

INTELLECTUAL PROPERTY AND PUBLIC HEALTH: TWO SIDES OF THE SAME COIN*

*Yahong Li***

ABSTRACT

Intellectual property (IP) protection has been blamed as one of the main sources of the public health challenge facing society. The high prices of patented drugs causes a low rate of access to medicine in poor countries. Public health and human rights advocates propose to abandon pharmaceutical patents or impose a legal duty on pharmaceutical companies to make essential medicines accessible. This article investigates the monopoly rights and practices in the pharmaceutical field, the gravity of the public health problem and the status of patenting and medicine access in least-developed countries (LDCs) and developing countries (DLCs), and the legal and policy schemes tailored to increase medicine access. Based on the analyzes of the findings from the investigation, the article argues that a patent is a minor factor for medicine access in LDCs, and an important factor in DLCs. But compulsory licensing or other practical solutions can reduce its impact, and intellectual property and public health, as an integral part of each other or two sides of the same coin, are inseparable and mutually dependent. IPR provide necessary incentives in drug discovery and development for public health, the IP system in turn benefits from public health related drug discovery R&D and commercial activities.

* This article is revised based on a paper submitted for presentation in “2011 Conference on International Health and Trade: Globalization and Related Health Issues,” held on Aug. 5-6, 2011 at College of Law, National Taiwan University. The author is grateful for the enlightening comments from the conference participants, particularly from Professors Chang-fa Lo, Shin-yi Peng and Thomas Alured Faunce, and from an anonymous article reviewer.

** Associate Professor, Faculty of Law, the University of Hong Kong. The author can be reached at yali@hku.hk.

The relationship between the two should be perceived and constructed in a positive, forward looking and pragmatic way, rather than mutual condemnation and destruction. Scholars and practitioners in both fields should collaborate to have an in-depth understanding of the issues, objectives, schemes and practices in the two fields, and an objective assessment of the impact each has exerted, efforts to reconcile, and positive outcomes achieved.

KEYWORDS: *intellectual property rights, patents, access to essential medicines, public health, compulsory licensing, Doha Declaration*