

Patents trade and development

What is a patent?

A patent is a privilege granted by a government, allowing the holder to exclude others from making, using, importing and selling an invention. Patents provide the holder with an effective monopoly on a particular product or production process. These privileges apply in the countries where they are granted for a limited period (the minimum is now 20 years). To prevent some patents from harming the public interest, governments retain the right to over-ride them in certain circumstances (using a 'compulsory licence').

The patent system is meant to provide incentives for the research and innovations which society might need. However, there is debate about whether the patent system is the most effective way to achieve this and whether current standards of protection are excessive. Many patent-based industries base much of their research on previous public sector innovation, fail to address research needs in areas where there is no market, and even use patents to block new research and competition.



Questions of control

Global justice and the distribution of wealth and power are increasingly affected by national and international rules on patents, copyright and other forms of 'intellectual property'. In today's world, these rules underpin the control of, access to and use of technology, knowledge, medicines, seeds, biodiversity, scientific research and much more.

Currently, international rules for patents are being shaped in the narrow interests of a few major industries in rich countries. One international trade deal is particularly important: the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This accord, which is overseen by the World Trade Organisation (WTO), covers patents and various other forms of 'intellectual property'. TRIPS has introduced a set of minimum standards in patents, copyright and other areas that have been criticised as being too high and not well-suited to the needs of people in poorer countries.

There are also growing concerns that ever higher standards of protection in

rich countries are not good for their citizens either. There are concerns that the patent system distorts research and development towards products and processes that can be patented and generate income for corporations. As a consequence, ecological and social solutions to problems that may be more relevant and beneficial to citizens of both rich and poor countries are neglected.

Overly strong rules may actually result in less innovation and less variation in culture. They may also reduce public access to things that were formerly part of the 'global commons' – including genetic information encoded in the genes of people, plants, animals and microorganisms. Once these things are controlled by companies, they can exclude people from using them unless they can pay.

The rules on patents and other forms of intellectual property are simply too important to be left to technical experts and patent lawyers. They need to be open to much greater public debate and scrutiny – based on the fair and equitable development needs of people everywhere.

Protecting human rights

Many governments have ratified important treaties on human rights, such as the International Covenant on Economic, Social and Cultural Rights. Arguably, trade deals that require countries to implement strong patent protection on medicines, food and other basic

goods may compromise human rights commitments relating to health, nutrition and an adequate standard of living. As yet, there has been relatively little assessment of the human rights implications of trade agreements on 'intellectual property'.

Imagine...



“A child is using a swing in a public park. Instead of swinging backwards and forwards she swings from side to side by pulling on one chain first and then the other. A few days later her parents receive a letter from the Intellectual Property Enforcement Agency, an arm of the police force. The letter states that their daughter was caught by a surveillance camera using a method of swinging that is the subject of a patent. The method has been claimed in a patent belonging to PlayPay Inc. Her parents are given the

choice of paying a licence fee or facing prosecution for patent infringement.

In Phoenix, Arizona a group of Americans get on a bus. They are going to Mexico to buy drugs for use in the US..... By buying generic equivalents in Mexico for their treatment needs they will save themselves thousands of dollars.

The first scenario is, of course, far-fetched, except for a couple of things. A patent has been granted on a method of swinging a swing in the US, and intellectual property owners increasingly look to technology to police their intellectual property rights. The need to register a computer program or face lock out, and the fact that some DVD players are restricted to playing DVDs from some geographical zones are two examples of this. The second scenario is true. US citizens are travelling to Mexico [and Canada] on special bus tours to buy generic medication they find increasingly difficult to afford in the US. Spending on brand name drugs in the US tripled between 1990 and 2000, going from US\$40.3 billion in 1990 to US\$121.8 billion in 2000. Rising prescription prices, underpinned by the strongest patent laws anywhere in the world, are turning more and more retired US citizens into medical refugees.”

From: Peter Drahos with John Braithwaite, Information Feudalism: Who Owns the Knowledge Economy? Earthscan, London, 2002

WIPO: a global patent?

“Through the ownership of abstract objects intellectual property owners can reach into the material world and control vital resources. With these rights comes, potentially, great power.”

John Braithwaite and Peter Drahos, Global Business Regulation, CUP, Cambridge 2000, pp56-57



Currently, patents apply only in the country where they are granted. International business would like to move to a global patenting system. A new treaty being negotiated in WIPO, the World Intellectual Property Organisation, pushes countries in this direction. Rich countries want to use treaty negotiations at WIPO to increase the range and level of what is patentable.

Through savings in time and patent office fees multinational companies would stand to gain from a global patent; however, poorer countries would be deprived of the limited

flexibility they still have under TRIPS. Developing countries have already had difficulty at the WTO in ensuring TRIPS does not prevent them protecting public health.

More generally, there are growing concerns that WIPO, as a specialised UN agency, does not take development concerns sufficiently into account in its activities. Because WIPO gets most of its income from industry - as fees paid for the administration of various treaties - it tends to see industry as its clients, rather than the people of the world as is the case with other UN agencies.

Moving the goalposts



Because people and companies in rich countries hold 97% of patents worldwide, they effectively control modern technologies. Obviously, they want to maintain this control and continue dominating global markets.

This has resulted in pressures from firms, especially in the USA but also in Japan and Europe, to extend globally the type of patent rules in their countries. In the 1970s and 80s, they were unable to do this in WIPO, where countries may or may not sign on to the different treaties. Instead, they succeeded in having intellectual property rules included in the Uruguay Round of trade negotiations in the mid-1980s as part of a package of deals to which prospective signatories would have to agree. These negotiations led to the TRIPS Agreement becoming one of the three key areas covered by WTO.

The processes by which these deals are negotiated are far from fair and just. Most poor countries played little part in the negotiations on TRIPS; those that did participate resisted it strongly and negotiated some concessions giving them some flexibilities. However, they had to accept TRIPS as part of a package of

trade deals if they wanted to obtain concessions in other areas such as agriculture and textiles - the benefits from which they are still waiting for.

Since TRIPS took effect, negotiators in Geneva from poorer countries have become better informed about its implications and more effective in arguing about using its flexibilities. Some negotiators, however, have faced pressures, exerted by some rich countries via their capitals, to keep quiet.

The USA has also shifted its focus away from the WTO as a place to achieve its economic interests. It has adopted a very aggressive stance in pushing for ever higher levels of patent protection through regional and bilateral Free Trade Agreements. If poor countries do not sign on to these, they do not gain theoretical access to markets in the North. Such deals often remove what few, limited options developing countries have to tailor their laws to meet their needs by using the flexibilities allowed under TRIPS rules. This push for higher standards moves the goalposts agreed when negotiating TRIPS. At that time, it was agreed developing countries would not be pushed into even higher levels of protection for the various forms of 'intellectual property'.

“...Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement...”

TRIPS Agreement, Article 1.1



One rule for the rich...?

Rich countries want poorer countries to adopt rigorous protection for patents, and have already obliged them to offer 20-year protection for all patents.

Ironically, this is not how rich countries themselves developed in the past. Countries such as the USA, Switzerland, Canada and Japan all benefited from weak or no rules on patents and other forms of 'intellectual

property' such as copyright and trademarks and the use of compulsory licensing.

This enabled new scientific advances to be spread more quickly and freely, including the fruits of the Industrial Revolution, for example. It was only after these countries had industrialised sufficiently that they began to adopt stronger laws to prevent new inventions from being copied.

Questioning the rules

There is a need for greater public involvement in policy making on the privileges society grants to patent holders. Attention from the media and public health advocates has already had an impact in important fields such as access to medicines.

A wider range of interest groups need to engage in policy-setting and decision-making on these issues for real change to happen. Only then are we likely to get rules on patents that reflect the broader public interest and the needs of the poor. In the long term, this requires a fundamental reform of the decision-making processes that set public policy.

Getting involved

1. Are other organisations near you involved in the debate? These could include labour unions, environmentalists, businesses, faith-based organisations, farming and health groups, law associations, health advocates, universities, or consumer groups. If not, suggest they start thinking about these issues and looking at how they affect people locally and globally.

2. What actions might you usefully take to influence decision-makers? This might involve contacting parliamentary representatives, government departments and ministries. You might be able to raise awareness about the issues at stake, for example, by writing a letter to a local or national newspaper.



On-line resources:

South Centre

<http://www.southcentre.org/>

World Trade Organisation

<http://www.wto.org/>

International Centre for Trade and Sustainable Development (ICTSD) / UN Conference on Trade and Development (UNCTAD) - IPRs online

<http://www.iprsonline.org>

ActionAid

<http://www.actionaid.org/>

Médécins Sans Frontières (MSF): Access Campaign

<http://www.accessmed-msf.org/>

Oxfam International

<http://www.oxfam.org>

Consumer Project on Technology

<http://www.cptech.org/ip/>

UK Commission on Intellectual Property Rights

<http://www.iprcommission.org/>

Royal Society report: Keeping Science Open

<http://www.royalsoc.ac.uk/policy/>

World Intellectual Property Organisation

<http://www.wipo.org>

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For more information, see the other briefing papers in this series. These and other resources are available on our websites or on request from one of the addresses below.

Quaker International Affairs Programme

97 Powell Avenue, Ottawa, Ontario, Canada K1S 2A2

tel: +1 613 231 7311

fax: +1 613 231 7290

email: qiap@quaker.ca

<http://www.qiap.ca>



Quaker United Nations Office, Geneva

13 Avenue du Mervelet, 1209 Geneva, Switzerland

tel: +41 (0)22 748 4800

fax: +41 (0)22 748 4819

email: quno@quno.ch

<http://www.geneva.quno.info>

