– пришвидшення темпів та спрощення процедур підготовки кваліфікованих спеціалістів з організації процедур набуття та передачі інтелектуальної власності;

– організація ефективної системи заходів із поширення знань, формування в суспільстві високого рівня культури та освіти у сфері набуття та використання прав на продукти інтелектуальної діяльності.

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INDIVIDUAL PRIVATE IP-OWNERS' INITIATIVES FOR PUBLIC ACCESS DURING COVID-19 PANDEMIC

ЧАСТНЫЕ ИНИЦИАТИВЫ ВЛАДЕЛЬЦЕВ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ ДЛЯ ПОВЫШЕНИЯ ДОСТУПНОСТИ МЕДИЦИНСКИХ ПРЕПАРАТОВ ВО ВРЕМЯ ПАНДЕМИИ COVID-19

ПРИВАТНІ ІНІЦІАТИВИ ВЛАСНИКІВ ІВ ДЛЯ ПІДВИЩЕННЯ ДОСТУПНОСТІ МЕДИЧНИХ ПРЕПАРАТІВ ПІД ЧАС ПАНДЕМІЇ COVID-19

Abstract. Voluntary actions have evolved since the onset of the Covid pandemic. Calls for non-compliance and voluntary contributions by IP and technology companies to facilitate access to medical technology have been encouraged since the start of the pandemic. However, the emphasis on voluntary contributions from private sector companies has had limited impact.

Аннотация. Призывы к добровольному отказу от прав ИС для повышения доступности медпрепаратов звучат с начала пандемии Covid-19. Исследование показывает ограниченную эффективность частных инициатив владельцев ИС для преодоления пандемии.

Анотація. Заклики до добровільної відмови від прав ІВ для підвищення доступності медпрепаратів звучать з початку пандемії Covid-19. Дослідження показує обмежену ефективність приватних ініціатив власників ІВ для подолання пандемії.

For overcoming Covid-19, a quick and large-scale response is required, which would be one that would not destroy the existing system of intellectual property rights, would not neutralize the incentives for expensive investment in research and development in the future.

This retention of incentives for private participants for their long-term R&D and innovation activities is commonly called dynamic efficiency. However, the very nature of the challenge imposes restrictions on the applicability of the concept of dynamic efficiency in its classical Schumpeterian

definition, since by definition, there are not enough resources of anyone private R&D participant to respond to a Covid challenge. This limitation is being solved on a large scale through government funding of vaccine R&D, i.e., activities from the set of "static effectiveness" at the national (but not global!) level.

Such a set of measures that can provide static effectiveness as a quick response to Covid is limited by national boundaries, which does not provide a global solution to the pandemic problem. However, this approach maintains incentives for the dynamic efficiency of innovative companies in the global market, while the own governments of these countries become stakeholders of R&D results.

Thus, at the level of national states, without the use of international intellectual property law mechanisms, namely, through individual contractual mechanisms, it is planned to achieve static efficiency. As a consequence, one can see duplication of efforts to develop vaccines wasting money, separatism in R&D instead of pooling research efforts, pursuing a policy of international isolationism (the United States, including in the shadow of the COVAX initiative).

The main advantage of individual contracts is speed; the main disadvantage is the limited scope of action. The individual voluntary actions of IP owners are criticized for voluntarism and inadequacy of their response to the challenge of Covid and often asymmetric actions in relation to developed and developing countries.

It is important to investigate how voluntary action has evolved since the onset of the Covid pandemic.

Calls for non-compliance and voluntary contributions by IP and technology companies to facilitate access to medical technology have been encouraged since the start of the pandemic.

However, the emphasis on voluntary contributions from private sector companies has had limited impact:

First, a prime example of coordinated sabotage of voluntary action and non-participation in the WHO COVID-19 Technology Access (C-TAP) Initiative, which seeks to voluntarily contribute IP, technology, and data to support international exchange and expansion of production and supply of products to combat COVID-19. A recent MSF study of lessons learned from voluntary licensing also shows that IP-owning corporations can apply restrictive licensing conditions, such as limited geographic offerings and other conditions that limit the benefits of competition and global offerings. This practice has already taken place during the pandemic.

Second, and often criticized, is the fact that Gilead has left almost half of the world's population without access to remdesivir as part of its voluntary licensing strategy. (Recall that remdesivir has only recently been shown to be ineffective against Covid-19).

Third, major vaccine and therapeutic developers such as Pfizer / BioNTech and Regeneron have not even attempted licensing or technology transfer efforts to manufacturers in developing countries.

Fourth, while AstraZeneca has signed licensing agreements to facilitate the transfer of their vaccine manufacturing technology through agreements with manufacturers in Argentina, Brazil, China, India, and Indonesia, these agreements raise a number of questions. The first issue is the exclusivity of the agreement with the only producer from India – Serum Institute of India (SII). In addition, SII is prohibited under this contract from supplying products to upper middle income and high-income countries, which are the most profitable markets for AstraZeneca. Another deal AstraZeneca – with the Brazilian public research center Fundação Oswaldo Cruz (Fiocruz) gives AstraZeneca the right to declare the end of the pandemic voluntaristically, namely: already in July

2021. This may result in the following: after this date (regardless of the actual non-end of the pandemic), AstraZeneca may charge buyers higher prices for the vaccine. Critics point to the hypocrisy of this agreement, as the AstraZeneca vaccine is a well-known example of a public-private partnership in the UK and was funded by public investment in R&D.

To summarize, these pharmaceutical corporation case studies illustrate the refusal of the pharmaceutical industry to regularly offer non-exclusive licenses with global reach to facilitate global access; this once again confirms that reliance on their limited voluntary action is not the solution to the global pandemic.

And the most recent data on the lack of voluntary action by leading pharmaceutical companies that have developed essential medicines to defeat the pandemic, published on January 22, 2021, by the Pharmaceutical Reporting Foundation (PAF). Wilbert Bannenberg, chairman of PAF, comments on the analytics received as follows:

“Despite the nearly unanimous endorsement of human rights principles that ensure equitable global access to vaccines and pharmaceuticals, companies' behavior does not really reflect such principles ... Their policies to ensure that people have effective access to their Covid-19 products, leaves much to be desired. "

In accordance with the 18 Covid-19 Good Practices (GCCP) proposed by the Pharmaceutical Accountability Fund (Table 1), there is a lack of voluntary actions, their low popularity among key players:

“Despite the willingness of some companies to forgo some profits from their Covid-19 products, all seven companies seem to be adhering to their intellectual property rights. This limits global production capacity and unnecessarily prolongs the duration of the pandemic, " says Tessa Jolan Yager, research coordinator.

Key findings from this study are as follows:

1) Just one company pledged not to defend its patent rights for its Covid-19 product.

2) Only a few companies are willing to sell their vaccines or pharmaceuticals against Covid-19 at a non-commercial price.

3) Despite the fact that all seven companies have published their (limited) manufacturing capacity, they do not intend to provide manufacturers in low and middle income countries with access to licenses, knowledge and technology.

4) Declaratively: five out of seven manufacturers have publicly endorsed the UN Business Guidelines for Human Rights.

5) It is significant that all seven companies have published the results of their clinical trials.

6) However, all seven companies are less transparent about development costs, manufacturing costs and profitability of their Covid-19 products.

7) Additionally, none of the companies have published a clear plan to address the uneven distribution of Covid-19 products.

8) Unfortunately, no company has yet shared their skills, knowledge and intellectual property with the Covid-19 Technology Access Pool (C-TAP). As we said above, the Pool was specially created in May 2020 by the World Health Organization for this purpose.

To summarize, all of these solutions are prolonging the global shortage of drugs for Covid-19.

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