

Abstract

The protection of varieties of traditional Chinese medicine (TCM for short) is an administrative measure. Since implemented from January 1st 1993 till now, the Regulations on Protection of TCM (regulation for short) has its own history for about 15 year. During this period, the regulation had played an important role in containing low-level imitation of TCM, accelerating quality improvement of TCM, establishing well-known brands of TCM, safeguarding the legitimate rights and interests of the enterprises as well as promoting the healthy development of the TCM industry. As great changes had come over China these years, more and more problems of the regulation had taken place. In July 2006, a draft for advice was introduced in order to amend the regulation. Although a number of changes have been introduced to the regulation in the aspects such as goals, the definition of objects, term of protection, ways of protection and punishment, there are still some problems remained.

We aimed at comprehensively doing a retrospective and appraisal analysis of the protection of varieties of traditional Chinese medicine system. Firstly, this article briefly introduced 8 measures of the protection of TCM, then traced back to the regulation's background, presented specific provisions, reviewed the progress, illustrated the effects and explained problems in respects such as the drawback of the regulation itself, negative impact on enterprises' competition, varieties innovation and the public interest. Secondly, we analyzed the difference between the draft and the regulation as well as the remaining issues. And thirdly we put forward some corresponding recommendations on the varieties of TCM protection system: it's necessary for the regulation to be retained and we should endow it with new aims at promoting varieties innovation. As a supplement of the patent, the regulation should find its best way to coordinate with the patent. We then suggested introducing civil relief to it. At the end of the article, we gave some ordinary suggestions for the protection of intellectual property of traditional medicine knowledge and TCM.

Key words: protection of varieties of TCM, intellectual property of TCM, traditional Chinese medicine knowledge, protection