Committee of permanent representatives

Law

Mount a defence of the actions taken by multinational pharmaceutical companies to maintain and uphold their intellectual property rights (IPRs) in the international economy in recent years. Pharmaceuticals invest a lot ofmoneyto research and develop new vaccine and drugs. They therefore require intellectual property rights in terms of patents, creating a temporary monopoly to recoup the investment the initially made. If they did not have this patent system they will stop researching as there is no incentive to invest money and not obtain any feasible profits. However the patent rights which the pharmaceutical industry uses is challenged under the reason that patents stop generic companies to create the same drug at the fraction of the price for countries which are poor and can't afford the drugs.

This essay will firstly look into what intellectual property rights are and in terms of patents what they do and how they are enforced. The essay is doing to defend the patent use, explaining why pharmaceuticals need these patents in place and what challenges they face in the pharmaceutical industry. The essay will then consider some of the critics of the parents' monopoly created which will then lead to TRIPs agreement and how that enforces the pharmaceutical intellectual property right protection. The TRIPs critics has further led to the Doha deceleration which has had major impacts on the pharmaceutical and finally look at a case with Novartis suing the India's government.

Intellectual property rights refer to rights given to the owner and creator of a result of human intellectual creativity. The product should be unique and un-obvious with some value in market. In terms of the pharmaceuticals it is the chemical formula of a new drug. The objective is to protect the right of the

creator of the work, whilst allowing public to access the creativity. It is possible to establish ownership rights over intellectual property through patents, copyrights and trademarks. (Hill, 2001)

Pharmaceutical companies protect their intellectual property rights through patents. Patents grant the inventor of a new product or process exclusive rights to manufacture, use or sale of the innovation for up to 20 years from the date of application. For the pharmaceuticals the invention is often a new molecule or afamilyof molecule for the treatment of a particular disease, or a method of producing a drug. (pjonline. com).

A monopoly is given to the owner of usually 20 years. During this period no-one can reproduce it, although they might just use the method to some up with their own independent invention. The specification which is the patent document is available publicly. So it can be used to understand invention so that it can be used as soon as it expires. So for a pharmaceutical where the research and development is very expensive however the manufacturing is cheap, patents are useful to keep the rights. However there are fees to be paid to the patent office to make a product patent.

Patents are enforced through countries recognizing the intellectual property rights; they then enforce them into their domestic laws. This suggests that they can not be employed everywhere they depend on territories. The extent of the patent protection depends from country to country. The patent holders have to obtain the rights in each country where they wish to enforce their patents. The patent tries to strike a balance between two important aims: the need to encourage invention and the desire to spread the benefits of

inventions as widely as possible. (Patently wrong, open world). It is important that inventors or the companies who employ them get just rewards. They are very important to motivate for the innovation.

To bring a new pharmaceutical on the market requires great investment, which is mostly spent in testing the product for safety and efficacy. It may be possible to manufacture the medicines easily, but it is necessary to charge the high prices in order to recoup the capital spent on testing; not only on the final product but on the other which fail to reach that stage. If there was no patents, a copier who doesn't suffer the cost of research and development could offer the medicine at a much lower price but still be making healthy profits. Also they will be a standing competition against the original creator of the medicine.

The drug development process takes a great deal of time. For a brand new medicine or vaccine to appear on the market it firstly takes 2 years to do the lead finding which consist of research planning, obtain test compounds and screening. Then a further 4-6 years are spent on preclinical trials and then again another 4-6 years on clinical trials and then finally 2-3 years on registration, launch and sales. Therefore on average it can take from 8-15 years.

If a strongly negative result is obtained at any stage of the process the entire project is abandoned. It is estimated that for every 5000 compounds that are tested only one actually gets marketed. This indicates the huge risk capital the companies invest. GSK invest $4 billion each year on its research and development. In 2003 R&D represented 14. 8% of the pharmaceutical sales.

Compared to other industries as percentage of sales in 2002 the pharmaceutical industry spent over 18%, computer software 17%, automotive 5% and telecommunication spent about 3%. (gsk. com).

Also many believe that majority of the new drugs are discovered by government and universities researchers and that the drug development cost is largely funded by the government. However this is proved incorrect as by Christopher Viehbacher, President of GlaxoSmithKline Pharmaceuticals US: " Ninety-one percent of the top selling medicines available were developed by pharmaceutical companies, but bringing just one of those medicines to patient's costs as much or more than a space shuttle mission. And it's the medicines we buy today at the pharmacy that are financing tomorrow's discoveries".

So 91% of research comes from pharmaceuticals companies and the government's only funds for a few drugs for rare diseases. Also the resources which are required to make a drug are beyond the governments reach, they could not afford to create them. All great investment is recouped from the sales of the drug or vaccine. By not having patents, sales by the imitators whom do not have to take the cost of the overheads would destroy any possibilities of the inventor to recover its investments and then in a result no initial investments would be made.

The value of the patent drugs to the pharmaceuticals companies can be seen after the Patent expires when generic drugs are available the price often drops by 80%. Another factor is time for which the patent is implemented for. The point of development which the patent is filled varies from company

to company, but this would normally be at an early stage. Although as discussed that the patent time is normally 20years by the time that the patent comes to the market the product only have exclusive rights of up to 8-12 years. This explains why many pharmaceutical giants are always looking to extend their patent rights which would be effective to them. This also explains the importance of understanding why the TRIPs give 20 years protection. Countries such as India whom only give ten years or less for pharmaceutical companies are actually not giving any patents at all.