

## Access and Innovation in Public Health: A Challenging Dichotomy

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The patent system is designed to protect innovation and, in the same vein, offer an instrument guaranteeing that the fruits of innovation, such as genetic profiling, pharmacokinetics, and gene therapy, will be beneficial for all groups in society.

Given the diverse array of national objectives, however, developing countries such as Thailand often face difficult questions regarding how far they should go in promoting pharmaceutical patents versus obstructing patents in favour of increasing access to medicine for patients.

On the one hand, dismissing intellectual property (IP) protection in pharmaceutical patents may promote local drug companies and facilitate access to medicines by way of reduced prices. On the other hand, innovation must be protected in order to foster the development of new products and maintain competitiveness in the market.

The challenge faced by legislators and public health officials is to find an optimal balance between the rights of patent owners, who provide such technological breakthroughs to improve public health conditions, and the needs of the general public health.

Compulsory licences: In Thailand, this issue was never more acute than during the debate on compulsory licensing. In 2006, the Thai government proposed five-year compulsory licences for two patented HIV/Aids medicines, Efavirenz and Lopinavir-Ritonavir among several other drugs.

The government claimed that this decision was in line with Article 31 of the international Trips (Trade-related Aspects of Intellectual Property Rights) agreement, and Sections 50-51 of the Thai Patent Act of 1979 (amended in 1992 and 1999), which allowed for "government-use compulsory licences".

Generally speaking, after a patent is granted, the patent owner will have an exclusive right to produce, use, sell, possess for sale, offer for sale, or import into Thailand the patented product. Under the provisions of government-use compulsory licences, however, anyone is permitted to use the patented product without the permission of the patent owner, provided that such licence is exercised in the case of a critical shortage of food or medicine or for the sake of public health with non-commercial value.

While the Thai authorities viewed this patent instrument as an opportunity to gain access to the original medicines that had been approved by proper clinical tests and to increase their affordability in the market, the drug companies responsible for these innovations saw this licence mechanism as directly contradicting the purpose of the patent system.

Within this context, some would argue that compulsory licensing can result in remarkable financial benefit, due to the access gained to expensive medicines in a much-reduced period of time. It is, however, heavily debated whether such provisions will help Thailand in the long run.

Impact on investment: Although the five-year licences for the HIV/Aids medicines mentioned above expired in 2011, the long-term consequences of the licensing exercise may have a negative impact on foreign direct investment (FDI) for local pharmaceutical businesses and related pharmaceutical research.

Thailand's compulsory licensing policy in 2006 was a direct contributor to the country being placed on the US Priority Watch List in 2007. As a result, pharmaceutical companies may look for a different country with a more suitable FDI climate to protect their product(s) from government-use compulsory licences.

Singapore, for example, has become a major recipient of foreign direct investment in biotechnology in Asia. This can be explained by a combination of its market conditions and a strong pharmaceutical IP protection regime, which has allowed the country to capture a niche in the global biotechnology economy. It comes as no surprise that Novartis, a major Swiss pharmaceutical company, has one of its largest foreign direct investments in Singapore. Taking into account priorities in research and development activities, in more modernised economic regimes — such as that in Singapore — positive movement forward can be promoted by broadening and facilitating patent owners' rights.

One thing that policymakers should bear in mind is that patent protection does not only benefit inventors, but it also safeguards the complete value chain of innovation from clinical research to information investment, benefiting the public health regime via the introduction of new therapies.

New opportunities: As innovation becomes more accessible, new and challenging opportunities for both developed and undeveloped countries will arise. In order to ensure their competitiveness, developing countries should have a strong shield of IP protection, under which the authorities establish a cooperative climate that encourages innovation by both domestic and international investors. When scientific discoveries are turned into new products developed through advanced processes, we will see measurable benefits through development and growth — and patents are a key platform to achieve this objective.