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## THE SIGNIFICANCE OF WAVING INTELLECTUAL PROPERTY PROTECTION ON CORONAVIRUS VACCINES

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### ABSTRACT

Vaccinations are the best possible way to combat the global pandemic which has resulted in complete devastation all around the globe. Mass vaccination against the severe acute respiratory syndrome coronavirus 2 (SARS-Cov-2) should be viewed as a global struggle in which no country, particularly low-income nations like Africa, can afford to fall behind.<sup>2</sup> This final point may, in fact, facilitate the virus's uncontrolled reproduction and the emergence of new variations. One potential solution to this dilemma is to waive patent rights for COVID-19 vaccinations. Waiver of patent for covid 19 vaccines can make a global influence and boost global efforts toward mass vaccination. Granting compulsory licensing can enhance the vaccine production pace at the international level, as immunization of the world is the only way to bring this pandemic to an end. This article supports the waiver of patent rights and grant of compulsory licensing under the TRIPs agreement in WTO. Countries like India and South Africa have taken initiative to bring the voice of poor nations to international organizations such as WTO, as mass production of vaccines is an immediate and basic requirement for all the nations including Economically poor nations to fight and end this pandemic. Patent waiver can make these low-income countries self-dependent on the production of vaccines which will result in mass vaccination all around the world to end this pandemic. I also highlighted the hindrances of IP waiver in this Article and the latest developments towards attainability of Patent waiver for Covid 19 vaccines.

*Keywords: Covid, Pandemic, Intellectual Property, IPR rights in pandemic*

### INTRODUCTION

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<sup>2</sup> Aljazeera, WTO chief welcomes COVID vaccine patent waiver plan, 16 March, 2022,

[www.aljazeera.com/news/2022/3/16/wto-chief-welcomes-covid-shot-patent-plan-drugmakers-balk](http://www.aljazeera.com/news/2022/3/16/wto-chief-welcomes-covid-shot-patent-plan-drugmakers-balk)

In the past few years coronavirus has changed our lives upside-down, some countries are on the verge of complete economic and medical infrastructure collapse due to catastrophic waves of mutating covid 19, and some developed countries are on the verge of offering booster shots to their citizens but does this lead to the end of a pandemic for all?

Developed countries like the UK, USA which have enough stock of vaccines have started offering 3rd dose of covid shots whereas only 8.9% of people of low-income countries have received two doses of Covid vaccines. vaccines are expected to reach African and other low-income countries by 2023. But the question arises again are we heading toward ending this pandemic?

this vaccination percentage differs dramatically, because of the lack of funding for research and development required for covid 19 vaccinations. For ending the pandemic all parts of the world should get vaccinated to make immunity and fight the virus but most of the developed countries have not given their best as rich counties have blocked covid vaccine patent for commercial interest. vaccine patents should be given to all developing and underdeveloped countries to put an end to fight and end this devastating virus.

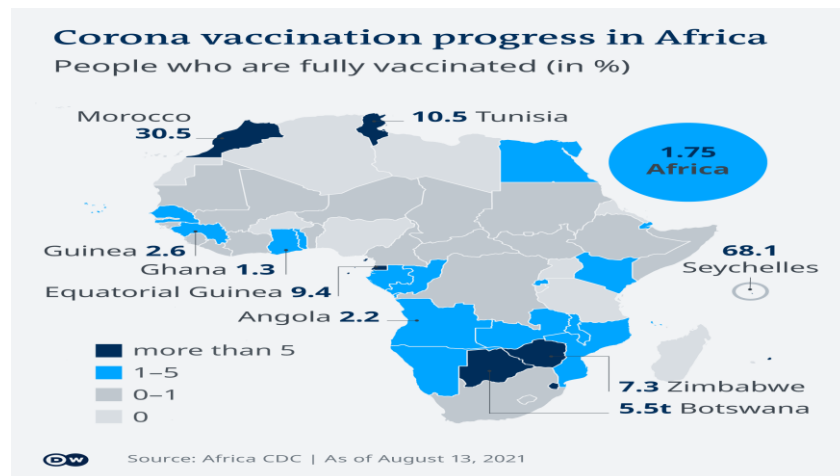
Ip plays a major role in protecting the rights of an inventor, as research and development costs are very high not every country can afford to develop their covid vaccines so it does in covid 19 vaccine invention So at a time of this world emergency these patent rights of vaccines and medications become more crucial, as it can save a million lives.

A patient waiver is something that can be called a technology transfer for vaccine development and vaccine equity for all the nation so that pandemic is defeated. At present only drug companies which own patents are authorized to manufacture covid vaccines Patient waiver can ultimately result in a solution to the pandemic.

### **WHAT IS THE NEED FOR PATIENT WAIVERS FOR POOR COUNTRIES?**

Inequitable distribution of vaccines has opened a massive gap between developing and rich countries. This is against humanity and the interest of the world on a larger or long-term scale, this can end up giving more catastrophic waves with new mutations in the virus. WHO has warned of various mutations of covid 19 in more contagious and deadly forms, in addition to that Vaccine experts have warned of long covid circulates in developing countries and this can completely disrupt the world and cause a million lives?

The need for a waiver of vaccine patent is becoming urgent as new variants such as omicron, XE variant, can be very contagious still more research is being performed on these variants, but new variants have resulted in a sudden surge in covid 19 infection graph. However, people are still left unvaccinated in most developing countries and left way behind in vaccination. We might see a sudden surge in mortality rates in developing and underdeveloped countries because of low vaccination rates. The problem of Inequitable distribution of vaccines can be solved.



Through covid vaccine patent waiver and that can lead to global access and equity of covid vaccines, as said by CEO of GAVI and cofounder of COVAX “no one is safe until everyone is safe”.<sup>3</sup>

The African continent imports 99% of its vaccines<sup>4</sup>. African countries have poor health infrastructure as well as a lack of funding, most of the African countries are dependent for vaccination upon bilateral deals and donations. Programs like COVAX have also come up to help the poor, but the demand for the vaccine is high. Delay in the delivery of vaccines is a major issue<sup>5</sup> because of the self-requirement of countries as well. A rapid surge in covid 19 cases have been noticed in these unvaccinated low-income African countries According to WHO Africa needs 900m vaccine doses to fully vaccinate 40 % of its population, it can take them decades to

<sup>3</sup> Gavi.org, No one is safe until everyone is safe, 29<sup>th</sup> October, 2021, <https://www.gavi.org/vaccineswork/no-one-safe-until-everyone-safe>

<sup>4</sup> NYTIMES, What Would It Take to Vaccinate the World Against Covid, 15 May 2021, <https://www.nytimes.com/2021/05/15/world/americas/covid-vaccine-patent-biden.html>

<sup>5</sup> The Hindu, WTO General Council discusses India’s call for holding virtual Ministerial meet on COVID-19 pandemic response ,11th January 2022, <https://www.thehindu.com/business/wto-general-council-discusses-indias-call-for-holding-virtual-ministerial-meet-on-covid-19-pandemic-response/article38231454.ece>

vaccinate the total continent if they are dependent on import, the only way to vaccinate people as soon as possible is to give patient wavier for vaccines as provided in the emergency provisions from the WTO. Talking about the current scenario, one of the most active variants of concern Omicron is believed to be found in South Africa, this was one such example of how coronavirus can mutate and spread rapidly in low vaccinated areas, how it can disrupt the lives of the entire world.

As per data 27% of the world, population has been vaccinated and 84% of all doses that have been administered have been gone to high and upper-middle-class countries Is this disease turning out to be a disease of poor nations? As underdeveloped nations are left way behind in vaccine diplomacy WHO has warned of more catastrophic and deadly waves of covid 19. Natural immunity for all can help in defeating the virus and that can <sup>6</sup>be done by vaccinating more people also in underdeveloped countries and providing patient wavier to underdeveloped countries so that they can manufacture vaccines without any hindrances and vaccinate their country. We are all in this together even if a single country is left unvaccinated it can give a chance to the virus for mutation and hit waves all across the globe, developed countries like the USA and Britain have vaccinated more than 85 per cent of its population but there are millions of cases of the new covid variants in these countries and these variants mutated in Africa and are currently across the globe. The patent waiver is required for the mass production of vaccines all over the world to end this pandemic.

### **WHY IS THE WORLD DIVIDED FOR THE WAIVER OF INTELLECTUAL PROPERTY PROTECTION FOR THE COVID VACCINE?**

India and South Africa along with 60 other WTO members in November 2020 have kept a proposal in front of WTO for covid 19 temporary vaccine patent wavier under Doha Declaration TRIPS (Trade-Related aspects of Intellectual Property Rights) agreement for ramping up vaccine production in the world and especially low developed countries The proposal was met with strong opposition by Donald Trump administration as well as the UK and the EU. In May 2021 the proposal was revised and was supported by 62 countries with the hope of at least part of the TRIPS waiver till this emergency to ramp up vaccine production.

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<sup>6</sup> Aljazeera, Explainer: What are patent waivers for COVID vaccines, 29th June 2021, [www.aljazeera.com/news/2021/6/29/explainer-what-are-covid-vaccine-patent-waivers](http://www.aljazeera.com/news/2021/6/29/explainer-what-are-covid-vaccine-patent-waivers)

In May 2021 when Joe Biden's administration Supported this proposal it gained momentum, It was also welcomed by WTO but countries like Germany and the UK are having a stance that "limiting factors in the production of vaccines are the production capacities and the high-quality standards, not patents".<sup>7</sup>

Germany and UK have developed vaccines like Pfizer and AstraZeneca with research and development costs. Leading World known personalities like Bill gates have also opposed the wavier of patents as it infringes the inventor's intellectual rights but as per reports he has also made an investment in the vaccine market and has prioritized commercial interest. Within the EU countries like France and Italy have supported patent waiver but countries that spent on research and development have a clear stance that intellectual property rights should be protected and has divided the world into two parts in international vaccine diplomacy, so is commercial interest been prioritized before human lives?

### **WHAT DOES THE LAW OF WTO AND TRIPS AGREEMENT SAY?**

Compulsory licensing is defined by WTO as when a government allows someone else to produce a patented product without the consent of the patent owner. It has given flexibility in patent protection in WTO agreements in IPR. AS still there is a confusion that when this flexibility can be used, and there are no clear circumstances mentioned in the WTO agreement as an emergency when compulsory licensing can be used and even if compulsory licensing is issued still, according to the WTO agreement an adequate remuneration according to the circumstances of each case is to be paid. Article 31 of the TRIPS agreement talks about the option of granting compulsory licensing. Compulsory licensing can be used as an important tool for the technology transfer of covid vaccines so that manufacturing can be ramped up and the worldwide vaccination campaign gets a boost.

While the final decision on vaccine patent wavier is still to be taken by the WTO and that will be done by Voting in the UN security council. Wealthy countries should allow this wavier according to me on humanitarian interest.

### **HOW MUCH DOES THE USA'S STANCE MATTER ON THE PATENT WAIVER?**

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<sup>7</sup> Philip Blenkinsop and Carl O'donnell, EU supports COVID vaccine patent waiver talks, but critics say won't solve scarcity, Reuters, May 6, 2021, <https://www.reuters.com/world/europe/eu-willing-discuss-covid-19-vaccine-patent-waiver-eus-von-der-leyen-2021-05-06/>

The USA has shown its positive approach towards the waiver of patents on covid vaccines. As major research and development costs are borne by pharmaceutical companies in the USA, being a major reason why developed countries who developed covid 19 vaccines are hindering to share technology transfer to other countries.

With the change in administration, the USA revised its decision to support the waiver of covid vaccine patents. WHO and the African Union has applauded POTUS for Supporting IP waiver as this is a Global emergency? But still, it is a time taking process and if UN resolution passes the waiver it may still take months or a year to complete the process and start the production as developments have been very slow.

### **THE EMERGENCY MEETING OF WTO'S GENERAL COUNCIL THIS MONTH**

An emergency meeting has been sought by India of WTO general council as a response to sudden covid surge all around the globe. This meeting is called regarding the development on waiver of IPR, India has reached out for the meeting after a sudden spike in covid cases and new mutations. Poor countries lack vaccines and they have emerged out to be the epicentre of the pandemic, giving the virus a chance to mutate. Countries like India and South Africa are expecting a proposal submitted in October 2020 for the patent waiver of vaccines for WTO members under the TRIPS agreement. The meeting is dated to take place on 10th January 2022. Furthermore, it is very crucial for poor countries that patent waiver is allowed and that will be done by voting in the UN council. As new variants are more contagious and can cause a more severe fertility rate, sudden steps towards IPR waiver through TRIPS agreement are expected as a result.

### **WHAT IS HAMPERING CORONAVIRUS VACCINE PATENT WAIVER?**

Delayed meetings because of mutation of the virus have been a major reason that has hampered coronavirus vaccine patent waiver, also the fact that many countries who developed vaccines are unwilling to share IPR to other countries as they have commercial interest behind, and research and development cost barred by the countries are extremely high.<sup>89</sup> But there is an emergency of a global pandemic, that the complete world has to face, developed countries have to understand

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<sup>8</sup> Krishna Veera Vanamali, What's hindering Covid-19 vaccine IP waiver, Business Standard, December 28, 2021, [https://www.business-standard.com/podcast/international/what-s-hindering-covid-19-vaccine-ip-waiver-121122800062\\_1.html](https://www.business-standard.com/podcast/international/what-s-hindering-covid-19-vaccine-ip-waiver-121122800062_1.html)

<sup>9</sup> Ankit Agarwal, US supports India on Covid vaccine patent waiver, Study Iq 6 May, 2021, <https://www.youtube.com/watch?v=hMK-lxvBDOs>

the importance and need of IP wavier for a secure future. Developed countries are expected, not to take decisions with commercial interest, more of a humanitarian approach is expected.

### **WHAT IS THE GLOBAL EFFECT OF THE WAVIER OF VACCINE PATENTS?**

Patent wavier plays a very vital role at this point of time as new variants of covid 19 have caused catastrophic waves all over the world, some economies have collapsed, and some are on the verge of collapse, there will be unlimited waves of covid 19 until complete vaccination of world is done. Vaccine patents to poor countries can help in mass vaccine production and will also help avoid future covid19 waves. Waiver of IP will help the world to contain the spread of the virus as the vaccinated population is less likely to spread the virus. Covid 19 has exacerbated more poverty and mortality rate in poor countries before this pandemic becomes pandemic for the poor, Rich countries like the UK, Germany, Norway, Switzerland should stop blocking access to vaccines patent so that universal access to covid 19 vaccine can be offered by technology transfer for manufacturing covid -19 vaccines for equitable access of vaccines all around the globe.

### **CONCLUSION**

IPR waiver is not a magic pill, But International bodies must understand that it is a crisis that is supposed to be addressed by vaccinating people against the virus, waiver of patent rights can result in mass production of vaccines that can ultimately save human lives. A new coronavirus variant termed "Omicron" has been detected in most parts of the world and is extremely contagious. Though India has called for an urgent WTO meeting for patent wavier emergency as a response to the spread of the Omicron variant. A global effort is required to beat the invisible enemy with an immediate response to the patent wavier of vaccines.

This Article strongly supports the waiver of Patent rights for covid-19 vaccines.