

Patent

Legal title granted by a state or by a group of states in a regional patents office (OAPI, ARIPO) for its only territory, assuring a monopoly for a limited duration (in general 20 years) for the production, sale and importation of an invention on its national territory. It is a right of intellectual property on an invention, either for a product or a process likely to lead to an industrial application. After the limited duration the invention "falls into the public domain" and can be exploited by anyone without an authorisation.

Patented medicine

Medicine manufactured and sold exclusively by the laboratory holding the patent and marketed under a brand name. The first patents for antiretroviral drugs of the first generation will expire in 2007, the third generation ones in 2013.

Patent of product vs process

In the pharmaceutical sector a process for obtaining a molecule can be patented but also a molecule itself. It is then possible to block any marketing of this molecule even if it is obtained through a new process.

Generic medicine

1) Copy of an original medicine made possible by the arrival of the initial patent in the public domain at the end of the legal protection period or because it never was protected by a patent. It is thus possible to produce and use it under its common international denomination (CID which corresponds to the molecule's chemical name) at a price lower than that of a brand name medicine.

2) Medicine marketed outside of a patent monopoly. When a patent is not registered in a country copies of the medicine are found which are commonly referred to as generics even if they can sometimes benefit from a brand name.

Essential medicines**Definition by WHO, in WHO(2002)**

«Essential medicines are those which satisfy the first needs of a population in terms of health. They are chosen taking into account their usefulness in public health, the data on their effectiveness and harmlessness and their cost/effectiveness with respect to other medicines. Essential medicines aim at being available at any time within the framework of functional health systems, in a sufficient quantity, in an appropriate form, with an assured quality, accompanied by an adequate information notice and at a price accessible for individuals and communities. It is up to every country to determine which are exactly the medicines which are deemed essential.» (WHO(2002)). From 1997 there is a (*Model List of Essential Drugs*) worked out and regularly revised by WHO so as to guide the elaboration of national lists. Let us remark however that there are medicines which are considered essential from the health point of view but are excluded from the WHO list because of their high cost, as e.g. antiretroviral drugs.

Parallel imports (of medicines)

Imports of patented medicines in a third country (e.g. which does not have a production laboratory) at a price lower than that conceded by pharmaceutical firms to certain countries. Such imports take place within the framework of rights depletion: after a first licit marketing of a patented product in a country any import of this product in another country (in which it is also patented) is possible even without the consent of the patent holder. These imports are not authorised in countries which do not recognise the theory of rights depletion, in which only the patent holder has the right to import a patented product. Let us note that within the European Union parallel imports are largely used and considered as an efficient way of reducing prices. On the other hand from the creation of WTO the American government has adopted an aggressive position against these imports.

Voluntary licence

Authorisation for the production, sale and import of a product by a patent holder to a firm or a government. It is a kind of a negotiated contract which can include an obligation (e.g. like the payment of a discretionary sum for the purchase of the licence).

Compulsory licence

Administrative legal procedure included in the TRIPS Agreement through which a government issues a licence authorisation for a patent. The judiciary or administrative authority thus authorises the production, sale and import of a product without the permission of the patent holder. So in an emergency situation a state can manufacture a product without abiding by the ordinary patents right. At the time of the Doha Declaration it was proposed that emergency situations in public health be part of these exceptions but establishing a list of emergency diseases remains problematic. Moreover these exceptions only apply to countries which have the capacity to produce generics and the fate of numerous countries which have great needs for medicines but no production capacity remains problematic. Finally let us note that the United States and the European Union correspond to the two regions of the world that issue most compulsory licences.