

David McCombs, Eugene Goryunov and Dina Blikshteyn Author Law360 Article About Temp Waiver of IP Protection on Vaccines

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On May 5, President Joe Biden's administration announced its support for waiving intellectual property protections provided by the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights Agreement for COVID-19 vaccines.

The TRIPS Agreement establishes minimum standards for protecting IP rights among WTO member nations.

A waiver, as currently proposed, would suspend obligations to enforce patent and trade secret protections related to COVID-19 vaccines for at least three years and could potentially be expanded to suspend enforcement related to COVID-19 health products and technologies other than vaccines.

Short-Term Impact

The short-term impact of the IP waiver will vary depending upon the ramp-up time for new vaccine manufacturers, the alternative protections available to IP right holders that operate in parallel with IP protections, and various business considerations.

Long-Term Impact

The long-term effect of the IP waiver presents more nuance. Though temporary, the IP waiver can cause long-lasting business ramifications such as an irreversible loss of trade secrets.

Our View

The IP waiver is a noble idea to combat the current pandemic. However, even in the short-term, the beneficial impact of the waiver is unclear because of uncertainties related to new production ramp-up timelines, exclusivity protections beyond IP that also exist for the current vaccines, and the apparent willingness of businesses to voluntarily forgo short-term profit out of social considerations.

In the long term, invoking the waiver is the beginning of a slippery slope that devalues intellectual property protection and the incentives it creates to invest in research and development. As the current pandemic reveals, our policies should encourage more investment in life-saving innovation, not less.

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