

## OPINION PIECE

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# Patents and the availability of essential goods in crises: the case of COVID-19 vaccines

The development of safe and effective COVID-19 vaccines at an unprecedented speed has been a remarkable achievement for modern science and technology. However, scaling up the supply of COVID-19 vaccines remains a key challenge to quickly vaccinating the world's population (Agarwal and Gopinath, 2021).

In order to facilitate timely access to COVID-19 vaccines and other essential products, India and South Africa have proposed to WTO members that a waiver be applied to the relevant provisions of the WTO TRIPS Agreement until widespread vaccination is in place globally. The proposal has attracted both support and opposition from a number of quarters.

Because a pandemic-specific TRIPS waiver would target essential goods during the pandemic, it is unlikely to change incentives for the creation of future non-pandemic goods. A more pressing concern is the effect on incentives for innovation for essential goods in future pandemics. The COVID-19 experience suggests that, during a crisis, R&D efforts quickly scale up (Agarwal and Gaulé, 2021). However, before a crisis occurs, there tends to be far too little

R&D investment in pandemic preparedness (Abi Younes et al., 2020), and an IP waiver during the current crisis might accentuate such underinvestment. Increased public support for R&D into pandemic preparedness might alleviate that problem.

How effective would pandemic-specific IP waivers be in expanding access to COVID-19 vaccines?

In the case of therapeutics based on small molecules, intellectual property rights matter considerably for such access. In the early 2000s, for instance, the threat (or actual implementation) of compulsory patent licensing was used by a number of countries to obtain significant discounts for HIV antiretrovirals (WHO, 2014).

Vaccines, however, are different from small molecule therapeutics in ways that may be highly relevant for the effect of IP waivers on access. Whereas simple tests can be used to show that a generic small molecule drug has the same effects as the original, clinical safety and efficacy testing of copycat vaccines would be required for vaccines (Friede 2010). Moreover, a considerable amount of know-how is involved

in the production of vaccines (even for those based on older technological platforms), and most of the producers with the relevant experience and expertise are already engaged in the production of COVID-19 vaccines.

The existence of additional barriers to entry in the production of COVID-19 vaccines – above and beyond IP – implies that the effect of IP waivers on vaccine availability might be rather limited in the short run. Subsidizing the development of new production capacity is likely to be a more effective way to accelerate the COVID-19 vaccine supply.

IP policy is fundamentally a choice between the speed of creation of new products and the speed of their diffusion. In a crisis, the speed of diffusion of essential products naturally assumes greater importance. However, IP waivers may not be effective in quickly expanding access for essential goods when other barriers to entry are present. Non-IP policies, such as subsidizing R&D and manufacturing capacity, have a key role to play in accelerating the creation and diffusion of essential goods in crises.