

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Intellectual Property Waiver on Covid Vaccines

SIMRAN NAIK¹

ABSTRACT

164 WTO members and over 100 of them have agreed to this waiver proposal that was initiated by India and South Africa. The hurricane that came in the form of a virus named COVID-19 in 2020 took away a lot of lives and left a lot of people in denial. Vaccinations came in the form of hope to all the countries only because of the various medical teams and researchers that worked day in and day out to come up with a solution. The agenda of the waiver proposal is to eliminate any form of intellectual property protection on the vaccine to further encourage a metrical production of the vaccination in all the countries irrespective of their economic standards. This initiative even though wasn't supported in the beginning, but; over a period with every country noticing the need for more vaccinations they decided to step in and show their agreement towards this proposal.

Keywords: Covid Vaccine, IP Waiver Proposal, WTO.

I. INTRODUCTION

The whole purpose of intellectual property protection as per World Intellectual Property Organization (WIPO) is for people to enable recognition and financial benefits from what they invent or create. The IP system focuses on creating an environment where creativity and innovation can flourish. But keeping in mind the current situation and the growing pandemic, countries like India and South Africa initiated an IP waiver proposal on covid vaccines at WTO last year.

Now the question that arises is how will this waiver benefit the world? The purpose of this proposal is to remove any bottlenecks due to intellectual property protections and ramp up the production and distribution of these vaccines in the rest of the world. As per studies the distribution of the covid vaccines across the world is not even, and only 44% of the US and 51% of the UK population are vaccinated. But these percentages are way lower in many developing economies in which India is at 9.4% and all of Asia and Africa at 4.4%

¹ Author is an Associate at Fox Mandal, India.

and below 1% respectively.

II. THE PROPOSAL FROM INDIA AND SOUTH AFRICA IN 2020

On 2 October 2020, India and South Africa submitted a joint communication to the TRIPS Council at the WTO, titled “Waiver from certain provisions of the TRIPS agreement for the prevention, containment and treatment of COVID-19”. The proposal asked for a waiver to be granted to WTO members so that they do not have to implement, apply or enforce certain obligations related to COVID-19 products and technologies under Section 1 (copyrights and related rights), 4 (industrial design), 5 (patents) and seven (protection of undisclosed information) of Part II of the TRIPS Agreement. This waiver would be restricted only to the prevention, containment and treatment of COVID-19. The waiver proposal was discussed on 16th October, 2020 where nearly 100 countries welcomed and showed support but nine WTO members (EU included) weren't in favor of the waiver.

III. ADVANCEMENT IN THE PROPOSAL AS OF 2021

After the proposal came into existence and was discussed in October, 2020 the waiver proposal was at a standstill for many months. Finally, on May 5th, 2021 Katherine Chi Tai the United States Trade Representative (USTR) made an announcement regarding the support for the waiver proposal by the Biden-Harris administration. The importance of the decision given by the US cannot be overlooked because this country is the world's largest market for pharmaceuticals.

After the announcement by US, China on May 18th showed its support towards the TRIPS waiver so that developing countries would have a fair access to vaccines. EU announced their support for a “third way” alternative which would include trade facilitation and disciplines on export restrictions, support for the expansion of production (including through voluntary licensing agreements), and simplifying the use of compulsory licenses (under TRIPS) during crisis times.

IV. WHAT IMPACT WOULD THE IP WAIVER ON COVID VACCINE HAVE?

As of now only drug companies which own patents are authorized to manufacture Covid vaccines. A lifting of patent will allow the method to be shared and there will no longer be any restriction, any company which possesses the required technology and infrastructure can produce vaccines. This will lead to cheaper and more universal versions of Covid vaccines. Which will highlight two main things that is; vaccines will be more

economical and this will be a major step to win against vaccine insufficiency.

If IP protection is waived, probably some immediate relief in terms of production and distribution could follow if more manufacturers in emerging economies can join in and allocate resources to vaccine production immediately. In addition to waiving legal protections, manufacturers would need to be supported with the technology to actually produce the vaccines. This would be true especially for the newer mRNA vaccines like those from Pfizer and Moderna, which are difficult to manufacture and it would equally apply to adenovirus vaccines such as the one produced by AstraZeneca. This type of technology transfer would be best achieved via voluntary licenses in which originators provide manufacturers with the ways to produce their vaccines like how it had been done by AstraZeneca.

At a time where a huge population across India are struggling to get vaccines and shortages are being reported from many states, there is an undisputed agreement on the fact that there is a need to increase production. For example, the United States has been sitting on tens of millions of AstraZeneca vaccines even when Pfizer and Moderna are estimated to deliver 600 million by the end of July. Along with the 20 million doses Johnson & Johnson is also expected to deliver this month, the US may have an overabundance of over 80 million doses.

Uneven distribution of vaccines has opened up a huge gap between developing and wealthier countries. While countries where vaccine orders saw billions of doses have already given the shot to a substantial percentage of their population and are becoming able to welcome a semblance of normalcy back to their lives, poorer nations that still face shortages have overburdened healthcare systems and hundreds dying daily.

V. VIEW OF THE PHARMACEUTICAL INDUSTRY ON THIS PROPOSAL

Pfizer chief executive officer, Albert Bourla, who is “not at all” in favor of the U.S. position, stated that the important challenge is manufacturing capacity. “We should focus our efforts in what we will build immediately, which is enough capacity to supply billions of doses. The problem is that there are not any facilities within the world outside those that we will build ourselves, which will make mRNA vaccines,” said Bourla, in regard to the technology behind the Pfizer/BioNTech and Moderna vaccines. Moderna Chief Executive Officer Stéphane Bancel stated that “There is no mRNA in manufacturing capacity in the world, this is a new technology. You cannot go hire people that skills to form the mRNA. Those people don't exist. And then even if all those things

were available, whoever wants to do mRNA vaccines will have to buy the machine, invent the manufacturing process, invent verification processes and analytical processes."

A longer-term concern for drug makers like Moderna and Pfizer in possession of novel technology like mRNA could be that once the formula is out of the bottle, it is difficult from an IP perspective, to place it back in.

Various companies that have been fully involved in the production of vaccination and have been the sole producers of it will be massively hit if the waiver proposal would be accepted. Keeping this in mind the pharmaceutical industry is not in full agreement to this proposal and believe that they would be self-sufficient to produce the vaccinations on their own.

VI. STUMBLING BLOCK IN THE UPCOMING TIMES

With such a waiver coming into existence would companies in the future be interested in such manufactures if they wouldn't be gaining any benefits? No patent means no incentives which might reduce the number of investors if there would ever be such a situation again. Setting aside intellectual property protection could be dangerous especially if it does not work out.

VII. EFFECT OF SUCH A WAIVER ON THE COMMON PEOPLE

With the rising cases of COVID-19 due to the second wave the main agenda of most countries is to get their people vaccinated. Not because it would completely eradicate the virus but at least the risk factor would be much lower. But the rate at which the people are receiving the vaccine a lot of them would end up losing their lives due to the insufficient amount of vaccination in various countries. If the WTO members agree to such a waiver proposal the hope is that the production rate would increase not only in the rich countries but also the middle-income and poor countries.

At a time like this where saving lives must be the highest priority it is the duty of every nation to look out for their people and consider the monetary gains a secondary concept.

It is very true that most of the developing countries and under developed countries have been majorly hit due to the pandemic and the economy has been highly effected. But what must be thought of in the current scenario is that if we don't save enough lives then who will help you improve the economy? That is for every nation to think about.
