



Resolved: Equitable access to pharmaceuticals should be prioritized over protecting intellectual property rights.

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Introduction

Confronting the recent COVID-19 pandemic has raised grave concerns regarding future epidemics with the potential to inflict severe casualties worldwide. This has intensified the need for improved countermeasures and brought the debate surrounding equitable access to pharmaceuticals into question. While intellectual freedom and high accessibility are ethical and respectable objectives that should be upheld, certain aspects of equitable access raise doubts about its applicability to the real world. These challenges include the unfeasibility of equitable access, existing flexibilities, and the high possibility of counterfeit drugs. It reveals that such prioritization remains an idealistic approach rather than an accountable solution. This paper thereby opposes equitable access being prioritized over intellectual property rights protection of pharmaceuticals.

Defining Terms

To clarify this resolution, the negative will begin by defining key terms. “Equitable access” refers to medicines being attainable to the general public, even the most marginalized and deprived groups to achieve fairness. For example, low-income families may receive financial support from the government when accessing insurance. Equitable access must be based on reasonable standards that do not undermine incentives for the medical industry. In terms of “pharmaceuticals”, they are substances for preventing and treating diseases such as prescription drugs, over-the-counter medicine, and vaccines (Britannica). Additionally, Research and Development (R&D) means gathering knowledge to develop new medicines or discover new ways to improve existing products (W. Light).

On the other hand, “Intellectual Property Rights (IPR)” are creations of the mind, such as inventions, literary works, etc. (WIPO). IPR includes four main types: patents, trademarks, copyrights, and trade secrets (St Francis School of Law). Specifically, IPR on pharmaceuticals offers corporations exclusive rights and prohibits other firms from selling or manufacturing these drugs (Bhattacharya and Saha). Based on IPR laws, there exists the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which is an international legal agreement among World Trade Organization members. In this context, this paper assumes that IPR is already prioritized in the current global society, where the term “prioritize” refers to arranging in order of importance, so that the most important matter can be dealt with before all others (Cambridge University Press).

Feasibility issues of Equitable Access

(i) Evaluation of TRIPS regarding Feasibility

Equitable access is built on the assumption that international law and the members of the global community can support this concept. Their recognition of the inequality issue and the demonstration of their willingness to enshrine such virtuous principles by enacting and enforcing the law is essential. However, in recent years, international law has proven to be inadequate in

fundamentally preserving equitable access. In essence, it is highly improbable that equitable access will be feasible or that significant progress can be made when IPR is prioritized over protecting IPR.

At the core of this controversy surrounding IPR and equitable access is the TRIPS agreement signed in January 1995 that sets “minimum standards of protection to be provided by each Member” (World Trade Organization). For years, this has become the basic foundation for safeguarding IPR for numerous countries. However, during the global COVID-19 pandemic, the WTO (World Trade Organization) provided a waiver of IPR by adopting the Ministerial Decision on the TRIPS Agreement in June 2022 (Gabriele). WTO members would temporarily waive certain obligations from the original agreement until the world acquires coronavirus immunity (World Trade Organization, 1). For many, this is recognized as a move towards achieving equitable access as the National Center for Biotechnology Information states that “governments should view the waiver as a minimum first step to securing access to needed COVID-19 vaccines, therapeutics, and medical devices” (Kohler et al.). It was followed by the waiver expansion proposal which arose due to a sudden surge in COVID-19 mortality rates—but has not been decided officially.

However, despite its relationship to equitable access, TRIPS waiver’s setbacks prove why equitable access in the future is infeasible. Borges claims “COVID-19 TRIPS waiver has had minimal impact on overall vaccine access”, arguing that “no country had declared intent to make use of the TRIPS waiver as of 2022” (Borges). Moreover, the data for December 2022 indicates that a large gap in vaccine equity persisted. In low-income countries, only 21% of people were vaccinated while 64% were unvaccinated worldwide (World Health Organization). This confirms the inefficiency of the TRIPS waiver despite the attempts by the international community towards equitable access to pharmaceuticals. Additionally, as Georgetown International Research Group reported in 2023, “the TRIPS waiver expansion can...be undermined through parallel imports or gray imports”, and “the waiver increases the vulnerability of medical treatment exports to parallel/gray imports.” This demonstrates that the initiating TRIPS waiver expansion—therefore, advancing toward equitable access—can lead to illegal trading and black markets emerging. This can fracture the trust that the international community has for each other and hence, limit the feasibility of equitable access.

Certainly, there are limitations within the TRIPS agreement that should be considered which demand the global community's attention and therefore prioritization over equitable access—before it can be achieved at all. Countries' respective IP protection laws have predictable frameworks, allowing them to easily respond accordingly to any infringement. However, in a globalized world where some pharmaceuticals are better produced in specific places and therefore require effective trading, achieving equitable access will be difficult due to the differences in the level of protection between nations and the lack of definite standards behind equitable access. Some regions may demand more than what the other side expects and pressure their pharmaceutical companies.

Having observed these effects, counter-arguments can arise, suggesting the TRIPS agreement reform or a TRIPS waiver adjustment. Nonetheless, it is doubtful—due to these transnational, legal differences as mentioned above, and the weak international cooperation even with the presence of the TRIPS waiver—that those amendments would positively affect the international situation. Therefore, because of the infeasibility of equitable access, IP protection should be prioritized more heavily.

(ii) Evaluation of Infrastructure Regarding Feasibility

Other than international cooperation, equitable access to high-quality pharmaceuticals depends on local healthcare infrastructure and governance. The National Library of Medicine states that social structures, one of the most substantial determinants of healthcare, derive from social, economic, or political structures built on age and major sociopolitical shifts. The presence of group divisions according to race, gender, nationality, and disability results in inevitable marginalization in healthcare. This alienation occurs in any stage of the medication use process such as prescription, dispensing, and medication administration. The feasibility of equitable access is highly strained as it is highly impractical to guarantee a successful modification of such a deep-rooted structure can be readily achieved.

The unconscious or implicit biases of healthcare professionals and individuals are additional circumstances that fuel health inequities. Misbeliefs about illnesses and medication use, cultural perceptions, health literacy and communication, and trust in healthcare providers, for instance, function as patient-level factors of ethnic minority groups that induce inferior medication-related outcomes (Grimes et al.). A study discussed false racially biased beliefs that Black Americans experience less pain relative to White Americans. This was reflected in the level of pain assessments and ultimately created inaccurate prescriptions of pain medications; medical professionals gave weaker-level medicines (Hoffman et al.). As such predominant conditions demand prolonged effort and time to be moderated, as it necessitates tackling the beliefs of populations, which for common cases have been consolidated through lengthy generations. Conclusively, attaining equitable access—to any extent—requires addressing such heavily ingrained social structures that hinder the feasibility of such equality. Such considerations ultimately accentuate the protection of the IPR over the impractical theory of equitable access to pharmaceuticals. (Grimes et al.).

Furthermore, technical challenges are another reason that inhibits equitable access to vaccines. Though patent information is publicized, pharmaceutical companies can conceal trade secrets—for example, vaccine manufacturing techniques—limiting the sufficient production and replication of the medicine (Shotts and Melvin). This type of marginalization in terms of healthcare infrastructure between companies themselves can hinder the feasibility of equitable access to pharmaceuticals, and thus, IPR should remain prioritized.

Existing Flexibilities

Despite the limitations of the TRIPS agreement outlined previously, it provides some flexibility to achieve equitable access while prioritizing IPR. TRIPS includes flexibilities, preventing the isolation of least-developed countries from technological advancement. Compulsory licensing and parallel importation are the two main policies under the TRIPS Agreement. These are the elements that provide greater flexibility when addressing health concerns, while still respecting the framework of IPR. Compulsory licensing is a key policy in balancing IPR and healthcare. It allows governments to authorize third parties to produce patented products without the owner's consent, significantly lowering costs and expanding access. Research shows that in Thailand, compulsory licensing proved to have improved access to pharmaceuticals and health outcomes as well as providing financial benefits, influencing over 84,158 people and adding 12,493 Quality-Adjusted Life Years. Hence, the total financial gain for the government ultimately exceeded 132 million US dollars (Yamabhai et al.).

Parallel importation is when a product is imported to another country without the permission of the IPR holder and often re-sold at a lower price (WTO). This has been employed in several countries such as the EU; in 1990, parallel importation made up an average of two percent of the market share of the prescription drug market in the European Countries, with up to 8 percent in the UK (Peiravian). It led to a direct reduction in branded medicine prices, such as in Sweden, where it resulted in a 6% reduction in general medication costs, saving 421 million SEK annually (Granlund). This demonstrates that there's room for flexibility even under IP regulations – ensuring that welfare is not sacrificed and that individuals in developing countries can still receive essential healthcare. This guarantees the achievement of equitable access without sacrificing intellect, which undermines the argument for further prioritizing equitable access over IPR.

Productivity & Innovation

Equitable access is not only virtually unattainable through undermining IPR as argued in the first argument, but undermining IPR also has a significantly high potential to harm equitable access due to dwindling productivity and innovation. This tradeoff is critical to pharmaceutical companies, which is fundamentally driven by financial incentives. As Sullivan reports, patent protection is key to providing financial stability that allows pharmaceutical industries to “sustain innovation and fund the development of new drugs.”

Strong IPRs incentivize the productivity of R&D to develop cutting-edge drugs that address global health challenges. Without an incentive to manufacture innovative drugs, providing equitable access loses purpose, as new drug production stops in the first place. Currently, existing regulatory hurdles and expiration of patents, particularly on “blockbuster drugs” significantly impede firms’ incentive to invest in new research, as increased development costs pose financial challenges. Such undermining of IPRs further complicates production since “private capital often requires exclusive rights for investment in risky technologies” (Ashwin, et al. p.9). Without a secure patent or extension in patent life, the financial stability of the medical industry is severely compromised, inhibiting necessary medical advancements.

The US pharmaceutical sector, one of the global leaders in drug manufacturing, exemplifies a thriving industry sustained by economic incentives of a strong IP infrastructure. U.S. global biopharmaceutical companies allocate over 90% of R&D expenditure domestically, employing over 900,00 workers and directly supporting 4.4 million American jobs. Additionally, from 2018 to 2021, private investments in the biopharmaceutical sector grew by 96%, incentivized by a rewarding IPR framework for innovation and economic development (Ashwin, et al. p.13). This patent system is not only responsible for the security and economic livelihood of US citizens but the distribution of U.S.-made drugs, notably the COVID-19 vaccines, ensuring health safety worldwide.

However, a potential expansion of the TRIPS waiver poses a critical threat to the global ecosystem of medical innovation, driven by the US. Weakening IP protections “undermine incentives for pharmaceutical companies to develop new treatments”, devastating the progress of drug innovation (Ashwin, et al. p.13). Ashwin further highlights a disruption in the US healthcare system’s ability to face public health crises such as pandemics, estimating a “loss of the ability to fight” future diseases such as “COVID-19”. The consequences of an impaired IPR system extend beyond the U.S., affecting the broader pharmaceutical industry of the European Union (EU). Restricting IPRs could “weaken the EU’s pharmaceutical competitiveness” and “diminish the global supply of medical goods”, which is detrimental to developing countries and

recipients of products from European exporters (Bauer). This signifies that limited R&D stifles overall healthcare innovation and leads to a shortage of essential medicines, disproportionately burdening populations reliant on these necessary resources.

The broader economic implications are also considerable. Ceding IP protections threatens US economic stability by directly targeting a major job market. As millions of US pharma jobs are outsourced, including potential mass lay-offs of “researchers and manufacturers to distributors and logistics professionals”, this would disable the US long-run leadership in the biopharma industry (Etten). This expansion poses extensive financial repercussions, promising to “hamper both the American economy and the entire US biopharmaceutical sector”. Essentially, the TRIPS waiver risks a dormancy in medical innovation, while threatening unemployment and possible drug shortages globally.

Contrary to beliefs on restricted access, pharmaceutical corporations are already demonstrating effective capacity to distribute pharmaceuticals worldwide without restrictions on IP. Major 40 pharmaceutical companies have taken measures to increase global access to COVID-19 treatments while maintaining the protection of their patent (Etten). Proactive initiatives from companies assure a realistic coexistence of equitable access and medical innovations. The promising efforts in balancing global distribution, incentivized and funded by established corporations, deem the TRIPS goal of investing in necessary drugs in smaller companies unnecessary and wasteful.

Beyond IPR’s benefits to industries in developed countries, developing countries receive crucial stimulation for innovation and economic growth. In Ghana, a strong IP framework acted as a stimulus for creativity and innovation, while reversing the effects of reliance on low-level technology and limited human and institutional capacities (Adoma). This directly contrasts with the 2003-2013 period, where a weaker IP framework stifled domestic innovation capacity in Ghana, and exacerbated poor circumstances.

In comparison, developing nations lacking proper IP protections exhibit constraints in technological advancements and health improvements. Particularly, a majority of Sub-saharan Africa, including Nigeria and Sudan, struggles to establish local pharmaceutical industries, or attract sufficient foreign investments to drive medical innovation (Motari et al.). As a result, these WHO African regions, become heavily reliant on imported medicines or resort to outdated medical technologies. The absence of a proper IP framework risks trapping developing countries into a regressive cycle of dependence on outdated medical solutions. The study on the World Intellectual Property Organization displays that African regions with insufficient IPR, experience slower adoption of new healthcare technology, highlighting public health crises when advancements are most critical (Motari et al.). Consequently, this emphasizes that “equitable access” without IPR protections leaves developing countries vulnerable to external dependence and impedes long-run progress in domestic health care.

High Probability of Counterfeit Drugs

Without regulations of IPR, society would face difficulties in preventing counterfeit drugs, as some pharmaceutical private sectors only prefer the profits. According to the FDA, counterfeit drugs are harmful to global health since they are being misrepresented as authentic. They are thus prone to containing the wrong or detrimental ingredients. In fact, WHO reported that counterfeit drugs contribute to about 116,000 malaria deaths, “which would be avoidable if the medicines available of good quality and used correctly” annually in sub-Saharan Africa alone

(M. L.). Evidently, this shows that although equitable access itself may have importance, loosening or weakening the IPR would increase the number of people dying due to counterfeit drugs, hence leading to a “Using a Sledgehammer to Crack a Nut” situation.

Moreover, even if the ingredients themselves do not pose fatal damage, it may be problematic as counterfeit drugs have the potential to degrade the trust in other reliable vaccines. Minister of Health Adam Niedzielski expressed fear that fake vaccines could undermine months of efforts to build confidence in vaccines. According to research published in the Malaria Journal, reports of counterfeit antimalarial drugs rose by 90% between 2005 and 2010, further illustrating the extent of the problem (Walker et al.). This case shows the substantial issue of counterfeit drugs that perilous consequences can be induced if the drug is poorly regulated and is regularly used by patients.

IPR successfully prevents such issues of counterfeit drugs. IPR can be granted by patent registration, leading to the assurance of the quality of pharmaceuticals. It guarantees that pharmaceutical products are safe, well-developed, and meet regulatory standards (Pharma Mirror). Therefore, the protection of IPR in the pharmaceutical industry is essential for providing the authenticity and safety of products. Pharmaceutical private sectors like AstraZeneca have invested notable quantities of resources including capital into research, testing, and developing drugs that can meet the strict safety standards of CDCs around the world.

Furthermore, counterfeit drugs disincentivize pharmaceutical private sectors to invest in drug development. Considering innovation in healthcare, the pharmaceutical and biopharmaceutical industries are highly significant (Blackstone et al.). However, counterfeit drugs reduce the incentive to engage in research development and innovation, which can deprive pharmaceutical private sectors of revenues and lower the amount of money available for further R&D. Without new drugs, the global community will have fewer weapons to combat future pandemics or diseases, diminishing the goal of equitable access.

Conclusion

In conclusion, the pursuit of IPR should be prioritized over equitable access. The feasibility of equitable access itself is scarce and the concept is impractical and thus simply not worth undermining IPR. Not only this, the weakening of IPR is likely to damage productivity and innovation as well as the equitable access that follows. It further promotes the distribution of counterfeit drugs that threaten global health. Existing flexibilities, such as the TRIPS agreement, will nonetheless permit equitable access to be achieved through the prioritization of IPR. Hence, IPR should be pursued over the matter of equitable access.



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