



FIVE QUESTIONS

ON PATENT PROTECTION FOR VACCINES

FOR RETO HILTY

Professor Hilty, there is a global shortage of vaccines against COVID-19. That's why India and South Africa are fighting for a relaxation of patent protection at the World Health Organization, and they have the support of over 100 countries. What would happen if their application is successful?

RETO HILTY If their proposal is accepted, every individual member state would be able to decide autonomously whether to suspend patent protection or not, with those who cannot currently afford the vaccines being most likely to take advantage of the suspension. The problem is that suspending patent protection in one's own country makes no sense if there is no domestic company that has the technical capabilities to produce such vaccines.

Which patents are affected?

Ironically, it is not only patents specifically relating to COVID-19 vaccines that are affected. The new mRNA-based vaccines in particular are based on technologies that are themselves protected by basic patents that have already been granted or are due to be granted. These technologies have other very different and promising areas of application, namely in cancer therapy. If the patent protection for vaccines were to be suspended, this would also have to apply to these basic patents. It is highly unlikely that this would increase incentives for the pharmaceutical industry to continue investing in such

future technologies. Those who interfere with patent protection are therefore playing with fire.

What, in your view, would be a better solution?

In general, it is much more efficient if the players involved cooperate with each other and grant the necessary licenses on a contractual basis. In the meantime, a number of commissioned productions on this basis have become known. Of course, this industrial sector is not exactly renowned for its transparency. But I would not accuse the vaccine developers right from the start of refusing to grant licenses. The problem is that we simply do not have enough suitable manufacturers yet. An illustrative example is the cooperation between BioNTech/Pfizer and Novartis or Sanofi, after all global corporations. They are among the few that are capable of even filling the vaccine vials. By the way, without patents, such cooperation would hardly occur, because patents are precisely the prerequisite for collaboration. They create the legal certainty that ensures that the company's own technology is used in accordance with the contractual specifications.

Even so, for millions of people in the global south, the vaccination is still too expensive.

The gap between privileged and underprivileged countries is indeed alarming. However, those who minimize the problems to

patent law alone and blame the pharmaceutical industry are taking the easy way out. Problems of this nature cannot be solved through market mechanisms alone. It is not without reason that some wealthy countries contributed substantial funding for the development of vaccines. And it's fantastic that they did so. But if more than their own populations are to benefit, further costs will inevitably have to be incurred in order to supply economically weak states as well. Hopefully, the EU can soon do a lot of good in this regard. If it receives and accepts all the vaccine doses it has ordered, the EU will have far more than it needs.

But isn't it the pharmaceutical industry that once again profits in the end?

Certainly, no one should be "making a killing" from the pandemic. But public funds do not have to be spent unconditionally. In this respect, however, there is also little transparency on the part of the public funders. At any rate, the fact that in the U.S. a proportion of population three times as large as in the EU has already been vaccinated indicates that the U.S. government has negotiated more farsightedly than others already in the allocation of its funds.

This interview was conducted in the beginning of March 2021. Interview: Michaela Hutterer

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