

Table of Contents

Table of Illustrations	xxi
Preamble	xxiii
CHAPTER 1	
The Business Identifiers of Medicines and Access to Health	1
§ 1.01. Terra Sigillata—The Greek Island of Lemnos exports its branded medicinal earth, with reputed therapeutic effects—Second Century BC	2
§ 1.01.1. Dioscorides' observations on Lemnian earth and the seals used to brand it (c. 40 AD-c. 90 AD)	4
§ 1.01.2. Galen (Claudius Galenus) (c. 129 AD-c. 200 AD) describes his visit to Lemnos and what he learned about the preparation of Lemnian earth	5
§ 1.01.3. Jean de Renou (1568-c. 1620) explains the difference between the genuine earth of Lemnos and its most common counterfeits	6
§ 1.02. Roman ophthalmologists' trademarks and slogans—First century BC-Third century AD	6
§ 1.02.1. Graffiti and inscriptions on an ophthalmologist's stamp	9
§ 1.02.2. Graffiti and inscriptions on another ophthalmologist's stamp	10
§ 1.03. In Venice, pharmacists were required to designate medicines with common names	10
§ 1.04. Laws regulating the profession of apothecaries in Paris—Fourteenth Century	11
§ 1.04.1. Directive determining the inspection of Paris apothecaries' remedies by the physicians of the [medical] school	12
§ 1.04.2. Directive on the exercise of the profession of apothecary and herbalist, subjecting them to the inspection	12

Table of Contents

§ 1.05.	French authorities start acknowledging apothecaries' individual and collective trademarks—Early Sixteenth Century	13
§ 1.05.1.	By-laws of the Apothecaries-Wax Makers-Grocers, written at the Hotel-de-Ville of Rouen, by three medical doctors and by three Apothecaries-Wax Makers-Grocers	14
§ 1.05.2.	Letters for the separation of the profession of an apothecary from that of a grocer, and on the mode of election of the trustees, and the reception of the apprentices	14
§ 1.06.	The intensive use of jars by apothecaries in the sixteenth century gives rise to a new line of pottery products: the apothecaries' jars. An example from Rouen: Masseot Abaquesne.	15
§ 1.07.	Jean de Renou, a French physician (c. 1568-c. 1620), describes a typical drugstore and mentions its most distinctive element—the esthetical features of pharmaceutical jars and containers	17
§ 1.08.	The importance of certification marks in the pharmaceutical industry grows in the early seventeenth century	20
§ 1.09.	A court settles the dispute between two apothecaries who used the same shop sign—a red cross—to identify and differentiate their businesses	20
§ 1.10.	In the sixteenth and seventeenth centuries, with the growth in the number of drugstores, pharmacists intensified the use of shop signs	21
§ 1.11.	In 1638, the by-laws of the guild of the apothecaries and wax makers of Paris required the latter to have individual trademarks	24
§ 1.12.	A French apothecary, Elie de Seignette (1632-1698), used several intellectual property tools to assert his proprietary interests in the medicine he invented with his brother, the Salt of Polychreste: trade secrecy, trade name, trademark, a patent letter	25
§ 1.12.1.	Elie Seignette explains how he and his brother invented the salt of polychrest and the troubles they faced to keep it exclusive	26
§ 1.12.2.	Notice by the Royal Academy of Sciences on the composition of the Salt of Seignette	29
§ 1.12.3.	Advertisement of the True Salt of Polychrest, in the <i>Mercure de France</i> [a French gazette and literary magazine]	30
§ 1.13.	Three renowned Italian charlatans, Desiderio Descombes, Levantin and Contugi, and their disputes and controversies on the exclusive making and distribution of a famous antidote—the Orvietan	30
§ 1.13.1.	One of the many recipes of Orvietan, as it was described in a treatise on drugs	32
§ 1.13.2.	One of the several patent letters authorizing Desiderio Descombes to make and sell Orvietan in various parts of France, on the condition that he did not engage in the practice of medicine and surgery	32

§ 1.13.3.	Desiderio Descombes advertises his Orvietan on the Pont-Neuf, Paris, by staging theatrical representations, and magical tricks	34
§ 1.13.4.	Judgment by Parliament of Aix-en-Provence granting Antoine Levantin exclusivity in the use of the term “Orvietan” to designate his antidote	36
§ 1.13.5.	Settlement of a dispute between Contugy and the Corporation of Apothecaries-Grocers of Paris concerning the making and selling of Orviétan, its various business identifiers, and the right of inspection at Contugy’s shop	42
§ 1.13.6.	Judgment by the private Council in favor of Christophe Contugi, known as the true Orviétan, against Poloni, pseudo-Orviétan	43
§ 1.13.7.	Report of another judgment [on the conflicting use of the name Orvietan] (by an unspecified court)	44
§ 1.14.	Another evidence that in the seventeenth century the use of trademarks by druggists had already become a common practice: the by-laws of their guild in the French city of Saint-Quentin	45
§ 1.15.	Privilege for the exclusive distribution of mineral waters, which were to be designated by a certification mark, along with their trademarks—1739	46
§ 1.16.	A French druggist obtains patent letters permitting him to sell and advertise a secret medicine without any encumbrance from physicians and apothecaries	47
§ 1.16.1.	Judgment of the Great Council that orders the enforcement of the Letters in the form of a Provision of the Profession and Distributor of the King, belonging to the Court, and of its Councils, granted to Mr. Pierre-Raimond Vacossain, Merchant Grocer-Druggist in Paris, on the first of September 1750, in the Prévôté of the Hotel, and Great Prévôté of France	48
§ 1.16.2.	Piece of advertisement published by Vacossain promoting his medicine, whose genuineness was confirmed by his seal and signature	49
§ 1.16.3.	Another piece of advertisement of Vacossain’s purgative powder, this time under the disguise of a press editorial	50
§ 1.17.	An apothecary disputes with grocers the qualified privilege of exercising the profession of pharmacy, with implications on the use of shop signs—1773	50
§ 1.18.	A British druggist creates his own label to ensure the genuineness of the products of his trade	52
§ 1.18.1.	Announcement of the method that William Bacon created to ensure the genuineness of the drugs he sold in his store, the Royal Patent Medicine Warehouse	53
§ 1.18.2.	Advertisement of the Spa Elixir in Bacon’s prospectus	54

Table of Contents

§ 1.18.3. Specification of the Patent on the Spa Elixir granted to Thomas Gale	55
§ 1.19. The maker and seller of <i>Água de Inglaterra</i> (Water of England), a popular secret medicine in Portugal and Brazil, obtains (and loses) exclusive rights in his trademarks, including the medicine's generic name	55
§ 1.19.1. License for the making and selling of <i>Água de Inglaterra</i>	57
§ 1.19.2. In a booklet, André Lopes de Castro, introducer of <i>Água de Inglaterra</i> [Water of England] in Portugal, advertises that he has communicated the secret composition to his wife and son and warns against counterfeits	58
§ 1.19.3. The maker of <i>Água de Inglaterra</i> receives permission to designate its manufacture as Royal Manufacture	59
§ 1.19.4. The Prince Regent of Portugal approves Castro's request that enforcement measures be taken to stop the generalized counterfeiting of his medicine	60
§ 1.19.5. Castro's son and heir is authorized to sell <i>Água de Inglaterra</i> without the need to disclose the secret	61
§ 1.19.6. Castro obtains the exclusive right in the use of the designation " <i>Água de Inglaterra</i> " and the confirmation of the designation of his factory as "Royal Manufacture"	61
§ 1.19.7. An apothecary challenges José Joaquim de Castro's right to the exclusive making of <i>Água de Inglaterra</i> and use of its generic designation	62
§ 1.20. The British High Court of Chancery grants an injunction securing exclusivity in medicine even in the absence of a patent	63
§ 1.21. The French government adopts a regulation for the territory of the low countries (Belgium), providing for the mandatory use of common names and the (certifying) signature of apothecaries for designating medicines and their ingredients	63
§ 1.21.1. Instructions approved by Royal Decree of May 31, 1818, for the Doctors of Medicine, Surgeons of the Cities and of the Interior, Obstetricians, Apothecaries, Midwives, and Druggists of the Lower Countries	64
§ 1.21.2. Additional provisions on the designation of medicines on medical prescriptions in Belgium	64
§ 1.22. Thomas Holloway and his pills and ointment—a successful combination of secrecy, trademarks (and their enforcement), and intensive advertisement	65
§ 1.22.1. Holloway sues his brother for trademark infringement	66
§ 1.22.2. A sarcastic article on the ointment sold by Albinolo, who claimed that Holloway had stolen its composition from him	67
§ 1.22.3. A report on the lawsuit initiated by the Swedish physician Sillen against Holloway, involving the permission to sell Holloway's ointment in France	68

§ 1.22.4.	Notice of another litigation episode involving Holloway's trademark, this time involving a distributor of his pills and ointment in South America	70
§ 1.22.5.	Examples of advertisements of Holloway's pills and ointments	70
§ 1.22.6.	<i>Hansfstaengl Art Publishing Company and another v. Holloway</i> , a case of copyright infringement by Thomas Holloway's heirs—1893	72
§ 1.22.7.	Another instance of trademark enforcement by Holloway's heirs	73
§ 1.23.	A French court holds that a business identifier cannot be used for indirectly securing exclusivity in a secret medicine composition	75
§ 1.23.1.	Contract as per which Laffecteur assigned his name to Boyveau, inventor and distributor of the Syrup Boyveau-Leffacteur	76
§ 1.23.2.	Laffecteur obtains the permission to distribute his Anti-Syphilitic Syrup and exclusive rights in his trademarks	78
§ 1.23.3.	A French Court acknowledges the rights of pharmacists to use the designation of a medicine made and sold by a competitor, even if that designation contains the latter's name, provided that designation has become a necessary designation and additional elements prevent the public from being misled	79
§ 1.24.	A US District Court acknowledges the exclusive effects of a geographical indication for medicinal salts—1898	81
§ 1.25.	The case of Vaseline, designation of petroleum jelly: the vicissitudes of securing trademark rights in popular medicines	85
§ 1.25.1.	Excerpts from the specifications of Robert A Chesebrough's 1878 US Patent for new products from petroleum, where he employed the term "Vaseline" several times to designate his invention	86
§ 1.25.2.	A British court denies trademark protection to the word "Vaseline" because, having being used by its inventor in the patent specifications as the product's indication, has become a necessary, generic designation	87
§ 1.25.3.	No matter how generalized the use of a trademark has been, its owner is entitled to its protection—so has decided a United States Court	88
§ 1.25.4.	Justice Timlin, of the Supreme Court of Wisconsin, in a dissenting vote, expressed his reservations as to the registrability as trademarks of words (like "vaseline") which, in his view, had become a generic designation	89
§ 1.25.5.	Decision by a French Court: the trademark "Vaseline" has been abandoned due to laches	90
§ 1.25.6.	Vaseline deemed to be a generic designation in Germany	93

Table of Contents

§ 1.26.	A Scottish court denies trademark protection to a company that, for achieving commercial success in the sale of a medicine, systematically lied to consumers alleging the medicines' fictitious origins in Australian Aboriginal People's traditional knowledge	93
§ 1.27.	A US Federal Court of Appeals held that sellers of medicines are entitled to use expressions of boasting or puffing about the qualities of the drugs	97
§ 1.28.	Eugene Pouillet, a renowned French jurist, explains how in the late nineteenth and early twentieth centuries, French courts set the criteria for distinguishing protectable pharmaceutical trademarks from generic designations	100
§ 1.29.	The British Parliament reports on the frequently deceptive branding of secret (patent) medicines	104
§ 1.30.	In the United States, the brand for acetylsalicylic acid— <i>aspirin</i> —goes generic (in part), and in the United Kingdom, the medicine loses patent protection	105
§ 1.30.1.	A US District Court held " <i>aspirin</i> " as a generic trademark, in part	106
§ 1.30.2.	Excerpt from the specifications of the United States patent for acetylsalicylic acid (" <i>aspirin</i> ")	112
§ 1.30.3.	The Chancery Division of the High Court of Justice (England) held that the patent on acetylsalicylic acid is invalid (1905)	113
§ 1.30.4.	A German Court holds that the use of the trademark " <i>Aspirin</i> " by a competitor of Bayer, while an informative element of its own product, is, under the circumstances, a legitimate trade practice	115
§ 1.30.5.	Advertisement and notices concerning the successful enforcement of the trademark " <i>Aspirin</i> " published in a Canadian newspaper, 1936 and 1937	116
§ 1.31.	A United States Federal Court affirms the requirement of greater care in setting the distinctiveness of medicine trademarks	117
§ 1.32.	For the sake of public health, the UNICEF and the WHO order the reduction of the distinctiveness of trademarks concerning breast-milk substitutes	121
§ 1.32.1.	International Code of Marketing of Breast-milk Substitutes (excerpts)	123
§ 1.32.2.	Guatemala's law on the marketing of breast-milk substitutes (excerpt)	125
§ 1.32.3.	Guatemala's regulation on the marketing of breast-milk substitutes (excerpts)	125
§ 1.33.	The impediment to the use of trademarks as a manner to press generic pharmaceutical prices downwards—the example that comes from Brazil	126

§ 1.34.	Proprietary names of pharmaceutical substances versus nonproprietary names	128
§ 1.35.	Spain prohibits the designation of medicines by trademarks on medical prescriptions	130
§ 1.36.	Tobacco plain packaging—another assault on trademarks’ distinctiveness for the sake of public health	131
§ 1.36.1.	Australia—Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging	132
§ 1.36.2.	Australia’s Tobacco Plain Packaging Act 2011 (Excerpts)	133
CHAPTER 2		
	The Private Appropriation of Pharmaceutical Knowledge (Patents, Trade Secrets, Printing Privileges)	137
§ 2.01.	The secret medicine of Antonius Pacchius—First Century AD	138
§ 2.02.	Pliny the Elder commends the inventive labor of those who find new medicines in Nature but criticizes their greed and their “secret spirit”—First Century AD	140
§ 2.03.	Oath of secrecy by the new master apothecaries in Paris—Fourteenth Century	141
§ 2.04.	Jacopo di Dondi receives an industrial privilege for a process of extracting medicinal salt from the thermal waters of Abano, Italy—1355	142
§ 2.05.	The Ordinances of the Grocers’ Company and the obligation of apprentices to keep trade secrets—1525	143
§ 2.06.	A secret surgical method—1550	144
§ 2.07.	Alternative means of the appropriation of pharmaceutical knowledge: printing privileges, secrets, reputation	145
§ 2.07.1.	Alessio Piemontese, Prologue to his book <i>DE SECRETI</i>	146
§ 2.07.2.	Excerpt from the Privilege to the Belgian edition of Piemontese’s <i>De Secreti</i>	149
§ 2.07.3.	Excerpts from the Preamble to the Revealed Secrets of the Arts, both of Pharmacy and of Distillation, commonly called Alchemy, or Spargyric: through which perfection will be reached, both in Theory and in practice, in making gold drinkable, succinctly described in the form of Dialogs, by Godefroy Roussel	149
§ 2.07.4.	Extract from the exclusive privilege granted to Roussel for having his book on the Secrets of Arts printed, exhibited and sold—1612	152
§ 2.08.	Christian IV, of Denmark, acquires the secret formula of the ointments of Terkel Eskildsen, a Danish peasant—1621	152
§ 2.09.	The first British patent for a medical device—1629	153

Table of Contents

§ 2.10.	The By-laws and Regulations for the Sworn Apothecaries of Metz prohibit the “débauchage”—May 22, 1631	155
§ 2.11.	During the 1636 epidemics of the bubonic plague in London, Charles I ordered the publication of instructions on how to prepare cheap medicines	156
§ 2.12.	Sued by the apothecaries of Beaune, France, a dressmaker, owner of a secret medicinal formula, was authorized to continue distributing it, provided she would not charge for it—1661	157
§ 2.13.	Some commercial privileges granted to mountebanks during the reign of Charles II, including the license for erecting stages—1665 onwards	158
§ 2.13.1.	License to George Moretto, 1665	158
§ 2.13.2.	License to Joanees Michapilo, 1667	158
§ 2.13.3.	License to John Ryssell, 1667	159
§ 2.13.4.	Certificate and license in favor of Toussain Le Jond, 1667	159
§ 2.13.5.	License to John Baptista Quaranteni, 1668	159
§ 2.13.6.	Licence to Tamberlaine Harvey, 1673	159
§ 2.14.	Charles II, of England, creates a special public post—of Chemical Physician—for Thomas Williams, a physician and inventor of new medicines—1669	159
§ 2.15.	In 1670, under the Charter of the Guild of the Apothecaries of London, apprentices were requested to take an oath of secrecy	160
§ 2.16.	Charles II buys the secret of a medicinal formula created by Jonathan Goddard—c. 1670	161
§ 2.16.1.	Jonathan Goddard defends the private appropriation of physicians’ inventions concerning new medicines, either by patents or trade secrets	162
§ 2.16.2.	A [wrong] account of the composition of Dr. Goddard’s drops	164
§ 2.16.3.	Martin Lister, English Doctor, reveals the real composition of Goddard’s Drops, which was given to him personally by King Charles II	165
§ 2.16.4.	Cristopher Merrett, physician, attacks the apothecaries on their greed and appoints Dr. Goddard as an example of the physician’s honesty in charging fair prices for his drug	166
§ 2.16.5.	An anonymous group of apothecaries responds to Dr. Merrett’s accusations	166
§ 2.17.	A trade secret concerning a medical device: the invention of the obstetrical forceps	167
§ 2.18.	The inventor of a medicinal ointment (antihemorrhagic) sells his secret to several European kings—1673	168
§ 2.18.1.	Weber’s styptic liquor by Dr. Silva Carvalho (excerpt)	168
§ 2.18.2.	Waldshmits appoints a French surgeon, Mons. Vivens, as the inventor of the antihemorrhagic liquor	169

§ 2.18.3.	An Account of the Experiments promised at the end of the next precedent transactions concerning the wonderful effects of the Blood staunching liquor upon a Man and a Woman in St. Thomas's Hospital in Southwark London	170
§ 2.19.	The King of France, Louis XIV, acquires the formula of a secret medicine and orders its disclosure	170
§ 2.19.1.	An account of Robert Talbor's secret medicine, its success in English and French kings' courts, and the purchase of its formula by Louis XIV	171
§ 2.19.2.	Supplement of the Journal of Medicine published by order of the King	173
§ 2.20.	Helvetius (c. 1661-1724), a Dutch physician and inventor in the medical field, was rewarded by Louis XIV with several favors in exchange for the disclosure of one of his secret medicines	173
§ 2.20.1.	A sketch of the life and the events surrounding Helvetius' invention and his rewards	174
§ 2.20.2.	Letters Patent granting permission to Adrien Helvetius, Doctor of Medicine, naturalized French, to distribute alone throughout the Kingdom his specific against stomach colic, the flow of blood, and dysentery	176
§ 2.20.3.	Decision by the Parliament settling the dispute between Garnier Chapelier and Helvetius, concerning some alleged arrears by the latter in the payment of some quantities of ipecacuanha roots, which he used in preparing his famous medicine against dysentery	177
§ 2.20.4.	Prologue to Helvetius' treatise, <i>Méthode pour Guérir toute Sorte de Fièvres</i> —1694	179
§ 2.21.	Nehemiah Grew obtains the first English patent for a medicine under the Statute of 1624—July 15, 1698	180
§ 2.22.	A French doctor attacks the private appropriation of medicines through secrecy on ethical and religious grounds—1708	183
§ 2.23.	Creative pharmacists find the way to the British patent office: The second British patent for a medicinal composition was granted in 1711 to Timothy Byfield	186
§ 2.23.1.	Byfield's Patent – 1711, No. 388 (excerpts)	187
§ 2.23.2.	Dr. Byfield's leaflet describing his invention—1712 (?)	188
§ 2.24.	The Royal Academy of Sciences of France examines several patent applications concerning medical devices—1741 and 1754	188
§ 2.24.1.	Bed for the Disabled, Invented by Mr. Hanot, Carpenter—1741	189
§ 2.24.2.	Bandage for Hernias, Invented by Mr. Abeille, Engineer—1742	189
§ 2.24.3.	Fan or Ventilator for renewing the air of the room of the sick, established by experiment at the Hotel Royal des Invalides—1748	190

Table of Contents

§ 2.24.4.	Devices used to vaporize the chest, invented by Mr. Guignon, Surgeon—1754	191
§ 2.25.	The drops of General de la Motte: a secret medicine protected by several privileges; advertisement and enforcement—typical intellectual property of medicines in the eighteenth century	192
§ 2.25.1.	Privilege granted to the widow de la Motte, confirming the one granted twelve years before to his late husband, on the occasion of the acquisition by the king of the secret composition of his Drops of de la Motte	193
§ 2.25.2.	Judgment confirming the conviction of an apothecary of Paris who counterfeited the drops of General de la Motte	195
§ 2.25.3.	Advertisement of the Drops of General de la Motte	196
§ 2.26.	Judgment by the State Council of Louis XV, of France, according exclusivity to Guillaume Arnoult, concerning a secret recipe of a medicine against apoplexy	196
§ 2.26.1.	Guillaume Arnoult explains how he has learned the secret composition of the medicine and assigns it to his son	197
§ 2.26.2.	Judgment of the King's State Council of August 2, 1748	198
§ 2.26.3.	Arnoult advertises the authenticity and the virtues of his secret medicine	200
§ 2.26.4.	Louis Arnoult advertises a Patent Letter he obtained from the King and announces his trademark as the only evidence of his Sachet's authenticity	202
§ 2.26.5.	The widow of Louis Lanfranc Arnoult, son and heir of Guillaume Arnoult, advertises her genuine secret sachet against a counterfeiter—November 24, 1800	203
§ 2.26.6.	Leaflet explaining how to use the Sachet and warning against counterfeits	204
§ 2.27.	Jacob de Castro Sarmento, a Portuguese physician, established in London, defends the merits of his secret in the method of preparation of a medicine, as opposed to the secret in the nature of the ingredients—1758	204
§ 2.28.	Louis XV of France grants another exclusive privilege for a secret medicine—1762	206
§ 2.29.	A French pharmacist publicizes the two privileges he has gained for his secret medicine: one privilege for the exclusive sale of the medicine and another for printing and selling his booklet—1769	208
§ 2.30.	France enacts the first regulation on the acquisition of secret medicines by the king—1776	210
§ 2.31.	Louis XVI establishes the Royal Society of Medicine, which becomes very critical of the private appropriation of remedies—1778 onwards	212
§ 2.31.1.	Letters attributing to the Royal Society of Medicine the examination of new medicines	214

§ 2.31.2.	The State Council defines the attributions of the Royal Society of Medicine concerning the examination of secret medicines	215
§ 2.31.3.	The Royal Society of Medicine establishes a procedure for the examination of secret medicines and the public exhibition of those approved—1778	216
§ 2.31.4.	The Royal Society of Medicine reports on its experience in examining patent applications for pharmaceutical inventions and requests the National Assembly to ban secrecy, as well as any sort of private property in new medicines	218
§ 2.31.5.	The French Royal Society of Medicine proposes prizes for new therapeutic methods—1778	220
§ 2.32.	An attack against the patent system, and pharmaceutical patents in particular	220
§ 2.33.	In England, patent medicines and their secrecy—the paradox explained	221
§ 2.34.	The French Revolutionary Assembly revokes all laws and statutes concerning the guilds, including those of apothecaries—and reinstates the mandatory inspection of medicines just one month later—1791	224
§ 2.34.1.	March 17, 1791—Decree abolishing all rights of assistance, all masteries and <i>jurandes</i> , and the establishment of patents	224
§ 2.34.2.	April 17, 1791—Decree relating to the practice of pharmacy, and the sale and distribution of drugs and medicines	225
§ 2.35.	France grants the first utility patent (brevet d'invention) for an invention with therapeutic uses—26 August, 1791	225
§ 2.36.	A British inventor, William Bodrum, obtains a patent for two of his medicines and advertises their quasi-miraculous powers—1799	228
§ 2.37.	In France, pharmacists are required to experiment and disclose their secret medicines to the inspectors, who were bound to keep their confidentiality—1802	231
§ 2.38.	France requires the prior examination of secret medicines, sets a mechanism of acquisition and disclosure of some of them, and bans the trade of those that were not approved—August 18, 1810	232
§ 2.38.1.	The French statute concerning the examination and acquisition of secret medicines	233
§ 2.38.2.	Case law setting the definition of “secret remedies” for the purposes of the application of the statute of 1810	235
§ 2.38.3.	According to a Belgian court, the offer for sale of a secret medicine was, in itself, an unlawful act	237
§ 2.39.	Seidlitz Powders—The patent for the invention of the Seidlitz Powders, a very successful medicine, held invalid because of the deceptive nature of its specification	238

Table of Contents

§ 2.39.1.	Specification of Thomas Field Savory's patent on the Seidlitz powders	239
§ 2.39.2.	Decision of the Court of King's Bench holding that Savory's patent was unenforceable due to its flawed specification	240
§ 2.40.	A charitable North American physician fell in contradiction: in a book, he offered the secret recipes of several medicines effective against the epidemic of cholera for free but claimed copyright exclusivity in the work	241
§ 2.41.	The King of Portugal, João VI, grants a Brazilian apothecary a privilege for the exclusive importation and sale of medicinal water in the Province of Rio de Janeiro	245
§ 2.42.	Joseph Mettemberg (17?-1840), French physician and inventor of a medicine against scabies, struggled to secure proprietary interests in his invention	245
§ 2.42.1.	Extract from the Report on the Public Experiments Made in Paris, with the Antipsoric Quintessence, known as <i>Eau de Mettemberg</i> , renewed in the Hospices de Lille, and confirmed in the Hospitals of Lyon, by order of the Government	247
§ 2.42.2.	Observations on the safety of the use of <i>Eau de Mettemberg</i>	248
§ 2.42.3.	Two pieces of advertisement of <i>Eau de Mettemberg</i> , the first in France, the second in Spain	249
§ 2.42.4.	Specification of Mettemberg's British Patent—February 26, 1825	250
§ 2.43.	The Supreme Court of Ohio delinks patents from administrative permissions, thus according patents their current legal meaning—the right to exclude, rather than the right to use—1830	251
§ 2.44.	France excludes medicines from patentability	254
§ 2.45.	A French inventor obtains a patent in England for a device for purifying the air—1848	255
§ 2.46.	The Philadelphia College of Medicine takes a critical standing against secrets medicines or nostrums—1848	258
§ 2.47.	In the United States, the House of Representatives debates and rejects a bill that aimed at excluding medicines from patentability—1849	259
§ 2.48.	The law of trade secrets, which was then in development in England, assists a pharmacist to hold the secret in his invented medicine—1851	260
§ 2.49.	A Belgian court delinks the exclusive rights of making and using medicines that result from a patent from the notion of administrative permission to exercise the medical profession—1857	266
§ 2.50.	Portugal regulates the examination and the licensing of secret medicines—1863	268
§ 2.50.1.	Royal decision granting authority to the kingdom's public health council concerning the licensing of secret medicines	268

§ 2.50.2.	New regulations on the marketing approval of secret medicines	269
§ 2.51.	A French pharmacist and inventor, Stanislas Limousin, used various manners of capturing revenue from his inventions: patents, exposure in scientific articles, advertising, participation in international expositions, trademarks (and their enforcement), and lobbying for a more beneficial patent law—1866 onwards	270
§ 2.51.1.	Specification of French patent no. 71,176, of April 15, 1866, for 15 years, concerning a “appareil inhalateur pour respirer de l’oxygène ou tout autre gaz ou vapeur,” [“inhaler device for breathing oxygen or any gas or vapor”], granted to Stanislas Limousin	272
§ 2.51.2.	Specification of the Patent Limousin obtained in France for his medicinal cachets	273
§ 2.51.3.	Extract from the specification of Limousin’s patent on the medicinal cachets issued by the United States Patent Office in 1876	274
§ 2.51.4.	A French Court rejects Limousin’s attempt to enforce exclusive rights in the term <i>medicinal cachets</i>	275
§ 2.51.5.	At the International Congress on Industrial Property, of 1878, Limousin defends a patent system that better serves the interests of inventors in the pharmaceutical sector	277
§ 2.52.	A Portuguese pharmacist obtains a patent for a syrup against cough—1869	278
§ 2.53.	An appraisal of the U.S. patent system as applied to medicines in the late nineteenth century	283
§ 2.54.	In 1914, the British Parliament, discussing abusive practices in connection with the sale of secret medicines, did not recommend the prohibition of their commercialization, but rather that inventors provided their compositions to the agency in charge of authorizing their commercialization—which should keep that information secret	285
§ 2.55.	The American Medical Association alerts against the abusive use of the patent system to endorse fake medicines and in one particular case, has asked for the invalidation of one patent—1917	286
§ 2.56.	Brazil excludes pharmaceutical inventions from patentability—1971	289
§ 2.57.	The birth of the Bolar exemption—the Roche case and the statute—1984	291
§ 2.57.1.	The opinion that has originated the Bolar exemption	293
§ 2.57.2.	The amendment to the United States Patent Act (Title 35, USC) that introduced the Bolar exemption	299
§ 2.58.	The controversy over patents for surgical methods—the case of Dr. Pallin and his invention of a method to operate cataracts	300
§ 2.58.1.	Dr. Pallin’s patent	302

Table of Contents

§ 2.58.2.	The amendment to the United States Patent Act (United States Code, Title 35) that eliminated the enforceability of patents for therapeutic and surgical methods	304
§ 2.59.	Brazil introduces the examination of patent applications by the Ministry of Health—2001	305
§ 2.59.1.	Law no. 10,196, of February 14, 2001	306
§ 2.59.2.	Coordination of the work of the patent office with that of the sanitary agency	306
§ 2.60.	The TRIPS Council hosts debates on access to pharmaceutical products that lead to the first amendment of the TRIPS Agreement	307
§ 2.61.	With the aim of obtaining technology concerning the making of medicines necessary for its national health system, Brazil introduces a mechanism of PDPs (Partnerships for Productive Development)	309
§ 2.62.	The European Union submits to the WTO Dispute Settlement Mechanism a complaint concerning Turkey's requirement of technology transfer and national production of medicines—2019	312
§ 2.63.	Intellectual property rights under the COVID-19 pandemic	314
§ 2.63.1.	France—Emergency Law no. 2020-290 of March 23, 2020 to deal with the COVID-19 epidemic	316
§ 2.63.2.	Canada—An Act respecting certain measures in response to COVID-19, March 25, 2020	317
§ 2.63.3.	United Nations—International cooperation to ensure global access to medicines, vaccines and medical equipment to face COVID-19	318
§ 2.63.4.	A wide group of well-known, influencing personalities call for the public, free-for-all COVID-19 vaccine: “a people's vaccine”	319
§ 2.63.5.	World Health Organization—COVID-19 response	321
§ 2.63.6.	The United States responds to WHA's “COVID-19 Response” Resolution	322
§ 2.63.7.	India and South Africa seek in the TRIPS Council a general waiver from the obligation to protect intellectual property rights, October 2, 2020	324
	Credits and Sources of Texts and Illustrations	327
	Index	337