Can you own health?
Patenting and invention in the history of medicine

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The worlds of medicine and commerce are inseparable from one another. From the expensive, bespoke treatments offered by elite physicians in the seventeenth century to the world of modern pharmaceuticals, medicine has been deeply involved in economics, marketing and business. Doctors, entrepreneurs and manufacturers have worked together to create new products and devices, and their motivations for doing so have been very variable.

Crucial to much of this activity has been the acquisition and use of patents, legal documents which allow for inventions to be made public whilst protecting the holder from infringement for a fixed period of time. Despite the goal of transparency to which patenting aims, the process of obtaining and using patents has become cloaked in layers of socio-cultural meaning. Disciplinary constraints of professionalism, profit and ethics and the limitations of patents themselves provided the backdrop against which corporate interests and entrepreneurial individuals attempted to expand the meaning and function of intellectual property. Others shunned the mechanism of patenting, trademarking and copyright in favour of softer, broader forms of intellectual property, preferring instead to exercise moral property rights through strategies such as eponymity and professional credit and recognition.¹

Medicine, and in particular medical technologies and pharmaceuticals, offers another lens through which to examine the use (and non-use) of patenting strategies, the implications of these for the inventive process, and the wider cultures of ownership, consumerism and protection within healthcare. By taking seriously not just patents themselves as historical source materials, but the far broader cultural, professional and technological context in which patenting took place, we can see that intellectual property is about much more than a legal and inventive process.²

In the first place, choices about whether or not to engage in patenting and other forms of protection have been based on a wide range

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of factors, from a desire to establish control in a given market to a need to prevent others from doing so. The motivations underpinning these decisions were similarly diverse, whether to protect professional integrity, profit from commercial activity or enable investment in future research. Secondly, patents themselves functioned in different ways for consumers, acting variously as symbols of ownership, markers of efficacy and claims to novelty. In the context of medical practice, these different meanings became the source of intense negotiations, not infrequently leading to damaging, lengthy and expensive legal battles. Thirdly, it is clear that the relationship between patenting and the medical profession was transformed during this period, from one of cautious denial to active engagement. Ultimately professional bodies recognised that patenting was just one of many different ways of establishing credit, alongside, for example, eponymity; yet patenting acquired new legitimacy and respectability as the value of the collaborative relationship between practitioners, entrepreneurs and manufacturers became more widely-recognised during the early twentieth century.

In the case of the Kromayer Lamp, for example, the noted German dermatologist Ernst Kromayer (1862-1933) enlisted the industrial support of the US-based Hanovia Chemical and Manufacturing Company in order to exploit the commercial potential of his new UV lamp. A rival to the earlier and more famous Finsen Lamp (also named after its developer, the Danish physician Niels Finsen), the Kromayer Lamp was first manufactured in 1905 and went through a number of different design modifications, many of which were developed entirely independently of
Kromayer’s work. Ultimately, his name remains associated with the device, whilst the loose commercial relationship between Kromayer and his manufacturing partners enabled him to preserve his professional relationship in medical practice, despite taking out several patents relating to his invention. Whilst Kromayer would have endangered his reputation by entering into legal proceedings in order to protect his inventive rights, there were no such obligations on the part of Hanovia, who emblazoned the details of patents on their devices and took to court a number of competitors who they believed had infringed their patent rights.

By way of contrast, the Marconi Otophone, a device which first appeared on the market in 1923 and claimed to be the first electronic hearing aid, made use of an earlier patented technology: the radio valve. The goal here was to extract additional value from a patent which had expired and to restore the reputation of the Marconi Company after a series of expensive public legal battles which had damaged their image. By producing an assistive device which did not require substantial commercial investment, the Marconi Company were able to demonstrate their inventive credentials in a new area; their credibility in the medical field was further enhanced by a collaboration with the famous medical manufacturers T. Hawksley Ltd., who they enlisted to represent their device in the UK. Although the Otophone was widely criticised for being heavy and cumbersome, it became a niche middle-class status symbol and established a more general trend towards the use of electronic rather than acoustic hearing aids, all whilst capitalising on a technology which had first been pioneered for use in radio.

Finally, the Overbeck Rejuvenator was an electrotherapy device designed for use in the home. Developed by the brewer’s chemist turned entrepreneur Otto Overbeck (1860-1937), the Rejuvenator shows the extent to which non-medical men were able to exert substantial power in the medical marketplace. Although Overbeck did not have any formal training in medicine, he nevertheless appealed to his credentials as a ‘well-known British scientist’ to persuade consumers that his device was a viable and effective alternative to treatment from a physician. Patents were a key part of Overbeck’s marketing strategy, and he included a list of these on the lid of the Rejuvenator as well as in newspaper advertisements and pamphlets. Although the patents associated with the Rejuvenator only referred to one small component part of the device, they were nevertheless deployed in order to persuade potential purchasers that they were buying something entirely new, trustworthy and efficacious, even though there was no requirement during the patenting process on the part of Overbeck to show that his device worked.
The case of these three very different medical technologies shows us that patents and marketing strategies have been used in very different ways, whether to persuade customers that devices really work or give credibility to new kinds of treatment. The use of patents has therefore expanded far beyond their status as forms of legal protection and indicators of novelty. They have become important methods of asserting commercial power, establishing scientific and medical authority, and in determining the direction of future investment and research in developing new devices and treatments. The complex international systems of patenting and intellectual property have therefore been key factors in the development of medical practice, from the patent medicines of the Georgian period, scorned by the medical profession, to widespread commercial relationships between medicine and industry which characterise contemporary research and development.