



■ Topic 1: Introduction to Intellectual Property

WIPO Practical Workshop

Brigitte Vézina

Legal Officer, Traditional Knowledge Division, WIPO

Geneva, Switzerland
3-5 December 2014

What is intellectual property?

- Products of the human **mind**, the fruits of human **creativity and innovation**

inventions	literary and artistic works	designs	“brands” symbols, names and images used in commerce
------------	-----------------------------	---------	--

What is the intellectual property system?

- IP is protected by different laws and mechanisms...

patents

copyright

trademarks

geographical
indications

industrial
designs

trade
secrets

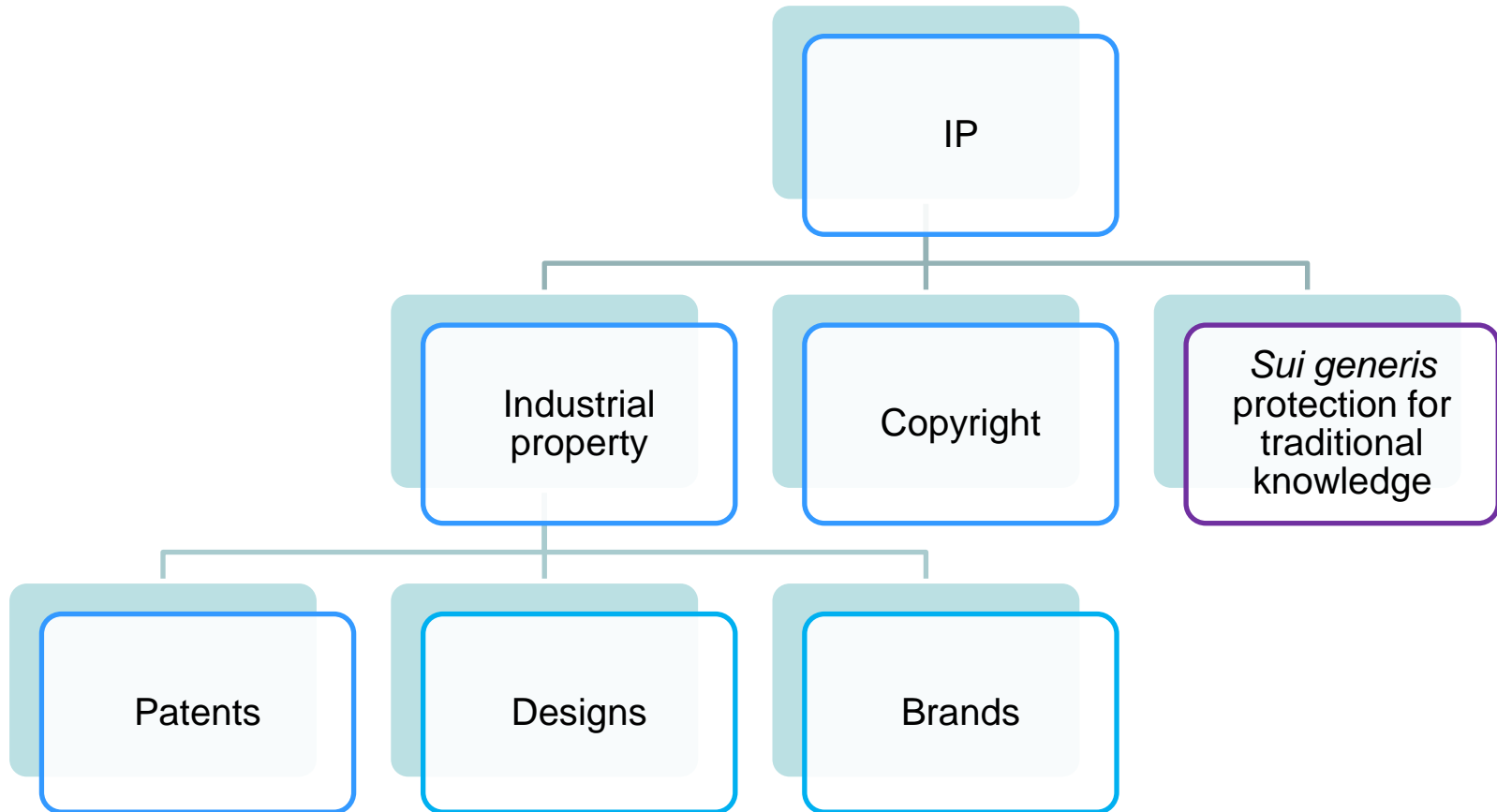
...

What is the intellectual property system for?

- Enables people to earn
 - **recognition**
 - **financial benefit**from what they invent or create

- Aims to foster a **balanced** environment in which **creativity and innovation** can flourish

The intellectual property family tree



The basics of patents



United States Patent [19]

Das et al.

[34] USE OF TURMERIC IN WOUND HEALING

[75] Inventors: **Suman K. Das; Hari Har P. Kohly,**
both of Jackson, Miss.

[73] Assignee: **University of Mississippi Medical
Center, Jackson, Miss.**

[21] Appl. No.: 174,363

[22] Filed: Dec. 28, 1993

[51] Int. Cl.⁶ A61K 35/78

[52] U.S. Cl. 424/195.1; 514/925;
514/926; 514/927; 514/928

[58] Field of Search 424/195.1

[56] **References Cited**

U.S. PATENT DOCUMENTS

4,719,111 1/1988 Wilson 424/195.1
5,120,538 6/1992 Oei 424/195.1
5,252,344 10/1993 Shi 424/682

OTHER PUBLICATIONS

Institute GA. 99: 218620T (1983) of JPN. 58-162520



US005401504A

[11] Patent Number: **5,401,504**

[45] Date of Patent: **Mar. 28, 1995**

(Ulcer Inhibitor Tablets Effective in Mice Contain Carcinogen).

Soma et al GA. 116: 221612S (1992) of JPN 4-49240 (Digestive Tract Ulcers Treated with *Curcuma longa* (Turmeric) Extract (Lipopolysaccharides)).

Kumar et al GA.119: 871K (1993) of Ind. Vet. J. 70(1):42-4 (1993).

Abstracts of Charles et al Trop. Geogr. Med: 44(1-2) 178-181 Jan. 1992; Rafatullah et al J. Ethnopharmacol. 29(1): 25-34 Apr. 1990; Kutton et al Tumori 73(1): 29-31 Feb. 28, 1987; Mehra et al. Tokai J Etpharm Med 9(1): 27-31 Mar. 1984.

Primary Examiner—Shep K. Rose

Attorney, Agent, or Firm—Wenderoth, Lind & Ponack

[57] **ABSTRACT**

Method of promoting healing of a wound by administering turmeric to a patient afflicted with the wound.

6 Claims, No Drawings

Turmeric, a yellow powder developed from the plant *Curcuma longa*, is commonly used as a food colorant in many Indian dishes and imparts a bitter taste. Turmeric is also used as an additive in prepared mustard.

Although it is primarily a dietary agent, turmeric has long been used in India as a traditional medicine for the treatment of various sprains and inflammatory conditions (Rao T S et al., *Indian J. Med. Res.*, 75:574–578, 1982). The active ingredient in turmeric powder is curcumin, which is a completely symmetrical molecule

DETAILED DESCRIPTION OF THE INVENTION

The present invention provides a method of promoting healing of a wound in a patient, which comprises administering a wound-healing effective amount of turmeric to the patient.

The present inventors postulated that turmeric may have significant antineoplastic, antioxidant, antibacterial and anti-inflammatory properties when given orally or applied topically. In view of these facts and the availability of turmeric, the present inventors studied the wound healing properties of turmeric to provide a simple and economical solution to the problem of chronic ulcers.

tions of turmeric were added to the cell plates and this plate was incubated in 95% oxygen, 5% carbon dioxide air at 37 degrees Celsius for 72 hrs. Following incubation the cells were pulsed 16 hrs with tritiated thymidine and then harvested onto filter paper disk for counting by liquid scintillation. Cell counts revealed that cells cultured in media alone resulted in < 500 CPM (counts per minute) whereas those cells cultured in media as well as turmeric [0.01%] resulted in 4900 CPM (counts per minute). These results demonstrate an in vitro proliferative effect of turmeric on endothelial cells isolated from umbilical vein.

We claim:

1. A method of promoting healing of a wound in a patient, which consists essentially of administering a

wound-healing agent consisting of an effective amount of turmeric powder to said patient.

2. The method according to claim 1, wherein said turmeric is orally administered to said patient.

3. The method according to claim 1, wherein said turmeric is topically administered to said patient.

4. The method according to claim 1, wherein said turmeric is both orally and topically administered to said patient.

5. The method according to claim 1, wherein said wound is a surgical wound.

6. The method according to claim 1, wherein said wound is a body ulcer.

* * * * *

B1 5,401,504

1

**REEXAMINATION CERTIFICATE
ISSUED UNDER 35 U.S.C. 307**

THE PATENT IS HEREBY AMENDED AS
INDICATED BELOW.

2

AS A RESULT OF REEXAMINATION, IT HAS BEEN
DETERMINED THAT:

Claims 1-6 are cancelled.

* * * * *

The basics of patents

What is an invention?

- A product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem.

What is a patent?

- An exclusive right, that allows to prevent or stop others from commercially exploiting the patented invention
- granted by a State or by a regional office acting for several States
- applicable in the country or region in which the patent has been filed and granted, in accordance with the law of that country or region
- for a limited period, generally 20 years from the filing date of the application.

- Three principal requirements for inventions to be protected (**Conditions of patentability**)
 - Novelty: New characteristic not known in the body of existing knowledge (prior art) in its technical field
 - Inventive step / non-obviousness: Cannot be deduced by a person with average knowledge in its technical field
 - industrial application /utility: The invention must be of practical use or capable of some kind of industrial application
 - + Disclosure of the invention (description in detail)

- If these conditions are not met: A patent should not be granted. If this is discovered later, patents can be revoked or invalidated.

- Interests at stake: State / inventor ... Society

The basics of trademarks

What is a trademark?

A trademark is:

- A sign
- Capable of being represented graphically
- Which is capable of distinguishing goods or services of one undertaking from those of other undertakings

What does a trademark do?

The proprietor of a **registered** trademark has **exclusive rights** in the trademark which are **infringed** by **use of the trademark** in the given territory **without his consent**

Where to register a trademark?

Three possible routes to trademark registration

- National registration
- Regional system of registration (for example in Europe, registration of a Community Trade Mark)
- International filing

What is a sign?

Very few restrictions on what can be a sign

- Words
- Designs
- Letters
- Numerals
- The shape of goods or their packaging
- Slogans
- Colours
- Sounds
- Smells
- Gestures
- Taste

Words and designs



Slogans

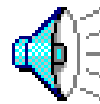


i'm lovin' it™

Colors



Sounds

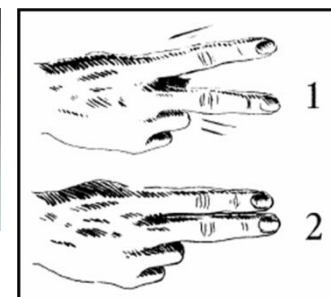


Shapes



Gesture

- Gesture of two cutting fingers. This gesture is recognized as the commercial origin for TWIX chocolate

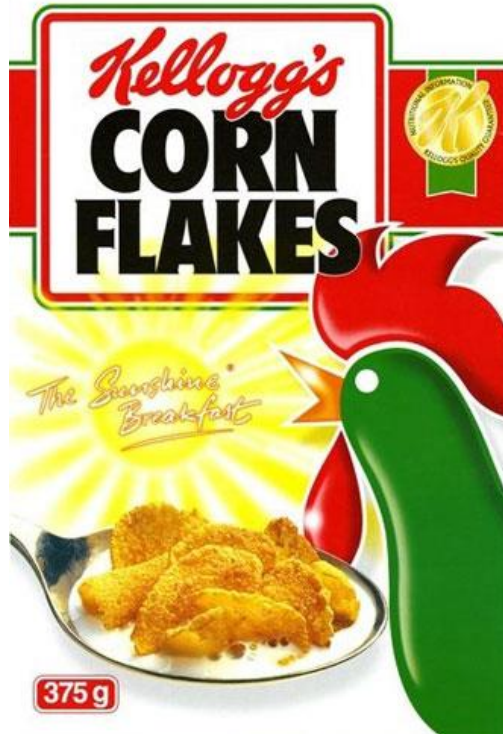


What is a graphic representation?

A graphic representation is one which utilises images, lines or characters. In order to render a sign registrable as a trademark, the graphic representation **must be clear, precise, self-contained, easily accessible, intelligible, durable and objective.**

In addition, a representation must be **sufficiently accessible and intelligible and not require excessive efforts to be taken for the public to understand it.**

Word marks/Device or figurative marks



Shapes

Verbal description?

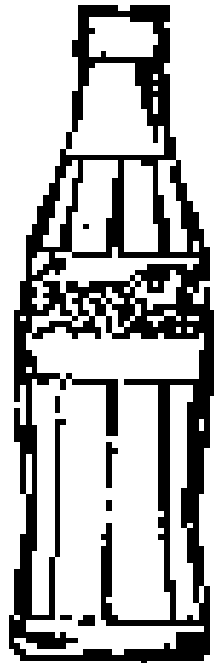
This will rarely be satisfactory as it will not convey the precise appearance of the sign

Example: “A chewy sweet on a stick”



Shapes

- Design drawings
- Photographs



Capacity to distinguish

- The sign must be capable of distinguishing the goods or services of one undertaking from the goods or services of another
- A failure to comply with this requirement constitutes an absolute ground for refusal of registration

Absolute grounds for refusing to register a trademark

Here we look at the sign itself

Categories of absolute grounds

Exclusion from registrability of signs that are:

- **Non-distinctive** (ex: single letters or numerals)
- **Descriptive** (ex: BABYDRY for nappies)
- **Generic** (ex: aspirin, escalator, sellotape, hoover)
- **Contrary to public policy or morality**
- **Likely to deceive the public**
- **Prohibited by law**
- **Made in bad faith**

Relative grounds for refusing to register a trademark

Here we compare the sign that is being applied for with signs that are already on the register

Trademark infringement

The proprietor of a registered trademark has **exclusive rights** in the trademark which are **infringed by use of the trademark** in the given territory without his consent

- **No requirement of knowledge or intention** on the part of the defendant. Liability is strict
- **No need to demonstrate damage**

Invalidity and revocation

- A trademark may be declared **invalid** if it was registered in breach of one of the absolute or relative grounds for refusal

- A trademark may be **revoked**
 - For non use
 - For suspension of use
 - If the trademark has become the “common name in the trade” (generic)
 - If the trademark has been used in a way so that it is liable to mislead the public (deceptive)

Defences - use of name or address, descriptive use and intended purpose

Usually, a registered trademark is not infringed by:

- The use by a person of his **own name or address**
- The use of indications concerning the **kind, quality, intended purpose, value, geographical origin, the time of production of goods or of rendering of service**, or other characteristics of goods and services
- The use of the TM where it is necessary to indicate the **intended purpose** of a product or service
- In **comparative advertising**

Provided that the use is in accordance with honest practices in industrial and commercial matters

The basics of trade secrets

What are Trade Secret?

- Secret
- Commercial value
- Subject to reasonable steps to keep it secret

Why Trade Secret?

- No procedural formalities
- Unlimited period of time

What is the Risk?

- If discovered or leaked, it can be used by others.

The basics of geographical indications

What's in your mind when you hear:

- Champagne
- Cognac
- Roquefort
- Chianti
- Pilsen
- Porto
- Sheffield
- Havana
- Tequila
- Darjeeling

What are Geographical Indications?

- A sign used on goods that have a specific geographical origin (**the name of the place of origin** of the goods and/or symbols without literally naming its place of origin).
- Possess **qualities, reputation or characteristics** that are essentially attributable to that place of origin.
- In short, to be distinct due to geographical location.

Why Geographical Indications?

- Identify its source
- Indicate the unique qualities
- Promote the product with a distinguishing name
- Prevent infringement and unfair competition

What are “Appellations of Origin”?

- **Stronger link** with the place of origin
 - exclusively or essential quality or characteristics due to geographical origin
 - the raw materials and the processing

The basics of industrial designs

What is an industrial design?

the ornamental or aesthetic aspect of an article

3-D

shape or surface of an article

2-D

patterns, lines or color

Why protect industrial designs?

- A design is what makes a product attractive and appealing
 - contributes to commercial value and marketability
 - promotes fair competition and honest trade practices
 - helps economic development, by encouraging creativity

How can industrial designs be protected?

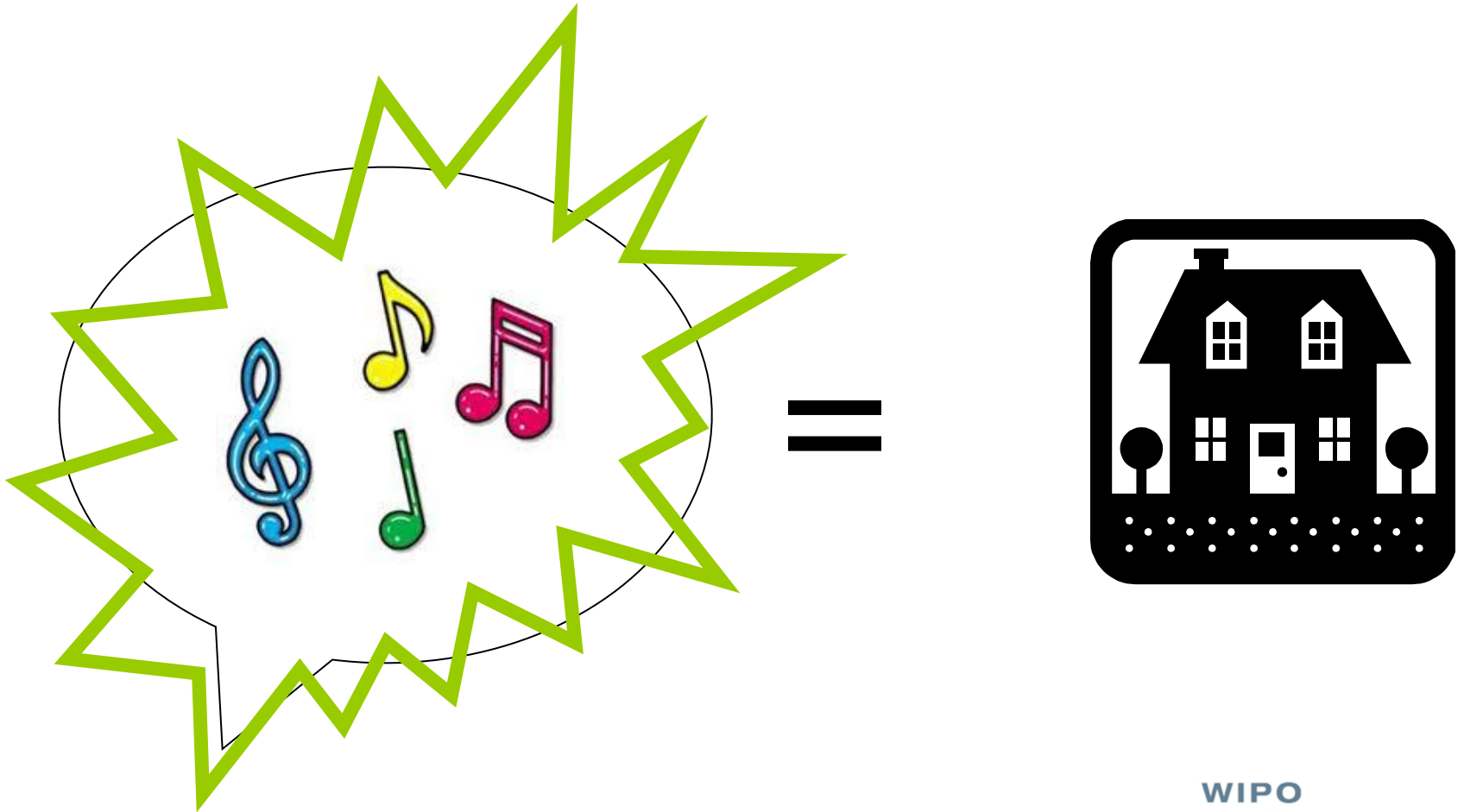
- In most countries, must be **registered** in order to be protected
 - unregistered design

- must be “**new**” or “original”
 - no identical or very similar design is known to have existed before

The basics of copyright

Copyright

Rights over literary and artistic “works”



What is a work ? Categories of works

- literary works
 - dramatic works
 - musical works
 - artistic works
 - cinematographic works
 - ...
-
- sound recordings
 - Broadcasts
 - performances

Conditions for protection

- Arises automatically
- No formalities

Idea/Expression

Ideas are not protectable in themselves, but the expressions of such ideas are protectable

- Copyright does not protect: ideas, procedures, processes, systems, methods of operation, concepts, etc.
- It only protects **the way ideas are expressed** in a particular work
- What can be protected: the characteristics by which the author has made the theme personal
- Why? Would it be **productive, efficient, fair, or morally justifiable** to give exclusive rights to the first person to write about an idea?

Originality

The work must be original

NOT
NECESSARILY
novelty
ingenuity
inventiveness
aesthetic merit

“originates” from the creator
not copied
minimal degree of creativity

Duration

Rights are limited in time

- Life of the author + min. 50 years

Exclusive Rights

A “bundle”

Moral rights

attribution

integrity

Economic rights

reproduction

distribution

adaptation

translation

public performance/display

public communication

Violation - Infringement

some myths

we can copy as long as we don't sell...
...any copying is unlawful

anyone who

without permission
carries out one of the reserved acts

**UNLESS AN EXCEPTION OR
LIMITATION APPLIES**

Exceptions and Limitations

- Certain acts which might otherwise constitute an infringement of copyright do not incur liability
 - Fair use/fair dealing exceptions (research/private study, criticism/review, reporting current events)
 - Incidental uses e.g. in a sound recording, film, broadcasting