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5 JUN, 2012, 07:17AM IST, SIDHARTHA, TNN

A mission to defend traditional knowledge

In a few weeks, negotiators from the group of like-minded countries such as India, Columbia, Peru, and New Zealand will converge on Bali to decide on what "traditional knowledge" is. For over a decade now, the like-minded countries have been trying to do just that but have so far been unable to narrow down their differences and agree to a common definition.

In private, negotiators would tell you that in large part, the developed-countries gang, led by the US, has done its bit to scuttle an agreement. After all, US patent attorneys stand to lose business if countries agree to protect traditional knowledge, genetic resources and traditional cultural expression.

Once an agreement is thrashed out, patenting the healing effects of turmeric or ayurveda, yoga and dance forms such as Bharatnatyam would not be easy. In 1995, the patent of turmeric by non-resident Indians in the US woke the world to the negative impact of the Agreement on Trade-Related Aspects of Intellectual Property Rights or Trips.

Although the patent was subsequently declared null and void, since then countries such as India have been trying to get protection. Since 1999, the issue has been under negotiation at international forums such as the World Trade Organisation (WTO) and the World Intellectual Property Organization (WIPO). But a breakthrough is yet to be reached.

Definition apart, who gets to share the royalty or fee that accrues to a company due to the use of traditional knowledge, genetic resources or traditional cultural expression is the other issue that must be decided. While the Peruvians and the Columbians want the resources to flow to the local communities, those like India are seeking that sovereign governments get the funds. "After all, we don't know who developed ayurvedic techniques," says a negotiator.

Like traditional knowledge, even cultural expressions or folklore is on a similar stage of negotiations. Everything from the definition to beneficiaries, the extent of protection and its length and penalties are to be decided.

"Unlike patents these do not provide negative rights. What we are seeking is that companies that use these techniques and genetic resources should clearly say that they have been legally accessed. But quite obviously the developed countries would not like things to be settled," says Biswajit Dhar, director general of research and information systems for developing Countries. He has for long championed the cause of protection for genetic rights.

From all accounts protection is not coming any time soon. Luckily, through steps such as the Traditional Knowledge Digital Library, which can be accessed by patent offices in several countries, the government has sought to prevent companies from walking away with protection for products such as neem and turmeric that are based on resources development in India centuries ago.