



## CHRONICLE ON TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY PROTECTION

Isabel HERNANDO COLLAZOS<sup>1</sup>

**ABSTRACT.-** This contribution is the presentation - chronicle of the course - conference on Traditional Knowledge and Intellectual Property Protection held within the Master *Magister Lvcentinus* on Intellectual Property LLP (IP)<sup>2</sup> on November 10, 2015 in the Alicante University (Spain). This presentation following the conference structure is divided into two parts. A first Part devoted to providing an overview of the subject and its key concepts and a second Part focused on the different options of Protection for the Traditional Knowledge according to the current Intellectual Property law developments.

**RESUMEN.-** Esta contribución tiene como finalidad la presentación – crónica del curso sobre Conocimiento Tradicional y Propiedad Intelectual – Industrial celebrado dentro del Master *Magister Lvcentinus on Intellectual Property LLP (IP)* el 10 de noviembre de 2015 en la Universidad de Alicante (España). En la presente presentación se ha seguido la estructura del curso dividida en dos partes. Una primera parte centrada en proporcionar una visión general del tema y de sus conceptos clave y una segunda parte dirigida a la observación y análisis de las opciones de protección de los Conocimientos Tradicionales proporcionadas por los sistemas actuales de Propiedad Intelectual e Industrial.

**KEYWORDS.-** Traditional Knowledge – Genetic Resources – Traditional Cultural expressions – Patents – Trademarks – Copyright – Industrial Design – Geographic Indications – Nagoya Protocol – Prior informed consent (IPC) – Access – Benefits Sharing (ABS).

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<sup>1</sup> Isabel HERNANDO, Profesora Titular de Derecho Civil en la Universidad del País Vasco (UPV/EHU), Abogada especialista en Propiedad Intelectual e Industrial, [isabel.hernando@ehu.es](mailto:isabel.hernando@ehu.es) / [isabel.hernando@ehu.es](mailto:isabel.hernando@ehu.es)

<sup>2</sup> <http://www.ml.ua.es/>

**PALABRAS CLAVE.-** Conocimientos Tradicionales – Recursos Genéticos – Expresiones Culturales Tradicionales – Patentes – Marcas – Derechos de Autor – Diseño Industrial – Indicaciones Geográficas – Protocolo de Nagoya – Consentimiento previo informado (CPI) – Acceso y Participación en los Beneficios (ABS)

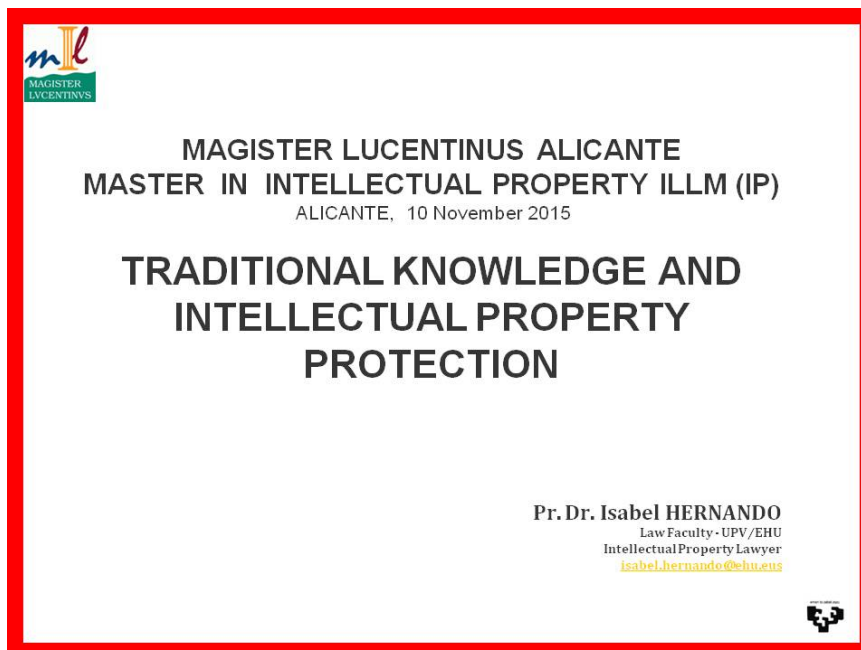
**SUMMARY.-** Introduction I.- OVERVIEW AND KEY CONCEPTS. 1. What is Traditional Knowledge?. 1.1. Definition of Traditional Knowledge by its characteristics. 1.2. Definition of Traditional Knowledge by Levels. 1.2.1. Categories or “areas” of Traditional Knowledge “as such” corresponding to the First Level. 1.2.1.1. Traditional Knowledge (TK) in a narrow sense. 1.2.1.2. Genetic Resources (GR). 1.2.1.3. Traditional Cultural Expressions (TCE). 1.2.2. Description of Traditional Level corresponding to the Second Level. 1.2.3. Description of Traditional level corresponding to the Third Level. 2. Who are involved in Traditional Knowledge?. II. OPTIONS FOR INTELLECTUAL PROPERTY PROTECTION OF TRADITIONAL KNOWLEDGE. 3. Regulation for Traditional Knowledge Preservation. 3.1. International Instruments: UNESCO –ONU. 3.2. Documenting Traditional Knowledge. 3.2.1. Inventorying Intangible Cultural Heritage (ICH). 3.2.2. Intellectual Property Issues in Process of Documenting Traditional Knowledge. 3.2.3. Traditional Knowledge databases – Registries. 3.3. Legal Requirements. 4. Protection of Traditional Knowledge with existing and adapted Intellectual Property modalities. 4.1. Existing Modalities of Intellectual Property Protection for Traditional Knowledge ( in a broad sense). 4.1.1. Patents for Traditional Knowledge (narrow sense) and for Genetic Resources. 4.1.2. Copyright for Traditional Knowledge (narrow sense) and for Traditional Cultural Expressions (TCE). 4.1.2.1. Copyright in the Three Levels. 4.1.2.2. Examples of Conflict and Controversial cases. 4.1.3. Trademarks for Traditional Knowledge (narrow sense) and Traditional Cultural Expressions. 4.1.3.1. Collective Marks. 4.1.3.2. Certification Trademarks. 4.1.3.3. Official Insignia and National Symbols. 4.1.3.4. Geographical Indications for Traditional Knowledge (narrow sense) and Traditional Cultural Expressions. 4.1.5. Industrial Design for Traditional Knowledge (narrow sense) and Traditional Cultural Expressions. 4.2. Protection of Traditional knowledge with “*sui generis*” Systems.

## Introduction

This contribution is not an article in a classical sense but the presentation - chronicle of the course - conference on Traditional Knowledge and Intellectual Property Protection held within the Master *Magister Lvcentinus* on Intellectual Property LLP (IP)<sup>3</sup> on November 10, 2015 in the Alicante University (Spain).

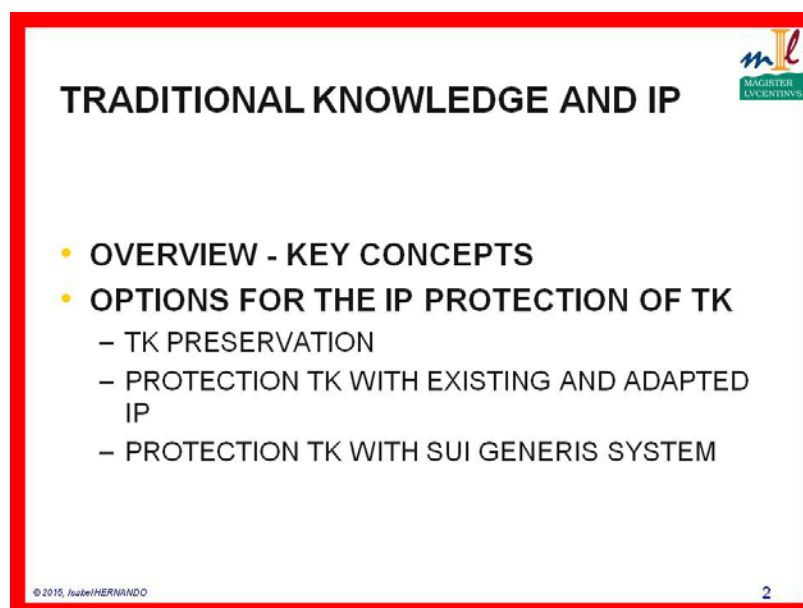
This chronicle consists in the presentation of the material used during the specific course of Traditional Knowledge and Intellectual Property Protection without providing any additional comments.

<sup>3</sup> <http://www.ml.ua.es/>



This contribution follows the structure of the course and it is divided into the two following parts:

- A first Part devoted to providing an overview of the subject and its key concepts and
- A second Part focused on the different options of Protection for the Traditional Knowledge according to the current developments of the Intellectual Property laws.



## I. OVERVIEW AND KEY CONCEPTS

The main objective of the presentation in this first part is to deepen and try to answer the following two key questions:

- What is Traditional Knowledge? and
- Who are involved?

### 1. What is Traditional Knowledge?

The answer to this first question is not univocal since there is not a clear cut definition of Traditional Knowledge. In this context, we have proceeded to approach the Traditional Knowledge from different perspectives that will allow a subsequent Intellectual Property legal treatment.

#### 1.1. Definition of Traditional Knowledge by its Characteristics



## TK – IP. WHAT is TK?

- NO CLEAR-CUT DEFINITION
- PART CULTURAL HERITAGE–
  - CREATED/DEVELOPED /PRESERVED/HELD AND TRANSMITTED
  - WITHIN LOCAL /TRADITIONAL COMMUNITY /
  - BY THE COMMUNITY OR BY INDIVIDUALS
- DEFINITIONS TK
  - TK DEFINITION BY CHARACTERISTICS
    - HOLISTIC IN NATURE
      - LINKED COMMUNITY'S SPIRITUAL BELIEFS (OR/AND)
      - WAY OF LIFE (OR/AND)
      - RELATION TO ENVIRONMENT (OR/AND)
      - PRACTICES
    - INTERGENERATIONAL /
      - NOT "OLD" /
      - CONSTANTLY EVOLVING /
      - DYNAMIC

## 1.2. Definition of Traditional Knowledge by Levels

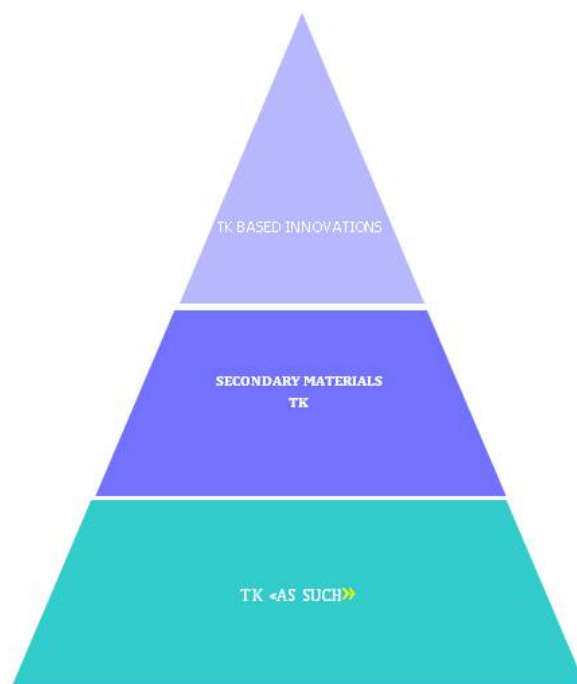
### TK- IP. WHAT IS TK?



#### • TK DEFINITION BY LEVELS:

##### - THREE LEVELS OF TK

- TK «AS SUCH»
- SECONDARY MATERIALS OF TK
- TK BASED INNOVATIONS /CREATIONS



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### 1.2.1. Categories or “areas” of the Traditional Knowledge “as such” corresponding to the First level

#### TK- IP. WHAT IS TK?

##### FIRST LEVEL - TK “As such” “broad sense”



- DEFINITION BY CATEGORIES / AREAS
  - TRADITIONAL KNOWLEDGE (TK) (narrow sense)
  - GENETIC RESOURCES (GR) and TK ASSOCIATED
  - TRADITIONAL CULTURAL EXPRESSIONS /folklore (TCE /EXPRESSIONS OF FOLKLORE)

## 1.2.1.1. Traditional Knowledge (TK) in a narrow sense

# FIRST LEVEL. WHAT (TK AS SUCH) ?

## TK (narrow sense)



### TRADITIONAL KNOWLEDGE (TK)

- TECHNICAL KNOW-HOW/
- PRACTICES /
- SKILLS/
- INNOVATIONS /



AUBUSSON TAPESTRY \*

<http://www.degustajaen.com/empresas/quesos-artesanos/>



Camomille \*



### TRADITIONAL KNOWLEDGE ASSOCIATED WITH

- TRADITIONAL BIODIVERSITY CONSERVATION KNOWLEDGE
- ENVIRONMENTAL KNOWLEDGE
- FARMING AND AGRICULTURE KNOWLEDGE
- MEDICINAL KNOWLEDGE
- TRADITIONAL COSMETIC
- TRADITIONAL FISHING
- KNOWLEDGE EMBODYING TRADITIONAL LIFESTYLES OF INDIGENOUS /LOCAL COMMUNITIES



- CORDYCEPS SINENSIS\* in

<http://www.shen-nong.com/eng/herbal/cordyceps.htm>



EPHEDRA SINICA\*

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### Notes - Sources \*

- Camomille \*: Photo in <https://en.wikipedia.org/wiki/Chamomile>
- AUBUSSON TAPESTRY \* Photo in [France](https://www.unesco.org/culture/ich/en/RL/aubusson-tapestry-00250) Inscribed in 2009 ([4.COM](http://www.4.com)) on the Representative List of the Intangible Cultural Heritage of Humanity in <http://www.unesco.org/culture/ich/en/RL/aubusson-tapestry-00250>
- CORDYCEPS Photo in <http://www.shen-nong.com/eng/herbal/cordyceps.htm>
- EPHEDRA SINICA\* Photo in NCCIH Publication No.: D336, Created: December 2006, Updated: June 2013. <https://nccih.nih.gov/health/ephedra>
- Quesos artesanos de frailes in <http://www.degustajaen.com/empresas/quesos-artesanos-de-frailes/>

## 1.2.1.2. Genetic Resources (GR)

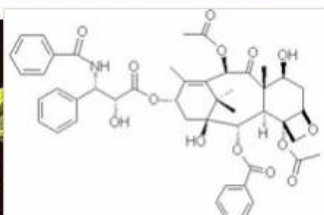
# FIRST LEVEL . WHAT (TK AS SUCH) ? GENETIC RESOURCES (GR)



- GENETIC MATERIAL OF ACTUAL /POTENTIAL VALUE
- FOUND PLANTS /ANIMALS /MICRO-ORGANISMS
- (ASSOCIATED OR NOT WITH TK)
  - <http://www.nybg.org/science/feb.php>



PACIFIC YEW TREE\*



and TAXOL (ANTI-CANCER DRUG)\*



TURMERIC (CURCUMALONGA)\*



NEEM TREE\*



DESCHAMPSIA ANTARCTICA\*



"Hodia gordonii P1010383" by Winfried Bruenken (Amrum) - Own work. Licensed under CC BY-SA 2.5 via Commons - [https://commons.wikimedia.org/wiki/File:Hodia\\_gordonii\\_P1010383.JPG#/media/File:Hodia\\_gordonii\\_P1010383.JPG](https://commons.wikimedia.org/wiki/File:Hodia_gordonii_P1010383.JPG#/media/File:Hodia_gordonii_P1010383.JPG)

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## Notes - Sources \*


- PACIFIC YEW (*Taxus brevifolia*) Photo in [http://oregonstate.edu/trees/conifer\\_genera/spp/yew\\_spp.html](http://oregonstate.edu/trees/conifer_genera/spp/yew_spp.html)
- TAXOL (ANTI-CANCER DRUG)\* image in en <https://en.wikipedia.org/wiki/Paclitaxel>
- TURMERIC (CURCUMA LONGA)\* Photo in <http://www.punmiris.com/himg/o.12172.jpg>  
Author: Naheed Shoukat Ali ([naheed](http://www.fragrantica.com/notes/Curcuma-Turmeric--308.html)) in <http://www.fragrantica.com/notes/Curcuma-Turmeric--308.html>
- NEEM PLANT\* Photo by Yeoh Tsvia Flickr.com) , (What is the Neem Plant and How Is it Used? In <http://www.discoverneem.com/neem-plant.html> )
- DESCHAMPSIA ANTARCTICA\* Photo in Anillo de Investigación en Ecofisiología de Plantas Artárticas. Ecofisiología de Plantas Artárticas en línea <http://antarcticplantscience.cl/es/publicaciones/detail/article/publicaciones-1990-2000/>
- "Hodia gordonii P1010383" by Winfried Bruenken (Amrum) - Own work. Licensed under CC BY-SA 2.5 via Commons - in [https://commons.wikimedia.org/wiki/File:Hodia\\_gordonii\\_P1010383.JPG#/media/File:Hodia\\_gordonii\\_P1010383.JPG](https://commons.wikimedia.org/wiki/File:Hodia_gordonii_P1010383.JPG#/media/File:Hodia_gordonii_P1010383.JPG)

### 1.2.1.3. Traditional Cultural Expressions (TCE)

## FIRST LEVEL. WHAT (TK AS SUCH) ? TRADITIONAL CULTURAL EXPRESSIONS



#### 4 CLASSIFICATIONS

VERBAL EXPRESSIONS	MUSICAL EXPRESSIONS
<ul style="list-style-type: none"> <li>- FOLK TALES /</li> <li>- FOLK POETRY –</li> <li>- RIDDLES/</li> <li>- SIGNS / WORDS /</li> <li>- NAMES /</li> <li>- SYMBOLS AND</li> <li>- INDICATIONS</li> </ul>	<ul style="list-style-type: none"> <li>- FOLK SONGS /</li> <li>- INSTRUMENTAL MUSIC /</li> <li>- RHYTHMS</li> </ul>
<p><b>Pohaturoa Rock. IIZ'</b> Photo of Kiwifella</p>  <p><a href="http://nz.geoview.info/pohaturoa_rock,773763p">http://nz.geoview.info/pohaturoa_rock,773763p</a></p>	<ul style="list-style-type: none"> <li>• Beagu -- Rorogwela (Sweet Lullaby) cantada por Afunakwa 1969</li> <li>• Music of Txistu and tamboril* <a href="https://www.youtube.com/watch?v=HWFvR8PcxFs">https://www.youtube.com/watch?v=HWFvR8PcxFs</a></li> </ul>




#### Notes - Sources \*

- PoHatura Rock NZ, Photo of Kiwifella in [http://nz.geoview.info/pohaturoa\\_rock,773763p](http://nz.geoview.info/pohaturoa_rock,773763p)
- Music of Txistu and tamboril in <https://www.youtube.com/watch?v=HWFvR8PcxFs>





# FIRST. LEVEL. WHAT (AS SUCH) ? TRADITIONAL CULTURAL EXPRESSIONS

EXPRESSIONS BY ACTIONS	TANGIBLE EXPRESSIONS
<p>FOLK DANCES/ PLAYS / CEREMONIES /RITUALS / GAMES / TRADITIONAL SPORTS / PUPPET PERFORMANCES / WHETHER OR NOT REDUCED TO A MATERIAL FORM</p>	<p>- PRODUCTIONS OF FOLK ART: DRAWINGS /PAINTINGS/CARVINGS/ SCULPTURES/POTTERY/ TERRACOTA/MOSAIC/ WOODWORK/ METAWARE/ JEWELRY/ BASKET WEAVING/ NEEDLEWORK/ TEXTILES/ CARPETS/ COSTUMES</p> <p>- CRAFTS</p> <p>- MUSICAL INSTRUMENTS</p> <p>- ARCHITECTURAL FORMS</p>
<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  <p><b>BASQUE DANCES</b> <a href="http://turismo.euskadi.eus">http://turismo.euskadi.eus</a>  <a href="http://semanasantaymas.blogspot.com.es/2014/06/octava-del-copus-en-la-orotava.html">http://semanasantaymas.blogspot.com.es/2014/06/octava-del-copus-en-la-orotava.html</a></p> </div> <div style="text-align: center;">  <p><b>FLOWER CARPETS /CORPUS CHRISTIE OROTAWA CANARIAS</b></p> </div> </div>	<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  <p><b>TRADITIONAL COSTUMES VALENCIANAS DANCES</b> <a href="http://www.fallasvalencia.es/fallas/historia/folclore">http://www.fallasvalencia.es/fallas/historia/folclore</a></p> </div> <div style="text-align: center;">  <p>Castanets'</p> </div> </div> <div style="text-align: center; margin-top: 20px;">  <p>MAORITATOO*</p> </div>

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## Notes - Sources\*

- BASQUE DANCES, Photo in line <http://turismo.euskadi.eus>
- FLOWER CARPETS /CORPUS CHRISTIE, OROTAWA CANARIAS, Photo in line <http://semanasantaymas.blogspot.com.es/2014/06/octava-del-copus-en-la-orotava.html>
- TRADITIONAL COSTUMES, VALENCIANAS DANCES, Photo in line <http://www.fallasvalencia.es/fallas/historia/folclore>
- CASTANETS (CASTAÑUELAS)\* Photo in line <http://tiendaplusmusic.es/Castanuelas>
- MAORI TATOO\*, Photo in line <http://cdn26.us3.fansshare.com/photo/tattoodesigns/perfect-maori-tattoo-designs-1852171267.jpg>

## 1.2.2. Description of Traditional Knowledge corresponding to the Second level



# TK- IP. – SECOND LEVEL WHAT SECONDARY MATERIAL OF TK?

 <p>SECONDARY MATERIALS TK</p>	<p>DATABASES. INVENTORIES. COLLECTIONS. RECORDS - DIGITIZING</p> <ul style="list-style-type: none"> <li>TRADITIONAL SONGS , MUSIC and DANCES</li> <li>TK</li> <li>ANCIENT MANUSCRIPTS –</li> <li>TRADITIONAL MEDICAL TEXT</li> <li>ORAL HISTORIES INCLUDE TK</li> </ul>	<p>MEMORIAL UNIVERSITY NEWFOUNDLAND <a href="http://www.mun.ca/folklore/leach/songs/index.html">http://www.mun.ca/folklore/leach/songs/index.html</a></p> <p>UNESCO – COLLECTIONS AND INTANGIBLE CULTURAL HERITAGE LIST <a href="http://www.unesco.org/archives/multimedia/index.php?id_page=65&amp;pattern=2011+inscriptions">http://www.unesco.org/archives/multimedia/index.php?id_page=65&amp;pattern=2011+inscriptions</a></p> <p>INDIA. <a href="#">TKDL Traditional Knowledge Digital Library</a></p> <p>Korean TRADITIONAL KNOWLEDGE PORTAL</p>
	<p>WRITING JOURNALS - ETHNOGRAPHIC COLLECTIONS</p>	<p>ETHNOPHARMACOLOGY <a href="http://www.sciencedirect.com/science/journal/03768741">http://www.sciencedirect.com/science/journal/03768741</a></p> <p>JOURNAL OF CHINESE MEDICINE <a href="http://www.jcm.co.uk/latest-issue/">http://www.jcm.co.uk/latest-issue/</a></p> <p>Economic BOTANY <a href="http://www.springer.com/life+sciences/plant+sciences/journal/12231">http://www.springer.com/life+sciences/plant+sciences/journal/12231</a></p>
	<p>DIGITIZING AND WEB CONTENT INTERNET</p>	<p><i>El Web de la Música Tradicional Aragonesa</i> <a href="http://www.arafolk.net/dreliq.php">http://www.arafolk.net/dreliq.php</a></p>
	<p>VIDEOTAPING</p>	<p>PREPARATION MEDICINAL POTAGE – (QUECHUA COMMUNITIES) –PERU</p>
	<p>PHOTOGRAPHYING traditional art</p>	<p>rocks paintings</p>

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### Notes – Sources

- MEMORIAL of the UNIVERSITY of NEWFOUNDLAND. In line <http://www.mun.ca/folklore/leach/songs/index.html>
- UNESCO – COLLECTIONS AND INTANGIBLE CULTURAL HERITAGE LIST in line [http://www.unesco.org/archives/multimedia/index.php?id\\_page=65&pattern=2011+inscriptions](http://www.unesco.org/archives/multimedia/index.php?id_page=65&pattern=2011+inscriptions)
- INDIA. [TKDL Traditional Knowledge Digital Library](#)
- ETHNOPHARMACOLOGY Journal in <http://www.sciencedirect.com/science/journal/03768741>
- JOURNAL OF CHINESE MEDICINE <http://www.jcm.co.uk/>
- Economic BOTANY in <http://www.springer.com/life+sciences/plant+sciences/journal/12231>
- Aragon traditional Music Web in <http://www.arafolk.net/dreliq.php>

### 1.2.3. Description of Traditional Knowledge corresponding to the Third level

## TK-IP. THIRD LEVEL

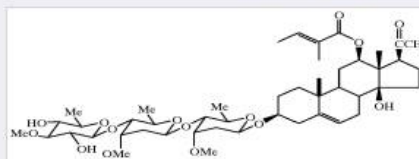
## WHAT TK BASED INNOVATIONS /CREATIONS?



- PHAMACEUTICAL PRODUCTS
- COSMETIC PRODUCTS
- FASHION PRODUCTS
- ARCHITECTURE - CONSTRUCTION TECHNOLOGIES AND MATERIALS
- BIOCLIMATIC PRODUCTS
- SCULPTURES
- MUSICAL PRODUCTS
- BIOCHEMICAL PRODUCTS
- AUDIOVISUALS PRODUCTS



TURMERIC (CURCUMA) BASED INNOVATIONS



A pharmaceutical composition which contains an extract obtainable from a plant of the genus *Trichocaulon* or *Hoodia* containing an appetite suppressant agent having the formula (I). A process for obtaining the extract and a process for synthesizing compound (I) and its analogues and derivatives is also provided. The invention also extends to the use of such extracts and compound (I) and its analogues for the manufacture of medicaments having appetite suppressant activity. The invention further provides novel intermediates for the synthesis of compound (I).

58 Claims, 6 Drawing Sheets

US6376657 (B1) - Pharmaceutical compositions having appetite suppressant activity-(HOODIA)

### Notes – Sources\*

- DEEP FOREST\* Photo Album in <http://www.amazon.com/Deep-Forest/dp/B0000029IH>
- THE MARK OF KRI\* Photo in <http://www.theisozone.com/covers/ps2/mark-of-kri-the-usa-dvd-sleeve-ps2/>
- TURMERIC (CURCUMA LONGA)\* Photo in <http://www.punmiris.com/himg/o.12172.jpg>  
Author: Naheed Shoukat Ali ([naheed](http://www.fragrantica.com/notes/Curcuma-Turmeric-308)) in <http://www.fragrantica.com/notes/Curcuma-Turmeric-308>
- CURCUMA BASED INNOVATIONS in [http://worldwide.espacenet.com/searchResults?submitted=true&locale=en\\_EP&DB=EPODOC&ST=advanced&TI=CURCUMA&AB=&PN=&AP=&PR=&PD=&PA=&IN=&CPC=&IC=&Submit=Search](http://worldwide.espacenet.com/searchResults?submitted=true&locale=en_EP&DB=EPODOC&ST=advanced&TI=CURCUMA&AB=&PN=&AP=&PR=&PD=&PA=&IN=&CPC=&IC=&Submit=Search) See also. Plasma-assisted processing natural curcuma longa dyeing method ( N104975524 (A) — 2015-10-14) in [http://worldwide.espacenet.com/publicationDetails/biblio?DB=EPODOC&II=7&ND=3&adjacent=true&locale=en\\_EP&FT=D&date=20151014&CC=CN&NR=104975524A&KC=A](http://worldwide.espacenet.com/publicationDetails/biblio?DB=EPODOC&II=7&ND=3&adjacent=true&locale=en_EP&FT=D&date=20151014&CC=CN&NR=104975524A&KC=A)

## 2. Who are involved in the Traditional Knowledge?



# TRADITIONAL KNOWLEDGE AND IP OVERVIEW – KEY CONCEPTS

## • WHO ARE INVOLVED? . THREE LEVELS

LEVELS	IDENTIFICATION USUAL PROTAGONISTS	LEGAL QUALIFICATIONS
1 TK "AS SUCH"	LOCAL COMMUNITIES INDIVIDUALS	- HOLDERS - POSSESSORS - CUSTODIANS - OWNERS - LICENSORS
2 SECONDARY MATERIALS	INDIVIDUALS LIBRARIES RESEARCH - CULTURAL CENTERS PRIVATE NON PROFIT ENTITIES PUBLIC ENTITIES	- OWNERS (CREATORS – INVENTORS - FABRICANTS) - LICENSORS - LICENSEES
3 TK BASED INNOVATIONS / CREATIONS	INDIVIDUALS LOCAL COMMUNITIES COMPANIES – SOCIETIES	- OWNERS (CREATORS – INVENTORS) - LICENSORS - LICENSEES

Harmonized the terms and key concepts used in the Traditional Knowledge context, we are able to proceed with the Second Part.

## II.- OPTIONS FOR INTELLECTUAL PROPERTY PROTECTION OF TRADITIONAL KNOWLEDGE

This second part is divided into the three following sections that although separately expose, in practice they are coexistent and interdependent.

- Regulation for Traditional Knowledge Preservation
- Protection of Traditional Knowledge with existing and adapted Intellectual Property modalities
- Protection of Traditional Knowledge with “*sui generis*” systems

### 3. Regulation for Traditional Knowledge Preservation

## TK. OPTIONS FOR IP PROTECTION REGULATION TK PRESERVATION



### • FUNCTIONS

- **SAFEGUARDING CULTURAL HERITAGE**
- **AS EVIDENCE FOR IP DEFENSIVE PROTECTION**
  - STOP PEOPLE OUTSIDE COMMUNITY FROM ACQUIRING IP OVER TK.
  - STOP MISSAPPROPRIATION OF TK /GR/ .
  - STOP MISUSE OF TK
- **FOR ASSERTING POSITIVE IP PROTECTION**
  - GRANT IP RIGHTS /EMPOWER LOCAL COMMUNITIES /INDIVIDUALS/
  - PROMOTE USES TK
  - CONTROL USES /BENEFIT FROM TK COMMERCIAL EXPLOITATION

3.1. International Instruments: UNESCO – ONU

**TK PRESERVATION. INTERNATIONAL INSTRUMENTS. UNESCO -ONU**



INDIGENOUS PEOPLE ONU	TK –TCE UNESCO	GR (+- TK)
Declaration on Rights of Indigenous People, 2007	- Convention <b>Safeguarding Intangible Cultural Heritage</b> , 2003 - Convention on Protection and Promotion of Diversity of Cultural Expressions, 2005	-Convention on <b>Biological Diversity</b> (CBD), 1992 + - <b>Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits</b> (2010) – (IN FORCE 2014)  -International Treaty Plant Genetic resources for Food and Agriculture. (2001 – approved UNION 2004)
	DOCUMENTING TK	LEGAL REQUIREMENTS
	<ul style="list-style-type: none"> <li>• INVENTORIES INTANGIBLE CULTURAL HERITAGE</li> <li>• TK DATABASES - REGISTRIES</li> </ul>	<ul style="list-style-type: none"> <li>• <b>DISCLOSURE OF SOURCE/ORIGINE</b> (GR) (TK)</li> <li>• <b>(ABS) ACCESS BENEFIT SHARING SYSTEM</b> <ul style="list-style-type: none"> <li>• PIC. PRIOR INFORMED CONSENT</li> <li>• MTA. - MATERIAL TRANSFER AGREEMENT - MUTUALLY AGREED TERMS</li> </ul> </li> <li>• <b>OFFICIAL CHEKPOINTS COUNTRIES UTILISIED</b></li> </ul>

## 3.2. Documenting Traditional knowledge

### 3.2.1. Inventorying Intangible Cultural Heritage (ICH)



## TK PRESERVATION. DOCUMENTING TK

### • INVENTORYING ICH

UNESCO GUIDELINES AND SYSTEMS	UNESCO LISTS
<p>-POSSIBLE OUTLINE FOR INVENTORYING ELEMENTS OF THE INTANGIBLE CULTURAL HERITAGE  <a href="http://www.unesco.org/culture/ich/index.php?lg=en&amp;pg=00266">http://www.unesco.org/culture/ich/index.php?lg=en&amp;pg=00266</a></p> <p>- NATIONAL INTANGIBLE INVENTORYING PRACTICES  <a href="http://www.unesco.org/culture/ich/index.php?lg=en&amp;pg=00314">http://www.unesco.org/culture/ich/index.php?lg=en&amp;pg=00314</a></p> <p>-LIVING HUMAN TREASURES (LHT) NATIONAL SYSTEMS</p> <ul style="list-style-type: none"> <li>• PERSONS WHO POSSES – HIGH DEGREE KNOWLEDGE /SKILLS REQUIRED</li> <li>•FOR PERFORMING OR RECREATING SPECIFIC ELEMENTS OF ICH</li> </ul> <p><a href="http://www.unesco.org/culture/ich/index.php?lg=en&amp;pg=00061">http://www.unesco.org/culture/ich/index.php?lg=en&amp;pg=00061</a>  <a href="http://www.maitresdart.com">http://www.maitresdart.com</a></p>	<p>- LIST OF INTANGIBLE CULTURAL HERITAGE IN NEED OF URGENT SAFEGUARDING</p> <p>- REPRESENTATIVE LIST OF THE INTANGIBLE CULTURAL HERITAGE OF HUMANITY</p> <ul style="list-style-type: none"> <li>- Identification of ICH</li> <li>- Consent of communities</li> </ul> <p><a href="http://www.unesco.org/culture/ich/index.php?lg=en&amp;pg=00011">http://www.unesco.org/culture/ich/index.php?lg=en&amp;pg=00011</a></p>

### Notes – Sources

- UNESCO Guidelines and Systems:
  - <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00266>
  - <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00314>
  - <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00061>
  - <http://www.maitresdart.com>
- UNESCO LISTS
  - <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00011>

### 3.2.2. Intellectual Property Issues in Process of Documenting Traditional Knowledge

## TK PRESERVATION. DOCUMENTING TK PROCESS IP ISSUES (WIPO TOOLKIT )



SUBJECT MATTER (TK-TCE)	NATURE (TK-TCE)	-SECRET – CONFIDENTIAL? – SACRED? -INDIVIDUALLY / COMMUNALLY HELD? --ORALLY TRANSMITTED? DOCUMENTED ? CODIFIED? --COSTUMARY RESTRICTIONS USE / DISCLOSURE?
	CONTENT / EXPRESSION (TK-TCE)	-TECHNICAL KNOWLEDGE /KNOW –HOW? --EMBODIED TANGIBLE PRODUCT? --RELATED TO TCE?
	TK – BIOLOGICAL /GENETIC RESOURCES	-BR/GR - BE COLLECTED AS PART OF DOCUMENTATION? -EXTRACTS: COLLECTED AND DOCUMENTED? -BR/GR DISTINCTIVE CHARACTERISTICS DEVELOPED THROUGH TRADITIONAL METHODS : SELECTION/ BREEDING/PROCESSING?
	HOW EXTENDED TK USE /DISSEMINATION	-NON-DISCLOSED /DISCLOSED TO – GENERAL PUBLIC/INDIVIDUALS? -KNOWN BY COMMUNITY INDIVIDUAL/ WHOLE/ GROUP/INDIGENOUS NATION? - COMMERCIALIZED /TRADE IN SOME FORMS ? LOCALLY, REGIONALLY/INTERNATIONALLY?
APPLICABLE IP LEGISLATION	NATIONAL /INTERNATIONAL	- SPECIFIC LAWS /REGULATION APPLICABLE? SPECIFIC TK/TCE LAWS?
OTHER RELATED LEGAL REGIMES	OTHER RELEVANT LEGAL REGIMES /INSTRUMENTS	- CUSTOMARY LAWS /LOCAL TRADITIONS? -COMMUNITY PROTOCOLS? -- BIODIVERSITY LAWS AND ABS LEGISLATION?

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### Notes – Sources

- The World Intellectual Property Organization. Organization Traditional Knowledge. *Documentation Toolkit*. Consultation Draft, November , 1, 2012, WIPO, pages 27-28.



### 3.2.3. Traditional Knowledge Databases – Registries

## TK PRESERVATION. DOCUMENTING TK



### • TK DATABASES – REGISTRIES

AVAILABLE TO EXAMINERS	OTHERS
<p>KJTK Korean TRADITIONAL KNOWLEDGE PORTAL: <a href="http://www.koreantk.com/ktkp2014/asset/list-by-index.page">http://www.koreantk.com/ktkp2014/asset/list-by-index.page</a></p>	<p>GENESYS GATEWAY TO GENETIC RESOURCES : <a href="https://www.genesys-pgr.org/content/about">https://www.genesys-pgr.org/content/about</a></p>
<p>TCM TRADITIONAL CHINESE MEDICINE PATENTS DATABASE: <a href="http://221.122.40.157/tcm_patent1/englishversion/help/help.html">http://221.122.40.157/tcm_patent1/englishversion/help/help.html</a></p>	<p>NATIONAL PUBLIC REGISTERS FOR COLLECTIVE KNOWLEDGE – PERU (<a href="http://www.indecopi.gob.pe/portal">http://www.indecopi.gob.pe/portal</a> )</p>
<p>TDKL . TRADITIONAL KNOWLEDGE DIGITAL LIBRARY INDIA: <a href="http://www.tkdل.res.in/tkdل/langdefault/common/Home.asp?GL=Eng">http://www.tkdل.res.in/tkdل/langdefault/common/Home.asp?GL=Eng</a></p>	<p>MEDICINES COMPLETE : looking for • KNOWN PROPRIETIES AND USES • OF SPECIFIC PLANT <a href="https://www.medicinescomplete.com/mc/herbals/current/">https://www.medicinescomplete.com/mc/herbals/current/</a></p>
<p>XPTK (Indian Journal of Traditional Knowledge, Medicinal and Aromatic Plants Abstracts database) <a href="http://www.niscair.res.in/sciencecommunication/researchjournals/rejour/ijtk/ijtk0.asp">http://www.niscair.res.in/sciencecommunication/researchjournals/rejour/ijtk/ijtk0.asp</a></p>	<p>RAIN-TREE DATABASE • PLANTS FOR THE AMAZONIAN FOREST <a href="http://www.rain-tree.com/plants.htm#VjZN1rcvdD8">http://www.rain-tree.com/plants.htm#VjZN1rcvdD8</a></p>

### Notes - Sources

- KJTK in <http://www.koreantk.com/ktkp2014/asset/list-by-index.page>
- TCM in [http://221.122.40.157/tcm\\_patent1/englishversion/help/help.html](http://221.122.40.157/tcm_patent1/englishversion/help/help.html)
- TDKL in <http://www.tkdل.res.in/tkdل/langdefault/common/Home.asp?GL=Eng>
- XPTK in <http://www.niscair.res.in/sciencecommunication/researchjournals/rejour/ijtk/ijtk0.asp>
- Genesys Gateway in <https://www.genesys-pgr.org/content/about>
- National Public Register , Peru, in (<http://www.indecopi.gob.pe> )
- Medicines Complete in <https://www.medicinescomplete.com/mc/herbals/current/>
- Rain- Tree Database in <http://www.rain-tree.com/plants.htm#VjZN1rcvdD8>

### 3.3. Legal Requirements

## TK PRESERVATION. LEGAL REQUIREMENTS



### • GR - TK (ns) - NAGOYA

#### DISCLOSURE OF SOURCE /ORIGINE OF TK-GR

- TO ENSURE PIC AND ABS

#### ACCESS –BENEFIT SHARING (ABS)

- HOW ACCESS TO GENETIC RESSOURCES & TK ASSOCIATED. ACCESS PERMISSIONS
- HOW SHARING BENEFIT OBTAINED BETWEEN USERS AND PROVIDERS COUNTRIES
- <http://www.abs-initiative.info/knowledge-center/multimedia/>

#### PRIOR INFORMED CONSENT (PIC)

- CONSENT OBTAINED BY THE FORMAL RESEARCH COMMERCIAL /NON COMMERCIAL USER
- FROM LOCAL INDIVUAL /COMMUNITY PROVIDER COUNTRY PREVIOUSLY NFORMED:
- FULLY DISCLOSED THE INTEND AND SCOPE OF RESEARCH AND UTILISATION
- ARTICLE AND NATURE

#### MATERIAL TRANSFER AGREEMENT MUTUALLY AGREED TERMS (MTA)

- IDENTIFICATION: MATERIAL/ PURPOSES TRANSFER
- PROVIDER AND USER'S RIGHTS /OBLIGATIONS
  - OWNERSHIP OF IP
  - DISSEMINATION AND ACCESS RIGHTS
  - COMMERCIAL DEVELOPMENTS
  - TRANSFERS TO THIRDS PARTIES
  - DERIVATIVES
- FAIR AND EQUITABLE SHARE BENEFITS OBTAINED
  - MONETARY BENEFITS : ROYALTIES – FLAT FEE PAYMENTS /SHAREHOLDER/ IP DERIVATIVES/ TRANSFER TECHNOLOGY
  - NON MONETARY BENEFITS: FOR PROVIDER COUNTRY AND LOCALS : SHARING KNOW– HOW OR TRAINING/ CONSERVATION ACTIVITIES

#### 4. Protection of Traditional Knowledge with existing and adapted Intellectual Property modalities

## PROTECTION TK WITH EXISTING AND ADAPTED IP



WIPO -OMPI	PROPRIETARY APPROACH
<ul style="list-style-type: none"> <li>- BERNAL CONVENTION PROTECTION LITERARY ARTISTIC WORKS 1967 (1971):(OMPI-UNESCO) "Unpublished works where identity author unknown»</li> <li>- Tunis Model Law Copyright Developing Countries 1976</li> <li>- MODEL PROVISIONS for NATIONAL LAWS 1982 (OMPI-UNESCO)</li> <li>- PERFORMANCES AND PHONOGRAMS TREATY (WPPT. 1996)(into force 2002) " "performers expressions Folklore"</li> </ul>	<ul style="list-style-type: none"> <li>• DEFENSIVE PROTECTION</li> <li>• POSITIVE PROTECTION</li> </ul>
<ul style="list-style-type: none"> <li>- (IGC) INTERGOVERNMENTAL COMMITTEE – IP AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE -2000 ss</li> <li>- TK Treaty (project)</li> </ul>	<ul style="list-style-type: none"> <li>• COPYRIGHT</li> <li>• TRADEMARKS</li> <li>• GEOGRAPHICAL INDICATIONS (GI)</li> <li>• PATENTS /</li> <li>• UM /</li> <li>• INDUSTRIAL DESIGN (ID)</li> <li>• PLANTS VARIETIES</li> <li>• KNOW – HOW</li> </ul>


#### 4.1. Existing Modalities of Intellectual Property Protection for Traditional Knowledge (in a broad sense)



## EXISTING MODALITIES IP PROTECTION TK LARGE SENSE

	PATENTS	©	TRADE MARKS	GI	ID	PLANT VARIETIES	UTILITY MODELS	KNOWHOW - TRADE SECRETS
TK	X	X	X	X	X	X	X	X
TCE		X	X	X	X		X	X
GR+ - TK	X	X	X	X	X	X		X


### 4.1.1. Patents for Traditional Knowledge (narrow sense) and /or Genetic Resources



## EXISTING MODALITIES IP PROTECTION PATENTS FOR TK (narrow sense) -GR (+ - TK)

- **FUNCTION**
  - GRANTS SET EXCLUSIVE RIGHTS INVENTOR FOR A LIMIT TIME
  - PREVENTS OTHERS FROM COMMERCIALY USING PATENTED INVENTION WIHOUT PERMISSION
  - ALLOW THEIR RIGHT HOLDERS PREVENT THIRD PARTIES FROM: MAKING /USING/ SELLING/OFFERING FOR SALE/IMPORTING FOR THESE PURPOSES A PATENTED INVENTION.
  - IN RETURN, AN INVENTOR MUST SUBMIT A PATENT APPLICATION TO «NATIONAL» OR "INTERNATIONAL - EUROPEAN" ORGANIZATION
  - WHICH DISCLOSE HOW TO REPLICATE INVENTION BY PERSON SKILLED IN THE ART.
- **PUBLIC DOMAIN**
  - ONCE PATENT EXPIRED, THIRD PARTIES MAY USE CLAIMED INVENTION WITHOUT CONSENT PATENT OWNER

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## EXISTING MODALITIES IP PROTECTION – PATENTS FOR TK (narrow sense) - GR (+- TK)



- **PATENTS INVENTION : THREE CRITERIA**

NOVELTY	NON OBVIOUSNESS	INDUSTRIAL APPLICATION
- "NEWNESS"	- PRESENCE INVENTIVE STEP - SOLVES A PROBLEM IN A TECHNICAL WAY	- UTILITY - EXISTENCE POTENTIAL MARKET FOR PATENTED KNOWLEDGE
NOT PRIOR ART BASE: - (Not MADE AVAILABLE PUBLIC )	- NOT PRIOR ART BASE:	
• USA. PRINTED PUBLICATION DESCRIBING INVENTION /DISCOVERY: MAGAZINES / SCIENTIFIC JOURNALS /WEB/...	- NOT "OBVIOUS" TO SOMEONE WITH ORDINARY SKILL IN THE ART	
EU. MEANS: - WRITTEN / ORAL DESCRIPTION - USE /ANY OTHER WAY - FROM ANY PART OF WORLD - ANY TIME BEFORE DATE FILING PATENT APPLICATION		

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## EXISTING MODALITIES IP PROTECTION – PATENTS . TK (narrow sense) – GR (+-TK)



TK – GR (AS SUCH)	TK/GR BASED INNOVATIONS / CREATIONS
DEFENSIVE PROTECTION HOLDERS	POSITIVE PROTECTION -
<ul style="list-style-type: none"> <li>• NON PATENT LITERATURE RESOURCES               <ul style="list-style-type: none"> <li>• PROOF THAT :                   <ul style="list-style-type: none"> <li>• TK USED GENERATIONS/</li> <li>• DISSEMINATED LOCAL COMMUNITIES/</li> <li>• DOCUMENTED IN PUBLICLY AVAILABLE SOURCES</li> </ul> </li> <li>• PROOF LACK OF NOVELTY : LACK INVENTIVE STEP FOR PRIOR ART INFORMATION</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- PATENTED:               <ul style="list-style-type: none"> <li>- METHODS OF PROCESS OR</li> <li>- NEW USES OF TK</li> </ul> </li> <li>- INTERACTION WITH SAVEGUARDING RULES /CONVENTIONS</li> <li>- ADDITIONAL LEGAL DOCUMENTATION REQUIRED:               <ul style="list-style-type: none"> <li>- DISCLOSURE OF SOURCE /ORIGINE (TK/GR)</li> <li>- PRIOR INFORMED CONSENT</li> <li>- ABS AGREEMENTS - MTA</li> </ul> </li> </ul>
<p><b>A.- JOURNALS:</b></p> <ul style="list-style-type: none"> <li>• JOURNAL ETHNOPHARMACOLOGY <a href="http://www.sciencedirect.com/science/journal/03788741">http://www.sciencedirect.com/science/journal/03788741</a></li> <li>• JOURNAL OF CHINESE MEDICINE <a href="http://www.jcm.co.uk/latest-issue/">http://www.jcm.co.uk/latest-issue/</a></li> <li>• ECONOMIC BOTANY <a href="http://www.springer.com/life+sciences/plant+sciences/journal/12231">http://www.springer.com/life+sciences/plant+sciences/journal/12231</a></li> <li>• PHARMACEUTICAL BIOLOGY <a href="http://www.jpbjournal.com/content.php">http://www.jpbjournal.com/content.php</a></li> <li>• JOURNAL OF NATURAL PRODUCTS <a href="http://pubs.acs.org/loi/jnprdf">http://pubs.acs.org/loi/jnprdf</a></li> </ul> <p><b>B.- DATABASES:</b></p> <ul style="list-style-type: none"> <li>• TDKL . TRADITIONAL KNOWLEDGE DIGITAL LIBRARY INDIA: <a href="http://www.tkdli.res.in/tkdli/langdefault/common/Home.asp?GL=Eng">http://www.tkdli.res.in/tkdli/langdefault/common/Home.asp?GL=Eng</a></li> </ul>	<div style="display: flex; justify-content: space-around;"> <div style="text-align: center;">  <p><b>Hoodia* ,</b> CSIR patent licensed to PHYTOFARM Used to potential slimming and for obesity San People sued CSIR – PHYTOFARM South Africa</p> </div> <div style="text-align: center;">  <p><b>Kava (Piper methysticum Forster)*</b> (Pacific . Fidji – Vanuatu) French company L'Oreal - has patented the use of Kava to reduce hair loss and stimulate hair growth</p> </div> </div>

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### Notes – Sources\*


- JOURNAL ETHNOPHARMACOLOGY  
<http://www.sciencedirect.com/science/journal/03788741>
- JOURNAL OF CHINESE MEDICINE in <http://www.jcm.co.uk/>
- ECONOMIC BOTANY <http://www.springer.com/life+sciences/plant+sciences/journal/12231>
- PHARMACEUTICAL BIOLOGY <http://www.jpbjournal.com/content.php>
- JOURNAL OF NATURAL PRODUCTS <http://pubs.acs.org/loi/jnprdf>
- TDKL <http://www.tkdli.res.in/tkdli/langdefault/common/Home.asp?GL=Eng>
- HOODIA\* , Photo in <http://www.summit-fuel.com/product-development/hoodia-a-natural-appetite-suppressing-herb/> , Hoodia – A natural Appetite Suppressing Herb Posted on [June 25, 2014](#) by [Terry Clayton Ph.D.](#)
- KAVA (PIPER METHYSTICUM FORSTER)\* Photo of · Forst & Kim Starr ; [CC BY 3.0](#) hide terms: · File:Starr 070515-7054 Piper methysticum.jpg : · ; · Created: 15 May 2007. Piper methysticum (leaves). Location: Oahu, Hoomaluhia Botanical Garden in [https://en.wikipedia.org/wiki/Kava#/media/File:Starr\\_070515-7054\\_Piper\\_methysticum.jpg](https://en.wikipedia.org/wiki/Kava#/media/File:Starr_070515-7054_Piper_methysticum.jpg)



# EXISTING MODALITIES IP PROTECTION – PATENTS . TK (narrow sense) – GR (+-TK)

## NEEMTREE BASED INNOVATIONS

**NEEMTREE BASED INNOVATION**



(19) **United States**  
 (12) **Patent Application Publication**  
**Booyesen et al.** (10) **Pub. No.: US 2015/0272132 A1**  
 (43) **Pub. Date: Oct. 1, 2015**

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(54) **NEEM OIL GRANULE WITH NUTRIENTS** *C05G 3/02* (2006.01)  
*B05D 1/02* (2006.01)  
 (71) Applicants: **Pieter W. Booyesen**, St. Augustine, FL (US); **Ronald R. Shingler**, Blakely, GA (US); **Robert L. Thompson**, Arlington, GA (US) *A01N 25/12* (2006.01)  
*A01N 25/24* (2006.01)  
 (52) **U.S. CL.**  
 CPC ..... *A01N 65/26* (2013.01); *A01N 25/12* (2013.01); *A01N 25/24* (2013.01); *C05G 3/02* (2013.01); *B05D 1/02* (2013.01); *B05D 1/002* (2013.01)

(72) Inventors: **Pieter W. Booyesen**, St. Augustine, FL (US); **Ronald R. Shingler**, Blakely, GA (US); **Robert L. Thompson**, Arlington, GA (US)

(21) Appl. No.: **14/672,116**  
 (22) Filed: **Mar. 28, 2015**

**Related U.S. Application Data**  
 (60) Provisional application No. 61/972,409, filed on Mar. 30, 2014.

**Publication Classification**  
 (51) **Int. Cl.**  
*A01N 65/26* (2006.01)  
*B05D 1/00* (2006.01)

(57) **ABSTRACT**  
 A pesticide granule containing neem oil is provided. A biodegradable carrier granule is coated with neem oil and silica or a similar drying agent. The granule preferably contains a blend of nutrients and other ingredients beneficial to crops. The granules have a relatively dry exterior and are free-flowing. The granules are applied to crops by placing the granules into the seed furrows at the time of seed planting or otherwise incorporating the granules into the soil.

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### Notes – Sources \*

- NEEM PLANT\* Photo in ( in <http://antarcticplPhoto> by Yeoh Tsv ia Flickr.com) , (What Is The Neem Plant And How Is It Used? In <http://www.discoverneem.com/neem-plant.html> )



# EXISTING MODALITIES IP PROTECTION – PATENTS . TK (narrow sense) – GR (+-TK)



NEEMTREE  
BASED INNOVATION

Instituto Mexicano de la Propiedad Industrial		(11) <b>MX 2013004928 A</b>	
<b>SOLICITUD de PATENTE</b>			
(43) Fecha de publicación:	20/11/2014	(51) Int. Cl.:	<b>A61K 38/56</b> (2006.01)
(22) Fecha de presentación:	02/05/2013		<b>A61K 8/97</b> (2006.01)
(21) Número de solicitud:	2013004928		<b>A61K 47/06</b> (2006.01)
			<b>A61K 8/30</b> (2006.01)
			<b>A61K 9/10</b> (2006.01)
			<b>A61Q 19/08</b> (2006.01)
(71) Solicitante: DIRECCION GENERAL DE EDUCACION SUPERIOR TECNOLÓGICA DE LA SECRETARÍA DE EDUCACION PUBLICA Arcos de Belen No.79 Piso 3 06010 CUAUHEMOC Distrito Federal MX			
(72) Inventor(es): FEDERICO ANTONIO GUTIERREZ MICELI Kilometro 1080 TUXTLA GUTIERREZ Chiapas MX VICENTE FEDERICO GUTIERREZ OLIVA			
(74) Representante: BLANDINA OCHOA HERNÁNDEZ Arcos de Belen No.79 Piso 11(PH) CUAUHEMOC Distrito Federal 06010 MX			
(54) Título: COMPOSICIÓN TÓPICA COSMÉTICA A BASE DE EXTRACTOS DE HOJAS DE NEEM (AZADIRACHTA INDICA JUSS) PARA PROMOVER EL REJUVENECIMIENTO DE LA PIEL Y PARA COMBATIR INFECCIONES CON HONGOS Y BACTERIAS.			
(54) Title: TOPIC COSMETIC COMPOSITION BASED ON EXTRACTS OF NEEM LEAVES ((AZADIRACHTA INDICA JUSS) FOR PROMOTING THE SKIN REJUVENATION AND TREATING FUNGI AND BACTERIA INFECTIONS.			
(57) Resumen El objeto de la presente invención es describir una formulación a base de extracto de hojas de neem (Azadirachta indica Juss) para promover el rejuvenecimiento de la piel y para combatir infecciones con hongos y bacterias que contiene entre 1 y 10% de extracto de hoja de neem. Esta formulación sirve de base para la elaboración de diferentes presentaciones para su aplicación tópica.			
(57) Abstract The purpose of the invention is to describe a formulation based on a neem leaf extract (Azadirachta indica Juss) for promoting the rejuvenation of the skin and treating fungi and bacteria infections, this may comprise from about 1% to about 10% of neem leaf extract. This formulation is useful as a base for the manufacture of different presentations of topic applications.			


## Notes – Sources \*

- NEEM PLANT\* Photo in ( in <http://antarcticplPhoto> by Yeoh Tsv ia Flickr.com) , (What Is The Neem Plant And How Is It Used? In <http://www.discoverneem.com/neem-plant.html> )



#### 4.1.2. Copyright for Traditional Knowledge (narrow sense) and for Traditional Cultural Expressions (TCE)

## EXISTING MODALITIES IP PROTECTION COPYRIGHT – TK (ns) -TCE



- **FUNCTION**
  - PROTECT ORIGINAL WORKS AGAINST UNAUTHORIZED USE BY THIRD PARTIES.
  - PROTECT ORIGINAL FORM OF EXPRESSION OF IDEAS /SENSATIONS
- **PROTECTABLE WORK IS BROAD:**
  - IMAGES, SYMBOLS, MUSIC, SCRIPTS, CHOREOGRAPHIES, MUSICS, ILLUSTRATIONS, ARCHITECTURAL WORKS (PROJECTS, PLANS), FURNITURES, PLASTIC WORKS, PHOTOGRAPHIC WORKS, DATABASE, SOFTWARE (...)
- **CRITERIA TO FULFILL: ORIGINALITY –**
  - MANIFESTATION OF THE AUTHOR /CREATOR´S PERSONALITY ( EU COURTS)
- **CREATOR:**
  - INDIVIDUALS / COLLECTIVE WORKS
  - GROUPS ( COLLABORATION WORKS) /
  - UNKNOWN (UNPUBLISHED WORKS)

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## EXISTING MODALITIES IP PROTECTION COPYRIGHT – TK (ns) -TCE




- **RIGHTS:**
  - MORAL RIGHTS: AUTHOR ATTRIBUTION / INTEGRITY / DISCLOSURE / MODIFY ...
    - PERIOD OF PROTECTION
  - EXPLOTATION RIGHTS: REPRODUCTION / DISTRIBUTION / TRANSFORMATION / PUBLIC COMMUNICATION
    - EXCEPTIONS & LIMITS
    - PERIOD OF PROTECTION. GENERAL. CREATOR´S LIFETIME AND (70 YEARS / 50 YEARS)
    - PUBLIC DOMAIN
- **RELATED RIGHTS**
  - PHOTOGRAPHIES / PERFORMANCES /
  - PHONOGRAMS & AUDIOVISUALS PRODUCERS

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#### 4.1.2.1. Copyright in the three Levels

EXISTING MODALITIES IP PROTECTION COPYRIGHT – TK (ns) -TCE		
TK (ns) –TCE (AS SUCH)	TK (ns) –TCE (SECONDARY MATERIAL)	TK (ns) –TCE (BASED INNOVATIONS / CREATIONS)
<b>DEFENSIVE PROTECTION HOLDERS</b>	<b>POSITIVE PROTECTION</b>	<b>POSITIVE PROTECTION</b>
<ul style="list-style-type: none"> <li>• PUBLIC DOMAIN</li> </ul>	<ul style="list-style-type: none"> <li>•ORIGINAL NEW PRODUCTS</li> </ul>	<ul style="list-style-type: none"> <li>•Original PRODUCTS</li> <li>•DERIVATIVE PRODUCTS</li> </ul>
<ul style="list-style-type: none"> <li>• YOGA ASANAS EXAMPLE</li> </ul>	<ul style="list-style-type: none"> <li>•UNESCO - SMITHSONIAN  <ul style="list-style-type: none"> <li>•<a href="http://www.folkways.si.edu/unesco">http://www.folkways.si.edu/unesco</a></li> </ul> </li> <li>•UNESCO LIST</li> <li>•TDKL . TRADITIONAL KNOWLEDGE DIGITAL LIBRARY INDIA:  <a href="http://www.tkdil.res.in/tkdil/langdefault/common/Home.asp?GL=Eng">http://www.tkdil.res.in/tkdil/langdefault/common/Home.asp?GL=Eng</a></li> </ul>	<ul style="list-style-type: none"> <li>• BODY ART : TATTOO. KIRITURI in BRINK PLAYSTATION3 GAME  <a href="https://www.youtube.com/watch?v=iveNFw8XRng">https://www.youtube.com/watch?v=iveNFw8XRng</a></li> <li>• AUDIVISUALS GAMES. THE GUARDIAN in METIA INTERACTIVE <a href="http://www.metia.co.nz/">http://www.metia.co.nz/</a> example:</li> </ul>
<b>POSITIVE PROTECTION HOLDERS</b>	<b>SPECIFICITIES</b>	
<b>PERFORMERS PROTECTION, RELATED RIGHTS</b> <ul style="list-style-type: none"> <li>•<b>MORAL RIGHTS</b> : NAME - INTEGRITY.</li> <li>•<b>EXPLOITATIONS RIGHTS</b>:  <ul style="list-style-type: none"> <li>✓PERFORMANCES (WITHOUT FIXATION): BROADCASTING/ PUBLIC COMMUNICATION/ FIXATION (50 YEARS)</li> <li>✓FIXATION OF PERFORMANCES – PHONOGRAMS: REPRODUCTION / DISTRIBUTION/ PUBLIC COMMUNICATION (70 YEARS)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• CONTENT DATABASES</li> <li>• ORPHAN WORKS</li> <li>• AUTHOR UNKNOWN – NON DISPLAY WORKS</li> <li>• AUTHOR KNOWN /UNKNOWN – NON DISPLAY WORKS / PUBLIC DOMAIN</li> <li>• © EXCEPTIONS / LIMITATION AND ARCHIVES / MUSEUMS / REGISTRIES</li> </ul>	 <p><a href="http://www.theguardiangame.com">http://www.theguardiangame.com</a>  <a href="http://kiwiconnect.co.nz/maru-nihoniho-bringing-gaming-heroines-to-life/">http://kiwiconnect.co.nz/maru-nihoniho-bringing-gaming-heroines-to-life/</a></p>

#### Notes – Sources\*

- UNESCO – SMITHSONIAN in <http://www.folkways.si.edu/unesco>
- TDKL in <http://www.tkdil.res.in/tkdil/langdefault/common/Home.asp?GL=Eng>
- Kirituri in Paystation3 Game in <https://www.youtube.com/watch?v=iveNFw8XRng>
- The Guardian in Metia Interactive <http://www.metia.co.nz/> <http://www.theguardiangame.com>  
Photo in <http://kiwiconnect.co.nz/maru-nihoniho-bringing-gaming-heroines-to-life/>

#### 4.1.2.2. Examples of Conflict and Controversial cases

### © CONFLICT CASE. example



#### • BIKRAMYOGA CASE : CLAIM © FOR SEQUENCE ASANAS

"Bikram yoga", the practice consists of 26 positions performed in a precise sequence in a room heated to 105 degrees



in  
<http://www.bikramyogafleet.co.uk/wp-content/uploads/2015/10/postures1.jpg>  
<http://www.bikramyogafleet.co.uk/about-us/bikram-postures-benefits/>

In 2011 Mr. Choudhury sued the husband-and-wife founders EVOLUTION YOGA LLC , a six-year-old chain of "hot yoga" studios operating in several states including New York, Florida and California. Mr. Choudhury claimed Evolution set up a "copy-cat yoga system" that plundered his intellectual property, accusing the defendants of copyright infringement.

EE.UU COURT APPEALS 9 CIRCUIT  
OCTOBER 8, 2015:

"Sequence," developed by Bikram Choudhury and described in his 1979 book, *Bikram's Beginning Yoga Class*, was not a proper subject of copyright protection because it was an **idea, process, or system** designed to improve health, **rather than an expression of an idea.**

Because the Sequence was an unprotectible idea, it was **also ineligible** for copyright protection as a **compilation or choreographic work.**

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#### Notes – Sources\*

- Photo in Bikram Yoga Fleet in <http://www.bikramyogafleet.co.uk/wp-content/uploads/2015/10/postures1.jpg> <http://www.bikramyogafleet.co.uk/about-us/bikram-postures-benefits/>
- EE.UU Court Appeals ) circuit, October 8, 2015 in [https://www.eff.org/files/2015/10/09/yoga-copyright-opinion-ca9\\_0.pdf](https://www.eff.org/files/2015/10/09/yoga-copyright-opinion-ca9_0.pdf)



## © CONTROVERSIAL CASE 1- Example

<p><b>UNESCO Collection of Traditional Music of the World</b></p> 
<p>SOLOMON ISLANDS FATALEKA AND BAEGU MUSIC OF MALAITA</p>
<p>Recording 1969 - 1970 <b>Hugo Zemp</b></p> <p><b>DIVINATORY SONGS</b></p> <ol style="list-style-type: none"> <li>1. UUNU3'21</li> <li>2. UUNU2'47</li> <li>3. SUSUKU SOLO 0'42</li> <li>4. ROIROA (Woman's song)2'33</li> </ol> <p><b>AU SISILE: PANPIPE ENSEMBLE</b></p> <ol style="list-style-type: none"> <li>5. FAA TA GWOUNA1'48</li> <li>6. FAA GANI'AE BOS01'20</li> <li>7. 'AU SANGO / PANPIPE ENSEMBLE9'11</li> <li>8. ROROGWELA (Lullaby)1'41</li> <li>9. SUKUTE0'51</li> <li>10. SUKWADI SOL00'58</li> </ol> <p><a href="http://web.archive.org/web/20040223195604/http://www.unesco.org/culture/cdmusic/html_eng/solomon.shtml">http://web.archive.org/web/20040223195604/http://www.unesco.org/culture/cdmusic/html_eng/solomon.shtml</a></p>

- **Beagu -- Rorogwela (Sweet Lullaby)** performed by **Afunakwa 1969**

<https://www.youtube.com/watch?v=HD9viEul0dc>

- **Deep Forest** - Sweet Lullaby. 1992

- DIGITAL SAMPLES
- MUSIC FROM GHANA /SOLOMON ISLANDS /AFRICAN «PYGMY»



<http://www.youtube.com/watch?feature=twpe&NR=1&v=tGjKwJ0tmsA>

### Notes – Sources\*

- UNESCO in [http://web.archive.org/web/20040223195604/http://www.unesco.org/culture/cdmusic/html\\_eng/solomon.shtml](http://web.archive.org/web/20040223195604/http://www.unesco.org/culture/cdmusic/html_eng/solomon.shtml)
- DEEP FOREST\* Photo Album in <http://www.amazon.com/Deep-Forest/dp/B0000029IH>

## © CONTROVERSIAL CASE 2. Examples

- Sacred Paintings and T-shirts



Eric J. BRANDL

"Aboriginal Art Australia" by Thomas Schoch (= user Mosmas) - Thomas Schoch at <http://www.retas.de/thomas/travel/australia2005/index.html>.  
 Licensed under CC BY-SA 3.0 via Commons -

[https://commons.wikimedia.org/wiki/File:Aboriginal\\_Art\\_Australia.jpg#/media/File:Aboriginal\\_Art\\_Australia.jpg](https://commons.wikimedia.org/wiki/File:Aboriginal_Art_Australia.jpg#/media/File:Aboriginal_Art_Australia.jpg) in  
[https://en.wikipedia.org/wiki/Ubirr#/media/File:Aboriginal\\_Art\\_Australia.jpg](https://en.wikipedia.org/wiki/Ubirr#/media/File:Aboriginal_Art_Australia.jpg)

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### Notes – Sources\*

- **Photo Rock Paintings. Ubirr (Obiri Rock).** "Aboriginal Art Australia" by Thomas Schoch (= user Mosmas) - Thomas Schoch at <http://www.retas.de/thomas/travel/australia2005/index.html>. Licensed under CC BY-SA 3.0 via Commons

[https://commons.wikimedia.org/wiki/File:Aboriginal\\_Art\\_Australia.jpg#/media/File:Aboriginal\\_Art\\_Australia.jpg](https://commons.wikimedia.org/wiki/File:Aboriginal_Art_Australia.jpg#/media/File:Aboriginal_Art_Australia.jpg) in [https://en.wikipedia.org/wiki/Ubirr#/media/File:Aboriginal\\_Art\\_Australia.jpg](https://en.wikipedia.org/wiki/Ubirr#/media/File:Aboriginal_Art_Australia.jpg)

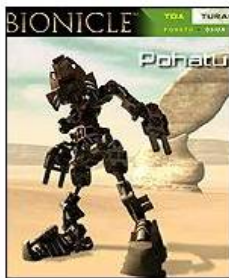
See also, LEWIS, Darrell, "THE ROCK PAINTINGS OF ARNHEM LAND AUSTRALIA. Social, ecological, and Material Culture Change in the Post- Glacial Period", 1988 in line <http://www.ifrao.com/wp-content/uploads/2014/11/LewisArnhem1988.pdf>

E. J. BRANDL. *Australian Aboriginal Paintings in Western and Central Arnhem Land temporal sequences and elements of style in Cadell River and Deaf Adder Creek art*, Australian Institute of Aboriginal Studies, 1982, in *Ethnographic Art Publication* <http://www.tribalartbooks.com/pages/books/2788/e-j-brandl/australian-aboriginal-paintings-in-western-and-central-arnhem-land-temporal-sequences-and> ;  
<http://www.elizabethsbookshop.com.au/shop/detail/australian-aboriginal-paintings-in-western-and-ce/>

- <http://www.aboriginalartonline.com/index.php>

## © CONTROVERSIAL CASES 3. Examples

- “Tohunga” and LEGO CASE



- <http://news.bbc.co.uk/2/hi/asia-pacific/1619406.stm>
- **LEGO USES OF MAORIS WORDS FOR BIONICLE TOYS**  
The Pohatu character is said to be a stone spirit

in <http://bionicle.wikia.com/wiki/BIONICLE>  
[http://web.law.duke.edu/cspd/pdf/ip\\_indigenous-traditionalknowledge.pdf](http://web.law.duke.edu/cspd/pdf/ip_indigenous-traditionalknowledge.pdf)

- **The Mark of Kri videogame and SONY PLAYSTATION2**



- (complaints made by use of Maori imagery and heritage)  
<https://www.youtube.com/watch?v=DIsb0ogloZg>

### Notes – Sources\*

- Bionicle Photo in BBC News Friday 26 Oct.2001 in line <http://news.bbc.co.uk/2/hi/asia-pacific/1619406.stm> and n <http://bionicle.wikia.com/wiki/BIONICLE>
- Mata Nui Photo in Dr ANDERSON, J. *Indigenous /traditional Knowledge and Intellectual Property*. Duke University School of Law. Center for the Study of the Public Domain, 2010, page 16, in line [http://web.law.duke.edu/cspd/pdf/ip\\_indigenous-traditionalknowledge.pdf](http://web.law.duke.edu/cspd/pdf/ip_indigenous-traditionalknowledge.pdf)
- The Mark of Kri, Photo in [https://en.wikipedia.org/wiki/The\\_Mark\\_of\\_Kri](https://en.wikipedia.org/wiki/The_Mark_of_Kri) Wall, JKack, SCE San Diego, Sony Computer Entertainment. See also, MAHUTA, Dean P. “Maori in Video games – A Digital Identity” Te Kaharoa, The e-journal on Indigenous Pacific Issues, vol.5, n° 1 (2012), page. 129 in line <http://tekaharoa.com/index.php/tekaharoa/article/view/122/82> ; See also in <https://www.youtube.com/watch?v=DIsb0ogloZg>

### 4.1.3. Trademarks for Traditional Knowledge (narrow sense) and Traditional Cultural Expressions

## EXISTING MODALITIES IP PROTECTION TRADEMARKS (TK (ns) –TCE)



- **FUNCTION**
  - PROTECT : WORDS / PHRASES/ SYMBOLS/ /DRAWINGS /IMAGES/ SOUNDS/ THREE-DIMENSIONAL FORMS /DESIGNS THAT IDENTIFY A SOURCE OF GOODS
  - HELP CONSUMERS – IDENTIFY PRODUCTS WITH PREFERRED CHARACTERISTICS
  - **USED TO MARKET PRODUCTS / SERVICES**
    - THAT ARE TCE/TK OR
    - ARE BASED ON TK
  
- **POSSIBILITIES FOR TK /TCE**
  - TRADEMARK USE TO INDICATE AN INDIVIDUAL SOURCE OF GOODS /SERVICES
  - COLLECTIVE TRADEMARKS
  - CERTIFICATIONS MARKS
  - “OFFICIAL” MARKS

### 4.1.3.1. Collective Marks

## EXISTING MODALITIES IP PROTECTION TRADEMARKS (TK –TCE)

### COLLECTIVE MARKS

- OWNED BY ORGANIZATION: ASSOCIATION – COOPERATIVE
- WHOSE MEMBERS USE COLLECTIVE MARK TO IDENTIFY THEMSELVES
- WITH CERTAIN REQUIREMENTS OF :
  - QUALITY
  - CHARACTERISTIC
  - GEOGRAPHICAL ORIGIN
- FOR GOODS /SERVICES

[http://www.oepm.es/es/signos\\_distintivos/resultados\\_expediente.html?mod=M&exp=3021480bis](http://www.oepm.es/es/signos_distintivos/resultados_expediente.html?mod=M&exp=3021480bis)=ASSOCIATION OF RESEARCH Meat Industries. ASTURIAS



VILLAGE of SANTO TORIBIO DE CUMBE



Franciscana Community  
Monastery of Santo Toribio de Liébana.  
M2338129



Toi Iho Charitable Trust – New Zealand  
Maori artists



### Notes – Sources

- **Chorizo Asturiano garantizado** (Asturian sausage guaranteed), see in [http://www.oepm.es/es/signos\\_distintivos/resultados\\_expediente.html?mod=M&exp=3021480bis](http://www.oepm.es/es/signos_distintivos/resultados_expediente.html?mod=M&exp=3021480bis)
- **Chrimoya Cumbe** in Sociedad Peruana de Derecho Ambiental, “*Guía Práctica para Productores y Agricultores: Marcas colectivas y Denominaciones de Origen*”, AGROECO, 2013, p.16, in line <http://www.lamolina.edu.pe/hortalizas/documentos%20agroeco/DOCUMENTOS/Gu+%C2%A1a%20de%20Marca%20Colectiva.pdf>
- **Toi iho** in <http://www.toiho.co.nz/>
- **Santo Toribio de Liébana**, see in [http://www.oepm.es/es/signos\\_distintivos/detalle.html?ref=M%202338129](http://www.oepm.es/es/signos_distintivos/detalle.html?ref=M%202338129)



### 4.1.3.2. Certifications Trademarks

## EXISTING MODALITIES IP PROTECTION TRADEMARKS (TK –TCE)



### CERTIFICATION TRADEMARKS

- USED BY ANYBODY
  - WHO COMPLIES with standards
  - defined by the owner of the certification.
- USED to show that the REGISTRANT certifies that:
  - goods or services so identified have
    - CERTAIN CHARACTERISTICS OR
    - QUALITIES, or
    - GEOGRAPHICAL ORIGIN
  - user being duly authorized to use the mark under the control of the proprietor

BIERZO CHESNUT

<http://www.castanadelbierzo.es/>



HUELVA OIL

<http://www.foe.es/portal/nuevosmercados/txtT01-05.html>



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### Notes – Sources

- Bierzo Chesnut in <http://www.castanadelbierzo.es/>
- Huelva Oil in <http://www.foe.es/portal/nuevosmercados/txtT01-05.html>

### 4.1.3.3. Official Insignia and National Symbols



## EXISTING MODALITIES IP PROTECTION TRADEMARKS – TK -TCE

OFFICIAL INSIGNIA	NATIONAL SYMBOLS
<p>Examples:</p> <ul style="list-style-type: none"> <li>-USPTO - OFFICIAL INSIGNIA NATIVE AMERICAN TRIBUS <a href="http://www.uspto.gov/trademarks/law/tribal/index.jsp">http://www.uspto.gov/trademarks/law/tribal/index.jsp</a></li> <li>-EX, PETROGLYPH IMAGES –SNUEYMUXW FIRST NATIONS <a href="http://www.snueymuxw.ca/welcome">http://www.snueymuxw.ca/welcome</a></li> </ul> <div style="text-align: center; margin-top: 20px;">  </div>	<p>PATRONAT NACIONAL MISTERI D'ELX M2173015 .. GENERALITAT VALENCIA TCE LIST UNESCO INTANGIBLE CULTURAL HERITAGE</p> <div style="text-align: center; margin-top: 20px;">  </div>

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#### Notes – Sources

- USPTO – Official Insignia Native American Tribus  
<http://www.uspto.gov/trademarks/law/tribal/index.jsp>
- Petroglyph images – Snueymuxw First nations in <http://www.snueymuxw.ca/welcome>
- Misteri d'Elx in [http://www.oepm.es/es/signos\\_distintivos/detalle.html?ref=M%202079961](http://www.oepm.es/es/signos_distintivos/detalle.html?ref=M%202079961)  
Inscribed in 2008 (3.COM) on the Representative List of the Intangible Cultural Heritage of Humanity (originally proclaimed in 2001) in Mystery play of Elche in <http://www.unesco.org/culture/ich/en/RL/mystery-play-of-elche-00018>

#### 4.1.4. Geographical Indications for Traditional Knowledge (narrow sense) and Traditional Cultural Expressions

## EXISTING MODALITIES IP PROTECTION TK-TCE GEOGRAPHICAL INDICATIONS



- HELP IDENTIFY A SOURCE OF GOODS
- ASSOCIATE A PRODUCT WITH A PLACE (TERRITORY/REGION/LOCALITY) BASED ON A CHARACTERISTIC ASSOCIATED WITH THE PRODUCT'S PLACE OF ORIGIN
- USED TO DISTINGUISH TK – TCE BASE PRODUCTS BY LOCATION

	<p><b>PDO – PROTECTED DESIGNATION OF ORIGIN</b></p> <ul style="list-style-type: none"> <li>• COVERS AGRICULTURAL PRODUCTS</li> <li>• <b>PRODUCED, PROCESSED AND PREPARED</b></li> <li>• GIVEN GEOGRAPHICAL AREA</li> <li>• USING RECOGNISED KNOW HOW</li> </ul>	
	<p><b>PGI-PROTECTED GEOGRAPHICAL INDICATION</b></p> <ul style="list-style-type: none"> <li>• COVERS AGRICULTURAL PRODUCTS</li> <li>• CLOSELY LINKED TO THE GEOGRAPHICAL AREA</li> <li>• <b>AT LEAST ONE OF THE STAGE</b> OF PRODUCTION, PROCESSING OR PREPARATION</li> <li>• TAKES PLACE IN THE AREA</li> </ul>	
	<p><b>TSG-TRADITIONAL SPECIALITY GUARANTEE</b></p> <ul style="list-style-type: none"> <li>• HIGHLIGHTS TRADITIONAL CHARACTER</li> <li>• EITHER IN THE COMPOSITION OR MEANS OF PRODUCTION</li> </ul>	

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### Notes – Sources

- Idiazabal Cheese in [http://www.magrama.gob.es/es/alimentacion/temas/calidad-agroalimentaria/calidad-diferenciada/dop/queso\\_lacteo/DOP\\_idiazabal.aspx](http://www.magrama.gob.es/es/alimentacion/temas/calidad-agroalimentaria/calidad-diferenciada/dop/queso_lacteo/DOP_idiazabal.aspx)
- Cordero Manchego (Manchego lamb) in [http://www.corderomanchego.org/La\\_Fundacion.html](http://www.corderomanchego.org/La_Fundacion.html) and [http://www.magrama.gob.es/es/alimentacion/temas/calidad-agroalimentaria/calidad-diferenciada/dop/carnes/DOP\\_Cordero\\_Manchego.aspx](http://www.magrama.gob.es/es/alimentacion/temas/calidad-agroalimentaria/calidad-diferenciada/dop/carnes/DOP_Cordero_Manchego.aspx)
- Jamón Serrano (Serrano ham) in <http://www.magrama.gob.es/es/alimentacion/temas/calidad-agroalimentaria/calidad-diferenciada/especialidades-tradicionales-garantizadas/JamonSerrano.aspx>

#### 4.1.5. Industrial Design for Traditional Knowledge (narrow sense) and Traditional Cultural Expressions

## EXISTING MODALITIES IP PROTECTION INDUSTRIAL DESIGN - TK-TCE



- PROTECTS ORNAMENTAL OR AESTHETIC ASPECT ON AN ARTICLE
- CONSIST:
  - THREE DIMENSIONAL FEATURES: SHAPE OF AN ARTICLE
  - TWO DIMENSIONAL FEATURES: SUCH AS PATTERNS, LINES OR COLOR

- CRITERIA FULFILL

	NOVELTY	ORIGINALITY
	NOT PREVIOUSLY BEEN DISCLOSED TO THE PUBLIC	SIGNIFICANTLY DIFFERS FROM <ul style="list-style-type: none"> <li>• KNOWN DESIGNS OR</li> <li>• COMBINATIONS OF KNOWN DESIGNS FEATURES</li> </ul>

- PROTECTION

	TERRITORIAL	REGIONAL	INTERNATIONAL
	NATIONAL	<ul style="list-style-type: none"> <li>• OAPI . AFRICAN ID ORGANIZATION (Bangui Agreement)</li> <li>• ARIPO. AFRICAN REGIONAL ID ORG. (Lu saka Agreement)</li> <li>• BOIP. BENELUX ID ORG.</li> <li>• OHIM. EUROPEAN UNION</li> </ul>	<ul style="list-style-type: none"> <li>• International DESIGN SISTEM (Hague System)</li> <li>• WIPO Treaty Project</li> </ul>



# EXISTING MODALITIES IP PROTECTION INDUSTRIAL DESIGN. TK (NS)-TCE

TK – TCE (AS SUCH)	TK – TCE BASED INNOVATIONS /CREATIONS
<p><b>DEFENSIVE PROTECTION HOLDERS</b></p>	<p><b>POSITIVE PROTECTION</b></p>
<ul style="list-style-type: none"> <li>• PROOF LACK OF NOVELTY</li> <li>• PROOF THAT TK –TCE:                             <ul style="list-style-type: none"> <li>• USED BY GENERATIONS</li> <li>• DISSEMINATED LOCAL COMMUNITIES</li> </ul> </li> <li>• DOCUMENTED /REGISTERED IN PUBLIC AVAILABLE SOURCES</li> </ul>	<p>REGISTERED ID</p> <ul style="list-style-type: none"> <li>• PREVENT THIRD PARTIES FROM MAKING / SELLING / IMPORTING ARTICLES EMBODYING A DESIGN WHICH IS A COPY / SUBSTANTIALLY A COPY OF PROTECTED DESIGN</li> <li>• WHEN SUCH ACTS ARE UNDERTAKEN FOR COMMERCIAL PURPOSES</li> </ul>
<div data-bbox="197 1072 488 1326" data-label="Image"> </div> <div data-bbox="507 1072 834 1326" data-label="Image"> </div> <p>2008, Batik Museum Institute Pekalongan  <a href="http://www.unesco.org/culture/ich/index.php?lg=en&amp;pg=00011&amp;RL=00170">http://www.unesco.org/culture/ich/index.php?lg=en&amp;pg=00011&amp;RL=00170</a></p> <ul style="list-style-type: none"> <li>• Unesco 2009. Representative List of the Intangible Cultural Heritage of Humanity. Consent of communities</li> </ul>	<ul style="list-style-type: none"> <li>• Batik Patent Design Registry</li> </ul>

## Notes - Sources\*

- 2008, Batik Museum Institute Pekalongan in Unesco 2009. Representative List of the Intangible Cultural Heritage of Humanity, Consent of communities in <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00011&RL=00170>

**4.2. Protection of Traditional Knowledge with “*sui generis*” Systems**



**PROTECTION TK WITH SUI GENERIS SYSTEM**

<p><b>NATIONAL SUI GENERIS LEGISLATION</b></p>	<p>PANAMA / CHILE / PHILIPINES</p>
<p><b>KNOW HOW PROTECTION AND CONFIDENTIALITY</b></p>	<p>ENFORCEABILITY?</p>
<p><b>WIPO TK – IP TREATY WIPO GR- IP TREATY WIPO TCE IP TREATY PROJECT</b></p>	<p>1. INCLUSION TCE AS OBJECT PROTECTED 2. DISTINCTION / BENEFICIARIES 3. SCOPE PROTECTION MORAL / EXPLOTATION RIGHTS COLLECTIVE MANAGEMENT IPR EXCEPTIONS AND LIMITS</p>

**CONCLUSIONS**

## REFERENCES – SOURCES\*



## REFERENCES \*

- Camomille\*: Photo in <https://en.wikipedia.org/wiki/Chamomile>
- AUBUSSON TAPESTRY\* Photo in [France](http://www.unesco.org/culture/ich/en/RL/abusson-tapestry-00250) Inscribed in 2009 (4.COM) on the Representative List of the Intangible Cultural Heritage of Humanity in <http://www.unesco.org/culture/ich/en/RL/abusson-tapestry-00250>
- CORDYCEPS Photo in <http://www.shen-nong.com/eng/herbal/cordyceps.htm>
- EPHEDRA SINICA\* Photo in NCCIH Publication No.: D336, Created: December 2006, Updated: June 2013. <https://nccih.nih.gov/health/ephedra>
- PACIFIC YEW (*Taxus brevifolia*) Photo in [http://oregonstate.edu/trees/conifer\\_genera/spp/yew\\_spp.html](http://oregonstate.edu/trees/conifer_genera/spp/yew_spp.html)
- TAXOL (ANTI-CANCER DRUG)\* image in en <https://en.wikipedia.org/wiki/Paclitaxel>
- TURMERIC (CURCUMA LONGA)\* Photo in [http://www.punmiris.com/himg/o\\_12172.jpg](http://www.punmiris.com/himg/o_12172.jpg) Author: Naheed Shoukat Ali (naheed) in <http://www.fragrantica.com/notes/Curcuma-Turmeric-308.html>
- NEEM PLANT\* Photo in ( in <http://antarcticplPhoto> by Yeoh Tsv ia Flickr.com) , (What Is The Neem Plant And How Is It Used? In <http://www.discoverneem.com/neem-plant.html> )
- DESCHAMPSIA ANTARCTICA\* Photo in [antscience.cl/es/publicaciones/detail/article/publicaciones-1990-2000/](http://antscience.cl/es/publicaciones/detail/article/publicaciones-1990-2000/)
- CASTANETS (CASTAÑUELAS)\* Photo in <http://tiendaplusmusic.es/Castanuelas>
- MAORI TATOO\*, Photo in <http://cdn26.us3.fansshare.com/photo/tattoodesigns/perfect-maori-tattoo-designs-1852171267.jpg>
- DEEP FOREST\* Photo Album in <http://www.amazon.com/Deep-Forest/dp/B0000029IH>
- THE MARK OF KRI\* Photo in <http://www.theisozone.com/covers/ps2/mark-of-kri-the-usa-dvd-sleeve-ps2/>
- CURCUMA BASED INNOVATIONS in [http://worldwide.espacenet.com/searchResults?ST=singleline&locale=en\\_EP&submitted=true&DB=worldwide.espacenet.com&query=curcuma](http://worldwide.espacenet.com/searchResults?ST=singleline&locale=en_EP&submitted=true&DB=worldwide.espacenet.com&query=curcuma)
- HOODIA\*, Photo in <http://www.summit-fuel.com/product-development/hoodia-a-natural-appetite-suppressing-herb/> , Hoodia – A natural Appetite Suppressing Herb Posted on [June 25, 2014](http://www.summit-fuel.com/product-development/hoodia-a-natural-appetite-suppressing-herb/) by [Terry Clayton Ph.D.](http://www.summit-fuel.com/product-development/hoodia-a-natural-appetite-suppressing-herb/)
- KAVA (PIPER METHYSTICUM FORSTER)\* Photo of □ Forst & Kim Starr ; [CC BY 3.0](https://creativecommons.org/licenses/by/3.0/) hide terms: □ File:Starr\_070515-7054 Piper methysticum.jpg: □ [Uploaded by BotMultichillIT](https://commons.wikimedia.org/wiki/File:Starr_070515-7054_Piper_methysticum.jpg) ; □ Created: 15 May 2007. Piper methysticum (leaves). Location: Oahu, Hoomaluhia Botanical Garden in [https://en.wikipedia.org/wiki/Kava#/media/File:Starr\\_070515-7054\\_Piper\\_methysticum.jpg](https://en.wikipedia.org/wiki/Kava#/media/File:Starr_070515-7054_Piper_methysticum.jpg)