products. This way, we can bring in more income than with the export of raw materials.

According to the description of the patent, the preparation of this composition is quite elaborate and the effectiveness is dependent upon the adherence to several ancient practices. For instance, it is necessary to use a clay pot to prepare the mixture, and the mixture heated over a slow fire using cinnamon wood as firewood. This makes it hard to be infringed. It could have been possible to keep the preparation as a secret (or trade secret) rather than disclosing it in a patent. A secret has no time period of protection and does not cost like in the case of a patent.

Clarification

Not me!

Apropos "A commentary by K. S. Sivakumaran in **Midweek Review**, Dr. S. M. Kariyakarawana of the University of Kelaniya says:

"In ***The Island*** of January 16, my name has been cited by columnist K. S. Sivakumaran, titled 'Transgressing translation barriers", I did not attend this workshop and I consider the remark somewhat negative for me as an academic.

National Digitization Project

National Science Foundation

Institute : National Science Foundation

1. Place of Scanning : Sanje (Private) Ltd, Hokandara

2. Date Scanned : 02/06/2017

3. Name of Digitizing Company : Sanje (Private) Ltd, No 435/16, Kottawa Rd, Hokandara North, Arangala, Hokandara

4. Scanning Officer

Name : Angelo Melvin Luwis

Signature : A. M. Luwis

Certification of Scanning

I hereby certify that the scanning of this document was carried out under my supervision, according to the norms and standards of digital scanning accurately, also keeping with the originality of the original document to be accepted in a court of law.

Certifying Officer

Designation : Information Officer

Name : Renuka Sugathadasa

Signature : R. P. Sugathadasa

Date : 02/06/2017

"This document/publication was digitized under National Digitization Project of the National Science Foundation, Sri Lanka"