

CASE 4. *Patents and the African AIDS Epidemic*

INTRODUCTION

Today, more than 38.6 million people are suffering from AIDS. In 2005, AIDS killed more than 3 million people. One-third of those killed lived in sub-Saharan Africa.¹ In an attempt to garner such much needed economic stimulation and improve trade relations with the developed world, most sub-Saharan African nations have joined the World Trade Organization, an offshoot of the United Nations. One of the qualifications for membership in the WTO, is ratification of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). TRIPS requires member nations “to make patents available for any inventions, whether products or processes, in all fields of technology without discrimination, subject to the normal

tests of novelty, inventiveness and industrial applicability.”²

DRUG PATENTS

One major consequence of this agreement is that these countries must honor patents covering antiretroviral (ARV) drugs used for the treatment of AIDS. Unfortunately, the pharmaceutical companies who own the patents on these drugs have found it most profitable to sell a relatively small number of their drugs at a large premium in the developed world. Consequently, patients in developing countries are often denied treatment because they cannot afford to purchase drugs at first world prices and the monopoly protection granted by these patents

precludes the production of generic alternatives. If such generic alternatives were available at a reasonable price, the impact would be enormous. In the United States, ARV drugs have reduced the AIDS mortality rate by 75 percent in three years.³

COMPULSORY LICENSING

In response to pressure from AIDS-afflicted nations and human rights groups, several large pharmaceutical companies dramatically reduced prices on patented ARV drugs in May 2000. However no drugs were actually sold until October and it was found that even these reduced prices were much more than what most nations could afford.⁴ In an attempt to make generic drugs available, several countries began to issue "compulsory" patent licenses. TRIPS permits these licenses to be issued without consent of the patent holder in situations of "national crisis". The Pharmaceutical industry responded by intensifying their lobbying efforts in the United States and the European Union. At the behest of the industry, the United States made several attempts to strongarm South Africa and Thailand into agreements that would curtail compulsory drug licenses. At one point South Africa and Thailand were even placed on the U.S. trade sanctions "watch list."⁵

DOHA DECLARATION

Finally in November of 2001, the WTO released the Doha declaration to remedy the compulsory licensing situation. The Doha declaration clarifies parts of the TRIPS agreement to give countries more power to issue compulsory patent licenses in emergency

situations. Under this declaration, sub-Saharan African nations were reassured of their ability to issue compulsory licenses for ARV drug patents so that generic alternatives could be made available.⁶

FTAA AND TRIPS-PLUS

However, the battle between intellectual property holders and AIDS-afflicted nations wages on. Lobbyist pressure has caused the United States to continue to pursue more restrictive AIDS patent licensing measures in more recent agreements such as the U.S.-Jordan Free Trade Agreement and the Latin American Free Trade Agreement of the Americas. Meanwhile, Brazil has demonstrated the promise of generic ARV drugs. AIDS infection rates have been reduced to 1995 levels, and the cost of ARVs have been reduced by up to 80 percent over their patented equivalents.⁷

NOTES

1. Wikipedia, AIDS, <http://en.wikipedia.org/wiki/AIDS>
2. World Trade Organization, TRIPS Overview, http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm
3. World Intellectual Property Organization, Patent Protection and Access to HIV/AIDS Pharmaceuticals in sub-Saharan Africa, http://www.wipo.org/about-ip/en/studies/pdf/iipi_hiv.pdf
4. Ibid.
5. Human Rights News, "The FTAA, Access to HIV/AIDS Treatment, and Human Rights," <http://www.hrw.org/press/2002/10/ftaa1029-bck.htmIII.%20TRIPS%20and%20Doha>
6. Ibid.
7. World Intellectual Property Organization.