



Monopoly claims for traditional remedies

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The claiming of monopoly rights over traditionally used medicinal preparations as still continuing. All the periodic searches during the past five years have brought forth new patents that have been claiming monopolies over a traditional medicine of Sri Lanka. Most of these cover simple preparations and some only cover a particular use of a single ingredient. These are most often home remedies, simple preparations that are made at home and administered without the assistance of practitioners, but are nevertheless quite effective. This knowledge is not often written down, but has passed down through the generations through continuous usage. The knowledge has been freely shared with others and has been never kept as secrets. It is therefore natural that many people view patents that cover a traditional home remedy with disbelief and surprise. They cannot comprehend how such well known and freely shared knowledge could become the "intellectual property" of someone in a distant country.

An international patent published at the World Intellectual Property Office (WIPO) under WO 9829089, titled "Cosmetic preparations containing extracts from *Phyllanthus emblica* and *Centella asiatica* and/or *Bacopa monnieri*" is yet another recently found example that covers our traditional uses. The plants covered are Nelli (*Phyllanthus emblica*), Gotu kola (*Centella asiatica*) and Lunu-wile (*B. mannieri*). The application has been filled from the European Patent Office in the German language. The assignee and the inventor is Shyam Singh-Verma, an Indian national residing in Germany. A patent has been granted in U.S.A. on 17.07.2001 and bears the number U.S. 6,261,605.

This patent has eight claims. The first is the main claim that cover the formulations that contain the extracts of these plants mixed with a pharmaceutical acceptable carrier to be used as topical applications

to be applied on any part of the body. The next two (claims 2 and 3) covers the parts from which the extracts can be obtained. In Nelli it is the fresh or dried fruits only but in the other two it can be from any part such as leaves, roots, stem, flowers or from a combination of parts. The fourth claim covers the amounts of each extracts in formulations. These can range from 1% to 20%. The fifth claim covers carriers, or these substances with which the extracts can be mixed to make the formulations. The 7 and 8 are claims that cover methods of treatments. The sixth claim cover further additions. Only two have been named which are Komarika (*Alae*) and Rata bilinchi (*Hibiscus sabdariffa*).

The three main plants in the patent are well-known medicinal plants in Sri Lanka that are used in many home remedies and preparations. Nelli and Gotu-kola have been used to treat various skin ailments, both as a topical application and as an orally taken medicine. They are used to treat dry skin, eruptions in the skin, treat wounds and boils and to treat the red rash known as prickly-heat rash. They are both soothing and healing when applied on the skin. It is usually the fresh extracts or the boiled decoctions that are used in Sri Lanka. In addition Nelli is a popular fruit and the other two are consumed as leafy vegetables. According to the patent, the preparation can be used to treat in preventing dry skin, prevent premature skin aging, avoiding or preventing wrinkle formation, and non-genetical hair loss.

This patent does not mention the traditional use of any of these plants, either in Sri Lanka or in India. It has mentioned the Sinhala name Gotu kola and erroneously state that it is used to both *C. asiatica* and *B. monnieri*. It says that Gotu-kola is said to have

thereof is sufficiently proven from the tradition of folk medicine in all important cultures. In particular, the activity of phytopharmaceuticals is based on that fact".

There is however, no mention about the cultures where these plants have been used in folk medicines for the same purposes. This patent does not describe any newly discovered active ingredients but merely covers the whole extract for a particular use. The existence of the active ingredients is known only by the desired result. This is a feature common to several of the patents that cover traditional medicines. The patent provides three examples of using the formulation. In addition, it provides the composition of a medicinal hair tonic, a preparation to prevent hair loss and stimulate the growth of hair and a hair treatment composition in emulsion form and a shampoo formulation. These formulations have several additional ingredients.

It is clear that these four compositions are considerable improvements to the already existing knowledge. Therefore, it would

have been quite reasonable if the claims of the patents have been drafted to cover these compositions and all of their variants and small improvements. Instead, the very first claim covers all compositions containing the extracts of these plants, mixed with any carrier. It is really this very broad claim that transgresses our traditional use of these plants. This kind of very broad (or blanket claims) are intended to deter any other party from making use of the traditional knowledge bases to compete with the patented

The international application of the patent has been filed at WIPO on 18.12.1997 through the European Patent Office (EPO) and bears the number PCT/EP97/07113. It lists 92 designated countries from Albania to Zimbabwe in which the patents are sought. This list however does not have India as a designated country. The exact reasons for this is not known. If India has also used these plant extracts for the same purposes, it would then have refused granting the patent as it is then a part of "prior art".

blood-purifying, tonicising and diuretic properties when taken orally and can cause wound healing and has anti-bacterial effects. The Nelli fruit is mentioned in the patent as the amla fruit and myrobalane, both names being used in India. The use of these plants for cosmetic purposes in traditional medicine has been obliquely referred in page 3 of the patent. It says that in the field of medicinal plants, there are great opportunities of achieving the above-mentioned effects without appreciable risks to health, since tolerance

product. Rather than using a patent to defend the rights of an inventor, this kind of claims throw out all other potential competitors.

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It is not known whether the relevant application has been forwarded to the National Intellectual Property Office in Sri Lanka. If and when it happens, there would be several interesting questions. A patent is given only if it is new or novel. The Code of Intellectual Property Act defines what is new by defining what is not new or already known (Section 61(a)). This is referred to as prior art. According to Section 61(2)(a), everything disclosed to the public by written publication anywhere in the world and in addition, everything orally disclosed to the public in Sri Lanka form part of prior art. Therefore, the first claim should clearly fall into the category of prior art in Sri Lanka as this covers well-known herbal remedies. In addition, according to Section 59(3)(d) of the code, any methods for the treatment of the human body are not patentable in Sri Lanka. Thus the claims seven and eight which cover methods of treating the human body, cannot be accepted as well.

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