



The fig leaf of patent protection has to drop

CruX: The U.S.-supported patent waiver in the COVID fight has the potential to bring in much-needed global health equity.

Highlights:

1. 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.
2. 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.
3. However, the path ahead is not clear. While France and Russia have declared support, Germany has voiced its opposition.
4. 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.
5. 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.
6. It appeared that patent rights would be doggedly defended even in the face of a devastating pandemic.

Hollow reasons

1. 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.
2. Critics of a patent waiver say there is no evidence that extra capacity exists for producing vaccines outside of firms undertaking them now.
3. 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.
4. 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.



5. 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.
6. Much of the foundational science that built the path for vaccine production came from public-funded universities and research institutes.
7. 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.

Alternative: their failure

1. 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.
2. 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.
3. 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.
4. Some U.S. states have received more vaccines than 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.

Building on Biden's gesture

The World Trade Organization resolves debates by consensus and not by voting. The process may drag on, despite U.S. intervention. 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 the expansion of global production capacity. That will reflect both ennobling altruism and enlightened self-interest.