

Editorial

In pursuit of patents

The pursuit of health, happiness, and wealth is uniquely a human endeavor. Indian ethics endorses the above pursuits, but only when acquired without violating *dharma*. The pharmaceutical industry thus is well within its *dharma* to pursue profits. However, the pursuit of profits cannot be at the cost of the larger good of humanity. This indeed is the principle which guided the Supreme Court of India which recently denied a patent for a minor modification of the drug, Glivec. The Supreme Court of India in its wisdom has rightly denied a patent for a minor modification with no proven benefits. It has not breached any law which protects genuine innovations. Yet, the powerful lobby of pharmaceuticals industry and multinational companies (MNCs) has accused the highest court of India of being lax and incorrect in denying the patent! They have gone a step further by threatening to stop introducing newer molecules in India in the future. This outrageous temerity shown against the highest court of the sovereign land is indeed exceptional.

A patent which allows the inventor to reap the benefits for a fixed tenure at the exclusion of the others is an idea dating back to 500 BC. The inventors in the city of Sybaris in Greece were allowed to reap the benefits of their labor for one year. Protection of intellectual property enables inventions to be placed in the public domain which otherwise would be shrouded in secrecy. However, the current patent laws which enable inventors to profit exclusively from an innovation for 20 years have a flip side. Research has demonstrated that the pharmaceutical industry places profit above human concern. It has been amply shown that patents reduce the availability and affordability of new essential drugs in developing countries and thereby have a negative impact on the poor of the world (Kamil Kanji). This adds to the problem of access and accentuates the dilemma of distributive justice.^[1] The Indian pharmaceutical industry has shown a great deal of competence, ability, and ingenuity in reverse engineering. The impact of low-cost life-saving generic drugs is apparent not only in India and its neighboring countries but extends to extremely poor African countries as well. Even Obamacare has plans to induct generics in Medicare to reduce costs. The pharmaceutical

industry has responsibilities to the ailing humanity and its shareholders. Historically, the collective worth of the giants of MNCs is five times more than that of sub-Saharan Africa (Burger 2001). MNCs definitely have fulfilled their obligations to their shareholders. Most multinationals in this industry notch up profits with a margin of 35–57%. Patents play a crucial role in ensuring exclusivity and, thus, profitability. It is not surprising that lawsuits concerning patents have gone up from 81 in the year 2005 to 280 in 2011 (The paragraph four report). Billions are spent in litigation. Patent-related litigation in itself has evolved into a business. There is at least one company in the United States whose ‘main business’ according to the *Wall Street Journal* is buying up board patents and then suing other companies for alleged infringements (Flower 1996). The war of patents has grown fierce in the absence of low-hanging fruits to be plucked.

Patents do serve a role in the market-based economy. Private entrepreneurs are motivated to invest in the secure knowledge that a monopoly over the product exists for a stipulated time.

This has proven beneficial especially in the pharmaceutical industry. Therefore, efforts are made by the industry to evergreen the patents. The recent attempt by Novartis to extend the patent of Glivec after a minor modification is one such example. The company which enjoys 20 years of exclusivity makes billions which is several times the cost of innovation. The profligate system of innovations needs to transform into a more cost-effective one. The cost of research is generally overinflated by creative accounting.

The pharmaceutical industry has a bearing on human health. Effective but expensive medicines exclude a large chunk of humanity from the benefits of these useful drugs. There are experts, economists, and doctors occupying space in leading magazines and discussions on the television who exhort that the wretchedly poor should persuade governments to adopt the western capitalist economy so that everyone gets richer to pay for the medicines! Thus goes the thinking! It is just bad luck that they are born in poor countries. For

Nagraj Huilgol

Chief Radiation Oncologist,
Dr. Balabhai Nanavati Hospital, (BNH-HCG)
S. V. Road,
Vile Parle (W),
Mumbai – 400 056,
India.

For correspondence:

Dr. Nagraj Huilgol
Chief Radiation Oncologist,
Dr. Balabhai Nanavati Hospital, (BNH-HCG)
S. V. Road,
Vile Parle (W),
Mumbai – 400 056,
India.
E-mail: nagrajhuilgol@gmail.com

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the poor, suffering and death are the only options! One of the African presidents in reply has asked the west to stop subsidizing farming and start buying foodgrains from them so that they in turn can pay for their medicines. Economics is a complex phenomenon.

Jonas Salk did not patent the polio vaccine nor did Marie Curie patent radium. Any innovation or invention is based on a

vast amount of accumulated knowledge, the value of which is ineffable. We should evolve a better system such that most useful medicines are made accessible.

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