

Update: Recent International Activity on IP in Response to COVID-19

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As previously [blogged](#), even before potential treatments could yield results in trials, relevant stakeholders quickly pushed their respective (and, in most cases, expected) positions relating to the balance between IP rights and access.

Back in April, the World Health Organization announced [support for an IP pool proposal](#) relating broadly to COVID-19. Offered by Costa Rica, the proposal [would create](#) “a repository of information on diagnostic tests, devices, medication or vaccines, with free access or licensing on reasonable and affordable terms, in all member countries of the Organization.”

That pool appears near reality. On May 15th, in anticipation to the first [virtual World Health Assembly](#) (WHA), Costa Rica and the World Health Organization [announced](#) that the voluntary pool would be launched on May 29th. The COVID patent pool will apparently be built off of the Medicines Patent Pool, a pool funded by Unitaid, that pools patents for a variety of treatments and then licenses the patents to generics. Both the [Medicines Patent Pool](#) and [Unitaid](#) have expressed support for the WHO patent pool.

The WHA concluded by the adoption of a “landmark” [resolution](#) “to bring the world together to fight the COVID-19 pandemic.” Sponsored by 130 countries, the resolution broadly calls for “universal, timely and equitable access” to COVID-19 treatments.

But buried in that resolution are a few paragraphs that forced the United States to release an [Explanation of Position](#) **disassociating** itself from certain provisions. Relevant here, the US objected to paragraphs 4, 8.2 and 9.8 because the language there “does not adequately capture the carefully negotiated, and balanced, language” in the World Trade Organization Agreement on [Trade-Related Aspects of Intellectual Property](#) (TRIPS) and the [Doha Declaration of 2001](#). (The Doha Declaration encouraged countries not to let TRIPS get in the way of protecting public health.) Instead, those sections in the WHA resolution purportedly present an “unbalanced and incomplete picture of that language at a time where all actors need to come together to produce vaccines and other critical health products.”

Recognizing the “critical role that intellectual property plays” in incentivizing innovation, the United States is “concerned that a misinterpretation of international trade obligations in non-WTO

multilateral fora may negatively affect countries' abilities to incentivize new drug development and expand access to medicines.”

Costa Rica in particular may want to pay attention to the US's Explanation of Position. It shares the US's view that references to voluntarily patent pools should “be limited to voluntary mechanisms existing before the COVID-19 pandemic, not new or proposed ‘patent pooling’ mechanisms created in response to the pandemic.” Why? Because voluntary patent pools “as applied to COVID-19 related technologies [should] be narrowly tailored in scope and duration to the medical needs of the current crisis” and the World Intellectual Property Organization should play an appropriate role in their operation and evolution.

As international efforts pursue a treatment for COVID-19, we'll continue to monitor compulsory and voluntary initiatives—such as the [Open COVID Pledge](#)—that affect intellectual property.

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