

# The psychedelic revolution has arrived

Groovy Baby! The Rush to Protect Psilocybin and other Psychedelics in a Post-Pandemic World, by **Mike Fenwick**

**AS THE WORLD** begins to shake off the effects of the worst health crisis in generations, the attention of health professionals will turn, in part, to those who have suffered mental health issues during the pandemic. Psychedelics, such as psilocybin and mescaline, are now proving to be extremely effective at treating mental health conditions, which could completely transform the treatment of such disorders. However, these are not your parents' groovy drugs – current research into these compounds is providing for accurate dosing for pharmaceutical administration, while new derivatives with fewer side effects are just some of the advantages associated with the research into psychedelics. While psychedelic compounds remain illegal in most jurisdictions, the potential benefits are spurring a significant amount of research in the hopes that these compounds will be legalized and transform treatments for mental health. As the psychedelic revolution has arrived, there are numerous ways that innovators can protect these innovations.

## Patents

Patents often provide the strongest intellectual property protection for those looking to protect innovations in the psychedelic space. A patent allows the owner to exclude other parties from making or selling the invention for a period of 20 years. Patent rights can be enforced once a patent application has successfully completed the examination process in which a patent examiner reviews the application and determines whether the invention is patentable. An invention can be protected by a patent if the subject matter is new, non-obvious and useful. Examples of potential inventions in the psychedelic space include new chemical derivatives and

new formulations which can deliver the active compounds. In addition, new methods of extraction of the active compounds from mushrooms, as well as processes for synthesizing such compounds could be patentable as well. Even though such compounds are not approved for sale in many countries (because they are illicit), they still may be patented; however, regulatory approval would still need to be granted by health authorities to sell the compound.

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Patent rights are territorial and therefore an inventor must file the same patent application in each country where protection is sought; for example, an inventor looking to protect an invention in the United States and Canada, must file a patent application in both countries.

## Trademarks

Unlike patents which can protect the use and sale of an actual product, trademarks protect words, logos and/or designs which serve to distinguish a company and/or product from other competitors in the market. As psychedelics are still considered illicit substances, certain intellectual property offices may not register marks that specify such products. Trade mark registrability may improve if psychedelics are eventually legalized for the treatment of mental health conditions. Generally, to obtain

trademark protection, the word or slogan must not be descriptive of the actual product, and must not be confusing with other trademarks. Protection for a trademark can last forever if the renewal fees are paid to maintain the mark.

## Trade Secrets

A trade secret is another form of intellectual property which protects certain types of confidential information. For a trade secret to offer protection, the information must remain secret and that information must have economic value which provides a competitive advantage. Companies must take reasonable steps to maintain the secrecy of the information. The information is protected as long as it remains a secret, and if disclosed without authorization or misappropriated, the offending party may be held responsible if there was a theft, an obligation of confidence or fiduciary duty. In the psychedelic industry, a company may have a specialized process for extracting the active compounds which they decide to maintain as a

trade secret, rather than trying to protect (and therefore disclose) through the patent process.

## Moving Forward

As scientists begin to unravel the potential of psychedelics, companies in this space would be well served to have an intellectual property strategy. While psychedelics are still controlled substances, laws could change quickly to permit new, legal treatments. Utilizing all aspects of intellectual property rights will ensure the company is well suited to take on the challenges of the psychedelic revolution. **CLH**

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