### 1

#### Interpretation: The affirmative must specify which intellectual property rights they reduce and to what degree they reduce them.

#### Intellectual Property is a vague, meaningless term – there’s no normal means.

Chopra 18, Samir. “The Idea of Intellectual Property Is Nonsensical and Pernicious: Aeon Essays.” Aeon, Aeon Magazine, 12 Nov. 2018, aeon.co/essays/the-idea-of-intellectual-property-is-nonsensical-and-pernicious. Samir Choprais professor of philosophy at Brooklyn College of the City University of New York. He is the author of several books, including A Legal Theory for Autonomous Artificial Agents (2011), co-authored with Laurence White.//sid

In the United States, media and technology have been shaped by these laws, and indeed many artists and creators owe their livelihoods to such protections. But recently, in response to the new ways in which the digital era facilitates the creation and distribution of scientific and artistic products, the foundations of these protections have been questioned. Those calling for reform, such as the law professors Lawrence Lessig and James Boyle, free software advocates such as Richard Stallman, and law and economics scholars such as William Landes and Judge Richard Posner, ask: is ‘intellectual property’ the same kind of property as ‘tangible property’, and are legal protections for the latter appropriate for the former? And to that query, we can add: is ‘intellectual property’ an appropriate general term for the widely disparate areas of law it encompasses? The answer to all these questions is no. And answering the latter question will help to answer the former. Stallman is a computer hacker extraordinaire and the fieriest exponent of the free-software movement, which holds that computer users and programmers should be free to copy, share and distribute software source code. He has argued that the term ‘intellectual property’ be discarded in favour of the precise and directed use of ‘copyright’, ‘patents’, ‘trademarks’ or ‘trade secrets’ instead – and he’s right. This is not merely semantic quibbling. The language in which a political and cultural debate is conducted very often determines its outcome. Stallman notes that copyright, patent, trademark and trade secret law were motivated by widely differing considerations. Their intended purposes, the objects covered and the permissible constraints all vary. In fact, knowledge of one body of law rarely carries over to another. (A common confusion is to imagine that an object protected by one area of law is actually protected by another: ‘McDonald’s’ is protected by trademark law, not copyright law, as many consumers seem to think.) Such diversity renders most ‘general statements … using “intellectual property”… false,’ Stallman [writes](https://www.gnu.org/philosophy/not-ipr.en.html). Consider the common claim that intellectual property promotes innovation: this is actually true only of patent law. Novels are copyrighted even if they are formulaic, and copyright only incentivises the production of new works as public goods while allowing creators to make a living. These limited rights do not address innovations, which is also true of trademark and trade secret law. Crucially, ‘intellectual property’ is only partially concerned with rewarding creativity (that motivation is found in copyright law alone). Much more than creativity is ‘needed to make a patentable invention’, Stallman explains, while trademark and trade secret law are orthogonal to creativity or its encouragement. Clubbing these diversities under the term ‘intellectual property’ has induced a terrible intellectual error A general term is useful only if it subsumes related concepts in such a way that semantic value is added. If our comprehension is not increased by our chosen generalised term, then we shouldn’t use it. A common claim such as ‘they stole my intellectual property’ is singularly uninformative, since the general term ‘intellectual property’ obscures more than it illuminates. If copyright infringement is alleged, we try to identify the copyrightable concrete expression, the nature of the infringement and so on. If patent infringement is alleged, we check another set of conditions (does the ‘new’ invention replicate the design of the older one?), and so on for trademarks (does the offending symbol substantially and misleadingly resemble the protected trademark?) and trade secrets (did the enterprise attempt to keep supposedly protected information secret?) The use of the general term ‘intellectual property’ tells us precisely nothing. Furthermore, the extreme generality encouraged by ‘intellectual property’ obscuresthe specific areas of contention

created by the varying legal regimes. Those debating copyright law wonder whether the copying of academic papers should be allowed; patent law is irrelevant here. Those debating patent law wonder whether pharmaceutical companies should have to issue compulsory licences for life-saving drugs to poor countries; copyright law is irrelevant here. ‘**Fair use’** is **contested in copyright** litigation; there is **no such notion in patent law**. ‘**Non-obviousness’** is **contested in patent law**; there is **no such** notion **in copyright law**. **Clubbing these diversities under the term ‘intellectual property’ has induced a terrible intellectual error**: **facile and misleading overgeneralisation**. Indiscriminate use of ‘intellectual property’ has unsurprisingly bred absurdity. Anything associated with a ‘creator’ – be it artistic or scientific – is often grouped under ‘intellectual property’, which doesn’t make much sense. And the widespread embrace of ‘intellectual property’ has led to historical amnesia. According to Stallman, many Americans have held that ‘the framers of the US Constitution had a principled, procompetitive attitude to intellectual property’. But Article 1, Section 8, Clause 8 of the US Constitution authorises only copyright and patent law. It does not mention trademark law or trade secret law. Why then does ‘intellectual property’ remain in use? Because it has polemical and rhetorical value. Its deployment, especially by a putative owner, is a powerful inducement to change one’s position in a policy argument. It is one thing to accuse someone of copyright infringement, and another to accuse of them of the theft of property. The former sounds like a legally resolvable technicality; the latter sounds like an unambiguously sinful act.

#### Reduce requires quantification.

Passarello 13 – J.D. Candidate, Duke University School of Law, 2013. (Nicholas, NOTE: THE ITEM VETO AND THE THREAT OF APPROPRIATIONS BUNDLING IN ALASKA, 30 Alaska L. Rev. 125, Lexis)//BB

With respect to the item veto power, the question in the case was whether or not the governor could strike descriptive language without affecting the rest of the appropriation. The state constitution clearly guarantees the power to "strike or reduce items in appropriations bills." 61 To determine what exactly it is that the governor may strike, the Alaska Supreme Court here addressed the meaning of "item" for the first time. 62 The court concluded that "item" means "a sum of money dedicated to a particular purpose." 63 This holding rested on five lines of analysis, all of which indicate that the amount of an appropriation is the object affected by the item veto power. First, the court noted that the word "item" implies "a notion of unity between two essential elements of an appropriation: the amount and the purpose." 64 Altering the amount of an item is expressly allowed in the Constitution via the reduction power, 65 but to alter the purpose would destroy that unity by fundamentally changing the item into something else not enacted by the legislature. 66 Second, the use of the word "reduce" implies a quantitative effect**,** and the drafters likely intended the companion word "strike" to [\*136] have the same type of effect as well. 67 Third, "**reduce**" and "strike" **describe** the same **action applied to different extents:** **when an amount is "reduced**" **to the point where it is lessened to nothing**, **it is effectively "struck."** 68 **Thus, the object** of the "strike" **must be associated with an amount** of money **to the extent** **that it can be lessened**. 69 Fourth, the historical purpose of the item veto was to curtail the amount of state spending by mitigating the effects of log-rolling, a purpose most closely directed at the amount of the appropriation. 70 Fifth, "public policy disfavors a reading of "item' that would permit the executive branch to substantively alter the legislature's appropriation bills, resulting in appropriations passed without the protection our constitution contemplates." 71 For these reasons, the court concluded that the power to "strike" only refers to completely diminishing the amount of an appropriations item, not the descriptive language accompanying it.

#### Violation: they don’t – even if they outline a definition for an IP, reduction is more important

#### Standards

#### 1] Shiftiness- They can redefine the 1AC’s reductions in the 1AR which allows them to recontextualize their enforcement mechanism to wriggle out of DA’s since all DA links are predicated on type of enforcement i.e. sanctions bad das, domestic politics das off of backlash, information research sharing da if they put monetary punishments, or trade das.

#### 2] Real World - Policy makers will always specify how the mandates of the plan should be endorsed. It also means zero solvency, absent spec, states can circumvent the Aff’s policy since there is no delineated way to enforce the affirmative which means there’s no way to actualize any of their solvency arguments.

#### CX doesn’t check – my preround prep was skewed which

#### is when people construct the 1NC. Pre-round doesn’t solve – you should be held

#### to the aff you chose or it incentivizes shiftiness. Also outweighs on nomring, since it would just be easier if its in the aff

#### ESpec isn’t regressive or arbitrary- it’s an active part of the WTO is central to any advocacy about international IP law since the only uniqueness of a reduction of IP protections is how effective its enforcement is.

#### 1] Fairness and education are voters – its how judges adjudicate rounds and why schools fund debate, also comes before the aff becuase if the round is unfair I can’t engage

#### 2] DTD – Dropping detere future abuse by punishing heavily, which helps set better norms. Also, there is no argument to drop.

#### 3] Competing interps – Reasonability invites arbitrary judge intervention and a race to the bottom of questionable argumentation – it also collapses since reasonability operates on an offense-defense paradigm

#### 4] No RVIs – A - Forcing me to go all in on the shell kills substance education which outweighs on timeframe, B - discourages checking real abuse since I have to go 1 off theory and you can dump on it which outweighs on norm-setting C - Encourages theory baiting – outweighs because if the shell is frivolous, they can beat it quickly D – its illogical for you to win for proving you were fair – outweighs since logic is a litmus test for other arguments

### 2

#### Counterplan text: The member nations of the World Trade Organization ought to reduce intellectual property protections for medicines except for cannabis, medical marijuana, and medicines containing chemicals from cannabis by implementing a one-and-done approach for patent protection.

#### It competes – weed is a medicine and is used in medicine

WebMD 20 [WebMD Medical Reference, WebMD is an American corporation known primarily as an online publisher of news and information pertaining to human health and well-being. The site includes information pertaining to drugs. It is one of the top healthcare websites by unique visitors. It was founded in 1998 by internet entrepreneur Jeff Arnold., August 20, 2020, "Medical Marijuana FAQ,", WebMD LLC, https://www.webmd.com/a-to-z-guides/medical-marijuana-faq, 8-21-2021] //WHS MR

What is medical marijuana? Medical marijuana uses the marijuana plant or chemicals in it to treat diseases or conditions. It's basically the same product as recreational marijuana, but it's taken for medical purposes. The marijuana plant contains more than 100 different chemicals called cannabinoids. Each one has a different effect on the body. Delta-9-tetrahydrocannabinol (THC) and cannabidiol (CBD) are the main chemicals used in medicine. THC also produces the "high" people feel when they smoke marijuana or eat foods containing it. What is medical marijuana used for? Researchers are studying whether medical marijuana can help treat a number of conditions including: Alzheimer's disease Appetite loss Cancer Crohn's disease Diseases effecting the immune system like HIV/AIDS or Multiple Sclerosis (MS) Eating disorders such as anorexia Epilepsy Glaucoma Mental health conditions like schizophrenia and posttraumatic stress disorder (PTSD) Multiple sclerosis Muscle spasms Nausea Pain Seizures Wasting syndrome (cachexia) But it’s not yet proven to help many of these conditions, with a few exceptions, Bonn-Miller says. "The greatest amount of evidence for the therapeutic effects of cannabis relate to its ability to reduce chronic pain, nausea and vomiting due to chemotherapy, and spasticity [tight or stiff muscles] from MS," Bonn-Miller says. How does it help? Cannabinoids -- the active chemicals in medical marijuana -- are similar to chemicals the body makes that are involved in appetite, memory, movement, and pain. Limited research suggests cannabinoids might: Reduce anxiety Reduce inflammation and relieve pain Control nausea and vomiting caused by cancer chemotherapy Kill cancer cells and slow tumor growth Relax tight muscles in people with MS Stimulate appetite and improve weight gain in people with cancer and AIDS Can medical marijuana help with seizure disorders? Medical marijuana received a lot of attention a few years ago when parents said that a special form of the drug helped control seizures in their children. The FDA recently approved Epidiolex, which is made from CBD, as a therapy for people with very severe or hard-to-treat seizures. In studies, some people had a dramatic drop in seizures after taking this drug. Has the FDA approved medical marijuana? The cannabidiol Epidiolex was approved in 2018 for treating seizures associated with two rare and severe forms of epilepsy, Lennox-Gastaut syndrome and Dravet syndrome. In addition, the FDA has approved two man-made cannabinoid medicines -- dronabinol (Marinol, Syndros) and nabilone (Cesamet) -- to treat nausea and vomiting from chemotherapy. The cannabidiol Epidiolex was approved in 2018 for treating seizures associated with two rare and severe forms of epilepsy, Lennox-Gastaut syndrome and Dravet syndrome. How do you take it? To take medical marijuana, you can: Smoke it Inhale it through a device called a vaporizer that turns it into a mist Eat it -- for example, in a brownie or lollipop Apply it to your skin in a lotion, spray, oil, or cream Place a few drops of a liquid under your tongue How you take it is up to you. Each method works differently in your body. "If you smoke or vaporize cannabis, you feel the effects very quickly," Bonn-Miller says. "If you eat it, it takes significantly longer. It can take 1 to 2 hours to experience the effects from edible products."

### 3

#### The weed industry is growing, but needs investors to stay afloat – patents draw in investors and help companies expand

Roberts 20 [Chris Roberts, An award-winning investigative reporter and covered the legalization movement and the cannabis industry with a political economy lens for more than a decade. He launched northern California’s first cannabis-centric print vertical and founded San Francisco’s first dedicated drug-policy column. His work’s been featured in VICE, The Daily Beast, The Guardian, Deadspin, Observer, Curbed, Leafly News, High Times, SF Weekly, and many other places. He hold a master’s degree in politics from Columbia Journalism School, 5-28-2020, "Why Patent Cannabis? For Markets, Mostly.," Forbes, https://www.forbes.com/sites/chrisroberts/2020/05/28/why-patent-cannabis-for-markets-mostly/, 8-21-2021] //WHS MR

On May 20, Charlotte’s Web, the Colorado-based CBD giant and arguably one of the biggest names in legal cannabis, announced that the company was awarded its second federal patent on a cannabis plant. Unlike the company’s 2018 plant patent on a Farm Bill-compliant high-CBD hemp cultivar—which was the first hemp strain to receive federal intellectual property protection—US Patent No. 10,653,085 is a utility patent. This means, after satisfying a more rigorous process, including dropping off thousands of seeds at an official United States depository, Charlotte’s Web now claims as its intellectual property both the cultivar of hemp the company calls CW1AS1 as well as “methods” of plant production and cannabinoid extraction. Okay! But so what? Why patent a hemp strain—why patent two? What does it all mean? Does Charlotte’s Web now have legal claim to the entire CBD game?To the last question, no. And as for what this means, for normal people and cannabis consumers, very little. For patent attorneys or competitors of Charlotte’s Web in the CBD industry, it portends a little more, but just a little. At least for now, cannabis patents like this one aren’t really intended to defend intellectual property in court—which is where a patent has its most practical value. No, this patent is probably meant for the market. Patents like this exist mostly for companies to satisfy and woo investors, for whom a company’s ability to say “Look! I have a patent” might be the difference between signing a check, or not. And like all publicly traded cannabis companies, Charlotte’s Web has a lot of spooked and angry investors who need pleasing. Patents “generate interest in the company, and are something investors would look at,” said Jonathan Hyman, an attorney and partner at the Los Angeles office of Knobbe Martens. Whether Charlotte’s Web would enforce the patent, and how, “remains to be seen,” he added. Company officials were not available to discuss the matter. In a statement provided by Sylvia Tawse, the company’s director of communications, CEO Deanie Elsner said Charlotte’ Web “will continue to pursue patent protection for unique and novel hemp genetics developed by our horticulture division.” Whether that meant there are any pretenders the company plans to sue, she did not say. Though cannabis-related patent applications have been a thing since well before legalization and have tripled since 2015, as IP Watchdog noted, the mere phrase “cannabis patent” can still be triggering in cannabis circles. Patent talk can often lead to galaxy-brain thinking like the “Monsanto is supporting legalization in order to steal cannabis” or the “Philip Morris is buying up land in Humboldt County” conspiracy theories. In the case of Charlotte’s Web, the company’s already locked up what’s probably its most valuable asset: its name. Charlotte’s Web is named for Charlotte Figi, the sufferer of childhood epilepsy who enjoyed relief from her symptoms after taking an extract of high-CBD cannabis grown by the Stanley brothers (and who died earlier this month after contracting COVID-19). The world came to know Charlotte Figi and the Stanley brothers, seven photogenic Coloradans whose first names all begin with J, after they were prominently featured in a 2014 CNN special hosted by Sanjay Gupta. A very famous children’s book and a very famous and recognizable name, the company was sure lock down the name “Charlotte’s Web” with a trademark—one the company is currently defending in federal court, after a rival company dared market CBD products called Charlotte’s Web. That’s what patents are for in terms of the law. But markets are another matter—and it’s worth observing that the company went public after securing its first patent. Like almost all publicly traded companies in the cannabis sector, Charlotte’s Web is stuck in high-loss doldrums after hitting early peaks. For the past week, shares in Charlotte’s Web have been trading in the $7 to $9 range in the Toronto Stock Exchange. That’s a big gain from the $4.24 seen at the company’s mid-March nadir, but still far below last summer’s high-water mark of $28.21, set in August. Despite being sold in more than 11,000 stores, the company still lost $1.7 million in 2020—a hit smaller than other companies in the cannabis sector, but still in the red. Patenting hemp genetics and the processes to achieve them won’t be enough to rescue the rest of the company’s lost value. But if Charlotte’s Web wants to be a global CBD brand, with product in supermarkets and convenience stores all over the globe—and why wouldn’t it?—this means something. "Having this patent, that they can wave around and say, 'Hey, we've got coverage on it, and it's the best variety [of CBD rich hemp] that you're going to get,’ ” said Andrew Merickel, who holds a Phd in neuroscience and is also an attorney and partner at the San Francisco office of Knobbe Martens. “That’s pretty valuable.” How valuable? That’s all up to the logic of the market.

#### Cannabis is key to tech innovations in agriculture – only long-term solution for sustainability and security

Yamazaki 17 Kevin Yamazaki (founder and CEO of [Sidebench](http://sidebench.com/), a leading digital product and venture studio that creates custom software and apps), 3-27-2017, "High Tech: How Marijuana Legalization Breeds Innovation," Observer, https://observer.com/2017/03/high-tech-how-marijuana-legalization-breeds-innovation/, SJBE

With the competition blazing and increased legalization on the horizon, we can expect to see the weed market become a hotbed for tech innovations. Forecasts indicate that revenue in the U.S. from medical marijuana alone will reach at least [$10.8 billion by 2018](http://fortune.com/2016/02/01/marijuana-sales-legal/). When states expand to allow recreational use, this number will surely increase. As investors become more comfortable deploying capital around cannabis, tech will revolutionize the marijuana ecosystem for producers, distributors, and consumers alike. The future of marijuana innovation Innovation has begun to outpace legalization as tech organizations make groundbreaking strides in researching and developing applications for marijuana. For example, [Kalytera](https://kalytera.co/) is exploring how cannabidiol — a non-psychoactive cannabinoid with a number of potential medical applications — can be used to target diseases such as obesity and osteoporosis. The findings of such research could transform how people cope with chronic illness and pain. Companies are also experimenting with improvements in [weed-growing processes](http://www.ibtimes.com/legal-marijuana-cultivation-driving-technology-revolution-industrial-agriculture-1925167). Cannabis is a finicky crop, so the ability to fine-tune growing processes could generate products far superior to today’s. Several organizations are devising smart, energy-efficient systems that automatically adjust growing environments according to changes in moisture, temperature, and sunlight. Meanwhile, data-capture technologies enable growers to identify optimal conditions for their plants, leading to larger and better-quality yields. The primary speed bump for the industry at this point is that marijuana is still classified as a Schedule I drug and is illegal at the federal level. Even if this factor doesn’t inhibit marijuana-centric technology innovation directly, it certainly has a strong indirect effect, as many potential financiers (and entrepreneurs) are scared away by either fear of prosecution or skepticism about the industry’s stability. That said, as more states allow for medical marijuana or legalize the drug entirely, the potential market size for marijuana-centric products expands as well. Perhaps more importantly, with some form of state legalization becoming the norm rather than the exception, there is a degree of safety in numbers. Assuming we see the trend of legalization for medical and recreational uses continue, production will inevitably become an even bigger business. Technology will play an increasing role in ensuring quality, consistency, and efficiency on the production side. We’re already seeing startups like [Cannafuse](http://cannafuse.com/) and [Teewinoit Life Sciences](https://tlscorp.com/) focusing on providing a tech-enabled scientific approach to the mass scientific production and distribution of cannabis. Advances in the irrigation systems, efficiency lamps, and data tracking processes used to grow marijuana may have far-reaching effects beyond the cannabis industry. Industrial farmers could adopt these techniques to increase their outputs and reduce energy expenses, while building managers can use them to lower energy loads from their properties. On the consumer side, the medical marijuana industry, in particular, will likely see an explosion of on-demand delivery services. Consumers are accustomed to using their smartphones to book cars, buy groceries, and mail packages. Why wouldn’t they receive their medical marijuana that way, too? Expect to see personalized services as well — think apps that recommend strains of marijuana on the basis of your preferences. Apps such as [MassRoots](https://massroots.com/) bring the social media aspect to what is, for many people, a social product by connecting weed enthusiasts to one another through news updates and other types of content. Even Microsoft is throwing its hat into the ring with [marijuana tracking software](http://www.businessinsider.com/microsoft-marijuana-tracking-software-2016-11) that ensures growers comply with their tax obligations and prevents legally grown pot from ending up on the black market. As the cannabis industry expands, the opportunities for growth are diverse and extensive. Tech-enabled companies will inevitably spur that growth, driving breakthroughs in medicine, crop development, and customer experiences. The momentum created by legalization will transform a once-taboo drug into a mainstream commodity, and the tech world stands to benefit enormously.

#### Extinction – food insecurity causes conflict and goes nuclear

FDI 12 FDI Team, 25 May 2012, “Food and Water Insecurity: International Conflict Triggers & Potential Conflict Points,” Future Directions International, <https://www.futuredirections.org.au/publication/international-conflict-triggers-and-potential-conflict-points-resulting-from-food-and-water-insecurity/>, SJBE

There is little dispute that conflict can lead to food and water crises. This paper will consider parts of the world, however, where food and water insecurity can be the cause of conflict and, at worst, result in war. While dealing predominately with food and water issues, the paper also recognises the nexus that exists between food and water and energy security. There is a growing appreciation that the conflicts in the next century will most likely be fought over a lack of resources. Yet, in a sense, this is not new. Researchers point to the French and Russian revolutions as conflicts induced by a lack of food. More recently, Germany’s World War Two efforts are said to have been inspired, at least in part, by its perceived need to gain access to more food. Yet the general sense among those that attended FDI’s recent workshops, was that the scale of the problem in the future could be significantly greater as a result of population pressures, changing weather, urbanisation, migration, loss of arable land and other farm inputs, and increased affluence in the developing world. In his book, Small Farmers Secure Food, Lindsay Falvey, a participant in FDI’s March 2012 workshop on the issue of food and conflict, clearly expresses the problem and why countries across the globe are starting to take note. . He writes (p.36), “…if people are hungry, especially in cities, the state is not stable – riots, violence, breakdown of law and order and migration result.” “Hunger feeds anarchy.” This view is also shared by Julian Cribb, who in his book, The Coming Famine, writes that if “large regions of the world run short of food, land or water in the decades that lie ahead, then wholesale, bloody wars are liable to follow.” He continues: “An increasingly credible scenario for World War 3 is not so much a confrontation of super powers and their allies, as a festering, self-perpetuating chain of resource conflicts.” He also says: “The wars of the 21st Century are less likely to be global conflicts with sharply defined sides and huge armies, than a scrappy mass of failed states, rebellions, civil strife, insurgencies, terrorism and genocides, sparked by bloody competition over dwindling resources.” As another workshop participant put it, people do not go to war to kill; they go to war over resources, either to protect or to gain the resources for themselves. Another observed that hunger results in passivity not conflict. Conflict is over resources, not because people are going hungry. A study by the International Peace Research Institute indicates that where food security is an issue, it is more likely to result in some form of conflict. Darfur, Rwanda, Eritrea and the Balkans experienced such wars. Governments, especially in developed countries, are increasingly aware of this phenomenon. The UK Ministry of Defence, the CIA, the US Center for Strategic and International Studies and the Oslo Peace Research Institute, all identify famine as a potential trigger for conflicts and possibly even nuclear war.

### CASE (3:00)(3:30 ideally)

### OV

#### Skip for now – Aff fails – circumvention, it’s the squo, and claims of a “time-limit” are false.

Sauer 21 [Hans; Deputy General Counsel and Vice President for Intellectual Property for the Biotechnology Innovation Organization (BIO), a major trade association representing more than 1,000 biotechnology companies from the medical, agricultural, environmental, and industrial sectors. At BIO, he advises the organization’s board of directors, amicus committee, and various staff committees on patent and other intellectual-property-related matters. Before taking his current position at BIO in 2006, he was chief patent counsel for MGI Pharma Inc. in Bloomington, MN, and senior patent counsel for Guilford Pharmaceuticals Inc. in Baltimore, MD. Mr. Sauer holds a M.S. degree in biology from the University of Ulm in his native Germany, a Ph.D. in neuroscience from the University of Lund, Sweden, and a J.D. degree from Georgetown University Law Center, where he serves as adjunct professor; “Waiving IP Rights During Times of COVID: A ‘False Good Idea’,” IP Watch Dog; 4/19/21; <https://www.ipwatchdog.com/2021/04/19/waiving-ip-rights-during-times-of-covid-a-false-good-idea/id=132399/>] Justin

It should be clear from the foregoing that there are many practical problems with this proposal:

Even if it were to pass out of the WTO, the waiver would still have to be implemented under the national laws of the WTO member countries. No explanation has been provided as to how up to 164 countries would be expected to quickly amend multiple statutes in their legal codes, or which form these amendments would take. Curiously, close to half of the waiver-supporting countries are already exempt from TRIPS anyway, and are effectively demanding to be free of rules that don’t apply to them. The most likely result of the proposed waiver would be a chaotic global patchwork of national laws that would linger at various stages of national implementation for years after the end of the pandemic.

Due to the breadth and vagueness of the proposal, it would be impossible for IP right holders to understand which products or services would lose IP protection in which country, or for how long – and little faith can be had in assurances that a waiver would be targeted and time-limited. Especially with regard to the critical category of trade secret or proprietary information, manufacturing know-how, clinical regulatory data packages and proprietary cell lines and other biological materials that are proposed to be shared, the waiver would in **no way be time-limited**. Proprietary information and materials cannot be un-disclosed or un-shared once they have been made public; they would simply lose their protection forever.

One wonders whether Congressional proponents of the TRIPS Waiver have given any thought as to how it could be implemented in U.S. law. There is no mechanism in U.S. law for simply waiving vested IP rights. Amendments to the federal patent, copyright, food and drug, and other federal statutes would need to be attempted; trade secret protections under 50 state laws overridden; and the waiver’s interference with the IP and confidentiality provisions of myriad existing private contracts would need to be sorted out. As a result, the Federal Government would have to assume unforeseeable and potentially colossal financial liability. And because the waiver is intended for the benefit of foreign developing nations, the legality of any attempt at U.S. domestic implementation would be doubtful, as Congress has no authority to expropriate U.S. property to benefit foreign countries. It is of course possible that Congressional proponents of the waiver are merely engaging in virtue-signaling, without any intention of ever implementing anything. But nonetheless, the waiver is certain to invite similar legislative train wrecks in other countries that aspire to the rule of law, and it is perplexing how little forethought seems to have gone into the proposal.

### A2 COVID

#### Overreliance on vaccines hurts overall pandemic response.

**Lovelace 21:** Lovelace, Berkeley [health-care reporter for CNBC, mainly covering pharmaceuticals and the Food and Drug Administration] "WHO says Covid vaccines aren’t ‘silver bullets’ and relying entirely on them has hurt nations," *CNBC,* January 13, 2021

The World Health Organization said Friday that [coronavirus](https://www.cnbc.com/2021/01/15/coronavirus-live-updates.html) vaccines aren’t “silver bullets” and **relyi**ng solely on them to fight the pandemic has hurt nations. Some countries in Europe, Africa and the Americas are seeing spikes in Covid-19 cases “because we are collectively not succeeding at breaking the chains of transmission at the community level or within households,” WHO Director-General Tedros Adhanom Ghebreyesus said during a news conference from the agency’s Geneva headquarters. With [global deaths reaching 2 million](https://www.cnbc.com/2021/01/15/coronavirus-live-updates.html) and new variants of the virus appearing in multiple countries, world leaders need to do all they can to curb infections “through tried and tested public health measures,” Tedros said. “There is only one way out of this storm and that is to share the tools we have and commit to using them together.” The [coronavirus](https://www.cnbc.com/coronavirus/) has infected more than 93.3 million people worldwide and killed at least 2 million since the pandemic began about a year ago, according to data compiled by Johns Hopkins University. The virus continues to accelerate in some regions, with nations reporting that their supply of oxygen for Covid-19 patients is running “dangerously low,” the WHO said. Some countries, including the U.S., have focused heavily on the use of vaccines to combat their outbreaks. While vaccines are a useful tool, they will not end the pandemic alone, Mike Ryan, executive director of the WHO’s health emergencies program, said at the news conference. “We warned in 2020 that if we were to rely entirely on vaccines as the only solution, we could lose the very controlled measures that we had at our disposal at the time. And I think to some extent that has come true,” Ryan said, adding the colder seasons and the recent holidays also may have also played a role in the spread of the virus. “A big portion of the transmission has occurred because we are reducing our physical distancing. ... We are not breaking the chains of transmission. The virus is exploiting our lack of tactical commitment,” he added. “We are not doing as well as we could.” Dr. Bruce Aylward, a senior advisor to the WHO’s director-general, echoed Ryan’s comments, saying, vaccines are not “silver bullets” “Things can get worse, numbers can go up,” he said. We have vaccines, yes. But we have limited supplies of vaccines that will be rolled out slowly across the world. And vaccines are not perfect. They don’t protect everyone against every situation.” In the U.S., the pace of vaccinations is going slower than officials had hoped. As of Friday at 6 a.m. ET, more than 31.1 million doses of vaccine had been distributed across the U.S., but just over 12.2 million shots have been administered, according to data compiled by the Centers for Disease Control and Prevention. Meanwhile, cases are rapidly growing, with the U.S. recording at least 238,800 new Covid-19 cases and at least 3,310 virus-related deaths each day, based on a seven-day average calculated by CNBC using Johns Hopkins data. On Thursday, President-elect Joe Biden [unveiled a sweeping plan](https://www.cnbc.com/2021/01/14/biden-unveils-sweeping-plan-to-combat-the-covid-pandemic-in-the-us.html) to combat the coronavirus pandemic in the United States. While his administration will invest billions in a vaccine campaign, it will also scale up testing, invest in new treatments and work to identify new strains, among other measures.

### A2 Innovation

#### IP protections are key to innovation – recouping startup costs and high risk of failure

Grabowski et al 15 [(Henry, Professor of Economics, member of the faculty for the Health Sector Management Program, and Director of the Program in Pharmaceuticals and Health Economics at Duke University) “The Roles of Patents and Research And Development Incentives In Biopharmaceutical Innovation,” Health Affairs, 2/2015] JL

The essential rationale for patent protection for biopharmaceuticals is that long-term benefits in the form of continued future innovation by pioneer or brand-name drug manufacturers outweigh the relatively short-term restrictions on imitative cost competition associated with market exclusivity. Regardless, the entry of other branded agents remains an important source of therapeutic competition during the patent term.

Several economic characteristics make patents and intellectual property protection particularly important to innovation incentives for the biopharmaceutical industry. **5** The R&D process often takes more than a decade to complete, and according to a recent analysis by Joseph DiMasi and colleagues, per new drug approval (including failed attempts), it involves more than a billion dollars in out-of-pocket costs. **6** Only approximately one in eight drug candidates survive clinical testing. **6**

As a result of the high risks of failure and the high costs, research and development must be funded by the few successful, on-market products (the top quintile of marketed products provide the dominant share of R&D returns). **7**,**8** Once a new drug’s patent term and any regulatory exclusivity provisions have expired, competing manufacturers are allowed to sell generic equivalents that require the investment of only several million dollars and that have a high likelihood of commercial success. Absent intellectual property protections that allow marketing exclusivity, innovative firms would be unlikely to make the costly and risky investments needed to bring a new drug to market.

Patents confer the right to exclude competitors for a limited time within a given scope, as defined by patent claims. However, they do not guarantee demand, nor do they prevent competition from nonidentical drugs that treat the same diseases and fall outside the protection of the patents.

New products may enter the same therapeutic class with common mechanisms of action but different molecular structures (for example, different statins) or with differing mechanisms of action (such as calcium channel blockers and angiotensin receptor blockers). 9 Joseph DiMasi and Laura Faden have found that the time between a first-in-class new drug and subsequent new drugs in the same therapeutic class has been dramatically reduced, from a median of 10.2 years in the 1970s to 2.5 years in the early 2000s. 10 Drugs in the same class compete through quality and price for preferred placement on drug formularies and physicians’ choices for patient treatment.

Patents play an essential role in the economic “ecosystem” of discovery and investment that has developed since the 1980s. Hundreds of start-up firms, often backed by venture capital, have been launched, and a robust innovation market has emerged. **11** The value of these development-stage firms is largely determined by their proprietary technologies and the candidate drugs they have in development. As a result, the strength of intellectual property protection plays a key role in funding and partnership opportunities for such firms.

#### Biopharmaceutical innovation is key to prevent future pandemics and bioterror.

Marjanovic and Feijao 20 [(Sonja Marjanovic, Ph.D., Judge Business School, University of Cambridge. Carolina Feijao, Ph.D. in biochemistry, University of Cambridge; M.Sc. in quantitative biology, Imperial College London; B.Sc. in biology, University of Lisbon.) "How to Best Enable Pharma Innovation Beyond the COVID-19 Crisis," RAND Corporation, 05-2020, https://www.rand.org/pubs/perspectives/PEA407-1.html] TDI

As key actors in the healthcare innovation landscape, pharmaceutical and life sciences companies have been called on to develop medicines, vaccines and diagnostics for pressing public health challenges. The COVID-19 crisis is one such challenge, but there are many others. For example, MERS, SARS, Ebola, Zika and avian and swine flu are also infectious diseases that represent public health threats. Infectious agents such as anthrax, smallpox and tularemia could present threats in a bioterrorism context.1 The general threat to public health that is posed by antimicrobial resistance is also well-recognised as an area in need of pharmaceutical innovation. Innovating in response to these challenges does not always align well with pharmaceutical industry commercial models, shareholder expectations and competition within the industry. However, the expertise, networks and infrastructure that industry has within its reach, as well as public expectations and the moral imperative, make pharmaceutical companies and the wider life sciences sector an indispensable partner in the search for solutions that save lives. This perspective argues for the need to establish more sustainable and scalable ways of incentivising pharmaceutical innovation in response to infectious disease threats to public health. It considers both past and current examples of efforts to mobilise pharmaceutical innovation in high commercial risk areas, including in the context of current efforts to respond to the COVID-19 pandemic. In global pandemic crises like COVID-19, the urgency and scale of the crisis – as well as the spotlight placed on pharmaceutical companies – mean that contributing to the search for effective medicines, vaccines or diagnostics is essential for socially responsible companies in the sector. 2 It is therefore unsurprising that we are seeing industry-wide efforts unfold at unprecedented scale and pace. Whereas there is always scope for more activity, industry is currently contributing in a variety of ways. Examples include pharmaceutical companies donating existing compounds to assess their utility in the fight against COVID19; screening existing compound libraries in-house or with partners to see if they can be repurposed; accelerating trials for potentially effective medicine or vaccine candidates; and in some cases rapidly accelerating in-house research and development to discover new treatments or vaccine agents and develop diagnostics tests.3,4 Pharmaceutical companies are collaborating with each other in some of these efforts and participating in global R&D partnerships (such as the Innovative Medicines Initiative effort to accelerate the development of potential therapies for COVID-19) and supporting national efforts to expand diagnosis and testing capacity and ensure affordable and ready access to potential solutions.3,5,6 The primary purpose of such innovation is to benefit patients and wider population health. Although there are also reputational benefits from involvement that can be realised across the industry, there are likely to be relatively few companies that are ‘commercial’ winners. Those who might gain substantial revenues will be under pressure not to be seen as profiting from the pandemic. In the United Kingdom for example, GSK has stated that it does not expect to profit from its COVID-19 related activities and that any gains will be invested in supporting research and long-term pandemic preparedness, as well as in developing products that would be affordable in the world’s poorest countries.7 Similarly, in the United States AbbVie has waived intellectual property rights for an existing combination product that is being tested for therapeutic potential against COVID-19, which would support affordability and allow for a supply of generics.8,9 Johnson & Johnson has stated that its potential vaccine – which is expected to begin trials – will be available on a not-for-profit basis during the pandemic.10 Pharma is mobilising substantial efforts to rise to the COVID-19 challenge at hand. However, we need to consider how pharmaceutical innovation for responding to emerging infectious diseases can best be enabled beyond the current crisis. Many public health threats (including those associated with other infectious diseases, bioterrorism agents and antimicrobial resistance) are urgently in need of pharmaceutical innovation, even if their impacts are not as visible to society as COVID-19 is in the immediate term. The pharmaceutical industry has responded to previous public health emergencies associated with infectious disease in recent times – for example those associated with Ebola and Zika outbreaks.11 However, it has done so to a lesser scale than for COVID-19 and with contributions from fewer companies. Similarly, levels of activity in response to the threat of antimicrobial resistance are still low.12 There are important policy questions as to whether – and how – industry could engage with such public health threats to an even greater extent under improved innovation conditions.