

 **The COVID-19 Technology Transfer Environment and the Potential Uses of WIPO's New ADR Options**

Online Workshop on New WIPO ADR Options for Life Sciences

WIPO's COVID-19 Related Services and Support

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Technology Transfer and COVID-19

- The COVID-19 pandemic raised (again) the public profile of technology transfer questions
 - The subject of negotiation and dispute at highest levels of government
 - Corporate policies in the spotlight
 - History informed better-tuned corporate responses
 - WIPO's programs evolving to meet challenges

- Technology-intensive product areas have involved diagnostics, therapeutics, vaccines, medical devices and personal protective equipment (PPE), among others

- Actors include government funders of R&D, private sector pharmaceutical companies, universities and other public research entities, public-private partnerships, foundations, multilateral institutions (e.g., WHO C-TAP and technology hub), national drug regulatory authorities, contract research organizations, and others

A Complex Web

- There is a web of licensing relationships among the various parties, some of them “traditional” in the sense of ordinary commercial practice to address the development, manufacture and distribution of products. Others involve “social components” that attempt to account for differential requirements among countries and individuals that might otherwise fall outside the protection of robust health systems
 - Analogy to long-time “access-oriented” IP policies and licenses (inward and outward) of DNDi, FIND and MPP
- Unique elements of the COVID-19 pandemic involve intensive focus on the speed of development and introduction into the market that may place time pressures on negotiators that might (or might not) heighten the risks of contracting errors, or agreement to terms outside those normally accepted
 - Allocation (place in line), regulatory, liability and financing issues

WIPO ADR as a Problem Solver

- A trusted mediator appointed through the WIPO Arbitration and Mediation Center may assist parties having difficulty reaching mutually agreeable terms including those involving demands not ordinarily placed on the actors
- Complex negotiating environments may involve governments and private sector entities. Hypothetically a government approaches a private sector pharmaceutical company with a request that the company set up a manufacturing facility within its territory. The government is prepared to offer incentives such as tax holiday, guaranteed offtake agreement and/or other financial incentives. Attractive from a business standpoint to the private sector company, but the government also wants to promote its internal technological capacity and insists that an investment agreement include commitments by the private sector company to transfer technology to a local partner as part of the project

WIPO ADR as a Problem Solver

■ Hypothesize a high-income country pharmaceutical company wishing to enter into a product development agreement with a university laboratory that has promising early-stage research for a low-cost/accurate diagnostic test for COVID-19. The University researchers had envisaged making the diagnostics available to low-income countries at a very low price, while the pharmaceutical company sees a large and profitable market in the high-income countries. It is not uncommon for these types of parties to reach agreement on a development and marketing arrangement that envisages distribution rights for different classes of purchasers, including based on geography, public or private procurement, and/or income

■ There is room for disagreement regarding where boundary lines should be drawn, how agreements are to be enforced, and on rights to develop and market improvements. Negotiating parties can and do disagree regarding where country income level cutoffs should be established in the transition from low- to middle- to upper-middle income

WIPO ADR as a Problem Solver

- We could even envisage a circumstance in which a country expresses intention to issue a compulsory license following failed efforts to reach voluntary agreement. A neutral mediator might provide a useful sounding board for the parties to explore a middle ground
- In many or most of the contexts just described the availability of a neutral arbitrator in the event of a dispute arising out of an agreed arrangement may facilitate the conclusion of an agreement *ab initio*
- Private sector companies may be wary of ultimately having license disputes adjudicated by national courts, particularly the courts of the country receiving technology or related products
- Recall that WTO dispute settlement is limited to WTO Members, that many developing countries are wary of ADR institutions that typically adjudicate commercial disputes, and a neutral forum within WIPO might be agreeable to all sides

The Future is Famously Difficult to Predict

- The COVID-19 pandemic has taught us to be wary of prediction, and whether there will be demand for mediation or dispute settlement services specifically in the context of licensing and technology transfer relating to the pandemic is difficult to assess
- We can hypothesize many possibilities and it may be useful to bear these in mind as each of us involved in addressing the pandemic and its aftermath interact with relevant actors
- That is reason enough for a meeting such as this one
- There is and will be a technology transfer environment beyond COVID-19, along with the new WIPO ADR Life Sciences Options (a cautious prediction)