



IP and Health and Environment Policy in Developing Countries – Setting the Policy Context

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Introduction

- Amongst the diverse theories that exist today about patents: most cited is the “incentive” or the “reward” theory
- In both the health and climate change debates, IP and patents are perceived to have both positive and negative effects
- There is much debate on whether or not patents, in fact, encourage the creation of new technologies, and if so, to what extent
- And once the technology has been developed, does the patent system play a role in its diffusion?
- Developing countries are importers of technology

In sum, does the patent system do what it is intended for, namely foster innovation and technology diffusion in the areas we are discussing today? And why are so many people excluded from the benefits of innovation?

The role of the patent system in innovation

Framework for:

- Providing incentives to invest, in particular, mobilizing resources into risky investments
- Preventing free-riding
- Promoting an efficient allocation of resources into innovation
- Specialization and shaping partnerships at various levels and supporting cumulative and shared innovation

Beware of:

- Abuse of patent rights, for example, on research tools
- Impediment to access important goods
- Non-practicing entities
- Cases of market failure

The role of patents in technology diffusion

- The patent system is generally understood to facilitate technology diffusion and investment; for some, it is even a prerequisite for technology transfer and investment abroad
- It does that mainly via
 - patent information and
 - by using patents as an instrument to assist technology transfer
- Several countries have in the past relied on the patent system as a tool in developing the national economy and this assisted it in promoting FDI and transfer of technology (e.g. Japan, Republic of Korea)
- Other countries also show a correlation

The current international discourse

- Classical North-South debate to a certain extent (IPR as a barrier), but also serious discussions
- Environment
 - UN Conference on Sustainable Development (Rio+20)
 - UNFCCC
 - WIPO Development Agenda
 - WIPO Standing Committee on the Law of Patents (SCP)
- Health
 - WHO's Intergovernmental Working Group on Public Health, Innovation and Intellectual Property
 - WHO GSPOA
 - WTO/TRIPS
 - WTO/WHO/WIPO trilateral cooperation

Patents and Health

The broader policy debate

Internal challenges

- Use of private rights to promote the production of public goods
- Consequences on access to medicines
- Number of patents

External challenges: patent law and policy interacting with:

- Public policy issues, bioethics, development
- Public international law – human rights, biodiversity
- Interface with other issues (e.g. competition policy; standards)

special beast?

omic factors:

erns about the technology

erns about *patenting* the technology

out environmental impact

addresses fundamental human needs:

h

account for a significant proportion of research,
fundamental research

of genetic resources - human, agricultural, biodiversity –
tions of ownership and control of resources, prior
resent, benefit-sharing

tion criteria: expensive to develop, very cheap to copy

ension: patent system has allowed much of the

health care. At the same time, the patent system does

an incentive for the development of medicines against

ng manly developing countries

