



6. Will Thai traditional medicine fall into the hands of foreigners?

At present, countries compete with each other to sell biological resources in the global market. Thailand is one of twenty countries that is a “bio-diversity superpower”. We therefore attract the attention of foreign researchers and companies, who come looking for useful biological products.

The movement to preserve Thailand’s traditional medicine began in 2004, after the organization Bio Thai announced that many foreign companies had applied for patents on Thai plants, such as jasmine rice, plao noy, kwao krua khao, and a genetically modified papaya. People objected that Thai traditional medicine and knowledge about plants, which should be community property, were instead becoming the private property of companies or individuals. In November 2004, Thais learnt that a Japanese cosmetic company had, in 2002, applied for a United States patent on kwao krua khao. Kwao krua khao is an important Thai traditional medicine that traditional healers had used for decades as a beauty treatment.

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The patent application cited the use of kwao krua khao as an external medicine to treat the effects of aging on the skin. The patent application included 20 items, such as the chemicals that could be extracted from kwao krua khao, the method of extraction, and the idea of using the chemicals for skin care.

The patenting of traditional medicines is not a new issue: The interesting question is how different patents affect the accumulation of knowledge

The issue of patents on Thai traditional medicines first arose about 20 years ago, with the well-known case of plao noy. This plant is highly effective at healing stomach ulcers. It occurs naturally throughout the provinces of Prachuabkhirikhan, Prachin Buri, and Kanchanaburi. A Japanese company, with the assistance of Thai researchers, patented the active ingredient from plao noy in Thailand. The ingredient is patented under the name Plaunotol, and sold under the name Kelnac, as a medicine for healing ulcers in the stomach and intestine. It is sold in Japan for 30 baht per tablet. The company has no plans to sell the medicine in Thailand. However, it has established a factory in Prachuabkhirikhan to make the active ingredient from plao noy for sale around the world.

It has been claimed that there are many Thai traditional medicines that are at risk of being patented by foreign companies. Examples include fa talai jone, chum hed ted, mon, krajiap daeng, som khaek, luk prakob, kurmin , plai, kwao krua daeng, krachai dam, bua bok, and pepper.

However, Dr. Wichai Chokwiwat, Director of the Department for the Development of the Thai Traditional and Alternative Medicine has observed that there are at least 16 overseas patents on kwao krua, dating from 1957. There are important differences between the Japanese and Korean patents, which have contrasting effects on the development of traditional medicine in Thailand and other countries. The Japanese patent applies only to kwao krua as an external medicine for skin, and clearly specifies the uses. The Korean patent is registered, not only in Korea, but also in many other important markets. It applies to the whole plant, including the head, roots, leaves and stalk. It covers all extraction methods, and also all types of final product, whether drink, food, or medicine. It covers medicine in the form of tablet, capsule, or liquid. The breadth of the patent has a major effect on other producers because it leaves no scope to develop new products.

Cases like that of kwao krua led to an extensive public debate in 2004 on whether foreign companies patenting Thai traditional medicines might be depriving the country of enormous benefits. Some groups strongly opposed patents, while others claimed that there was no cause for concern.

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Thai traditional medicines should belong to Thais

The fundamental idea of groups who disagreed with patents was that Thailand had a natural right to its own biological resources. Foreign companies that registered patents were therefore violating the terms of the Convention on Biological Diversity, which has been ratified by more than 100 countries. In addition, patents violate the 1999 Protection of Plant Species Act, which holds that wild plants, such as kwao kua, and cultivated plants do not constitute new entities as required by the patent law of the United States and other countries.

Anyone wanting to take plants covered by the 1999 Act overseas to carry out research or use for commerce has to receive permission from the Committee for the Protection of Plant Species, and has to sign a contract promising to share the benefits. The patent application for kwao kua may also violate Thai law, as Thai traditional healers have known for many years that kwao kua can be used to look after skin.



Groups opposing patents are disappointed that the Department for Intellectual Property and the Department of the Development of Thai Traditional Medicine and Alternative Medicine appear to have accepted that foreign companies have the right to apply for patents. Groups opposing patents suggest that every government agency whose work relates to Thai plant species should try to prevent the patenting of kwao kua because of its effects on research and development, and on the export of Thai medicines based on kwao kua khao.



Patents are not a problem

Supporters of patents argue that international patent law only applies to original inventions that do not have owners. It does not apply to natural products, and kwao kua is a natural product. Thai intellectual property rights have therefore not been violated.

The only Thai people who can oppose the patent are cosmetic producers who make the same cosmetic using kwao kua khao, and who can prove that they invented it before the Japanese company currently applying for patent. To do so they would have to take the company to court in Japan and the United States, and provide evidence that the product is not new because Thais have already invented it. Japan and the United States would then withdraw the patent, as it would violate the inventor's intellectual property rights.

Another factor is that natural plants such as kwao kua khao grow in other countries in Southeast Asia. The Japanese patent application does not clearly specify whether it applies to the Thai plant. Moreover, it is a good thing that a Thai plant is used for research and development and becomes known around the world. Once the 20-year limit on the patent has expired, anyone can produce the product.

Similar arguments have been made by Mr. Kanissorn Navanugraha, Director of the Intellectual Property Department. He has said that there will be no impact on research in Thailand. Anyone can still conduct research on kwao kua khao, and can even produce and sell products that contain kwao kua khao, provided that they do not use the same ingredients as the patented product.



Protecting Thai tradition medicine in the future

Supporters and opponents of patents on Thai traditional medicines agree that the Thai government should make its view clear. It should revise the laws so that it has genuine control over the removal of natural resources, and should promulgate supporting regulations.

It needs to be emphasized that the protection of Thai plants involves more than just biology. Protection also needs to be given to the traditional extraction methods using water and alcohol. Thais should have the right to use medicines produced with traditional extraction methods. The government should apply for international patents, and appoint an agency to take responsibility. The government will need to pay the costs, because they are beyond the means of private organizations in Thailand.

The Department for the Development of Thai Traditional and Alternative Medicine has made two suggestions for Thai traditional medicine:

1. Support comprehensive research on Thai traditional medicine, to develop high quality production that can be patented in Thailand and in important overseas markets. Build a secure knowledge base for developing Thai traditional medicines, drawing on agricultural knowledge, science, and law.
2. Accelerate the cultivation, breeding, classification, modification, production, and marketing of traditional medicines.

