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# Overview of Protection of Traditional Medicine & GRs in China

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# Outline

I. Overview of Protection of TM  
In China

II. Legislation and Policy

Developing of TM and GRs in  
China



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# I. Overview of Protection of TM In China

- What is TM(Traditional Medicine)?
- Laws and Regulations relating to TM in China
- Intellectual Property Right system of protecting TM in China



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# What is Traditional Medicine?

- These experiences accumulated by people during their preventing or treating many kinds of diseases for a long period in past times.



# Characters of TM

- Long history
- accumulated experience
- Some is disclosed and codified,  
some is not





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# International treaties of Intellectual Property China joined

- |   |            |
|---|------------|
| 1□WIPO Convention   | 1980.6.3   |
| 2□Paris Convention  | 1985.3.19  |
| 3□Madrid Agreement (Marks)  | 1989.10.4  |
| 4□Berne Convention  | 1992.10.15 |
| 5□Universal Copyright Convention  | 1992.10.30 |
| 6□Rome Convention   | 1993.4.3   |
| 7□Patent Cooperation Treaty   | 1994.1.1   |
| 8. Budapest Treaty  | 1995.7.1   |
| 9. UPOV (the International Union for the Protection of New Varieties of Plants) | 1999.4.23  |
| 10. Agreement on Trade-related Intellectual Property                            | 2001.11    |



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# **Laws and Regulations concerning TM that Chinese National People's Congress had approved**

- Trademark Law (1983,2001)
- Patent Law(1984,1992,2000)
- Copyright Law(1990,2001)
- Law against Unfair Competition(1993)
- Regulations on Customs Protection of IPRs(1995)
- Regulations on the Protection of New Plant Varieties(1997)
- Regulations on Administrative Protection for Pharmaceuticals(1993)
- Drug Administration Law(2001)



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## **National Laws and regulations relevant to TM**

- The Constitution of the P.R.China
- Regulations on TCM(Traditional Chinese Medicine) of the P.R.China
- The Pharmaceutical administration law of the P.R.China
- Regulations of the P.R.China on the protection of TCM varieties
- Medical practice law
- Regulations on the administration of medical institution





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# Intellectual Property Right system of protecting TM in China

- **Protections of TM out of public domain and the innovation of TM by existing IPR system**
  - as trade secret
  - by patent system
  - by Trademark, service marks, commercial names and design
  - as Geographical Indications
  - by Copyright
  - by new varieties of plants right



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# Intellectual Property Right system of protecting TM in China

- **Protections of the codified TM by existing IPR system**
  - Geographic indication
  - Trademark (can protect old name of TCM enterprises)
  - Product Design Patent



## **Disadvantages in protection of TM by existing IPR system**

- Unclear active components of traditional products and clear claim requirement
- International standard to evaluate patent application of TM
- Permitting traditional products to enter the international market
- TM knowledge and public domain



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## Compensatory approach for the sold product of TCM in China

- Regulations of the People's Republic of China on the protection of Chinese traditional medicine varieties



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## II. Legislation and Policy

# Developing TM and GRs in China

- **Legislation of specific protection of TM in progress**
  - From 2005, started the legislation of specific protection of TM, Responsible by State administration of TCM of P.R.China;
  - Government shows great concern and attaches more importance to
  - In Oct.2009, made a draft of TM Law (*as sui generis*); the chapter of protection of TMK and TCM culture
  - then entered into the legislation plan of legislative Affairs Office of the State Council of P.R. China.





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## II. Legislation and Policy

# Developing TM and GRs in China

- **The third amended patent law had entered into force on October 1st, 2009**
  - Requirement of disclosing direct and original source of genetic resource in patent application
  - provide the definition of the genetic resource in the context of the patent law



## Conclusion

- TM may be protected by the following aspects in China
  - Using existing IPR system
  - By The Convention on Biological Diversity
  - Establishing *sui generis* system for TMK



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*THE END*

*Thank you for your attention!*