



FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION
VON PATENTANWÄLTEN

14 November 2022

Statement

On 19 May 2021 FICPI passed a resolution responding to proposals before the World Trade Organisation that Intellectual Property Rights on COVID-19 vaccines and treatments be waived for a limited period with the aim of decreasing the cost of the vaccines and treatments and hastening the end of the COVID-19 pandemic. While disagreeing with the proposed waiver, FICPI's resolution acknowledged that the international COVID-19 pandemic represented a global humanitarian crisis and that everyone without distinction should have access to appropriate treatments and vaccines. The resolution noted that suggestions had been made that that intellectual property protection for COVID-19 vaccines and related treatments and devices acted to hinder the rapid manufacture and distribution of life-saving protections and treatments, especially in Developing Countries and Least Developed Countries. FICPI disagreed with this suggestion, believing instead that Intellectual Property protection can promote such manufacture and distribution.

FICPI observed in the resolution that there was a lack of evidence that IP rights inhibit access to vaccines and treatments in connection with the fight against COVID-19 and noted that the possibility to obtain IP protection acts as a strong incentive to innovation to bring new products and processes to the market as quickly as possible; and many of the vaccines and treatments relevant to COVID-19 would not have existed had the IP systems not encouraged the development of technologies that have been rapidly adapted to produce vaccines against the SARS-CoV-2 virus. FICPI pointed out that IP rights are only one factor involved in the fight against COVID-19; and that other factors include complexities involved in the production of vaccines, availability of raw materials, development of systems for distribution and administration of the vaccines, and the related costs of these other factors.

FICPI also noted the role IP protection plays in encouraging innovation and the swift development of additional vaccines and treatments, particularly in view of the need for further improvements or variations to combat new variants of the virus, and recalled previous resolutions passed by FICPI which confirmed that the WTO system should offer the possibility of combating national emergencies or other circumstances of extreme urgency for public health, such as the COVID-19 pandemic. Such provisions are already included in the TRIPS Agreement.

Since the proposed waiver would have significantly undermined the IP protections afforded to Covid-19 vaccines and treatments, FICPI urged the WTO member states to reject the proposed waiver and to continue to afford IP protection for all COVID-19-related innovations. Accordingly FICPI was pleased that the Ministerial Decision on the TRIPS agreement (the Decision) adopted by the WTO on 17 June 2022 preserved IP protections for Covid-19 vaccines and treatments.

Instead of introducing a waiver as originally proposed, the Decision acts to clarify that a number of measures already included in the TRIPS Agreement to address cases of national emergency or other circumstances of extreme urgency are applicable to the COVID-19



pandemic. In this regard the Decision has substantially maintained the status quo in relation to patent rights provided for under Article 28.1 of the TRIPS Agreement, since such rights were already subject to the exceptions of Article 30 and 31. The Decision clarifies how these Articles apply to the COVID-19 pandemic and patents required for the production and supply of COVID-19 vaccines, and provides a partial waiver of Articles 31(a) and (b) for a five year period, subject to annual review. In this regard, the Decision waives the requirement to demonstrate that the COVID-19 pandemic represents a case of national emergency or other circumstances of extreme urgency.

While the Decision is currently limited to COVID-19 vaccines, FICPI notes that it may also be extended to COVID-19 diagnostics and therapeutics within 6 months of the date of the Decision.

FICPI believes the Decision does nothing to further encourage the development of vaccines, drugs, devices and methods of treatment or protection against COVID-19, or to assist in making such products and methods available to those in need. The Decision does however preserve the existing system of patent protection for COVID-19 related innovations and therefore is unlikely to have a negative effect on the development of such innovations.