

Intellectual Property Rights and Health Rights: A Feasible Reform Proposal to Facilitate Access to Drugs in Developing Countries

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Abstract : The non-effectiveness of certain codified human rights is particularly apparent with reference to the lack of access to essential drugs in developing countries, which represents a breach of the human right to receive adequate health assistance. This paper underlines the conflict and the legal contradictions between human rights, namely health rights, international Intellectual Property Rights, in particular patent law, as well as international trade law. The paper discusses the crucial links between R&D costs for innovation, patents and new medical drugs, with the goal of reformulating the hierarchies of priorities and of interests at stake in the international intellectual property (IP) law system. Different from what happens today, International patent law should be a legal instrument apt at rebalancing an axiological asymmetry between the (conflicting) needs at stake. The core argument in the paper is the proposal of an alternative pathway, namely a feasible proposal for a patent law reform. IP laws tend to balance the benefits deriving from innovation with the costs of the provided monopoly, but since developing countries and industrialized countries are in completely different political and economic situations, it is necessary to (re)modulate such exchange according to the different needs. Based on this critical analysis, the paper puts forward a proposal, called Trading Time for Space (TTS), whereby a longer time for patent exclusive life in western countries (Time) is offered to the patent holder company, in exchange for the latter selling the medical drug at cost price in developing countries (Space). Accordingly, pharmaceutical companies should sell drugs in developing countries at the cost price, or alternatively grant a free license for the sale in such countries, without any royalties or fees. However, such social service shall be duly compensated. Therefore, the consideration for such a service shall be an extension of the temporal duration of the patent's exclusive in the country of origin that will compensate the reduced profits caused by the supply at the price cost in developing countries.

Keywords : global health, global justice, patent law reform, access to drugs

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