Trad AC

#### I strongly affirm that the member nations of the World Trade Organization ought to reduce intellectual property protections for medicines.

## Definitions

### To start, I’ll clarify some definitions.

### Intellectual property protections are,

#### According to Yang 19,

James Yang (patent attorney). “Four types of intellectual property to protect your idea ,and how to use them.” OC Patent Lawyer. 2019. JDN. <https://ocpatentlawyer.com/four-types-intellectual-property-protect-idea/>

To protect your idea so that someone else cannot steal your idea, you need to secure one or more of the four different types of intellectual property (IP). **Intellectual property rights are exclusionary rights given to** authors**, inventors, and businesses for their** literary and artistic works of authorship, **useful** and ornamental **inventions, and valuable information.** Every invention generally starts as an inventor’s trade secret. **Before inventors market their inventions, they need to secure one or more** of the other **forms of intellectual property protection[s] – patents, trademarks, and copyrights.**

## Framework

The value is **morality** and the value criterion is **utilitarianism**, defined as maximizing pleasure and minimizing pain through the consequences of actions. Prefer utilitarianism for the following reasons:

**1. Consequentialism is key.**

**Sinnot-Armstrong 19**

Sinnott-Armstrong, Walter, "Consequentialism", *The Stanford Encyclopedia of Philosophy* (Summer 2019 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/sum2019/entries/consequentialism/>>. [Chaminade ZS]

​​Consequentialism also might be supported by an *inference to the best explanation* of our moral intuitions. This argument might surprise those who think of consequentialism as counterintuitive, but in fact consequentialists can explain many moral intuitions that trouble deontological theories. Moderate **deontologists**, for example, often **judge that it is morally wrong to kill one person to save five but not morally wrong to kill one person to save a million.** **They never specify the line between what is morally wrong and what is not morally wrong, and it is hard to imagine any non-arbitrary way for deontologists to justify a cutoff point. In contrast, consequentialists can simply say that the line belongs wherever the benefits outweigh the costs** (including any bad side effects). Similarly, when two promises conflict, it often seems clear which one we should keep, and that intuition can often be explained by the amount of harm that would be caused by breaking each promise. In contrast, deontologists are hard pressed to explain which promise is overriding if the reason to keep each promise is simply that it was made (Sinnott-Armstrong 2009). If consequentialists can better explain more common moral intuitions, then consequentialism might have more explanatory coherence overall, despite being counterintuitive in some cases. (Compare Sidgwick 1907, Book IV, Chap. III; and Sverdlik 2011.) And even if act consequentialists cannot argue in this way, it still might work for rule consequentialists (such as Hooker 2000).

#### 2. The actors of the resolution are governments and governments must be practical and cannot concern itself with metaphysical questions – its only role is to protect citizens’ interests

#### Rhonheimer 05

[(Martin, Prof Of Philosophy at The Pontifical University of the Holy Cross in Rome). “THE POLITICAL ETHOS OF CONSTITUTIONAL DEMOCRACY AND THE PLACE OF NATURAL LAW IN PUBLIC REASON: RAWLS’S “POLITICAL LIBERALISM” REVISITED” The American Journal of Jurisprudence vol. 50 (2005), pp. 1-70] [Chaminade AS]

It is a fundamental feature of political philosophy to be part of practical philosophy. **Political philosophy** belongs to ethics, which **is practical, for it** bothreflects on practical knowledge and **aims at action. Therefore, it is not only normative, but must consider the concrete conditions of realization. The rationale of political institutions** and action **must be** understood as **embedded in concrete** cultural and, therefore, historical **contexts** and as meeting with problems that only in these contexts are understandable. **A** normative political **philosophy which would abstract from the conditions of realizability** wouldbe trying to establish norms for realizing the “idea of the good” or of “the just” (as Plato, in fact, tried to do in his Republic). Such a purely metaphysical view, however, **is doomed to fail**ure**.** As a theory of political praxis, political philosophy must include in its reflection the concrete historical context, historical experiences and the corresponding knowledge of the proper logic of the political. 14 Briefly: political philosophy is not metaphysics, which contemplates the necessary order of being, but practical philosophy, which deals with partly contingent matters and aims at action. Moreover, **unlike moral norms in general**—natural law included,—which rule the actions of a person—“my acting” and pursuing the good—, **the** logic of the **political is characterized by acts like framing institutions** and establishing legal rules **by which** not only personal actions but the actions of **a multitude** of persons **are regulated** by the coercive force of state power, and by which a part of citizens exercises power over others. **Political actions are**, thus, both actions of **the whole** of the **body politic** and referring to the whole of the community of citizens. 15 **Unless** wewish to espouse a platonic view according to which **some** persons **are** by nature **rulers while others are** by nature **subjects**, we will stick to the Aristotelian differentiation between the “domestic” and the “political” kind of rule 16 : unlike domestic rule, which is over people with a common interest and harmoniously striving after the same good [despotism]and, therefore, according to Aristotle is essentially “despotic,” political **rule is** exercised **over free persons who represent a plurality of interests and** pursue, in the common context of the polis, different goods. The exercise of **such political rule, therefore, needs justification and is** continuously **in search of consent among those** who are **ruled**, but who potentially at the same time are also the rulers.

#### 3. Moral uncertainty means any risk of extinction outweighs under any framework

#### Bostrom 13

Nick. "Existential risk prevention as global priority." Global Policy 4.1 (2013): 15-31. (Faculty of Philosophy and Oxford Martin School University of Oxford)// Elmer recut by SHS/JS

These reflections on moral uncertainty suggest an alternative, complementary way of looking at existential risk; they also suggest a new way of thinking about the ideal of sustainability. Let me elaborate. Our present understanding of axiology might well be confused. **We may not now know — at least not in concrete detail — what outcomes would count as a big win for humanity**; we might not even yet be able to imagine the best ends of our journey. If we are indeed profoundly uncertain about our ultimate aims, then we should recognize that there is a great option value in preserving — and ideally improving — our ability to recognize value and to steer the future accordingly. **Ensuring that there will be a future version of humanity** with great powers and a propensity to use them wisely **is plausibly the best way available to us to increase the probability that the future will contain a lot of value. To do this, we must prevent any existential catastrophe**.

**With that, let’s move to the case.**

## Contention 1- Patent Trolling

**My first contention will prove that patent trolling is a significant problem in the status quo and affirming uniquely solves this issue.**

#### Patent trolls as according to Lindsey 21 are:

[Brink Lindsey, vice president for research at the Cato Institute, 6-3-2021, "Why intellectual property and pandemics don’t mix," Brookings, [https://www.brookings.edu/blog/up-front/2021/06/03/why-intellectual-property-and-pandemics-dont-mix/]/Kankee](https://www.brookings.edu/blog/up-front/2021/06/03/why-intellectual-property-and-pandemics-dont-mix/%5D/Kankee)

patent trolls: **firms that make nothing themselves but buy up patent portfolios and monetize them through aggressive litigation.**

#### Patent trolling is significantly more successful in the medical industry.

#### Nuttall 15

Nuttall, Jay (February 2015), "The Patent Trolls are Coming...To Medtech", Steptoe, In Vivo: The Business & Medical Report, https://www.steptoe.com/images/content/5/9/v4/5974/The-Patent-Trolls-Are-Coming...To-Medtech.pdf. [Chaminade AS]

But that tide is turning, **In 2009, plaintiffs filed nine medical device patent infringement cases. In 2014, they filed 93.** This year **we’ll see even more,** and in the coming years **the number of filings may increase by around 15% to 20% every year.** (See Exhibit 2.) There will be a significant increase in medical device troll litigation for several reasons. First, **the number of infringement cases closely corresponds to the number of new patents**: **RPX’s research found a 96% correlation. There’s been a 15% to 25% increase in medical device patents** issued the past few years. **It’s safe to expect a corollary rise in infringement suits based on this factor alone.** The year 2014 also saw a big increase in medical device patent sales and acquisitions. Trolls who had previously specialized in buying patents in other industries are now entering and expanding their patent portfolios in the medical device area.

**He continues…**

Most cases brought by patent trolls never make it to trial, let alone judgment-although NPEs file 67% of infringement cases, only 20% of judgements involve NPEs, according to PWC-since it’s far more sensible for defendants to settle quickly than to risk years of costly discovery and court battles. To capitalize on this apprehension and insulate themselves from their own set of protracted litigation costs, patent trolls set settlement requests below potential court costs, enticing companies to pay up and move on quickly. More bad news: when the cases do go to trial, plaintiffs in medical device cases win more often than in other tech sectors. **Across all industries,** PWC found **plaintiffs won just 33% of cases, but won nearly 40% of medical device cases.** Worse news: **at trial, when [trolls]** NPEs **win infringement suits, their median damages are nearly triple those won by practicing entities.** You can be sure that trolls know these figures by heart; it’s another reason **medical device companies now have a target painted on their back.**

**This is key as:**

#### Patent trolling harms innovation in medicine

#### Tucker 11

Catherine Tucker (the Sloan Distinguished Professor of Management at MIT). “Patent Trolls and Technology Diffusion: The Case of Medical Imaging.” 24 December 2011. JDN. Brackets for grammar and clarity. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1976593>

This paper explores empirically whether such litigation by patent‑assertion entities ham‑ pers the diffusion of innovations. It studies this in the field of healthcare information technology in light of recent litigation over medical imaging software patents. **Empirical analysis suggests that there was a large reduction in sales of [medical] imaging software products relative to other similar products that were produced by the same sued firms but did not fall under the scope of the disputed patent. There was no such significant change in sales of imaging software for firms that were not the target of [under] litigation**. **Further, there was an increase in sales proposal requests for both textual and imaging software by hospitals in this period, suggesting that these results do not reflect a suppression of demand.** Instead, it appears **the drop in sales was linked to a drop in incremental product innovation. No new variations of existing products or new models of imaging software were released by the affected vendors during the period of litigation.** An ex‑ planation for this lack of innovation is that the **vendors did not want to run the risk of being found guilty of ‘wilful infringement’ in the patent suit and being held liable** for treble damages. **Therefore, one explanation of the slow‑down in sales is that the product release and attendant sales cycle was halted as a result of litigation. This emphasizes that even if [trolls] patent‑assertion entities do not prevail in the courtroom, their actions can have significantly negative consequences for incremental innovation while litigation is ongoing.**

#### Further, Innovation is empirically key for longer life expectancy

#### Lichtenberg 12

Frank R. Lichtenberg, Columbia University. NATIONAL BUREAU OF ECONOMIC RESEARCH “PHARMACEUTICAL INNOVATION AND LONGEVITY GROWTH IN 30 DEVELOPING AND HIGH-INCOME COUNTRIES, 2000-2009 ”. July 2012. Accessed 8/28/21. [Chaminade ZS]

<https://www.nber.org/system/files/working_papers/w18235/w18235.pdf>

I used the estimates of the longevity growth model to assess both (1) how much of the global growth in life expectancy was due to pharmaceutical innovation, and (2) the extent to which international differences in life expectancy in 2009 were attributable to differences in drug vintage. **For the** 30 countries in our **sample, between 2000 and 2009 population-weighted mean life expectancy at birth increased by 1.74 years.** The estimates indicate that **the increase in life expectancy at birth due to the increase in the fraction of drugs consumed that were launched after 1990 was 1.27 years—73% of the actual increase in life expectancy at birth.** Some estimates imply that the increase in life expectancy at age 25 due to the increase in drug vintage exceeds the actual increase in life expectancy at age 25. This is possible because HIV prevalence and urbanization increased, and our estimates imply that these trends may have reduced longevity. Moreover, obesity has increased (at least in OECD countries), and previous research indicates that this has also reduced longevity. Although per capita income and educational attainment have also increased, there does not appear to be a consensus among scholars about the effects of these trends on longevity growth, and our estimates and those in some other studies suggest that they have not made a contribution to survival gains among adults. **To assess the extent to which international differences in life expectancy in 2009 were attributable to differences in drug vintage, I compared the top 5 countries (ranked by drug vintage in 2009) with the bottom 5 countries (ranked by the same criterion). Life expectancy at birth in the top 5 countries (Netherlands, Greece, Italy, Portugal, Spain) was 9.1 years higher than it was in the bottom 5 countries (Morocco, Egypt, Colombia, Thailand, Indonesia). My estimates imply that 37% (3.4 years) of this difference was due to the difference in drug vintage.** In recent years, several emerging economies, including India, Argentina and the Philippines, have passed laws placing strict limits on pharmaceutical patents, and Brazil and Thailand have been issuing compulsory licenses for AIDS drugs for years under multilateral agreements that allow such actions on public health grounds (Harris and Thomas, 2013). While such policies may benefit patients in those countries in the short run, in the long run, they are likely to diminish incentives for new drug development, particularly because sales in emerging markets like Brazil and China are expected to account for 30 percent of global pharmaceutical spending by 2016, up from 20 percent in 2011, according to IMS Health. The evidence presented in this paper indicates that reduced investment in pharmaceutical innovation would have adverse long-term effects on longevity.

**The affirmative solves because with less IP protections (i.e. patents), patent trolls wouldn’t have anything to leverage against companies, thus solving this issue.**

**Patent trolling links into utilitarianism because less innovation leads to lower life expectancy thus leading to more (and earlier) death, which contradicts utilitarian ethics.**

## Contention 2- Bioterror

**My second contention states that IP law provided by the WTO weakens the response to biological attacks by terrorists, which would create an existential threat.**

#### Bioweapons are becoming more accessible to terrorists, and carry great risks.

#### Millet and Snyder-Beattie ‘17

Piers Millett and Andrew Snyder-Beattie.Health Security. “Existential Risk and Cost-Effective Biosecurity” Aug 2017. Accessed 8/26/21. [Chaminade ZS] <http://doi.org/10.1089/hs.2017.0028>

Historically, disease events have been responsible for the greatest death tolls on humanity. The 1918 flu was responsible for more than 50 million deaths,1 while smallpox killed perhaps 10 times that many in the 20th century alone.2 The Black Death was responsible for killing over 25% of the European population,3 while other pandemics, such as the plague of Justinian, are thought to have killed 25 million in the 6th century—constituting over 10% of the world's population at the time.4 It is an open question whether a future pandemic could result in outright human extinction or the irreversible collapse of civilization. A skeptic would have many good reasons to think that existential risk from disease is unlikely. Such a disease would need to spread worldwide to remote populations, overcome rare genetic resistances, and evade detection, cures, and countermeasures. Even evolution itself may work in humanity's favor: Virulence and transmission is often a trade-off, and so evolutionary pressures could push against maximally lethal wild-type pathogens.5,6 While these arguments point to a very small risk of human extinction, they do not rule the possibility out entirely. Although rare, there are recorded instances of species going extinct due to disease—primarily in amphibians, but also in 1 mammalian species of rat on Christmas Island.7,8 There are also historical examples of large human populations being almost entirely wiped out by disease, especially when multiple diseases were simultaneously introduced into a population without immunity. The most striking examples of total population collapse include native American tribes exposed to European diseases, such as the Massachusett (86% loss of population), Quiripi-Unquachog (95% loss of population), and the Western Abenaki (which suffered a staggering 98% loss of population).9 In the modern context, no single disease currently exists that combines the worst-case levels of transmissibility, lethality, resistance to countermeasures, and global reach. But many diseases are proof of principle that each worst-case attribute can be realized independently. For example, some diseases exhibit nearly a 100% case fatality ratio in the absence of treatment, such as rabies or septicemic plague. Other diseases have a track record of spreading to virtually every human community worldwide, such as the 1918 flu,10 and seroprevalence studies indicate that other pathogens, such as chickenpox and HSV-1, can successfully reach over 95% of a population.11,12 Under optimal virulence theory, natural evolution would be an unlikely source for pathogens with the highest possible levels of transmissibility, virulence, and global reach. But **advances in biotechnology might allow the creation of diseases that combine such traits. Recent controversy has already emerged over a number of scientific experiments that resulted in viruses with enhanced transmissibility, lethality**, and/or the ability to overcome therapeutics.13-17 Other experiments demonstrated that mousepox could be modified to have a 100% case fatality rate and render a vaccine ineffective.18 In addition to transmissibility and lethality, studies have shown that other disease traits, such as **incubation time, [and] environmental survival**, and available vectors, could be modified as well.19-21 Although these experiments had scientific merit and were not conducted with malicious intent, their implications are still worrying. This is especially true given that there is also a long historical track record of state-run bioweapon research applying cutting-edge science and technology to design agents not previously seen in nature. The Soviet bioweapons program developed agents with traits such as enhanced virulence, resistance to therapies, greater environmental resilience, increased difficulty to diagnose or treat, and which caused unexpected disease presentations and outcomes.22 Delivery capabilities have also been subject to the cutting edge of technical development, with Canadian, US, and UK bioweapon efforts playing a critical role in developing the discipline of aerobiology.23,24 While there is no evidence of state-run bioweapons programs directly attempting to develop or deploy bioweapons that would pose an existential risk, the logic of deterrence and mutually assured destruction could create such incentives in more unstable political environments or following a breakdown of the Biological Weapons Convention.25 The possibility of a war between great powers could also increase the pressure to use such weapons—during the World Wars, bioweapons were used across multiple continents, with Germany targeting animals in WWI,26 and Japan using plague to cause an epidemic in China during WWII**.**27 **Non-state actors may also pose a risk, especially those with explicitly omnicidal aims. While rare, there are examples. The Aum Shinrikyo cult in Japan sought biological weapons for the express purpose of causing extinction.28 Environmental groups, such as the Gaia Liberation Front, have argued that “we can ensure Gaia's survival only through the extinction of the Humans as a species … we now have the specific technology for doing the job … several different [genetically engineered] viruses could be released”(quoted in ref. 29). Groups such as R.I.S.E. also sought to protect nature by destroying most of humanity with bioweapons.30 Fortunately, to date, non-state actors have lacked the capabilities needed to pose a catastrophic bioweapons threat, but this could change in future decades as biotechnology becomes more accessible and the pool of experienced users grows**.31,32 What is the appropriate response to these speculative extinction threats? A balanced biosecurity portfolio might include investments that reduce a mix of proven and speculative risks, but striking this balance is still difficult given the massive uncertainties around the low-probability, high-consequence risks. In this article, we examine the traditional spectrum of biosecurity risks (ie, biocrimes, bioterrorism, and biowarfare) to categorize biothreats by likelihood and impact, expanding the historical analysis to consider even lower-probability, higher-consequence events (catastrophic risks and existential risks). In order to produce reasoned estimates of the likelihood of different categories of biothreats, we bring together relevant data and theory and produce some first-guess estimates of the likelihood of different categories of biothreat, and we use these initial estimates to compare the cost-effectiveness of reducing existential risks with more traditional biosecurity measures. We emphasize that these models are highly uncertain, and their utility lies more in enabling order-of-magnitude comparisons rather than as a precise measure of the true risk. However, even with the most conservative models, we find that reduction of low-probability, high-consequence risks can be more cost-effective, as measured by quality-adjusted life year per dollar, especially when we account for the lives of future generations. This suggests that despite the low probability of such events, society still ought to invest more in preventing the most extreme possible biosecurity catastrophes.

#### Patent disputes create critical delays in bioterror response time

#### Mullowney and Harris 13

Jared Mullowney (Texas Tech University School of Law) and Neil Harris (Texas Tech University School of Law). “Patent Protectability or Public Health?—An Examination of the Patent Compulsory License and Bioterrorism.” Journal of Biosecurity, Biosafety, and Biodefense Law 4(1). June 2013. JDN. https://doi.org/10.1515/jbbbl‐2012‐0011

If a patent holder sues over royalty amounts and delays the granting of a compulsory license, then the second problem becomes even clearer: in the situation of a bioterrorism attack or a national public health emergency, **time is of the essence.** Not only would the **compensation disputes take** up **time,** butunder the [WTO] TRIPS Agreement, parties are required (unless exempted) to make efforts to reach an agreement on a voluntary license.107 Furthermore, **under TRIPS, a compulsory license is not** to be **granted until** “such **efforts have not been successful within a reasonable period of time.”**108 Here, we run into the similar situation where “reasonable period of time” is not defined. It has been suggested that a reasonable period of time is **anywhere from ninety days to six months.**109 The timing problem, thus, becomes obvious: **in the event of a bioterrorism attack** or a public health emergency, **waiting** ninety days to six months before granting a compulsory license **is simply unreasonable.** It appears, then, that the patent holder could bring suit for a better royalty determination or the patent holder could delay nego‐ tiations; either situation ultimately delays the issue of a compulsory license, potentially **leaving the** general **public at risk** of the effects of a bioterrorism attack. While it is unlikely that a pharmaceutical company would willingly delay negotiations, it should be noted that **neither** the **U**nited **S**tates **Code nor** the **TRIPS** Agreement sets out an express **require**ment that the **negotiations** be done **in good faith.**110

#### With this lowered response time, bioterror risks extinction.

#### Ochs 02

Richard Ochs, Chemical Weapons Working Group Member, 2002 [“Biological Weapons must be Abolished Immediately,” June 9, [http://www.freefromterror.net/other\_.../abolish.html]](http://www.freefromterror.net/other_articles/abolish.html%5D)

**Of all the weapons of mass destruction, the genetically engineered biological weapons, many without a known cure or vaccine, are an extreme danger to the continued survival of life on earth**. Any perceived military value or deterrence pales in comparison to the great risk these weapons pose just sitting in vials in laboratories. **While a "nuclear winter," resulting from a massive exchange of nuclear weapons, could also kill off most of life on earth and severely compromise the health of future generations, they are easier to control**. Biological weapons, on the other hand, can get out of control very easily, as the recent anthrax attacks has demonstrated. **There is no way to guarantee the security of these doomsday weapons because very tiny amounts can be stolen or accidentally released and then grow or be grown to horrendous proportions.** The Black Death of the Middle Ages would be small in comparison to the potential damage bioweapons could cause. Abolition of chemical weapons is less of a priority because, while they can also kill millions of people outright, their persistence in the environment would be less than nuclear or biological agents or more localized. Hence, chemical weapons would have a lesser effect on future generations of innocent people and the natural environment. Like the Holocaust, once a localized chemical extermination is over, it is over. With nuclear and biological weapons, the killing will probably never end. Radioactive elements last tens of thousands of years and will keep causing cancers virtually forever. **Potentially worse than that, bio-engineered agents by the hundreds with no known cure could wreck even greater calamity on the human race than could persistent radiation. AIDS and ebola viruses are just a small example of recently emerging plagues with no known cure or vaccine. Can we imagine hundreds of such plagues? HUMAN EXTINCTION IS NOW POSSIBLE.**

### Aff solves:

#### Bio terror exemptions for pharmaceutical patents are key to distributing the necessary resources for bioterror countermeasures.

#### Oriola 07

Taiwo A. Oriola (Cardiff Law School, and the ESRC Centre for Business Relationships, Accountability, Sustainability, & Society, University of Cardiff, United Kingdom). “AGAINST THE PLAGUE: EXEMPTION OF PHARMACEUTICAL PATENT RIGHTS AS A BIOSECURITY STRATEGY.” JOURNAL OF LAW, TECHNOLOGY & POLICY. 2007. JDN.<http://illinoisjltp.com/journal/wp-content/uploads/2013/10/05-05-08_Oriola_AHW_Formatted_FINAL.pdf> -recut CAT

This Article proposes the inclusion of a bioterrorism-specific pharmaceutical patents appropriation clause in national and international patent regimes. The thesis is predicated on the impropriety of the current bureaucracy-prone access to medicines paradigms in international and national patent regimes for bioterrorism-induced public health crises situations. Using highly plausible, worst-case scenarios of bioterrorism attacks, this Article argues that vast swathes of the population could become simultaneously vulnerable to deadly bioweapons, exposing millions of people to inevitable deaths, in override patents on crucial drugs or vaccines without the consent of patent 426. Audrey R. Chapman, Approaching Intellectual Property as a Human Right: Obligations Related to Article 15 (1) (c), COPYRIGHT BULL., July-Sept. 2001, at 4, 6-7, http://unesdoc.unesco.org/images/0012/ 001255/125505e.pdf#page=4. 427. See PERELMAN, supra note 219 at 2-3 (acquiescing to the creativity promotion rationale for intellectual property protection, but railing at the regime’s degeneration into a system which now “threatens to exhaust creative activity”). 428. Lawrence O. Gostin, When Terrorism Threatens Health: How Far Are Limitations on Human Rights Justified?, 55 FLA. L. REV. 1105, 1168 (2003) 429. LAWRENCE O. GOSTIN, PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT 20 (2000). 430. George G. Djolov, Patents, Price Controls, and Pharmaceuticals: Considerations from Political Economy, 6 J. WORLD INTELL. PROP. 611, 611-31 (2003); James Thuo Gathii, Rights, Patents, Markets and the Global Aids Pandemic, 14 FLA. J. INT’L L. 261, 263-351 (2002); Faizel Ismail, The Doha Declaration on Trips and Public Health and the Negotiations in the WTO on Paragraph 6: Why PhRMA Needs to Join the Consensus!, 6 J. WORLD INTELL. PROP. 393, 393-401 (2003); Nadia Natasha Seeratan, The Negative Impact of Intellectual Property Patents Rights on Developing Countries: An Examination of the Indian Pharmaceutical Industry, 3 SCHOLAR 339, 339 (2001). No. 2] AGAINST THE PLAGUE 343 holders, thus avoiding lengthy ight be destined for failure. Moreover, this Article deems a bioterrorism-specific appropriation clause in global negotiations that patents regimes expedient, in light of the pervasive and dominant propatents forces intent on a stronger intellectual property regime. This regime rationalizes patent protection solely on utilitarianism, and would cast attempts at proportionality of rights as campaigns against innovation. A fortiori, **absent a bioterrorism-specific pharmaceutical patent appropriation clause, authorities could be bogged down by political and economic expediencies** of pharmaceutical patent appropriation, fostering indecision that would **make securing critical medicines in** bioterrorism **pandemics situations** nigh **impossible**. **This** Article **justif[ying]**ies **the case for bioterror**ism‐specific pharmaceutical **patents appropriation** on ethical grounds, overriding public interests, and fundamental rights to health and life.

#### Increased and more accessible compulsory licensing will save lives by making mobilization faster.

#### Mullowney and Harris 13 2

Jared Mullowney (Texas Tech University School of Law) and Neil Harris (Texas Tech University School of Law). “Patent Protectability or Public Health?—An Examination of the Patent Compulsory License and Bioterrorism.” Journal of Biosecurity, Biosafety, and Biodefense Law 4(1). June 2013. JDN. [https://doi.org/10.1515/jbbbl‐2012‐0011](https://doi.org/10.1515/jbbbl%E2%80%902012%E2%80%900011)

This Article posits that another major benefit of the compulsory license is that it can work hand‐in‐hand with other countermeasures currently in place. For instance, with BARDA stockpiling certain medicines and vaccines under the Project BioShield Act, the compulsory license might be able to cover any hypothetical shortcomings. For exam‐ ple, although the government stockpiles large quantities of vaccines and other drugs, bioterrorism attacks are unpredictable. Nobody can predict what kind of attack will occur, how large‐scale the attack will be, where it will be, when it will be, and so on. It is certainly plausible that a currently stockpiled drug or vaccine will not be effective against a modified strand of any number of biological agents. In such an event, the **government might** find itself in a situation similar to that of the anthrax attacks of 2001, and might **need** substantially **large quantities of a** specific **drug in a short amount of time. The compulsory license** is a great tool to **ensure[s] that this could happen.** Or, because around $48 million worth of anthrax vaccines alone are tossed out every year due to expiration,93 it is possible that the **government could need a** significantly **speedy re‐stocking of** the **expired medicines.** Again, **the compulsory license could be a[n]** beneficial and **efficient method to ensure that** the **stockpiles stay** sufficiently **full**, should such a situation present itself.

### 

#### Compulsory licensing will keep access high while simulatonsily not affecting innovation.

#### Avedissian 02

Avedissian, Grace K (J.D. Candidate, May 2003, American University, Washington College of Law; B.A., Political Science, 1997, Rutgers College). "Global Implications of a Potential U.S. Policy Shift Toward Compulsory Licensing of Medical Inventions in a New Era of "Super-Terrorism"." American University International Law Review 18, no. 1 (2002): 237-294.<https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1188&context=auilr> -CAT

C. IMPLICATIONS OF A U.S. COMPULSORY LICENSING LAW ON GLOBAL COUNTERTERRORISM EFFORTS House Bills 1708 and 3235 primarily address the high cost of prescription drugs in the United States. 96 However, if Congress enacts the bills into law, **compulsory licensing** arrangements for prescription drugs in the United States **would** also **increase global access to** therapeutic **drugs to treat victims of bio**logical or chemical **terror**ism. 197 1.[...] This result would defeat the purpose of the compulsory license, which is to increase the availability of essential drugs at a reasonable cost.225 2. Impact on R&D of Pharmaceutical Products that Combat SuperTerrorism Compulsory licensing legislation in the United States **would not hinder the** pharmaceutical **industry's ability to develop new medicines that counter bio**logical or chemical **agents**.226 The 222. H.R. 1708, sec. 2(a)(d); H.R. 3235, sec. 2(a)(b); see also Mokhiber & Weissman, supra note 112 (discussing the compensation criteria of House Bill 3235). 223. See Correa, supra note 145, sec. 3.1 (explaining that remuneration under 28 U.S.C. § 1498 may be based on the amount of loss incurred by the patent owner, not the amount gained by the licensee); see also, e.g., Leesona Corp. v. U.S., 599 F.2d 958, 969 (Ct. Cl. 1979) (holding that in an eminent domain case, the proper measure of damages is "what the owner has lost, not what the taker has gained"). 224. See Todd Zwillich, Bill Would Allow Emergency Bypass of Drug Patents, REUTERS, Nov. 8, 2001 (reporting that supporters of House Bill 3235 claim that under the current system, a potential suit for patent infringement against the government could be very costly to the government), available at http://lists.essential.org/pipermail/ip-helath/200 1 -November/002366.html (last visited Sept. 5, 2002). 225. See id. (indicating that the compensation process of 28 U.S.C. § 1498 frustrates the purpose of compulsory licenses). 226. See Dolmo, supra note 30, at 160-61 (presenting the microeconomic theory that compulsory licensing **[and] will increase drug sales when prices decrease**, and therefore compulsory licensing does not harm sales revenue to the extent that drug industries contend); see also Statement of Congressman Brown, supra note 132 (noting that **drug companies** whose patents are under compulsory licenses **would still reap the financial rewards of marketing** their **products first**, and would be entitled to royalties from generic producers); Médecins Sans Frontières, MSF AM. U. INT'L L. REV. pharmaceutical industry and other opponents of compulsory licensing allege that revenue from drug sales is necessary to maintain investments and recoup R&D costs. 227 The occasional use of **compulsory licensing** by the government, however, **would not** likely **dissuade investors from participating in a highly lucrative industry**.228 Even if private investments in the industry decrease slightly, it would not drastically affect R&D financing.229 **Pharma**ceutical **companies finance less than half of** the **R&D for new products**. 230 **The majority** of R&D funding **comes from** American **tax dollars, private foundations, and** **state and local governments**. 23 I Also, the companies receive generous tax breaks on their portion of the R&D expenditure.232 [...] JII.RECOMMENDATIONS **Compulsory licensing is an essential legal and legislative tool in the fight against global** super-**terror**ism. 240 The U.S. opposition to compulsory licensing permits pharmaceutical companies to profit from bioterrorism, 241 and poses an unacceptable health risk to populations exposed to biological or chemical agents.242 In light of the effects of globalization, the United States and other developed countries cannot afford to ignore global health concerns. 243 A large- scale super-terrorist attack on any country would result in devastating human loss and would create regional or global panic, with rippling effects on the global economy.244 Accordingly, the WTO must add breadth to the compulsory licensing provisions of the TRIPS Agreement. 245 Also, the U.S. government must facilitate the use of compulsory licensing by addressing concerns regarding remuneration to patent holders and the effects of compulsory licensing on research and development. 246 This policy shift would recognize the need to assist the developing world during health emergencies, particularly those arising from the acts of super- terrorism. 2 47 A. THE WTO MUST RECOGNIZE ITS MEMBERS' RIGHT TO OBTAIN COMPULSORY LICENSED PRODUCTS FROM FOREIGN MARKETS In the event of a biological or chemical disaster, developing countries that lack the capacity to manufacture essential drugs must be able to exercise their legitimate right to use compulsory licensing without the fear of economic or legal reprisal from developed countries.2 48 The WTO must acknowledge this right by adopting an interpretation of the TRIPS Agreement that protects public health.2 In the Doha Declaration, the WTO Ministers instructed the TRIPS Council to find a solution to the problem arising from the inadequate manufacturing capacity of some developing nations.25 ° As an integral part of the solution, the Council must allow countries to either (1) grant a compulsory license to a generic drug manufacturer in a foreign market under Article 31 (f) of the TRIPS Agreement,25 ' or (2) import medicines that are the product of a compulsory license issued by the exporting country-as permitted under House Bill 3235.252 A contrary interpretation would simply defeat the fundamental purpose and premise of compulsory licensing under the TRIPS Agreement, that is, increasing global access to life-saving drugs.253 Without a proper implementation mechanism for compulsory licensing, the TRIPS Agreement offers empty benefits to poor countries in dire need of affordable drugs.254 Although the WTO could permit Members to issue compulsory licenses under either Article 30 or Article 31(f) of the TRIPS Agreement, it is more feasible to employ Article 3 1(0.255 Since Article 31 is the technical provision that authorizes compulsory licensing, it contains various terms and conditions that grant some protection to patent holders. 256 For instance, under Article 31, a compulsory license expires when the circumstances requiring it cease to exist, and the licensee must pay the patent holder "adequate remuneration" for the license.

**Bioterror links into utilitarianism because bioterrorism leads to extinction which, as Bostrom 13 stated, is the highest impact under mine and my opponent’s framework.**