

Book review

Discoveries, patents and the health of the developing world

C. Correa, *Integrating Public Health Concerns into Patent Legislation in Developing Countries*, South Centre, Geneva 19, Switzerland, 2000, 124 pp. ISBN 1607-5323. Price not stated.

Even since the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) came into being in 1996, with the prospect of virtually world-wide enforcement within less than a decade, there has been a vigorous and increasingly acrimonious debate around the negative effects of according universal long-term patent protection to new discoveries in the field of health. Virtually no participant in that debate seriously questions the right of an inventor to profit from his creation; nor is there fundamental doubt as to the fact that this can best be achieved by allowing him to patent it, so that he retains for a period the exclusive right to make and sell it. Criticism centres almost entirely on the fact that if an invention constitutes a true advance in the field of health, the traditional patent system creates no obligation on the inventor to make the benefits of his invention available universally, or at a reasonable price, or indeed at all.

Like other sharp social debates in a communicative society, this one is fought out with the aid of emotive image-building as much as with facts. Some of the images are far removed from reality. The intelligent group of young activist intellectuals (such as one finds in Health Action International and Médecins sans Frontières) who have spearheaded the case against excessive protection can hardly be characterized as rabble-rousing hotheads. But it is equally foolish to accept the image of the little inventor, pleading pathetically for the right to earn his daily bread until a benevolent World Trade Organization erects TRIPS as an umbrella to safeguard him against thieving imitators. That picture may hold good for the mythical man who makes a better mousetrap in his attic. It is not a proper portrayal of the multinational corporations which increasingly dominate the scene in health products, for which all that appears to matter in business is that their shares prices spiral ever upwards on the stock exchange, whether by fair means in the marketplace or foul.

Health is for everyman a priceless commodity, which in fact means that he can be induced to pay up whatever is demanded of him in order to retain or restore it, a situation which is all too tempting to the unscrupulous provider. The latter used to be the village quack. Now it is more likely to be a corporation which indeed has something of value to offer but has no hesitation in demanding twenty times, a hundred times or a thousand times what would be a fair asking price, providing the individual or the public health service can be induced to pay. It is in that respect astonishing how the western mass media have chosen to lambast the public services for failing to finance expensive drugs, rather than undertaking decent enquiry into what these drugs really are worth in monetary terms. Nor have the media as a rule realized the basic fact that for a commercial company it is often simpler and more convenient to supply a product at an outrageous price to ten thousand patients than at a fair price to ten million.

It is against this background that the issue of patents becomes so crucial. So long as some countries had lax patent systems, so long as periods of protection were little longer than the development period (and therefore expired only a few years after marketing) and so long as many patents protected only the mode of preparation of a product (and not the product itself) one with every useful new product could

reasonably look forward to a period when its supply could be opened up to competition. But new patent systems, WTO and TRIPs have largely sealed off these easy routes of escape. In the situation which is now coming into being, a new health product is likely to remain under firm patent protection so long as it remains the product of choice; by the time the patent expires, something better or safer will have arrived, carrying a new and younger patent. What that inevitably means is that the greater part of the world's population and communities, which cannot afford to pay the patentor's demands, will always be left to do as best they may with outdated products. On the day that an effective anti-AIDS vaccine becomes available, one will be faced with the sober realization that all people currently at risk will be long dead before society can afford to provide it.

For the last twenty years, the health products in the forefront of this absurdity have been synthetic drugs. But with the currently wide acceptance of the patent principle for materials, devices, biological materials and even some living organisms, the risk becomes much greater that the bulk of the world's population will be held to ransom by institutions determined to wring from them the maximum possible income, whatever the consequences may be in terms of suffering or death for those unable to pay.

The TRIPs agreement does indeed provide some loopholes for breaking the patent stronghold in the public interest, notably the awarding of compulsory licences and the retention of some exceptions to the right to patent products. Looking at the agreement as a whole, however, one can only conclude that it is heavily biased towards the interests of the licence holder and away from those of the user, as it was bound to be from the start. One can already see that a battle is developing to restrict the use of these loopholes to the very minimum. Governments, who are the agencies which could make use of them, are heavily influenced by the major corporations which provide the greater part of their tax revenue and manipulate much of their political support; they are unlikely to be active in breaking patent monopolies.

This being so, a vital role now is going to be played by the increasingly vociferous and well-orchestrated protest movement representing the world's people at large, and particular those of the poorer countries which are inevitably the victims of rules of this type. The protests around the meeting of the WTO at Seattle at the end of 1999 and subsequently in Prague and Washington are not the first stirrings of a bloody revolution, but they are the visible signs of a new current of opinion which is beginning to flow, which is gaining in strength from month to month and which is highly likely to change society's norms for the better within the next decade. The "South Centre", with its secretariat at Geneva, has since 1995 been a permanent intergovernmental organization of developing countries. Among its activities is the preparation of policy papers on key issues facing developing countries in multilateral discussions and negotiations and on which they need to develop appropriate joint policy responses. One of its most recent papers is this compact study by Carlos Correa from the University of Buenos Aires of the public health repercussions of TRIPs and related instruments. It is perhaps the most readable and best organized account of the issues of patents in health care which one will encounter anywhere. It is not impartial, but nor should it be. Just as TRIPs leans towards the interests of the patentor, so this book leans towards the needs and valid interests of the community at large. It is fair to all parties but above all it provides a splendid handbook to all who, in entering the fray, do so genuinely in the interests of their fellows. It can be of the greatest value to those governments and legal systems of developing countries who, in developing and applying their patent legislation in order to meet their international commitments, realize that where health is concerned they are at least equally committed to serving the needs of their own people.