



Health & Patent Rights During the COVID-19 Pandemic

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OLIVARES / Mexico

There is no doubt that COVID-19 has impacted almost every aspect of our lives. Due to the ongoing health crisis, among other efforts, governments have implemented measures expecting to break high rates of infection while trying to adapt the regulatory landscape to respond to the new virus and continuing to attend other illnesses. Moreover, the vaccination process has increased discussions over human rights, from right to health to patent rights.

An equitable and global distribution of the vaccine will be a challenging task for humanity. It requires the cooperation of governments, the pharmaceutical industry, distributors, health institutions, and healthcare professionals, as well as conscious and responsible behavior from the general population.

In Mexico, with more than 120 million individuals, it will be tough to ensure a fair, equitable and timely distribution for all Mexicans who need to be vaccinated. Nevertheless, it is important to point out that being able to get vaccinated in a timely manner is a right... a human right to health. Public and private health services should not be understood as a benefit or concession provided by the current government, or from any other, nor from a political party.

Human rights are inherent to all people, without any distinction of nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other condition. Furthermore, human rights are interrelated, interdependent and indivisible. For instance, one cannot respect one another, not randomly either, because some of these rights affect the enjoyment of the others.

The right to life is, perhaps, the original fundamental right. Without this right, we would not have access to any other, since they depend on the guarantee and conservation of the right to life. In this context, and considering the indivisibility of fundamental rights, the right to health protection is much more than the absence of disease or having access to medical care; it is a fundamental right that touches all aspects of life. That is why it is so important to understand health in the broadest and most progressive manner possible.

Therefore, it is understandable that all efforts are made to ensure the protection of the human rights to life and health, even if means looking at the possibility of suspending other rights.

So far, we are facing a worldwide shortage of vaccines, which has led to debates on the measures which need to be taken. Consequently, some jurisdictions, such as the US, India and South Africa have proposed lifting or suspending intellectual property (IP) rights for COVID-19 vaccines.

Indeed, such proposals are a good start to overcoming the pandemic, however, the patent system is not the problem, and the solution is not the waiver of the patents. Yet, it is impossible to deny that, during the COVID 19 pandemic, more than ever, the world has witnessed the relevance of pharmaceutical innovation.

The innovative pharmaceutical industry has risen to the situation and, as a result, there are now various COVID-19 vaccine options available. Additionally, this industry continues to work on the research and development (R&D) of new treatments and devices aimed at treating and/or curing this disease which has turned the world upside down. This R&D involves great efforts and resources, finding a fair balance and support in a healthy patent system.

We would all agree that the human right to health is probably at the top of our list, as explained above. However, it is necessary to broaden the scope of the situation, since focusing only on the patent system will not promptly solve the situation.

A suitable and instant solution is required. Hence, it is necessary to include other measures, such as scaling up production, support from wealthier nations to those with lower income levels in order to receive enough dosages, licensing agreements, etc. Moreover, access to raw materials, transfer of know-how and technology, as well as infrastructure to create the vaccines needs to be addressed.

The issue arises from a scarcity of goods and services, among other reasons, but not from the exclusive rights that are involved, especially since new products, devices, and vaccines are being developed by this innovative industry, which finds a great balance and stimulation from the patent system.

In brief, COVID-19 has impacted the life sciences in many aspects. Health products have become essential during these times, involving several changes in the system as known. The regulatory scenery has changed significantly, as new guidelines and measures had to be implemented to address the health crisis.

Those modifications have and may continue to transform the normal ways to obtain sanitary authorizations, exclusive rights, and the paths of access, among others, as the world is facing one of the most challenging tasks in history.

Thus, while ensuring proper access to the human right to health and patent rights, it is necessary to establish measures to expedite access along with a system that nurtures a balance between stakeholders, innovators, and governments.