

THE FIG LEAF OF PATENT PROTECTION HAS TO DROP

Relevant for: Indian Economy | Topic: Issues relating to Intellectual Property Rights (IPRs)

The [decision of the President of the United States, Joe Biden](#), to support the India-South Africa proposal, [seeking a waiver of patent protection for technologies needed to combat and contain COVID-19](#), comes as a shot in the arm for global health. The proposal that was placed before the World Trade Organisation (WTO) had been [facing resistance](#) from several high income countries including the U.S. administration. A change in the American position supporting a temporary waiver could act as a catalyst for building consensus in favour of that proposal when it [comes up for fresh consideration at the WTO](#) in June. However, the path ahead is not clear. While [France](#) and [Russia](#) have declared support, Germany has voiced its opposition.

Response to the proposal was divided during earlier debates at the WTO. While many low and middle income countries supported it, resistance came from the U.S., the United Kingdom, the European Union, Switzerland, Australia and Japan. A strange addition to this group was Norway, which usually supports initiatives that promote global health equity. On this occasion, it chose to shield patent rights. Since the WTO operates on consensus rather than by voting, the proposal did not advance despite drawing support of over 60 countries.

Explained | What the easing of IP norms on Covid vaccines means for India

Predictably, the pharmaceutical industry fiercely opposed it and vigorously lobbied many governments. Right-wing political groups in the high income countries sided with the industry. Microsoft co-founder and billionaire Bill Gates was strident in his opposition to patent waivers for vaccines, justifiably drawing ire from the public health community for a stance that was at great variance from his projected image as a messiah of global health. It appeared that patent rights would be doggedly defended even in the face of a devastating pandemic.

Many specious reasons were offered for such a defence. It was argued that the capacity for producing vaccines of assured quality and safety was limited to some laboratories and that it would be hazardous to permit manufacturers in low and middle income countries to play with technologies they cannot handle. This smacks of hypocrisy when pharmaceutical manufacturers have no reservations about contracting industries in those countries to manufacture their patent-protected vaccines for the global market. The low labour costs in those countries are obviously so attractive that confidence in the quality and the safety of their products is high, so long as patents and profits are protected.

This amazing duplicity has been seen for years when multinational firms have subcontracted manufacture of patented products to industries with low production costs in developing countries. This has been true of pharmaceutical products, as it has been of branded consumer products and luxury goods. This fig leaf has to drop, at least in a pandemic.

Is the government committed to vaccine equity?

The counter to patent waiver is an offer to license manufacturers in developing countries, while retaining patent rights. This restricts the opportunity for production to a chosen few. The terms of those agreements are opaque and offer no assurance of equity in access to the products at affordable prices, either to the country of manufacture or to other developing countries.

It was also stated that developing countries could be supplied vaccines through the COVAX facility, set up by several international agencies and donors. While well intended, it has fallen far short of promised delivery. Some U.S. States have received more vaccines than the entire Africa has from COVAX. The trickle down theory does not work well in the global vaccine supply, just like its dubious application in economics.

Critics of a patent waiver say there is no evidence that extra capacity exists for producing vaccines outside of firms undertaking them now. Even before the change in the U.S.'s position, manufacturers from many countries expressed their readiness and avidly sought opportunities to produce the approved vaccines. They included industries in Canada and South Korea, suggesting that capable manufacturers in high income countries too are ready to avail of patent waivers but are not being allowed to enter a restricted circle. The World Health Organization's mRNA vaccine technology transfer hub has already drawn interest from over 50 firms.

A patently wrong regime

Instead of arguing that capacity is limited, should not high income countries and other donors be supporting the growth of more capacity to meet the current and likely future pandemics? They should learn from the manner in which India built up capacity and gained a reputation as a respected global pharmacy by moving from product patenting to process patenting between 1970 and 2005.

Patent waivers are also dismissed as useless on the grounds that the time taken for their utilisation by new firms will be too long to help combat the present pandemic. Who can set the end date for this pandemic, when many countries have low vaccination rates and variants are gleefully emerging from unprotected populations? If the world boasts of the speed with which previously little known companies produced vaccines in record time in 2020, why not support others to develop that capacity through technology transfer? Efficacy and safety of their products can be assessed by credible regulatory agencies and the World Health Organization. Patent waivers will benefit by increasing access not just to vaccines but also to essential drugs and diagnostics. Surely, that will not take much time.

An argument put forth by multinational pharmaceutical firms is that a breach in the patent barricade will allow China to steal their technologies, now and in the future. The original genomic sequence was openly shared by China, which gave these firms a head start in developing vaccines. Much of the foundational science that built the path for vaccine production came from public-funded universities and research institutes. Further, what use is it to hold on to patents when global health and the global economy are devastated? Who will buy their precious products then?

Also read | [China offers vaccines to South Asia, says 'ready to support' India](#)

The perennial argument, offered for defending patent protection, is that innovation and investment by industry need to be financially rewarded to incentivise them to develop new products. Even if compulsory licences are issued bypassing patent restrictions, royalties are paid to the original innovators and patent holders. They will continue to gain revenue, though not super profits. Pfizer's vaccine generated \$3.5 billion in revenue in the first quarter of 2021, while mostly reaching the arms of the world's rich. It expects \$15 billion sales this year. Moderna says it expects sales of \$18.4 billion in 2021. The incentive to protect profits is very strong indeed.

The World Trade Organization resolves debates by consensus and not by voting. The process may drag on, despite U.S. intervention. If Mr. Biden succeeds in driving consensus to provide a global thrust to combat a global threat, he will match Franklin D. Roosevelt's leadership in the

Second World War. He does not have such an alliance in place now.

So, developing countries must take heart from his gesture and start issuing compulsory licences. The Doha declaration on TRIPS flexibilities permits their use in a public health emergency. National governments must be trusted to promote credible companies and not permit fly-by-night operators. High-income countries and multilateral agencies should provide financial and technical support to enable expansion of global production capacity. That will reflect both ennobling altruism and enlightened self-interest.

Prof. K. Srinath Reddy, a cardiologist and epidemiologist, is President, Public Health Foundation of India (PHFI). The views expressed are personal

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