

Patents, intellectual property rights and plain facts

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by Pravin Mendis

An article under the title 'Patents, intellectual property rights and common sense' appearing in the 'Commentary Plus' pages of the 'Daily News' written by a person who wanted to remain anonymous warrants comment.

His observations with regard to recent articles published in the press in relation to the threat posed by the escalation of bio-piracy are vague.

The writer's observation 'losing sight of the fundamental goal of serving the people's needs and aspirations', can best be answered by pointing to the high cost of medicinal drugs manufactured under so many names by different MNC's, available in the market today.

Do these companies think about the 'people's needs and aspirations' in marketing pharmaceuticals mostly developed and enhanced through acts of bio-piracy?

Unhealthy competition among these multinational companies has only helped exploit the poor populations of the Third World. Haven't they robbed the indigenous knowledge of the bio-diversity rich countries of the South?

The writer's argument of 'getting trapped in a plethora of conspiracy theories and fear-mongering that the developed world represented by the World Bank, IMF, USA etc are unfairly exploiting us', we feel, can best be addressed by economists who are monitoring the impact and the role played by these institutions in the recent East-Asian economic crisis. Articles by eminent economists have already been published in this regard.

The TRIPS (Trade Related Aspects of Intellectual Property Rights) agreement which came into effect after the Uruguay Round in 1993 has generated considerable public interest and debate especially with

regard to its patent system.

Many analysts say that extensive and uncontrolled monopoly granted to the patentee and the elaborate and time consuming process to revoke a patent prescribed under TRIPS can create problems for the nation and the consumer. Two main issues highlighted in this regard are the satisfaction of criteria of patentability and the abuse of patents.

On claims that trees have been patented, which the writer claims to be totally false, environmental lawyer Jagath Gunawardene says that the Basmathi plant has been patented in America by Rice-Tec Incorporation. 'They have even got the name Basmathi registered as a trade mark'. India and Pakistan have initiated action to get the patents annulled. Subsequent to India filing action, Pakistan too has followed suit. Both cases are still pending. The writer's contention that the

Japanese scientists copyrighted their scientific dissertation on the medicinal properties of salacinol which is extracted from Kothala Himbutu in the American Chemical Society (ACS) as a normal routine procedure is false says Gunawardene. 'Registering a copyright is a outright lie' he says arguing that the readers would be grateful to the writer to be enlightened more about this specific law. Gunawardene challenges the writer to support his claim by giving the relevant law and sections in the Patents Act in the USA. He further states that since this dissertation referred to by the Japanese scientists is published by them, a separate copyright in the American chemical society is an absurd proposition. The readers should be enlightened on this absurd copyright procedure, he says.

Gunawardene also says that the term of reference has to be made clear in this particular

case. Challenging the anonymous writer's claim about definitions of patents and copyrights in the Code of Intellectual Property Act No. 52 of 1979, he says that the issue in contention is the provisions of the US Patent Act and the implications stemming from the patents granted in the USA and not about the patent and copyright regime under our Code of Intellectual Property Act of 1979 which the writer repeatedly mentions.

The repeated mention of our laws which has no relevance to the issue in contention shows that either the writer is confused or that he is trying to conceal the truth and confuse the readers thereby letting the offenders to be let off the hook or go scot free, he says.

Thailand too has joined India and Pakistan in a similar issue more recently. Thailand has also threatened to take the US to the WTO for allowing Texas based

Rice-Tec Corporation to use 'Jasmati' as a trade mark for a variety of rice.

The most recent development with regard to Japanese research on Kothala Himbutu is that scientists of the Kyoto Pharmaceutical University namely Yoshikawa M, Murakami T, Yashiro K and Matsuda H have been able to isolate a potent natural alphasglucosidase inhibitor which they call 'Kotalanol' from our anti-diabetic plant 'Kothala Himbutu' through bio-assay guided separation.

The copyright paper which is numbered PMID: 9734318, UI: 98405235 of August 1998 says that this isolation 'Kotalanol' has been found to show more potent inhibitory activity against Sucrase than Salacinol (salacia reticulata) and acarbase.

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