### **1**

#### **Interp – the affirmative must defend a reduction of IP on a medicine.**

#### **“medicines” treat or cure, whereas vaccines prevent – o/w on specificity since it’s about the COVID vaccine**

Vecchio 7/22 (Christopher Vecchio, [CFA, Senior Strategist,], 7-22-2021, “Delta Variant Concerns Won't Cripple Markets, US Economy“, DailyFX, accessed: 8-9-2021, https://www.dailyfx.com/forex/video/daily\_news\_report/2021/07/22/market-minutes-delta-variant-concerns-wont-cripple-markets-us-economy.html) ajs

Let’s stick to the facts. The COVID-19 vaccines are not medicines, which by definition “treat or cure diseases.” Vaccines “help prevent diseases,” an important distinction. Why does this matter? Because data coming out of some of the world’s developed economies with high adult vaccination rates suggest that the vaccines are working as intended: tail-risks have been reduced, with hospitalizations and deaths falling relative to the recent spike in infections (which have been occurring primarily among the unvaccinated at this point). Put another way, vaccines are like a Kevlar vest for the immune system; while they don’t make you bulletproof, they dramatically increase the odds of surviving an adverse event.s

#### Violation – their advantage area is about vaccines which means either a. they solve nothing and vote neg on presumption because vaccines aren’t “COVID-19 medicines” or b. they violate

#### Negate –

#### 1] Limits – expanding the topic to preventative treatment or medical interventions allows anything from surgery to mosquito repellent to prevent malaria. Destroys core generics like innovation which are exclusive to disease curing – core of the topic is about proprietary information.

#### Voters:

#### Drop the debater – they have a 7-6 rebuttal advantage and the 2ar to make args I can’t respond to,

#### Use competing interps reasonability invites arbitrary judge intervention since we don’t know your bs meter,

#### No RVIs –illogical – you shouldn’t win for being fair – it’s a litmus test for engaging in substance,

Comes first – indicts the 1ac – any potential neg abuse was caused by aff abuse

### 2

#### Climate Patents and Innovation high now and solving Warming but patent waivers set a dangerous precedent for appropriations - the mere threat is sufficient is enough to kill investment.

Brand 5-26, Melissa. “Trips Ip Waiver Could Establish Dangerous Precedent for Climate Change and Other Biotech Sectors.” IPWatchdog.com | Patents & Patent Law, 26 May 2021, www.ipwatchdog.com/2021/05/26/trips-ip-waiver-establish-dangerous-precedent-climate-change-biotech-sectors/id=133964/. //sid

The biotech industry is making remarkable advancestowards climate change solutions, and it is precisely for this reason that it can expect to be in the crosshairs of potential IP waiver discussions. President Biden is correct to refer to climate change as an existential crisis. Yet it does not take too much effort to connect the dots between President Biden’s focus on climate change and his Administration’s recent commitment to waive global IP rights for Covid vaccines (TRIPS IP Waiver). “This is a global health crisis, and the extraordinary circumstances of the COVID-19 pandemic call for extraordinary measures.” If an IP waiver is purportedly necessary to solve the COVID-19 global health crisis (and of course [we dispute this notion](https://www.ipwatchdog.com/2021/04/19/waiving-ip-rights-during-times-of-covid-a-false-good-idea/id=132399/)), can we really feel confident that this or some future Administration will not apply the same logic to the climate crisis? And, without the confidence in the underlying IP for such solutions, what does this mean for U.S. innovation and economic growth? United States Trade Representative (USTR) [Katherine Tai](https://www.ipwatchdog.com/2021/05/05/tai-says-united-states-will-back-india-southafrica-proposal-waive-ip-rights-trips/id=133224/) was subject to questioning along this very line during a recent Senate Finance Committee hearing. And while Ambassador Tai did not affirmatively state that an IP waiver would be in the future for climate change technology, she surely did not assuage the concerns of interested parties. The United States has historically supported robust IP protection. This support is one reason the United States is the center of biotechnology innovation and leading the fight against COVID-19. However, a brief review of the domestic legislation arguably most relevant to this discussion shows just how far the international campaign against IP rights has eroded our normative position. The Clean Air Act, for example, contains a provision allowing for the mandatory licensing of patents covering certain devices for reducing air pollution. Importantly, however, the patent owner is accorded due process and the statute lays out a detailed process regulating the manner in which any such license can be issued, including findings of necessity and that no reasonable alternative method to accomplish the legislated goal exists. Also of critical importance is that the statute requires compensation to the patent holder. Similarly, the Atomic Energy Act contemplates mandatory licensing of patents covering inventions of primary importance in producing or utilizing atomic energy. This statute, too, requires due process, findings of importance to the statutory goals and compensation to the rights holder. A TRIPS IP waiver would operate outside of these types of frameworks. There would be no due process, no particularized findings, no compensationand no recourse. Indeed, the fact that the World Trade Organization (WTO) already has a process under the TRIPS agreement to address public health crises, including the compulsory licensing provisions, with necessary guardrails and compensation, makes quite clear that the waiver would operate as a free for all. Forced Tech Transfer Could Be on The Table When being questioned about the scope of a potential TRIPS IP waiver, Ambassador Tai invoked the proverb “Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime.” While this answer suggests primarily that, in times of famine, the Administration would rather give away other people’s fishing rods than share its own plentiful supply of fish (here: actual COVID-19 vaccine stocks), it is apparent that in Ambassador Tai’s view waiving patent rights alone would not help lower- and middle-income countries produce their own vaccines. Rather, they would need to be taught how to make the vaccines and given the biotech industry’s manufacturing know-how, sensitive cell lines, and proprietary cell culture media in order to do so. In other words, Ambassador Tai acknowledged that the scope of the current TRIPS IP waiver discussions includes the concept of forced tech transfer. In the context of climate change, the idea would be that companies who develop successful methods for producing new seed technologies and sustainable biomass**,** reducing greenhouse gases in manufacturing and transportation, capturing and sequestering carbon in soil and products, and more, would be required to turn over their proprietaryknow-how to global competitors. While it is unclear how this concept would work in practice and under the constitutions of certain countries, the suggestion alone could be devastating to voluntary internationalcollaborations. Even if one could assume that the United States could not implement forced tech transfer on its own soil, what about the governments of our international development partners? It is not hard to understand that a U.S.-based company developing climate change technologies would be unenthusiastic about partnering with a company abroad knowing that the foreign country’s government is on track – with the assent of the U.S. government – to change its laws and seize proprietary materials and know-how that had been voluntarily transferred to the local company. Necessary Investment Could Diminish Developing climate change solutions is not an easy endeavor and bad policy positions threaten the likelihood that they will materialize. These products have long lead times from research and development to market introduction, owing not only to a high rate of failure but also rigorous regulatory oversight. Significant investment is required to sustain and drive these challenging and long-enduring endeavors. For example, synthetic biology companies critical to this area of innovation [raised over $1 billion in investment in the second quarter of 2019 alone](https://www.bio.org/sites/default/files/2021-04/Climate%20Report_FINAL.pdf). If investors cannot be confident that IP will be in place to protect important climate change technologies after their long road from bench to market, it is unlikely they will continue to investat the current and required levels**.**

#### Climate change destroys the world.

Specktor 19 [Brandon writes about the science of everyday life for Live Science, and previously for Reader's Digest magazine, where he served as an editor for five years] 6-4-2019, "Human Civilization Will Crumble by 2050 If We Don't Stop Climate Change Now, New Paper Claims," livescience, <https://www.livescience.com/65633-climate-change-dooms-humans-by-2050.html> Justin

The current climate crisis, they say, is larger and more complex than any humans have ever dealt with before. General climate models — like the one that the [United Nations' Panel on Climate Change](https://www.ipcc.ch/sr15/) (IPCC) used in 2018 to predict that a global temperature increase of 3.6 degrees Fahrenheit (2 degrees Celsius) could put hundreds of millions of people at risk — fail to account for the **sheer complexity of Earth's many interlinked geological processes**; as such, they fail to adequately predict the scale of the potential consequences. The truth, the authors wrote, is probably far worse than any models can fathom. How the world ends What might an accurate worst-case picture of the planet's climate-addled future actually look like, then? The authors provide one particularly grim scenario that begins with world governments "politely ignoring" the advice of scientists and the will of the public to decarbonize the economy (finding alternative energy sources), resulting in a global temperature increase 5.4 F (3 C) by the year 2050. At this point, the world's ice sheets vanish; brutal droughts kill many of the trees in the [Amazon rainforest](https://www.livescience.com/57266-amazon-river.html) (removing one of the world's largest carbon offsets); and the planet plunges into a feedback loop of ever-hotter, ever-deadlier conditions. "Thirty-five percent of the global land area, and **55 percent of the global population, are subject to more than 20 days a year of** [**lethal heat conditions**](https://www.livescience.com/55129-how-heat-waves-kill-so-quickly.html), beyond the threshold of human survivability," the authors hypothesized. Meanwhile, droughts, floods and wildfires regularly ravage the land. Nearly **one-third of the world's land surface turns to desert**. Entire **ecosystems collapse**, beginning with the **planet's coral reefs**, the **rainforest and the Arctic ice sheets.** The world's tropics are hit hardest by these new climate extremes, destroying the region's agriculture and turning more than 1 billion people into refugees. This mass movement of refugees — coupled with [shrinking coastlines](https://www.livescience.com/51990-sea-level-rise-unknowns.html) and severe drops in food and water availability — begin to **stress the fabric of the world's largest nations**, including the United States. Armed conflicts over resources, perhaps culminating in **nuclear war, are likely**. The result, according to the new paper, is "outright chaos" and perhaps "the end of human global civilization as we know it."

### 3

#### Through the reading of books and images we build a constructive view of health and proper social posture due to an illusion of nature projected onto us by an illusory idea of purity. Focus on disease and health is an illusion of lived experience where our projected capacity of how we should live makes us determine the course of action due to our genetic risk where we project ideas of purity onto material images of ourselves and others.

Pender 18

Kelly Pender. (2018). Being at Genetic Risk : Toward a Rhetoric of Care. Penn State University Press. Pages 43 to 45. // js69

Kelly Happe frames her 2013 book, The Material Gene: Gender, Race, and Heredity After the Human Genome Project with a very provocative question: “How do **we think of** heredity and **disease** not as recalcitrant material realities discovered by researchers and physicians but **as contingent manifestations of** the lived social experience of worlds?” (2). Her aim, which this question makes clear, is to cut the Gordian knot, as Latour would put it. We can understand heredity and disease either in terms of nature, that is, as “recalcitrant material realities,” or in terms of culture, that is, as “**the lived experience of social worlds**,” but not in terms of both. Th us, we must choose, and in choosing we must **purify one from the other**. According to Latour, **this act** of purifi cation **is the hallmark of modernity** (Latour, We Have Never Been Modern 10–11). It constantly creates hybrids or quasi- objects—things that are not ontologically pure, not reducible to either the human realm or the nonhuman realm—and then assigns itself the task of **purifying** them, of either “bracketing all **dogma** and occult properties to arrive **at a theory of nature** in **itself**, or by turning a skeptical glance toward all scientific claims so as to view them as the surface eff ects of human political and linguistic convention” (Harman, Towards Speculative Realism 76). What **struck** me about Happe’s question the fi rst time I read it is the implication that engaging in this form of purifi cation would mean going **against** the grain, as though the audience would have to be won over to an unfamiliar way of thinking. Indeed, my second reaction to the question was to pose another: How can we think of heredity and **disease as** something other than cultural **constructions**? What resources do we have within the social sciences and humanities for understanding the reality of heredity and disease without sliding ba ck into a kind of naïve realism **that would enact** the very same form of purifi cation, only in the opposite direction? T h e point of the next chapter is to answer that question. The point of this chapter is to demonstrate that we need to. **The constructivist paradigm** has dominated scholarship on risk in the social sciences and humanities for decades, **exposing the human motives** and discursive forces operating **behind** the **illusion of nature**. And there’s no question that this has been an important undertaking, especially **in** the case of **genetic risk**, where the specter of genetic determinism always looms.  As long as we view genetic risk as a construction, and, as long as we continually reveal how that construction works, then we have some measure of **protection against** the very dangerous **idea that our health can** be **reduce**d to the function of our genes. As history has shown us this idea comes **with a** very high **price** tag. But at this point—a point when there are good reasons for rejecting the idea that contemporary genetic medicine is simply the newest incarnation **of eugenics**  —I believe that a continued comm itment to constructivism comes with a cost as well. This cost is the subject of Latour’s “Why Has Critique Run Out of Steam?: From Matters of Fact to Matters of Concern,” the well- known 2004 essay where he indicts the modern cr itical stance for its ceaseless repetition of a set of constructivist moves that has not only failed to achieve the amelioration it aimed for but has also pr evented us from revising our critical approaches to better suit present challenges (231). Th e specifi c problem for Latour is that constructivism has just two ways of dealing with hybrid objects. On the one hand, it locates them at the “fairy position,” which is **used by social scientists** engaged in a kind of anti- fetishism; the aim here “is **to show** that what the **naïve believers** are doing with objects is simply **a projection** **of** their **wishes onto** a **material entity** that does nothing at all by itself” (237). In other words, no matter what idol some group believes in —god, sports, art, and so forth—the aim is to show that its power is not innate but rather comes from them, from society. On the other hand, there’s the “fact position,” which corresponds most closely with the kinds of constructivist criti ques I’ll discuss in this chapter. Here the critic shows the naïve believers that while they might think they are free, they are actually acted on by unforeseen forces, which the critic explains by marshaling whichever “pet facts” she prefers to work with (238). These facts can come from any number of sources—economics, neurobiology, critical theory, wherever. What matters is that their “origin, fabrication, [and] mode of development” go unquestioned while the criti c uses them to demonstrate that the believer’s freedom is an illusion (238). Often animated by a hermeneutics of suspicion, this kind of critique pivots ar ound an appearance/reality distinction that puts the critic in the role of de coder and debunker. Together Latour sees these two positions, fairy and fact, as a ki nd of critical double blow. As soon as the fi rst position **gives** the **believers** some **faith in** “their own **projective capacity**,” the critic hits them with a “second upperc ut,” humiliating them by demonstrating that no matter what they think, “their behavior is entirely determined by the action of powerful causalities coming from an objective reality they don’t see, but that you, yes you, the never sleeping critic, alone can see” (239). No matter how these blows are administered, the outcome is the same: science and society are purifi ed from one another and anyone caught believing in the reality of an object is determined to be incredibly naïve (Latour, We Have Never Been Modern 6). Admittedly, Latour’s punching metaphor is a bit hyperbolic, and I am not suggesting that critics of genetic risk are out to humiliate the “naïve believers.” Yet I think Latour’s point still has a great deal of merit, especially in the case of genetic risk, which is about as hybrid an object as any that science and society have ever produced. Yet when we operate within a constructivist paradigm, our job is to ignore this hybridity, turning a skeptical eye not only toward science but also toward those who trust science and believe that there is something real about genetic risk. More often than not, this means that **their discourses**—and the medical and scientifi c discourses they draw on—**are** interpreted as indices and/or sources of ideological mystifi cation, that is, **evidence of** how they’ve been manipulated and **how they**, wittingly or not, **are manipulating others**. Taking on the role of debunker, we then attempt to explain how they have been tricked, presumably on the assumption that they would choose diff erently if they knew diff erently. As I intimated in the introduction, however, this assumption is fraught with problems, not the least of which is its inability to account for the fact that individuals can recognize a behavior as ideological and yet continue participating in it anyway. Thus, with Latour, I would argue that it is time to retool, time, that is, **to cultivate** ways of critically engaging the **ethics, politics, and rhetorics** of the new genetics that aim to do something other than enlighten the naïve believers. This, of course, is what I hope to achieve through a rhetoric of care.

#### These images of purity as built in the AC such as [Continued COVID spread causes great power war] build a discourse of unpurity that must be cleansed – whether it’s a future pandemic or any pandemic of history, the illusion of purity in genetics, genetic risk has created the problems that have stemmed into every part of our lives. The purity culture comes with inherent inferiors we call deterministic fires which the brigade of academia has to put out as seen in the AC. Due to these assumptions and illusions that have been made thus the Role of the Judge is to be a critic against genetic risk ideology.

Pender 2

Kelly Pender. (2018). Being at Genetic Risk : Toward a Rhetoric of Care. Penn State University Press. Pages 47 to 51. // js69

In their 1984 Not in **Our Genes**: Biology, **Ideology**, **and** Human **Nature** , Richard Lewontin, Steven Rose, and Leon Kamin compared their job as critics of biological determinism to that of a fi re brigade whose members were constantly being called out in the middle of the ni ght to put out one “confl agration” after another. “Now it’s **IQ and race**, **now criminal genes**, now **the biological inferiority of women**, now the genetic fi xity of human nature.” **All** of these “**deterministic fires**” need to be **doused with** the “**cold water of reason**,” they argued, **before the** “entire **intellectual neighborhood**” **goes up in flames** (265). Descriptions of these “deterministic fi res” and warnings about their increasing frequency set the stage for dozens of critiques of genetic sc ience and medicine in the 1980s and 1990s. Often citing the media’s **obsessive coverage of** “discoveries” like **the “gay gene**,” the “violence gene,” and **the “addiction gene**,” critics cautioned **that** biological explanations of human **health**, behavior, **and identity were making a comeback**; and they almost always framed this comeback within the same historical narrative: **the rise of eugenics** in the early twentieth century; its demise **after the** atrocities of **Nazi eugenic policy** in WWII; the triumph of nurture over nature in the 1950s and 1960s; and **the**n a slow but steady **return of biological determinism** beginning in the 1970s and reaching its apex and most obvious manifestation in the 1990 establishment of the HGP. Many critics saw this return of biological explanations as a conservative backlash against social welfare policies and the civil and women’s rights movements, arguing that even if the new genetics **focused on** the health of individuals rath er than the health of **the gene pool**, its discriminatory origins and potential were just as threatening as that of the eugenics movement. In fact, some worried that since this ve rsion of biological determinism operated under the protective cover of scientifi c objectivity and medical benefi cence, it posed an even greater threat. T h e concept of ideology was, in many ways, the perfect tool for explaining this hidden threat. According to its basic defi nition, ideology refers to something illusory, usually a set of ideas or practices that mask or invert reality, thus allowing one group to dominate another.  What’s key about this domination, though, is that it doesn’t require force. On account of the **illusions** perpetuated **by** ideology, **dominated groups** participate willingly in their domination. In other words, they are **complicit** **in** their own **exploitation**, and it’s not until they are made aware of this fact through ideology critique that progress can be achieved. **Thus, the** **task of the critic is to identify the contradictions that ideology has masked over**. Th is understanding of ideology is, indeed, quite basic, but it is the one that has most consistent ly been deployed in critiques of genetic science and medicine and the rhetorics of choice they promote. Some critics have executed this task of unmasking co ntradictions from an explicitly Marxist perspective, arguing that biological determinism is a way of legitimizing economic inequalities in industrialized capitalist societies. This was the primary claim of both Lewontin, Rose, and Kamin’s Not in Our Genes and Lewontin’s subsequent Biology as Ideology: Th e Doctrine of **DNA** . **Focus**ing on the supposed genetic basis of things **like mental illne ss**, intelligence, **patr iarchy, and criminal violence**, both of these books sought to **expose** the mutually reinforcing **relationship between bourgeois** socia l values **and** reductionist **scientific principles**. Lewontin extended this Marxist critique in Biology as Ideology , arguing that science was inevitably ideological becaus e it used commodities and was part of the process of commodity production (4). By confusing heredity for fi xity, he argued, biological determinism is the “mos t powerful single weapon that biological ideologues have had in legitimating a society of inequality,” and, since biolo gists should know better, that is, sinc e they should know that DNA does not unilaterally determine life, we must at least suspect that they are “benefi ciaries” of these inequalities and, as a result, cann ot be trusted as “objective experts” (37). Other critics were less Marxist in th eir understanding of ideology, but the general aim of their argument—to reveal the eugenic threat operating beneath the veneer of scientifi c objectivity—was the same. In Backdoor to Eugenics , for example, Troy Duster claimed that **no matter** how well intentioned **scientists’ motives appear**ed to be, an **orientation toward genetic susceptibility** couldn’t help but to dominate and **distort** our **ways of thinking** about **disease prevention** (123). Duster used the metaphor of a “prism of heritability” to describe this process, arguing that once a disorder is understood as genetic, only two modes of prevention appear possible: altering the aff ected genes or setting up genetic screening programs (55). Both solutions threatened to open a “backdoor” to eugenics, he argued, but we fail to recognize this threat because it’s obscured by a discourse of scientifi c, health, and medical benefi ts (129). Eff orts to screen workers for genetic susceptibility to chro nic lung disease, for instance, might seem like a reasonable way to reduce suff ering, but in reality those eff orts bear a hidden message, namely that it’s better to exclude certain types of people from certain types of jobs than it is to clea n up the workplace (123). Duster called for a critical examination of these “hidden arguments” or “subterranean political ideologies,” arguing that it would take a vigorous public debate and an informed public policy to stem the tide of biological determinism (113, 129). Abby Lippmann shared Duster’s concerns, but in her view, the idea of a “prism of heritability” didn’t go far enou gh to explain the problem. **Genetics is** not just a prism through which knowledge can be refracted, she argued, but is instead the “source of **the illumination itself**” (“Prenatal Testing and Screening” 19). Th us, Lippmann coined a new term, “geneticization,” which she defi ned as the ideology and the practice “by which diff erences between individuals are reduced to their DNA codes, with most disorders, behaviors, and psychological variations defi ned, at least in part, as genetic in origin” (19).  Lippman’s work focused specifi cally on geneticization within the context of prenatal diagnostics, as she sought to expose the eugenic reality operating beneath the rhetoric of autonomy, choice, and reassura nce used to market genetic testing to pregnant women (23–25). Eugenic intent is regularly denied in biomedical reports about prenatal diagnosis, she ma intained, but such denials are “disingenuous” since no matter how else we choo se to defi ne it, prenatal genetic testing and screening “ is a means of separating fetuses we wish to develop from those we wish to discontinue” (23). And making it a matter of “choice” does not change this fact. In a line of reasoning that would be repeated and developed by many after her, Lippman argued that real choice cannot exist in a society that does little to accommodate the needs of disabled children (32) and that makes the women who give birth to them feel guilty and inadequate for not ensuring a better pregnancy outcome (28). Lippman’s notion of geneticization had a wide impact outside the context of prenatal diagnostics, in part, no doubt, because it so succinctly summarized the case against genetic medicine. In this se nse, it functioned much like the earlier term, “medicalization,” **implying** the unwarranted and **ethically dangerous** movement of biomedical **authority into** facets of human **experience** previously understood in nonbiomedical terms (Illich; T en Have). Some critics studied this movement **within** the context of specifi c **diseases** in order to identify the scientifi c and social mechanisms by which a genetic disease defi nition replaced a nongenetic one. Hoedemaekers and Ten Have’s 1998 study, “Geneticization: Th e Cyprus Paradigm,” is representative in this regard. Focusing on beta thalassemia prevention policy in Cyprus in the 1970s and 1980s, they explained how health professionals encouraged the adoption of a genetic approach to the disease and how this adoption, in turn, resulted in certain “incongruities” between appearance and reality, for example, the fact that genetic screening was promoted on the basis of free choice but executed within a directive environment and, relatedly, that advocates of screening denied eugenic intent while simultaneously promoting its economic benefi ts for the community and the state (282, 284). Another 1998 study, this time on the gene ticization of breast cancer, also illustrates well the utility of Lippman’s argument. In “Breast Cancer: Reading the Omens,” Margaret Lock argued that the then- new technology of genetic testing for breast cancer susceptibility encouraged a biologically reductivist style of reasoning, one that eclipsed a better understanding of the environmental causes of the disease and created not just “hei ghtened anxiety” but also a “moral discourse” about prevention that made health an individual responsibility (8, 10). Other studies aimed for a broader critique of geneticization, focusing on either the faulty science behind it or its eff ects within popular culture. In **Exploding the Gene Myth** , for example, Ruth Hubbard and Elijah Wald argued that the “various ideological roots” of genetics are diffi cult to identity because **the public** has been **conditioned to accept** the idea that “the march of **science is immune from political** and societal **pressure**s” (7). Specifi cally, they sought to dispel the dangerous and misleading idea that geno type and phenotype exist in a relation ship of one- to- one correspondence. To this end, they debunked the popularly held belief that a single gene “codes for” a single protein, explaining that in order for any protein to be synthesized, a cell’s “entire metabolic apparatus,” which includes many proteins and, therefore, many genes, must function properly (52). Extending this line of argument throughout their book, Hubbard and Wald challenged the research linking complex, multifactorial disorders like diabetes, high blood pressure, and cancer, as well as traits such as sexual orientation and proclivity to violence, to an individual’s genetic makeup. Dorothy Nelkin and Susan Lindee took a similarly broad approach in their 1995 Th e DNA Mystique: Th e Gene as Cultural Icon , but their goal was to understand how the gene as a symbol served “ideological purpos es and institutional agendas” within popular culture, independent of its biological defi nitions (5, 16). Th us, theirs was a task of decoding slogans, ads, newspaper and magazine articles, TV shows, movies, jokes, and cartoons in order to demonstrate how the gene was used to not only defi ne identity, relationsh ips, and health but also to assign guilt and responsibility, to protect power and privilege, and to judge the morality of social systems. Jose van Dijk took on a similar task in her 1998 Imagenation: Population Images of Genetics , explaining how popular representations of genetics are shaped by ideological forces that aff ect our understanding of scientifi c purpose and progress.

#### the Role of the Judge is to be a critic against genetic risk ideology.The alternative is a rhetoric-based refusal of the AC – a reading of the NC as a form of care to otherized peoples instead of telling them they must live their life differently. The NC is a non-epistemological investigation into a rhetoric of care we must engage in instead of assertive action to rid determinism.

Pender 3

Kelly Pender. (2018). Being at Genetic Risk : Toward a Rhetoric of Care. Penn State University Press. Pages 103 to 108. // js69

As I noted in the introduction to this book, I do not believe that I (or anyone else) can just create a rhetoric of care for the at risk. A real **rhetoric of care can** **emerge** only **over time**, just as rhetorics of choice have done over decades of debates within and about genetic medicine. **But** that doesn’t mean there’s noth-ing **we can** do to **hasten its emergence**. Our thinking about **genetic risk is so saturated** by choice **that even to talk about care** in this context **would count as a step in the right direction**. However, what I aim to off er here is somewhat more specifi c than the suggestion that we need to talk about care. Taking a page from Richard McKeon’s book, my goal here is to use rhetoric architectonically, off er-ing “discoveries” that I have made through my engagements with BRCA- related discourses as “places by which to perceive creatively what might otherwise not be experienced in the existent world we constitute” (14–15). I am well aware that for a project that takes its **inspiration from the ontological turn**, the idea of using rhetoric architectonically might come across as a contradictory move. I will address this issue later, but for now the more important (but related) point I want to highlight is that this task, to “perceive creatively,” is somewhat diff erent from the purpose that **rhetorical commonplaces** usually serve with**in** RSTM **scholarship**, where a set of topoi often acts as an interpretive device or what Prelli refers to as “a fertile vantage point from which to understand the rhetoric that goes on in any substantive fi eld” (73). Th e topics I off er here fi t this bill somewhat, but their primary purpose is diff erent than the one described by Prelli. With them, I don’t aim to explain what is happening in this “substantive fi eld” as much as I aim to **change** it. To be sure, this is a tricky distinction, and there are times when I fail to maintain it, but nevertheless, I believe that it makes sense to identify my **mode of engagement** here **with invention rather than inter-pretation**. Rhetorics of choice are pervasive in the **biosocial discourses** of BRCA+ women. In those discourses, we **hear** a **constant refrain about** the **necessity of** personal choice and the gift of **empowerment** through knowledge. **But** rather than interpreting what we know is already there (and showing why so much of it is an illusion), we need to invent something new, to off er the par-ticipants an arena in which to gather. While I don’t claim that the four topics I present in this chapter are any kind of panacea for the problems created by an overreliance on choice in discourses surrounding BRCA risk, I do think they can help build these arenas. After all, what are topics if not rhetorical arenas in which to gather? **Orientations** Before I get to those topics, however, I want to examine this relationship between interpretation and invention and, through that examination, to articu-late a theoretical framework for what I am trying to do here. Earlier in the book I acknowledged that my goal of extending Mol’s work into the domain of genetic risk could be seen as an ethically fraught task because of its potential to further muddy the line between health and illness that has troubled genetic medicine for decades. But it could also be seen as a theoretically fraught task insofar as it is based on a specious opposition between invention and interpretation, that is, **between rhetoric’s heuristic capacities** and its hermeneutic capacities. On the one hand, this opposition is specious because the practices of inventing and interpreting are not easy to distinguish from each other. Th e simplest explana-tion of this practical inseparability comes from Schleiermacher, who argued that “every act of understanding is the reverse side of an act of speaking,” thus providing us with the “two sides of the same coin” metaphor (quoted in Pullman 156). Rhetoric, on one side, creates meaning, and hermeneutics, on the other, extracts it. Th e two practices cannot be separated because the latter depends on the former. More recently, rhetorical hermeneutics (or hermeneutical rhetoric) has provided us with a more complex explanation of this practical inseparabil-ity by showing how these practices mutually defi ne each other. Rhetoric and hermeneutics cannot be separated in practice because, as Steven Mailloux put it, they are “practical forms of the same extended human activity.” In order to pro-duce rhetoric, we must interpret a situation, and to communicate an interpreta-tion, we must produce rhetoric. Th us, for Mailloux, “hermeneutics is the rhetoric of establishing meaning and rhetoric is the hermeneutics of problematic linguis-tic situations (379). Th is practical inseparability is important to acknowledge, but it doesn’t pose any real problem here. My own act of rhetorical invention certainly depends on my reading of a “problematic linguistic situation,” but that doesn’t mean that the product of that reading must then be used primarily as a way to interpret mean-ing. Th ere is, however, another kind of inseparability at work, one that is more historical and philosophical in nature, and that does pose a problem. Simply put, this problem is that within rhetoric studies invention has provided the theoretical justifi cation for precisely the kind of purifi cation that I am trying to move away from. Here, I am referring to the eventual alignment of rhetoric—via the **move**ment from a **managerial to an epistemic view of invention**—with antifoundationalism and social constructivism and the kind of rhetorical analy-sis that alignment led to. If rhetoric didn’t just dress arguments but also invented them, the reasoning went, then arguments in any fi eld (even science) could be understood in rhetorical terms. Herbert Simons described this development in his introduction to Th e Rhetorical Turn, identifying the social constructivist view as one in which “[p]eople and places, problems and causes are all in eff ect ‘created’ by language” and arguing that according to this view, the job of the rhetorical analyst is, in part, “to determine how constructions of the ‘real’ are made persuasive” (11). Simons expressed some concern about this kind of rhe-torical analysis by pointing out (following Woolgar and Pawluch) that it requires a good deal of “ontological gerrymandering,” (11) but it was Dilip Gaonkar’s cri-tique seven years later in Rhetorical Hermeneutics that raised serious questions about rhetoric’s ability to function as an interpretive tool, creating what Gross described as a “refl ective moment in which to meditate on the methodological limitations of fi rst generation rhetoric of science” (Starring the Text 14). In brief, Gaonkar’s argument was that rhetoric’s interpretive capacities were limited for three reasons: one, it was a primarily productive enterprise; two, it was agent centered; and three, it was thin, meaning it lacked the hermeneutic constraints necessary for fruitful interpretations. But also at issue for Gaonkar—and more relevant to the problems with purifi cation that I’ve identifi ed in this book—was the ubiquity of rhetoric and the sense that anything could be reduced to its function. Gaonkar believed that rhetoricians had been “seduced” by the “dream of interpretation,” that is, the idea that as a kind of “hermeneutic metadiscourse” rhetoric could produce a “perfect interpretation” in which the objects under investigation lost all of their “recalcitrance” and became “transparent” (25). Hav-ing “entered the orbit of general hermeneutics,” rhetoric was, according to this dream, a “way of reading the endless discursive debris that surrounded us” (25). “It is a habit of our time,” Gaonkar argued disapprovingly, “to invoke rhetoric, time and again, to make sense of a wide variety of discursive practices that beset and perplex us, and of discursive artifacts that annoy and entertain us, and of discursive formations that inscribe and subjugate us” (25).To return to the problem posed by this second kind of inseparability, then, we might say that if rhetoric did enter “the orbit of general hermeneutics” during this time, then it was invention that propelled it there. What began in the 1960s as an eff ort to expand the epistemic function of invention had helped produce, by the 1990s, a style of rhetorical analysis that saw science as rhetoric “without remainder,” as Alan Gross so famously put it (“Origin of the Species” 107). And even though second and third generation rhetoric of science scholarship tended to back off such sweeping epistemological claims, we can still see the legacy of that expansion of invention in the work of rhetoricians like Happe and Dubriw-ny, where the object under investigation, BRCA risk, cannot help but lose its recalcitrance as it becomes part of the much larger operation of various cultural narratives and ideologies. If this is the case, then how can I claim invention as the way forward? Th at is, how can I off er invention as an alternative to precisely the kind of critique that it helped to foster? Th e short answer to this question is that I need a diff erent version of invention, one that does not carry with it the epistemological implications that lead to constructivist critique. In some sense, this is a tricky request since historically speaking we have needed to understand invention as epistemic so that it wouldn’t be understood as managerial. Within this binary, which has loomed very large in the history of rhetoric, a less epis-temic version of invention has typically meant a less powerful version. As Janet Atwill has noted, though, binaries have never served invention very well. She made this point in reference to the oppositions between theory and practice, subjectivism and empiricism, and aestheticism and **utilitarianism** that have made it hard for this canon to fi nd a home in American institutions of higher learning (“Finding a Home or Making a path” xi–xii). I would argue that it **applies** just as well **to** the **opposition between managerial and epistemic views of invention**. No matter where we place invention in relation to these two points, the question we are concerned with is a question about knowledge: To w h a t degree does rhetoric create knowledge? We are well aware of the problems that accompany a conservative response to this question, one that places invention at the managerial end of the spectrum. But as so many in rhetoric and communi-cation studies begin to organize their work around new materialist and onto logical theories of rhetoric, it is becoming clear that we can’t count on the opposite response, one that locates invention at the epistemic end of the spec-trum, to continue providing this important concept with a sound or convincing theoretical justifi cation. Without moving back into a managerial position, **we need** a version of **invention that is nonepistemological in orientation**, one that even if it’s **not built from** new **materialis**t and ontological **theories of rhetoric**, can at least accommodate them. In what follows, then, I try to indicate what such a non- epistemological orientation to invention might look like, focusing specifi cally on Richard McKeon’s concept of an architectonic productive art, Atwill’s interpretation of the ancient Greek concept of logon techne, and John Muckelbauer’s related notions of affi rmative repetition and productive reading. While these concepts are far from synonymous (and, in fact, are at odds with each other in some ways), I believe they can help provide the kind of theoretical framework that I need for fostering a rhetoric of care for the at risk.Invention Outside EpistemologyIf the aim here is to move away from a version of invention that focuses on questions of epistemology, then it is more than a little ironic that the fi rst source I am going to turn to is Richard McKeon’s 1971 “Th e Uses of Rhetoric in a Technological Age,” a locus classicus for those who have wanted to explain and expand rhetoric’s epistemic powers. Th e essay was fi rst published in Th e Pros-pect of Rhetoric,a book that helped considerably to spur the shift from a mana-gerial to an epistemic view of invention. McKeon’s contribution to this eff ort was to call for rhetoric to become, as it had been in the Roman Empire and the Renaissance, an architectonic productive art, meaning that its creative purview would not be limited to the content of verbal arguments but rather would extend to the production of schemata or devices that could guide the use of other arts (2, 12). For him, rhetoric was not about passively receiving the “data of existence” but instead about actively and creatively modifying that data in order to open up new avenues for action and to solve complex twentieth- century problems that were not distributed precisely in disciplines (17–18). Rhetoric was uniquely suited to these tasks, he believed, because its fi elds and methods transcended individual subject matters. McKeon focused on one of rhetoric’s methods—the commonplaces—in particular, arguing that they should be used as “a means by which to light up modes and meanings of works of art and natural occurrences and to open up aspects and connections in existence and possibility” (14–15). In McKeon’s view, commonplaces functioned more as a way of giving something presence (in Perelman and Olbrect- Tyteca’s sense of that term) than as a way of generating content for an argument. As Hauser and Cushman put it, McKeon’s view of the commonplaces transformed the aim of rhetoric from that of adherence or understanding to that of “making selections[. . .]. Rhetoric literally is the art of selecting conceptual starting- ’places’ or ana-lytic categories which may be used effi caciously in thought/address that creates what are relevant matters and recognized facts” (220).We usually think of rhetoric as the art of using conceptual starting places or analytic categories in order to engage in argument and produce knowledge. But here Hauser and Cushman have argued that for McKeon, rhetoric is the art of selecting conceptual starting places. Whether we deem the common-places epistemic or not, the use of them isn’t what rhetoric—in McKeon’s understanding—aims to do. Of course this distinction doesn’t do much **to counter** the **epistemological implications** that have **played** out **for decades in constructivist critique**. Rhetoric might not be the use of conceptual starting places to create knowledge via argument, but by selecting or creating those conceptual starting places used by other arts in the creation of knowledge, it certainly retains a strong epistemic function. We can see this in the second part of the Hauser and Cushman quotation—“which may be used effi ca-ciously in thought/address that creates what are relevant matters and recog-nized facts” (220). Th ere is no way, then, to say that McKeon’s work doesn’t provide the justifi cation for understanding rhetoric as a global hermeneutic. If rhetoric selects or creates the tool that is used elsewhere in the creation of knowledge, then that knowledge can be understood in rhetorical terms. We get the sense that by placings rhetoric in the superordinate position above all other arts as the dominant means of discovery, this is what McKeon intended, that rhetoric, not metaphysics, would be regarded as fi rst philosophy (McKeon 18; Depew 37).

### case

**You get it but it’s drop the arg & reasonability on 1ar theory**

**[a]the 2NR must cover substance and over-cover theory, since they get the collapse and persuasive spin advantage of the 3min 2AR,**

**[b] their responses to my counter interp will be new, which means 1AR theory necessitates intervention.**

**[c] no infinite abuse – only 7-minute 1nc – getting more efficient solves**

#### Vote neg on presumption – the compulsory licensing clause and exception in TRIPS is the same as the aff—proves no solvency b/c generic vaccines havent been made

#### Waiving IP enforcement results in rampant increase in counterfeit vaccines – turns case.

Mercurio 21 (Bryan Mercurio is a Professor and Vice-Chancellor's Outstanding Fellow of the Faculty of Law at the Chinese University of Hong Kong, February 21, 2021, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3789820&download=yes>) CS

6. IP enforcement is of vital importance to maintaining safety standards.

The protection of IP not only provides incentives to innovators to create, but also plays a crucial role in ensuring the safety of vaccines and helping to prevent the importation **of fraudulent and dangerous goods**. Unlike the typical pharmaceutical industry, the vaccine market is not a free and open market.69 Vaccines contain biological products made from living organisms and the risk of failure in vaccine development and production is high. 70 Moreover, the manufacturing process for vaccines is much more complex as it requires the use of facilities and equipment with a high degree of specialization.71 The complexity of vaccine products implies that more time and regulatory requirements are needed in order to make or “copy” the vaccine production process. Therefore, the innovator should be expected to make conscious and meticulous decisions as to when and to whom to issue licences, as this is the most responsible way to bring their technologies to the world and safeguard global health.

In addition, as the COVID-19 pandemic continues there has been a **noticeable increase in the circulation of fake medicines** around the world. According to the International Criminal Police Organization (Interpol), **organized crime groups** have been producing fake drugs and medical products and selling them for **lucrative profits in developing countries**.72 With the development of COVID-19 vaccines on the market, a rapid rise in the illegal sale of fake items is expected, according to the United Nations Office on Drugs and Crime (UNODC).73 Counterfeits of the legitimate products provide false promises of protection and could lead to **disastrous consequences**, including **worsened illness and** **death** for the individual and the retardation of herd immunity for the population at large. Effective and proactive **IP** procurement is **essential** and useful in mitigating the risks of counterfeit and substandard medicines. IP enforcement measures play a significant role in preventing these fake and illicit medicines from circulating in the market. While important during normal times, IP enforcement can take on an enhanced role of safeguarding the public during this critical period of time. Waiving all COVID-19 related IPRs raises the risk of unsafe or fake vaccines circulating in supply channels and being sold to unsuspecting governments, **putting millions of human lives at risk** and reducing trust in vaccines.

#### Vaccine IP is insufficient for imitation; originators will challenge with intense litigation, and nations don’t have necessary ingredients and materials. Independently, the plan will cause companies to disengage from global efforts.

Silverman 3/15 [Rachel Silverman is a policy fellow at the Center for Global Development where she leads policy-oriented research on global health financing and incentive structures. Silverman’s current research focuses on the practical application of results-based financing; global health transitions; efficient global health procurement; innovation models for global health; priority-setting for UHC; alignment and impact in international funding for family planning; and strategies to strengthen evidence and accountability. BA with distinction in international relations and economics from Stanford University.) “Waiving vaccine patents won’t help inoculate poorer nations” Washington Post, PostEverything Perspective, <https://www.washingtonpost.com/outlook/2021/03/15/vaccine-coronavirus-patents-waive-global-equity/>] RM

According to some activists, the solution to this inequity is relatively simple: By suspending protections on covid-19 vaccine patents, the international community “could help break Big Pharma monopolies and increase supplies so there are enough doses for everyone, everywhere,” [claims](https://peoplesvaccine.org/take-action/)the People’s Vaccine Alliance. Indeed, 58 low- and middle-income countries have mobilized in support of a proposed World Trade Organization [waiver](https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669.pdf&Open=True) that would temporarily exempt [coronavirus](https://www.washingtonpost.com/coronavirus/?itid=lk_inline_manual_4)-related intellectual property from normal international rules and protections. And while the effort to waive IP protections has been a global health hot topic for months, it gained a high-profile endorsement in the United States recently from Sen. Bernie Sanders (I-Vt.). In a March 10 video statement, Sanders [called upon President Biden](https://twitter.com/GlobalJusticeUK/status/1369734275818549252?s=20) to support the IP suspension while slamming “huge, multibillion-dollar pharmaceutical companies [that] continue to prioritize profits by protecting their monopolies.”

The logic of the argument seems clear and intuitive — at first. Without patents, which serve narrow commercial interests, companies all over the world could freely produce the vaccine. Sure, Big Pharma would lose money — but this is a pandemic, and human life comes before private profit, especially when vaccines receive substantial public financing to support research and development. As with HIV drugs in years past, widespread generic production would dramatically increase supply and drive down prices to levels affordable even in the developing world.

Reality is more complicated, however. Because of the technical complexity of manufacturing coronavirus vaccines, waiving intellectual-property rights, by itself, would have little effect**.** **It could even backfire, with companies using the move as an excuse to disengage from global access efforts**. **There are more effective ways to entice — and to pressure — companies to license and share their intellectual property and the associated know-how, without broadly nullifying patents.**

The Moderna vaccine illustrates the limits of freeing up intellectual property. Moderna [announced in October](https://investors.modernatx.com/news-releases/news-release-details/statement-moderna-intellectual-property-matters-during-covid-19) that it would not enforce IP rights on its coronavirus vaccine — and yet it has taken no steps to share information about the vaccine’s design or manufacture, citing commercial interests in the underlying technology. Five months later, production of the Moderna vaccine remains entirely under the company’s direct control within its owned and contracted facilities. Notably, Moderna is also the only manufacturer of a U.S.- or British-approved vaccine [not yet participating in Covax](https://www.washingtonpost.com/world/coronavirus-vaccine-access-poor-countries-moderna/2021/02/12/0586e532-6712-11eb-bf81-c618c88ed605_story.html?itid=lk_inline_manual_9), a global-aid-funded effort (including a [pledged $4 billion from the United States](https://www.npr.org/2021/02/18/969145224/biden-to-announce-4-billion-for-global-covid-19-vaccine-effort)) to purchase vaccines for use in low- and middle-income countries.

It is true, however, that activist pressure — including threats to infringe upon IP rights — can encourage originators to enter into voluntary licensing arrangements. So the global movement to liberate the vaccine patents may be useful, even if some advocates make exaggerated claims about the effects of waivers on their own.

One reason patent waivers are unlikely to help much in this case is that vaccines are harder to make than ordinary drugs. Because most drugs are simple chemical compounds, and because the composition of the compounds is easily analyzable, competent chemists can usually reverse-engineer a production process with relative ease. When a drug patent expires, therefore — or is waived — generic companies can readily enter the market and produce competitive products, [lowering prices dramatically](https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/generic-competition-and-drug-prices).

Vaccines, in contrast, are complex biological products. Observing their contents is insufficient to allow for imitation. **Instead, to produce the vaccine, manufacturers need access to the developer’s “soft” IP — the proprietary recipe, cell lines, manufacturing processes and so forth**. While some of this information is confidentially submitted to regulators and might theoretically be released in an extraordinary situation (though not without legal challenge), manufacturers are at an enormous disadvantage without the originator’s cooperation to help them set up their process and kick-start production. Even with the nonconsensual release of the soft IP held by the regulator, the process of trial and error would cause long delays in a best-case scenario. Most likely, the effort would end in expensive failure. Manufacturers also need certain raw ingredients and other materials, like glass vials and filtration equipment; overwhelming demand, paired with disruptive export restrictions, has constricted the global availability of some of these items.

#### Underinvestment and regulation drive vaccine inefficiency---licenses are already available

Tabarrok 5/6/21 [Alex Tabarrok is Bartley J. Madden Chair in Economics at the Mercatus Center and a professor of economics at George Mason University. Along with Tyler Cowen, he is the co-author of the popular economics blog Marginal Revolution and co-founder of Marginal Revolution University. He is the author of numerous academic papers in the fields of law and economics, criminology, regulatory policy, voting theory and other areas in political economy. He is co-author with Tyler of Modern Principles of Economics, a widely used introductory textbook. He gave a TED talk in 2009. His articles have appeared in the New York Times, the Washington Post, the Wall Street Journal, and many other publications.) “Patents are not the problem!” Marginal Revolution University, 5/6/21, Current Affairs, Economics, Law, Medicine, <https://marginalrevolution.com/marginalrevolution/2021/05/ip-is-not-the-constraint.html>] RM

For the last year and a half I have been shouting from the rooftops, “invest in capacity, build more factories, shore up the supply lines, spend billions to save trillions.” Fortunately, some boffins in the Biden administration have found a better way, “the US supports the waiver of IP protections on COVID-19 vaccines to help end the pandemic.”

Waive IP protections. So simple. Why didn’t I think of that???

**Patents are not the problem**. All of the vaccine manufacturers are trying to increase supply as quickly as possible. Billions of doses are being produced–more than ever before in the history of the world. Licenses are widely available. **AstraZeneca have licensed their vaccine for production with manufactures around the world, including in India, Brazil, Mexico, Argentina, China and South Africa**. J&J’s vaccine has been licensed for production by multiple firms in the United States as well as with firms in Spain, South Africa and France. Sputnik has been licensed for production by firms in India, China, South Korea, Brazil and pending EMA approval with firms in Germany and France. Sinopharm has been licensed in the UAE, Egypt and Bangladesh. Novavax has licensed its vaccine for production in South Korea, India, and Japan and it is desperate to find other licensees but t**echnology transfer isn’t easy and there are limited supplies of raw materials:**

Virtually overnight, [Novavax] set up a network of outside manufacturers more ambitious than one outside executive said he’s ever seen, but they struggled at times to transfer their technology there amid pandemic travel restrictions. They were kicked out of one factory by the same government that’s bankrolled their effort. Competing with larger competitors, they’ve found themselves short on raw materials as diverse as Chilean tree bark and bioreactor bags. They signed a deal with India’s Serum Institute to produce many of their COVAX doses but now face the realistic chance that even when Serum gets to full capacity — and they are behind — India’s government, dealing with the world’s worst active outbreak, won’t let the shots leave the country.

Plastic bags are a bigger bottleneck than patents. The US embargo on vaccine supplies to India was precisely that the Biden administration used the DPA to prioritize things like bioreactor bags and filters to US suppliers and that meant that India’s Serum Institute was having trouble getting its production lines ready for Novavax. CureVac, another potential mRNA vaccine, is also finding it difficult to find supplies due to US restrictions (which means supplies are short everywhere). As Derek Lowe said:

Abolishing patents will not provide more shaker bags or more Chilean tree bark, nor provide more of the key filtration materials needed for production. These processes have a lot of potential choke points and rate-limiting steps in them, and there is no wand that will wave that complexity away.

Technology transfer has been difficult for AstraZeneca–which is one reason they have had production difficulties–and their vaccine uses relatively well understood technology. The mRNA technology is new and has never before been used to produce at scale. Pfizer and Moderna had to build factories and distribution systems from scratch. There are no mRNA factories idling on the sidelines. If there were, Moderna or Pfizer would be happy to license since they are producing in their own factories 24 hours a day, seven days a week (monopolies restrict supply, remember?). **Why do you think China hasn’t yet produced an mRNA vaccine? Hint: it isn’t fear about violating IP**. Moreover, even Moderna and Pfizer don’t yet fully understand their production technology, they are learning by doing every single day. **Moderna has said that they won’t enforce their patents during the pandemic but no one has stepped up to produce because no one else can.**

The US trade representative’s announcement is virtue signaling to the anti-market left and will do little to nothing to increase supply.

What can we do to increase supply? Sorry, there is no quick and cheap solution. We must spend. Trump’s Operation Warp Speed spent on the order of $15 billion. If we want more, we need to spend more and on similar scale. The Biden administration paid $269 million to Merck to retool its factories to make the J&J vaccine. That was a good start. We could also offer Pfizer and Moderna say $100 a dose to produce in excess of their current production and maybe with those resources there is more they could do. South Africa and India and every other country in the world should offer the same (India hasn’t even approved the Pfizer vaccine and they are complaining about IP!??) We should ease up on the DPA and invest more in the supply chain–let’s get CureVac and the Serum Institute what they need. We should work like hell to find a substitute for Chilean tree bark. See my piece in Science co-authored with Michael Kremer et. al. for more ideas. (Note also that these ideas are better at dealing with current supply constraints and they also increase the incentive to produce future vaccines, unlike shortsighted patent abrogation.)

Bottom line is that producing more takes real resources not waving magic patent wands.

You may have gathered that I am angry. I am indeed angry that the people in power think they can solve real problems on the cheap and at someone else’s expense. This is not serious. I am also angry that they are sending the wrong message about business, profits and capitalism. So let me end on positive note. Like the Apollo program and Dunkirk, the creation of the mRNA vaccines by Pfizer and Moderna should be lauded with Nobel prizes and major movies. Churchill called the rescue at Dunkirk a “miracle of deliverance,” well the miracle of Moderna will rescue many more. Not only was a vaccine designed in under a year, an entirely new production process was set up to produce billions of doses to rescue the world. The creation of the mRNA vaccines was a triumph of science, logistics, and management and it was done at a speed that I had thought possible only for past generations.

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On May 5, U.S. Trade Representative Katherine Tai announced that the Biden administration would support a waiver of intellectual property (IP) restrictions for coronavirus vaccines to enable low-income countries to vaccinate their populations. While such a waiver is necessary to stem the global COVID-19 pandemic, it is not sufficient. What is missing from discussions of intellectual property is that **few of the countries with the potential to produce sophisticated pharmaceutical products currently have the technological capacity to manufacture mRNA and adenovirus vaccines to global standards.** This is because of the highly concentrated nature of the global pharmaceutical industry, which has impeded the transfer of production technology beyond a handful of countries.

Even after U.S. support of the IP waiver, significant obstacles to increased vaccine production and distribution remain. Primary among them is continuing resistance by profit-concerned pharmaceutical companies to sharing their technological expertise more broadly with capable partners, and the governments in high-income countries that support these strategies.

Corporations argue that, particularly for the mRNA vaccines, **wider distribution and production are prohibitively difficult due to the complex and relatively new technology involved.**

There is some truth in this. The genetic sequence of the virus is already publicly available. The safe transfer of this sequence to human bodies, via mRNA or an inactivated adenovirus, by contrast, is a complicated and sophisticated operation. Pharmaceutical companies argue this process needs to be kept in capable hands. They argue that they are the only ones with this capacity, and have received and continue to receive tremendous public funding as a result. None are offering up their expertise and, in particular, technology that they deem trade secrets, for wider public use, which would dramatically widen production and distribution capability beyond wealthy countries.

However, in light of the significant public funding already invested, the windfall profits already achieved and the significant public interest at stake, we can and should do more than support an intellectual property waiver to enable capacity building for pharmaceutical manufacturing and distribution in low-income countries. Vaccine producers are essentially realizing their profits as government contractors, and it is in the interest of the U.S. government for the pandemic to end globally, not just in the U.S. This will occur only if low-income countries can make and distribute vaccines.

We already see some examples of production beyond the West. The Serum Institute of India already produces a large proportion of the AstraZeneca vaccine bound for Europe. There is no reason why it and other Indian manufacturers, and those in other countries with emerging scientific and technological capacity, could not produce much more for the developing world over the next year. This was envisioned by the WHO’s C-TAP program. But Pfizer and Moderna, with the backing of the Trump administration, opposed this program.

Yet given the global threat — a threat which will not truly diminish locally until it diminishes globally — we should create incentives for them to lend their expertise and support to manufacturing partners of their own choosing in low-income countries to radically expand production capacity.

#### Circumvention and they don’t solve – even if they say “durable fiat”, they have not defined the scope of the plan in the 1AC so you don’t know what the plan would materially look like

Mercurio 6/24 [Simon F.S. Li Professor of Law, The Chinese University of Hong Kong, Shatin, Hong Kong. June 24, 2021. “The IP Waiver for COVID-19: Bad Policy, Bad Precedent” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/> Accessed 8/25 //gord0]

The role of intellectual property rights (IPRs) and access to medicines is contentious. On the one hand, IPRs encourage investment, innovation and the advancement of health science. On the other hand, the limited-term monopoly rights can result in artificially high prices and become a barrier to access to medicines. While the wisdom of the IPRs system has at times been tested, it has proven its value in the current COVID-19 pandemic as IPRs played a large role in the rapid (and unprecedented) development and availability of multiple vaccines. Despite the success, India and South Africa proposed that the World Trade Organization (WTO) waive IPRs under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in order to increase access to vaccines and other COVID-19-related technologies.[1](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn1) The proposal, tabled at a meeting of the TRIPS Council in October 2020, calls on Members to waive IPRs relating to and having an impact on the “prevention, containment or treatment of COVID-19”.[2](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn2) The proposal attracted support from the majority of developing country Members,[3](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn3) but was opposed by a handful of Members including the United States (US).[4](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn4) Given that consensus could not be reached within the deadline of 90 days as set out in Art. IX:3 of the Agreement Establishing the WTO, Members agreed to keep the waiver proposal on the agenda of the TRIPS Council in 2021.[5](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn5) On 5 May 2021, the US reversed its position and announced that it would support a waiver for COVID-19 vaccines.[6](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn6) To be clear, this does not mean that the US supported the waiver as proposed by India and South Africa. Instead, the US has simply agreed to negotiate the perimeters of a waiver. Others, including the European Union (EU), Canada, Australia, Norway, Switzerland, the United Kingdom (UK) and even leading developing countries such as Brazil, Chile and Mexico remain opposed or lukewarm on the waiver.[7](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn7) The US dropping opposition does not mean the concerns of other Members will simply disappear – one would hope that these nations opposed the waiver for valid reasons and did not simply blindly follow the US. Indeed, many of the above-listed Members remain unconvinced that even such a draconian step as a waiver of IPRs would accomplish the goal of increased vaccine production.[8](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn8) For its part, the EU continues to favour an approach which makes better use of existing flexibilities available in the TRIPS Agreement.[9](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn9) Thus, those expecting quick agreement on the waiver will be disappointed. Negotiations at the WTO are always difficult and lengthy, and US Trade Representative Katherine Tai acknowledged that the “negotiations will take time given the consensus-based nature of the institution and the complexity of the issues involved”.[10](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn10) Issues of negotiation will include the scope of the waiver. Whereas the original proposal and its amended form extend the waiver beyond patents and vaccines to include nearly all forms of IP (i.e. copyright,[11](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn11) industrial designs and trade secrets) as well as to all “health products and technologies including diagnostics, therapeutics, vaccines, medical devices, personal protective equipment, their materials or components, and their methods and means of manufacture for the prevention, treatment or containment of COVID-19”[12](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn12) (with no requirement on how or the extent to which they are related to or useful in combatting COVID-19), the US and others seem to support a waiver limited to patents and vaccines.[13](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn13) The length of the waiver will also be a contentious negotiating issue, with proponents seeking a virtual indefinite waiver lasting until the Membership agrees by consensus that it is no longer required – meaning even a single Member’s objection to ending the waiver would mean the waiver continues to remain in force[14](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn14) – as will the request that any action claimed to be taken under the waiver is outside the scope of the WTO’s dispute settlement mechanism.[15](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn15) These provisions will almost certainly be opposed by other Members, who would perhaps agree to a time-limited waiver which could be extended rather than an unchallengeable indefinite waiver which will be difficult to reverse. The proposal also fails to mention anything in relation to transparency and notification requirements and lacks safeguards against abuse or diversion. These points will likely also prove contentious in the negotiations. With so many initial divergences and as yet undiscussed issues, the negotiations at best could be completed by the time of the next WTO Ministerial Conference, scheduled to begin on 20 November 2021. There is precedent in this regard, as previous TRIPS negotiations involving IP and pharmaceuticals were not fully resolved until the days before the Ministerial Conferences (in 2003 and 2005).[16](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn16) There is also a chance that the negotiations will continue past the calendar year 2021. The chance for a swift negotiation diminished with the release of a revised proposal by India and South Africa on 22 May 2021. As mentioned above, the proposal contains no limit as to product coverage, scope, notification requirements or safeguards and proposes that the waiver will remain in effect for what could be an indefinite period. This was not a proposal designed to engender quick negotiations and a solution. Instead, the proposal perhaps reveals India’s and South Africa’s true intent to use the COVID-19 pandemic as an excuse to roll-back IPRs rather than a good-faith effort to rapidly increase access to lifesaving vaccines and treatments around the world. It is not only the length of time which is an issue but also the ultimate impact of the waiver. A waiver simply means that a WTO Member would not be in violation of its WTO obligations if it does not protect and enforce the COVID-19-related IPRs for the duration of the waiver. The waiver would thus allow Members to deviate from their international obligations but not obligate Members to suspend protection and enforcement of the IPRs. Members like the US who support the waiver may not implement the necessary domestic legislation to waive IPRs within the jurisdiction. It is questionable whether the US could even legally implement the waiver given that IPRs are a matter of constitutional law.[17](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn17) The US announcement remains meaningful, however, for two reasons. First, it signals a departure from the longstanding and bipartisan support for the pharmaceutical industry, which for decades has been instrumental in setting the IP and trade agenda.[18](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn18) Second, it sends a strong signal that the US does not oppose others from waiving patent protection for vaccines. This shift may also be part of a broader and alternative strategy to increase vaccine production and distribution, whereby the US is not viewing or supporting waiver negotiations as a legal tool but more so as a threat to encourage vaccine innovators to increase production. In essence, the desired reaction would be that the IP holders increase efforts to license, transfer technology and expand manufacturing – exactly what the world needs at this time. Alan Beattie, writing in the Financial Times, believes that even the proponents of the waiver desire this outcome: “having talked to the proponents, [the original proposal] was always a tactical position designed to start a debate, identify possible support and flush out opponents rather than a likely outcome. To that end, it seems to have worked rather well.”[19](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn19) India’s negotiator to the TRIPS Agreement and longtime WTO staffer, Jayashree Watal, agrees, stating the proposal is an “indirect attempt to put pressure on the original manufacturers to cooperate [and license production to companies in their countries]”.[20](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn20) This view makes sense, as the proponents (and their supporters) have not even pointed to one credible instance where IPRs have blocked the production of a COVID-19 vaccine. Moreover, it is well known that the leading vaccines using mRNA are difficult to reproduce and having the “blueprints” does not guarantee safe and effective production. Simply stated, if a pastry chef provides instructions on how to bake a cake, the cake they bake is still going to be better than cakes baked by novices using the exact same recipe. The know-how and trade secrets are the key ingredient to the manufacture of quality, safe and effective pharmaceuticals or vaccines, and not only is it not transferred through compulsory licenses but it is hard to imagine how any government would force the transfer of such information even under a waiver. For this reason, instead of encouraging production everywhere – including in locations where safety and efficacy standards are virtually nonexistent – and accepting that there will be a flood of substandard vaccines coming onto the world market (with devastating effects) it is much more sensible to find out where potential manufacturing capabilities exist and find ways to exploit them and scale them up. When asked if a waiver would improve vaccine availability and equity, Watal responded: “No. It won’t. That’s clear.”[21](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn21) I share Watal’s view and do not support a TRIPS waiver for IPRs or even a limited waiver for patents. With evidence mounting that “what the proposal … will definitely not achieve is speeding up the Covid-19 vaccination rate in India or other parts of the Global South”[22](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn22) I refuse to sacrifice academic integrity by supporting a proposal simply because it is gaining traction in some circles.[23](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn23) IPRs played a key role in delivering vaccines within a year of the discovery of a new pathogen; it seems inexplicable that the world would abandon the system without any evidence that IPRs are limiting during the current crisis.[24](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8223179/#Fn24) Moreover, innovators have been generous in licensing technology transfer and production and one would be hard-pressed to find credible reports of qualified generic producers being refused a license. This is not surprising, since multiple competing vaccines are on the market it simply does not make economic sense for innovators to refuse a license – the generic manufacturer would simply obtain a license (and market share) and pay royalties to a competitor. Instead, I support efforts to enable prompt and effective use of existing flexibilities in the TRIPS Agreement and concerted and coordinated efforts involving governments and the private sector to ensure all qualified generic producers willing and capable of manufacturing vaccines are doing so and to create supply by working to bring more facilities up to standard. Cooperation will not only lead us out of this pandemic but also put us in a better position to deal with the next one. Killing the goose that laid the golden egg may seem appealing to some in the short term but will only ensure that no eggs are delivered in the next pandemic.

#### Vaccines don’t solve & could drive virus evolution which turns case – adaptation

Gorman & Zimmer ’20 [James Gorman is a science writer at large for The New York Times and the author of books on hypochondria, penguins, dinosaurs and the ocean around Antarctica, Carl Zimmer writes the “Matter” column for The New York Times, “The Virus Won’t Stop Evolving When the Vaccine Arrives”, 11-27-2020, New York Times, https://www.nytimes.com/2020/11/27/science/covid-vaccine-virus-resistance.html]//pranav

Lederberg advised vigilance: “We have no guarantee that the natural evolutionary competition of viruses with the human species will always find ourselves the winner.” With the emergence of what seem so far to be safe and effective vaccine candidates, it appears that humanity may be the winner again this time around, albeit with a dreadful loss of life. But vaccines won’t put an end to the evolution of this coronavirus, as David A. Kennedy and Andrew F. Read of The Pennsylvania State University, specialists in viral resistance to vaccines, wrote in PLoS Biology recently. Instead, they could even drive new evolutionary change. There is always the chance, though small, the authors write, that the virus could evolve resistance to a vaccine, what researchers call “viral escape.” They urge monitoring of vaccine effects and viral response, just in case. “Nothing that we’re saying is suggesting that we slow down development of vaccines,” Dr. Kennedy said. An effective vaccine is of utmost importance, he said, “But let’s make sure that it stays efficacious.” Vaccine makers could use the results of nasal swabs taken from volunteers during trials to look for any genetic changes in the virus. Test results need not stop or slow down vaccine rollout, but if recipients of the vaccine had changes in the virus that those who received the placebo did not, that would indicate “the potential for resistance to evolve,” something researchers ought to keep monitoring

### Pandemics

#### Coronavirus won’t get *anywhere close* to existential – low mortality and burnout

Salzberg 20 [(Steven, PhD from Harvard, worked at The Institute for Genomic Research, where he sequenced the genomes of many bacteria, including those used in the 2001 anthrax attacks, also worked on the Human Genome Project, now the Distinguished Professor of Biomedical Engineering, Computer Science, and Biostatistics at Johns Hopkins University), “Coronavirus: There Are Better Things To Do Than Panic”, <https://www.forbes.com/sites/stevensalzberg/2020/02/29/coronavirus-time-to-panic-yet/#7de449ad7fa6>] TDI

1.The mortality rate is probably much, much less than 2%. The rapid spread of COVID-19 suggests that many more people are infected than those who have confirmed cases. The number of people who have no symptoms or very mild symptoms is likely to be ten times as high as the number of reported cases. (This is only a guess.) That would mean the mortality rate might be only 0.2%, or even lower. We still don't know. (The cruise ship that was quarantined in the Japan [had just over 700 cases, and 6 people have died](https://www.bbc.com/news/uk-51677846), suggesting a mortality rate of 1%.)

2.The reported mortality rate is dramatically lower in young people. If you are under 30, you can probably relax a bit. However, if you are over 70, the mortality rate is [frighteningly high, 8-15%](https://www.bbc.com/news/health-51674743).

3.2,933 deaths is a tragedy, but it's a tiny number compared to the annual deaths from the influenza virus, which we have learned to live with. In the U.S. alone, [the CDC estimates that 12,000–61,000 people die each year from the flu](https://www.cdc.gov/flu/about/burden/index.html) (the number varies a lot because the virus itself changes from year to year), and 9-45 million people get sick. The worldwide totals are far higher. So in terms of numbers, the world is definitely over-reacting to the new coronavirus.

#### Kitfield is super old – all of it’s internal links are pre-Biden which resolves divisions, scapegoating & rotting intl system bc Biden’s trying to build it back

Their impact ev is about industry shut down – places are opening up and industries are back to work proves no terminal impact.

#### IP laws are key to prevent counterfeit vaccines which are worse.

**Mercurio 21:** Mercurio, Bryan [the Simon F.S. Li Professor of Law at the Chinese University of Hong Kong (CUHK), having served as Associate Dean (Research) from 2010-14 and again from 2017-19. Professor Mercurio specialises in international economic law (IEL), with particular expertise in the intersection between trade law and intellectual property rights, free trade agreements, trade in services, dispute settlement and increasingly international investment law] “WTO Waiver from Intellectual Property Protection for COVID-19 Vaccines and Treatments: A Critical Review”, *Virginia Journal of International Law Online (Forthcoming 2021),* Feb 12, 2021

The protection of IP not only provides incentives to innovators to create, but also plays a crucial role in ensuring the safety of vaccines and helping to prevent the importation of fraudulent and dangerous goods. Unlike the typical pharmaceutical industry, the vaccine market is not a free and open market.69 Vaccines contain biological products made from living organisms and the risk of failure in vaccine development and production is high. 70 Moreover, the manufacturing process for vaccines is much more complex

as it requires the use of facilities and equipment with a high degree of specialization.71 The complexity of vaccine products implies that more time and regulatory requirements are needed in order to make or “copy” the vaccine production process. Therefore, the innovator should be expected to make conscious and meticulous decisions as to when and to whom to issue licenses, as this is the most responsible way to bring their technologies to the world and safeguard global health. In addition, as the COVID-19 pandemic continues there has been a noticeable increase in the circulation of fake medicines around the world. According to the International Criminal Police Organization (Interpol), **organized crime groups have been producing fake drugs and medical products and selling them for lucrative profits in developing countries.72 With the development of COVID-19 vaccines on the market, a rapid rise in the illegal sale of fake items is expected**, according to the United Nations Office on Drugs and Crime (UNODC).73 Counterfeits of the legitimate products provide false promises of protection and could lead to disastrous consequences, including worsened illness and death for the individual and the retardation of herd immunity for the population at large. Effective and proactive IP procurement is essential and useful in mitigating the risks of counterfeit and substandard medicines. IP enforcement measures play a significant role in preventing these fake and illicit medicines from circulating in the market. While important during normal times, IP enforcement can take on an enhanced role of safeguarding the public during this critical period of time. Waiving all COVID-19 related IPRs raises the risk of unsafe or fake vaccines circulating in supply channels and being sold to unsuspecting governments, putting millions of human lives at risk and reducing trust in vaccines.

They don’t have a warrant for increased production – it just asserts it – also claims “no compelling ev” for neg args, but our ev is from former Trade rep who prob knows more

Don’t Buy their “Goldilocks Claim” because **The squo is goldilocks--COVAX and licensing agreements ensure vaccine access now, but patent waiver causes unsafe vaccines and decks innovation.**

Crosby et al. 21 (Daniel Crosby [Lawyer specializing in international trade/law], Evan Diamond [Lawyer specializing in pharmaceutical and biotechnology patent litigation], Isabel Fernandez de la Cuesta [Lawyer specializing in international treaty arbitration], Jamieson Greer [Lawyer specializing in international trade], Jeffrey Telep [Lawyer specializing in international trade litigation], Brian White [Lawyer specializing in international arbitration], Group of Nearly 60 WTO Members Seek Unprecedented Waiver from WTO Intellectual Property Protection for COVID-related Medical Products, JD Supra, 3/5/2021, <https://www.jdsupra.com/legalnews/group-of-nearly-60-wto-members-seek-2523821/>) hwof

Efforts to develop, produce, and equitably distribute medical products. WTO Members recognize that unprecedented demand for medical products used in the fight against COVID-19 has far outstripped supply of required supplies. Several WTO Members have pointed out that intellectual property protections have not limited production of vaccines and other medical products. Rather, these Members have argued that intellectual property protection has incentivized the research, development and production of the necessary vaccines, treatments and products. Moreover, the international community is coordinating and funding equitable COVID-19 vaccine distribution globally through COVAX, which is organized by Gavi, the Vaccine Alliance, the World Health Organization and the Coalition for Epidemic Preparedness Innovations. Despite these facts, less developed countries continue to push for a waiver of all intellectual property protection for medical products related to the pandemic. Waiver risks uncontrolled use of patented technologies, without improving vaccine access. Pharmaceutical companies can provide, and have provided, licenses to distribute or scale-up production of COVID-19 vaccines and therapies at reduced cost. Such license agreements allow for expanded access in low- and middle-income countries, while also setting reasonable parameters so that patents and other IP rights are used to address the specific medical needs of the COVID-19

pandemic at hand, and not for other purposes. License agreements also allow for orderly technology transfer, including of unpatented “trade secret” information and other critical “know-how,” that may be essential to efficiently producing and scaling-up safe and effective versions of technologically complex vaccines and biologic drug products. Under the present TRIPS waiver proposal, however, member countries could try to exploit an extraordinarily broad scope of IP and copy patented technologies so long as they are “in relation to prevention, containment or treatment of COVID-19.” For example, under an expansive reading of the proposed waiver language, a member country could try to produce patented pharmaceutical compounds that have other indicated uses predating COVID-19, if such compounds had later been studied or experimentally used for potential symptomatic relief or antiviral activity in COVID-19 patients. The same risks may be faced by manufacturers of patented materials or devices that have multiple uses predating COVID-19, but also may be used as “personal protective equipment” or components thereof, or in other measures arguably relating to COVID-19 “prevention” or “containment.” At the same time, it is unclear how the proposed TRIPS waiver could provide the technology transfer and know-how critical for making the complex molecules and formulations constituting the various COVID-19 vaccines. Vaccine manufacture undertaken by an unauthorized party without the proper processes and controls could result in a different product that is potentially ineffective or results in unwanted health consequences. And even if an unauthorized manufacturer could overcome those substantial hurdles to reverse-engineer and scale up a safe and effective vaccine copy, it would likely take substantial time and a series of failures to do so. Notably, several of the original COVID-19 vaccine developers have recently faced low product yield and other manufacturing challenges during pre-commercial scale-up efforts and the initial months of commercial production.

### WTO

#### MEYER IS WRONG – there are Alt causes to WTO disunity

EP 5/20 [(European Parliament, legislative branch of the European Union) “Getting a patent waiver is not enough, says WTO chief to Trade Committee,” European Parliament News: Press Releases, 5/20/2021] JL

She said: “Getting the intellectual property rights waiver for vaccines will not be enough”. She listed three other routes: reducing export restrictions and reinforcing supply chains for vaccines, working with manufacturers to expand production, including in emerging countries with idle capacity such as Indonesia, South Africa, Thailand or Bangladesh, and transferring the necessary technology and expertise to produce the complicated vaccines.

“The IP waiver is a hot issue on which I cannot take sides. But we need more flexibility and automatic access for developing countries, and at the same time we have to protect research and development,” added the head of the World Trade Organisation (WTO).

MEPs also raised questions on trade and sustainability, including the proposed carbon border-adjustment mechanism

and its compatibility with WTO rules.

“I think everything is in the design; its implementation is going to be quite important. But we don’t have that yet, so we cannot say [whether it is compatible], the director-general said.

MEPs asked about the ongoing WTO negotiations over fisheries subsidies that the director-general hopes will be concluded by the end of the year, and about the now defunct dispute settlement mechanism in the WTO.

“We cannot make new rules at the WTO when our system of adjudication on those rules doesn’t work. We need to go to the [Twelfth Ministerial Conference] with an idea for a new system,” Dr Okonjo-Iweala responded to the latter issue, calling for Parliament’s assistance in reaching out to the United States Congress to scout for a common understanding on the Appellate Body.

#### There’s bipartisan Congressional hatred for the plan – they view it as a giveaway of American tech to China.

Lopez 5/19 [Ian, Senior Reporter @ Bloomberg Law, “China Will Steal U.S. Vaccine IP Via Waiver, GOP Senators Say”, 05-19-2021, Bloomberg Law, https://news.bloomberglaw.com/health-law-and-business/china-will-steal-u-s-vaccine-ip-via-waiver-gop-senators-say]//pranav

Senate Republicans are calling on top Biden administration officials to walk back support of an international plan to waive Covid-19 vaccine IP protections, calling the decision a “giveaway” to China and India that will only promote “vaccine nationalism.” Countries like China that regularly steal U.S. intellectual property began urging the World Trade Organization to waive IP rights “almost immediately after these vaccines were proven to work,” Sens. Thom Tillis (R-N.C.) and Tom Cotton (R-Ark.) wrote in a Wednesday letter to Commerce Secretary Gina Raimondo and U.S. Trade Representative Katherine Tai. “These nations are falsely claiming that granting such a waiver would speed the development of new vaccine capacity. Nothing could be further from the truth,” they said in the letter, obtained by Bloomberg Law. Senators d Chuck Grassley (R-Neb.), Mike Lee (R-Utah), and Dan Sullivan (R-Alaska) are among the letter’s backers, according to a Republican staffer. The letter comes amid a heightening debate over whether the U.S.'s backing of a waiver would help expedite global vaccine manufacturing and distribution. “It is not surprising that China, India, and South Africa want to steal our intellectual property and medical technology,” the senators wrote. “What is surprising is that an American president, especially one who claims to be a ‘jobs’ president, would force American companies to give their medical technology and manufacturing processes to foreign adversaries like China.” A proposal before the WTO—set out by South Africa and India last year and supported by dozens of other countries—would waive obligations on the protection of IP rights for the duration of the pandemic. ‘America’s Interests Last’ Key to the debate is whether patents and other IP are an obstacle to global Covid-19 immunization. Proponents of the waiver plan—which include some Democrats and nonprofits—say it’s a step in the right direction, and, taken with other steps like increased manufacturing capacity, could help with faster world vaccination. U.S. support could help get other countries on board with global distribution while spurring efforts to ramp up vaccine production capabilities in nations struggling to immunize their populations, proponents say. Opponents say it’s bad for innovation and does little to get vaccines to those in need while opening the door to IP theft from competing countries. Among those in the latter camp are Tillis, who led a legislative effort to strengthen patent rights; former U.S. Patent and Trademark Office Director Andrei Iancu; and Sen. Chris Coons (D-Del.), who has previously criticized the idea of waiving rights around Covid-19 vaccines. “The reason why there are not enough vaccine doses at this time is simple: the supply chain lacks the technological capacity,” the letter said. “At best, all The President’s giveaway to China and India and others will do is to foster uncoordinated vaccine nationalism, as countries jump in to try to coerce technology transfer and manufacturing locally.” Tai earlier this month announced the Biden administration’s support of the IP waiver, following pressure from a group of more than 100 House Democrats, led by Rep. Jan Schakowsky (D-Ill.). Piecemeal IP licensing agreements can’t keep pace with the scope and speed of the pandemic, while temporarily waiving rights could promote technology access and sharing for vaccine production without spurring trade sanctions, they argue. House Republicans quickly followed suit, writing their own letter to Tai in opposition. The senators in their letter posed a series of questions over the details and economic impact of waiving vaccine IP rights. They called for a list and descriptions of all U.S. meetings with foreign officials about the waiver plan. They also asked if the Biden administration is considering waiving domestic IP enforcement, and whether support of the waiver is “premised on China, Russia, South Africa, India, or any other nation state supporting other foreign policy priorities of the Administration,” according to the letter. “Simply put, the Biden Administration’s support for a TRIPS waiver puts America’s interests last and China’s interests first,” the senators said.

### Extra

#### Congress doesn’t have the support to pull out now, but more agreements that perceptually favor China changes that

Johnson ’20 [Keith, senior staff writer for Foreign Policy, “U.S. Effort to Depart WTO Gathers Momentum”, 05-27-2020, https://foreignpolicy.com/2020/05/27/world-trade-organization-united-states-departure-china/]//pranav

Frustration with hyperglobalization, China’s “economic imperialism,” and a seemingly broken world trading system is boiling over into serious calls for the United States to withdraw from the World Trade Organization (WTO)—which would have potentially disastrous implications for the country if carried out. For the first time since 2005, lawmakers from both parties and both houses of Congress are pushing to pull the United States out of the trading body it helped create and which was the culmination of decades of postwar efforts to boost free trade and economic integration. By law, the United States has a chance to vote every five years on staying inside the WTO, but staying on board was such a no-brainer in recent years that no such resolution was even presented. But this year—powered by a rise in economic nationalism, growing concern about China, and frustration with two decades of paralysis at the WTO—the knives on Capitol Hill are out, to the delight of some of the trade hard-liners in the White House. “The WTO has been a disaster for the United States,” said Rep. Peter DeFazio, an Oregon Democrat, who introduced House legislation to withdraw this month. “No trade regime can last when it no longer serves the people of the countries who are part of it,” said Sen. Josh Hawley, a Missouri Republican, in a recent Senate floor speech after introducing his own resolution to leave. “Our interests and those of the WTO diverged long ago.” It’s doubtful that the measures could secure enough votes for passage in either chamber, and a tight legislative calendar makes the push for withdrawal doubly hard to pull off. But the rush for the exit is still a serious indication of deep and growing dissatisfaction with how global trade has evolved, highlighted by the vulnerability of cross-border supply chains that have begun to come apart under the stress of the COVID-19 pandemic. If the United States were to pull out of the system it helped build, the implications would be dire. Other countries would be able to discriminate against U.S. goods and services with no limits. Tariffs would almost certainly rise and export markets shrink. Meanwhile, others like China and the European Union would increasingly be in a position to write the rules of the future economy, from data protection and privacy to intellectual property and state subsidies. “We’d have no rights, and we’d lose a seat at the table,” said Wendy Cutler, a former U.S. trade negotiator now at the Asia Society. Why the big push now? For years, different aspects of the global trading system have stirred concern and at times anger in the United States and other countries; the WTO has essentially been stuck in place since the collapse of its last big negotiating round in 2008. For years, economists have debated the impact of the so-called “China shock” on U.S. jobs and manufacturing, and some evidence has shown that the competition from low-wage Chinese labor and the rapid movement of U.S. companies offshore hit the U.S. middle class harder than many economists expected. For years, Republicans have railed against international organizations—from the WTO to the International Criminal Court—that they see as encroaching on U.S. sovereignty. Now, all those forces have come together in a kind of imperfect storm. “I think the confluence of factors—the WTO’s credibility, China’s accession and all the outsourcing, and then the general animosity toward international organizations—they’re all in play,” Cutler said. For proponents of withdrawal, like Hawley, it’s mostly about China taking advantage of an open global trading system to get a leg up on countries like the United States that mostly try to play by the rules. “I think [China] is a principal factor” in the push to leave the WTO, Hawley told Foreign Policy in a recent interview. Beijing’s ability to claim special privileges inside the WTO as a so-called “developing” country, despite boasting the world’s second-largest economy, has powered its rise at the expense of countries like the United States, he said.

#### The US has structurally undermined WTO legitimacy – every WTO ruling gets vetoed

Baschuk 2/22 [(Bryce, reporter for Bloomberg Economics based in Geneva, Switzerland, has been published in Bloomberg, the Washington Times, United Press International and National Public Radio) “Biden Picks Up Where Trump Left Off in Hard-Line Stances at WTO,” Bloomberg, 2/22/2021] TDI

President Joe Biden’s administration dashed hopes for a softer approach to the World Trade Organization by pursuing a pair of his predecessor’s strategies that critics say risk undermining the international trading system.

The U.S. delegation to the WTO, in a statement Monday obtained by Bloomberg, backed the Trump administration’s decision to label Hong Kong exports as “Made in China” and said the WTO had no right to mediate the matter because the organization’s rules permit countries to take any action to protect their “essential security interests.”

“The situation with respect to Hong Kong, China, constitutes a threat to the national security of the United States,” the U.S. delegation said. “Issues of national security are not matters appropriate for adjudication in the WTO dispute-settlement system.”

Prior to 2016, WTO members generally steered clear of defending their trade actions on the basis of national security because doing so could encourage other nations to pursue protectionist policies that have little or nothing to do with hostile threats.

That changed in 2018, when the Trump administration triggered a cold war-era law to justify tariffs on foreign imports of steel and aluminum. In response, a handful of U.S. trade partners, including Canada, the EU, and China filed disputes at the WTO and a ruling in those cases is expected later this year.

Since then, more nations -- including Saudi Arabia, India, Russia and others -- have cited the WTO’s national-security exemption in regional trade fights, leading trade experts to warn that such cases could erode the organization’s ability to mediate disputes.

The Biden administration on Monday said the U.S. has consistently argued that national-security disputes are not subject to WTO review because it would infringe on a member’s right to determine what is in its own security interests.

In spite of the U.S. objection, the WTO granted Hong Kong’s dispute inquiry and will establish a panel of experts to deliberate the matter and render a decision, which could take two to three years.

At the same meeting, the Biden administration said it would not agree to appoint new members to the WTO’s appellate body, a seven-member panel of experts who until 2019 had the final say on trade disputes involving billions of dollars worth of international commerce.

The Biden administration said it could not do so because the U.S. “continues to have systemic concerns” with the functioning of the appellate body as have all previous administrations over the past 16 years.

Though the statement was not entirely unexpected, it confirms America’s bipartisan frustration with the functioning of the WTO appellate body and the new administration’s willingness to block new panelists until changes can be agreed.

Once Katherine Tai is confirmed as the U.S. Trade Representative, her office “looks forward to working with” WTO Director-General Ngozi Okonjo-Iweala to tackle the problems with WTO dispute settlement, including the unresolved issues over appellate-body overreach, USTR spokesman Adam Hodge said in an email. “These are long-standing, bipartisan concerns that we hope our trading partners will work with us to address,” he said.

The Trump administration broke precedent when it refused to consider any nominees to fill vacancies on the panel until there weren’t enough to sign off on new rulings. As a result, the WTO’s dispute-settlement system has been critically damaged because WTO members are now free to veto any adverse dispute rulings by appealing them into a legal void created by the appellate body’s paralysis.

#### TRIPS alone is too ambiguous to serve as a sufficient legal standard

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Dina Halaijan (JD, Brooklyn Law School). “Inadequacy of TRIPS & the Compulsory License: Why Broad Compulsory Licensing is Not a Viable Solution to the Access Medicine Problem.” Brooklyn Journal of International Law. Volume 38, Issue 3, Article 7 (2013). JDN. <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1050&context=bjil>

3. Definitional Ambiguities & Ambiguities in Scope

Ambiguities in the interpretation of TRIPS due to the lack of substantive guidelines or definitions also hinder its effective use by **increasing the risk of litigation.**111 The Doha Declaration merely stated that individual countries have “the right to determine what constitutes a national emergency or other circumstances of extreme urgency” in deciding to grant a compulsory license, and thus did little to ameliorate the different interpretive approaches of developed and developing countries.112 **The flexible scope** of compulsory licenses **lends to abuse which further instills resistance and suspicion** from pharmaceutical companies.113 For example, Egypt’s compulsory license for Pfizer’s Viagra tarnishes the reputation of compulsory licensing because erectile dysfunction is clearly a less dire situation and one likely not intended to be covered by the public health exception of TRIPS.114 Such excessive abuse and over-use of compulsory licensing likely encourages pharmaceutical companies to aggressively resist valid uses of compulsory licenses to prevent **over-expansion of scope.**

115 In addition to ambiguity in the scope of intended diseases, conflicting interpretations exist in the type of pharmaceutical products intended for compulsory licensing.116 The scope of countries that should benefit from compulsory licensing remains another area of contention.117 Not limiting the scope of applicable nations may create a **chilling effect** on the types of drugs pharmaceutical companies choose to invest in and develop to avoid the potential for a compulsory license, **which hurts developing nations most in need of help.**118 Interpreting the morality exclusion in Article 27(2) also proves difficult, as **there is no universally accepted definition.**119 In addition to causing differing interpretations between countries, the lack of concrete definitions allows countries to alter their position to fit their self-interest and creates potential for abuse.120 For example, despite the United States’ narrow interpretation of TRIPS flexibilities, the United States contradicted itself during the 2001 anthrax scare by suggesting use of a compulsory license for Cipro, a drug that combats the effects of anthrax.121 On a related note, as India’s government and pharmaceutical industry’s capabilities grow, the future of India’s willingness to grant compulsory licenses and produce cheap generic drugs for export to other developing countries is questionable.122 Indian companies may opt to serve their selfinterest and become “innovator companies” to compete globally with other large pharmaceutical companies.123 The vagueness of Article 30, which allowed a narrow interpretation to be given by the WTO dispute resolution panel, is a further impediment to increasing access to medicines.124 Calculating adequate remuneration for payment to the patent holder when a compulsory license is issued is another obstacle to successful use of TRIPS flexibilities and is further complicated by the requirement to take the economic value of the authorization into account, as TRIPS does not provide guidance to determine what is ‘adequate’ and what is the authorization’s ‘value.’125 The WTO members’ inability to reach a decision regarding parallel importation created a “fundamental flaw” of ambiguity.126 In regard to compulsory licensing under the Paragraph 6 Decision, drugs made for export must be distinguishable by special labels, colors, or shapes to prevent trade diversion.127 However, lack of monitoring guidelines and repercussions makes the re-exportation issue troubling.128