## 1

#### Interpetation: Precluding a future increase is not a reduction

Melinda **Harmon 12**, Judge, United States District Court for the Southern District of Texas, Houston Division, 3/6/12, Zieche v. Burlington Res., Inc., 2012 U.S. Dist. LEXIS 30134,

Zieche contends that the Court erred when it concluded that "there was no reduction in Zieche's salary or bonus percentage" that would constitute "good reason" for his resignation. Doc. 70 at 8, 9. The Court relied on the fact that Zieche received "his full 2006 performance bonus" after he began working at ConocoPhillips and that the bonus percentage increased from 30% in 2005 to 40% in 2006 as proof that Zieche did not suffer a reduction in salary.

Zieche contends that an increase in his bonus is irrelevant to a determination of whether his salary was reduced because a "bonus is not part of the salary," but is instead [\*12] "something in addition to what is expected or strictly due." Doc. 72 at 4. Additionally, Zieche alleges that "the [C]ourt's analysis ignores the specific provisions of the retention agreement," which defines "good reason" to include "any reduction from your annual rate of base salary." Id.

Initially, although Zieche alleges that ConocoPhillips reduced his salary, he introduced no summary judgment **ev**idence to support this contention. In his Response to ConocoPhillip's Motion for Summary Judgment, Zeiche repeatedly asserts that, in his new position at ConocoPhillips, he would "**not be eligible for annual merit salary *increases***" as he had previously received at Burlington. Doc. 54 at 4 (emph. added). The summary judgment evidence before the Court included Zieche's deposition, in which he admitted that his salary "remained the same . . . up to the time [he] resigned from ConocoPhillips." Doc. 48-1 at 50 (emph. added). Nevertheless, Zieche argues that the Court unnaturally should read the word "reduce" in the retention agreement to mean "**not increase**," rather than interpreting the word according to its plain meaning. **The Court does not agree with this reasoning**, and Zieche has introduced [\*13] no evidence to convince the Court otherwise.

#### Violation: they preclude patent extensions

#### 1] Limits and ground—they allow the aff to monopolize prep by precluding a future increase anytime from now allowing affs to no link from uniqueness scenarios, delay CPs, etc which kills engageability—leads to unpredictable affs that skew the debate away from whether IP is good/bad to when a reduction should occur.

#### 2] TVA – defend the advantage to a whole rez timeframe. We don’t prevent new FWs, mechanisms, or advantages. PICs don’t solve – our model allows you to specify countries and medicines.

**Fairness is a voter – debate is a competitive activity that requires fairness for objective evaluation. Outweighs because it’s the only intrinsic part of debate – all other rules rely on some conception of fairness to be justified.**

**Use competing interps – [a] reasonability is arbitrary and encourages judge intervention [b] creates a race to create the best possible norms for debate**

**Drop the debater – a] deter future abuse and b] set better norms for debate.**

**No rvis— [a] it’s your burden to be fair and T [b] RVIs incentivize baiting theory and prepping it out which leads to maximally abusive practices**

**T before 1AR theory – the aff advocacy affects a larger portion of the debate since it determines every speech after it and pre round neg prep so neg abuse is justified by the aff**

## 2

#### Innovation is doing well right now, we were able to create solutions for covid, but innovation is reliant on the IP system.

Bryan Mercurio 4 -11-2021 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3789820> *Virginia Journal of International Law Online (Forthcoming 2021)* Chinese University of Hong Kong - Faculty of Law

The IP system is designed to encourage and reward creativity and innovation while benefiting society as a whole. The idea is that IPRs stimulate innovation by “enabling innovators to capture enough of the benefits of their own innovative activity to justify taking considerable risks.” 23 Therefore, while in the short term waiving IPRs may arguably accelerate the distribution of goods and services – i.e. access to COVID-19 vaccines – in the long term undermining IPRs would eliminate the incentives that spark innovation, thus hindering the discovery and development of knowledge for new products or technologies that the world needs.24 An example that illustrates the significance of IP protection is the technology of synthetic mRNA, a genetic technology behind the COVID-19 vaccines of both Pfizer and Moderna. Synthetic mRNA is a genetic technology that has long held huge promise but has so far run into biological roadblocks. The concept of tweaking specific strands in synthetic mRNA to deliver desired results was first introduced in the 1990s, but at that time while it made sense in theory it often failed in the real world as synthetic RNA was notoriously vulnerable to the body’s natural defenses and the synthetic RNA was very often destroyed before reaching its target cells. In some situations, the foreign materials even elicited an immune response that poses health risks for some patients. The solution, substituting one of the nucleosides (building blocks of mRNA) for a slightly tweaked version to bypass the body’s defense, was not discovered until 2005 and did not reach commercialization stage for another 15 years. Without the prospect of IP protection, it is simply unimaginable that scientists would devote the human and monetary resources into such R&D as there would have been no incentive to spend the time and effort on a promising but extremely challenging technology. Likewise, venture capitalists would refuse to invest billions of dollars into any research effort knowing that any other company could simply take the successful result and produce a medicine without paying for the R&D costs; in such a scenario, it would be virtually impossible to recoup the initial investment. Thus, without the promise of IP protection the technology underpinning the most advanced and promising COVID-19 vaccines would likely never have been developed. This point is of such importance that it is worth stating the obvious: IPRs have played a large role in the response to COVID-19; a response which has led to an incredible feat of humanity – the identification of the genome of a new pathogen and development of several treatments and promising vaccines within the space of a year. Without the promise of financial gain, the level of R&D into the novel coronavirus would have been greatly reduced and innovation hampered and delayed. In short, the IP system encouraged a robust response to the threat from innovator companies and worked as designed. It would be unwise (if not reckless) to place the innovation system which has delivered results in record time in jeopardy only in exchange for what is at best short-term benefits.

#### No innovation without protections—five warrants.

**McDole and Ezell, 21** (McDole is a senior policy analyst covering intellectual property (IP) and innovation policy at the Information Technology and Innovation Foundation (ITIF). Ezell is vice president, global innovation policy, at the Information Technology and Innovation Foundation (ITIF)), “Ten Ways IP Has Enabled Innovations That Have Helped Sustain the World Through the Pandemic,” Information Technology & Innovation Foundation, April 29, 2021, Accessed August 31, 2021,<https://itif.org/publications/2021/04/29/ten-ways-ip-has-enabled-innovations-have-helped-sustain-world-through>

**There are** at least **five principal benefits strong IP rights can generate**, for **both developing and developed** countries alike.31 **First, strong**er **IP protection spurs** the virtuous cycle of **innovation by increasing** the appropriability of **returns, enabling econom​​ic gain and** catalyzing economic **growth**. **Second, through patents**—which require innovators to disclose certain knowledge as a condition of protection—**knowledge spillovers build a platform of knowledge** that enables other innovators. For instance, studies have found that the rate of return to society from corporate R&D and innovation activities is at least twice the estimated returns that each company itself receives.32 **Third, countries with robust IP can operate more efficiently** and productively **by using IP to determine product quality and reduce transaction costs**. **Fourth, trade** and foreign direct investment **enabled** and encouraged **by strong IP protection** offered to enterprises from foreign countries **facilitates an accumulation of knowledge** capital within the destination economy. That matters when foreign sources of technology account for over 90 percent of productivity growth in most countries.33 There’s also evidence suggesting that developing nations with stronger IP protections enjoy the earlier introduction of innovative new medicines.34 **And fifth, strong IP boosts exports, including in developing countries**.35 **Research shows a positive correlation between stronger IP** protection **and** exports from developing countries as well as **faster growth rates of** certain **industries**.36

#### The aff still links

Ossowski 21 Yaël Ossowski. [Yaël Ossowski (@YaelOss) is deputy director of the Consumer Choice Center, a global consumer advocacy group.] “We Don’t Need to Lift Patents to Make Vaccines More Accessible.” Thedispatch.com, The Dispatch, 10 May 2021, thedispatch.com/p/we-dont-need-to-lift-patents-to-make. Accessed 28 Aug. 2021.

A full 14 months into the pandemic, nearly half of Americans who are eligible have received at least one vaccine dose. The end is in sight, and we have innovation to thank. And so, as our economy reopens and restrictions are being lifted, attention is turning to hard-hit nations like India and Brazil, currently experiencing skyrocketing case numbers. The question, then, is how to boost vaccinations abroad. The New York Times notes that India’s outbreak is causing the country to restrict export of its own vaccines, which could hurt Africa in particular, since those nations are relying on Indian vaccines. In the face of pressure to use every tool available to boost vaccinations abroad, the Biden administration announced last week that it supported a proposal to waive patent protections on the COVID vaccines. This measure, which is called a TRIPS Waiver (Trade-Related Aspects of Intellectual Property Rights) and was put forth last fall at the World Trade Organization by India and South Africa, would be far more than just a temporary fix for more shots. If the waiver is triggered, it would ostensibly nullify IP protections on COVID vaccines, allowing countries and companies to copy the formulas developed by private vaccine firms in hopes of making their own, with no guarantee of success or safety. The coalition backing Biden’s pledge includes Doctors Without Borders, Human Rights Watch, and World Health Organization Secretary-General Tedros Adhanom Ghebreyesus, who first backed this effort in 2020 before any coronavirus vaccine was approved. Intellectual property rights are protections that help foster innovation and provide legal certainty to innovators so that they can profit from and fund their efforts. A weakening of IP rules would actively hurt the most vulnerable—the same people that groups who support the IP waiver are nominally trying to help. The power to issue the waiver comes from a section in the 1995 treaty that created the World Trade Organization, meant to protect intellectual property among global trade partners. While a COVID vaccine waiver would be the most substantial one to date, similar efforts have been attempted on both HIV/AIDS medicines and generic drugs, the latter the only other successful case. The **push for a waiver ignores that many companies have voluntarily pledged to sell their vaccines at cost** or even offered to share information with other firms. Moderna, for its part, has stated it will not enforce the IP rights on its mRNA vaccine during the pandemic and will hand over any research to those who can scale up production. The developers of the Oxford-AstraZeneca vaccine have pledged to sell it at cost until the pandemic is over. Further, this measure would have far-reaching implications. Supporters claim that because COVID represents such a global threat and because Western governments have poured billions in to securing and helping produce vaccines, low and middle-income countries should be relieved of the burden of purchasing them. But rich countries are already donating vaccines to the World Health Organization’s COVAX program, which gifts countries vaccines free of charge. There are a few reasons that a TRIPS waiver is unlikely to be the most efficient solution. The vaccines require specialized knowledge to develop and produce these vaccines, and the mRNA vaccines require cold storage. As economist Alex Tabarrok has pointed out, vaccine makers have been scouring the globe for adequate vaccine facilities but fallen short. It seems implausible that any of this could be achieved outside the traditional procurement contracts we’ve seen in the European Union and the U.S. What is more likely is an increase of botched and unsafe vaccines that would be risky for vulnerable populations, as philanthropist Bill Gates has claimed in his opposition to the waiver. If the cost of researching and producing a COVID vaccine is truly $1 billion as is claimed, with no guarantee of success, there are relatively few biotechnology or pharmaceutical companies that can stomach that cost. And distribution would be an entirely different story. If Biden’s administration wants to help vulnerable nations, there is an easier way: release the tens of millions of doses of AstraZeneca vaccines sitting dormant in warehouses, which the FDA has not yet approved, and begin exporting our vaccine surplus to the most hard-hit countries. That’s precisely why the COVAX initiative was created, and why the U.S. should support it. Meanwhile, let’s also look at the future implications of moving now to restrict IP protections for the very companies that have delivered the life-saving vaccines that will get us out of our current pandemic. BioNTech, the German company headed by the husband-wife team of Uğur Şahin and Özlem Türeci that partnered with Pfizer for trials and distribution of their mRNA vaccine, was originally founded to use mRNA to cure cancer. Before the pandemic, they took on massive debt and scrambled to fund their research. Once the pandemic began, they pivoted their operations and produced one of the first mRNA COVID vaccines, which hundreds of millions of people have received. With billions in sales to governments and millions in direct private investment, we can expect the now-flourishing BioNTech to be at the forefront of mRNA cancer research, which could give us a cure. The same is true of many orphan and rare diseases that do not otherwise receive major funding. Would this have been possible without intellectual property protections? If we want to be able to confront and end this pandemic, we will continue to need innovation from both the vaccine makers and producers who make this possible. Granting a one-time waiver will create a precedent of nullifying IP rights for a host of other medicines, which would greatly endanger future innovation and millions of potential patients. Especially in the face of morphing COVID variants, we need all incentives on the table to protect us against the next phase of the virus. Rather than seeking to tear down those who have delivered the miracle of quick, cheap, and effective vaccines, we need to support their innovations and provide supplies to countries who need them. Symbolic gestures that will have drastic consequences, especially on the most vulnerable, just aren’t up to the task.

#### Additionally, Pharma IP independently solves future pandemics – an INCREASE in IP could actually be better due to knowledge sharing

Jeffrey Sachs 6/22, (University Professor at Columbia University, is Director of the Center for Sustainable Development at Columbia University and President of the UN Sustaina

ble Development Solutions Network. He has served as adviser to three UN Secretaries-General, an SDG Advocate under Secretary-General António Guterres.) “Important lessons from Ebola outbreak,” Business World Online, 6-22-21, https://www.project-syndicate.org/onpoint/finding-the-origins-of-covid19-by-jeffrey-d-sachs-2021-06 //DurhamSA

The question about origins is not about one government or another, much less a geopolitical issue or a matter of blaming China and exonerating the US. If there was indeed a laboratory-related release of SARS-CoV-2, it may well have occurred in a project funded by the US government, using methods developed and championed by US scientists, and as part of a US-led and US-financed program to collect and analyze potentially dangerous viruses, including in China.

To learn as much as possible regarding the origin of SARS-CoV-2, an international and independent investigation to examine the alternative hypotheses is urgently needed, and the US and Chinese governments should cooperate fully and transparently with such an inquiry. In the meantime, scientists, politicians, pundits, and those weighing in on social media should acknowledge the uncertainties that currently prevail.

They should also acknowledge that the tragedy of the pandemic has already shed light on how to prevent future outbreaks and pandemics. Because natural zoonotic events are inevitable, we must establish much better global surveillance and warning systems, and of course early response systems when outbreaks occur. We need credible communications channels to prevent rapid global transmission of newly emergent zoonotic diseases, and we must create institutional mechanisms that enable the speediest search for potential treatments, diagnostic tests, vaccines, and other tools and best practices to contain an outbreak. In short, we must be better prepared to share relevant scientific and technological know-how in a more honest, transparent, and credible manner than has been true during the current pandemic.

But there is also a risk of future research-related outbreaks of pandemic diseases. Governments need to upgrade the transparency, oversight, and biosafety of any projects that actively seek dangerous pathogens in nature and return them to laboratories, recognizing the multiple risks involved. Similarly, the tools of genomic manipulation have advanced so rapidly that the potential to create new deadly pathogens in the laboratory and accidentally or even deliberately release them is a very serious concern. The world currently lacks adequate international and national safeguards and transparency on such dangerous work, and the risks are compounded by the secretive bioweapons research programs several governments sponsor that help to sustain it.

## 3

#### IP is essential to modern health diplomacy

Obijiofor Aginam 10, Academic Programme Officer & Director of Studies, Institute for Sustainability and Peace, United Nations University headquarters, Tokyo, Japan; Adjunct Research Professor of Law, Carleton University, Ottawa, Canada, “HEALTH OR TRADE? A CRITIQUE OF CONTEMPORARY APPROACHES TO GLOBAL HEALTH DIPLOMACY,” https://poseidon01.ssrn.com/delivery.php?ID=149097083081123105113085099123123091104014059082060018071001088023116023118119002064117119051059021051011085110010121013091016020070011051015018011008065019104127084042076098081007102099120087031085093119071127122005124010118009001092104124120121094&EXT=pdf&INDEX=TRUE

The third limb of global health diplomacy critique reflects the complex linkages between “health and trade”18 where the modest achievements in global health diplomacy in the past decade are substantially driven not by events in the health sector but by the normative developments in the trade and economic relations of states enforced by the WTO. Although this sounds like “economic globalization triumphalism”, it is nonetheless hard to dispute the fact that it was the patent requirements for pharmaceuticals and other inventions in the WTO TRIPS Agreement that substantially catalyzed the health diplomacy on access to anti-retroviral drugs for HIV/AIDS for millions of poor HIV-positive who live mostly in developing countries. Food safety and security concerns and the hard diplomacy animated by biotechnology advances in food production, although global health issues in their own right, are catalyzed by the developments in the WTO on the SSPS Agreement, and not the subtle “diplomacy” around the WHO/FAO jointly administered Codex Alimentarius Commission standards. The migration of qualified health professionals from most of Africa to the West is now being driven in complex ways by one of the modes of service supply in the GATS Agreement.

#### Health diplomacy’s creates global cooperation solving multiple existential threats

James 17, Wilmot James, Honorary Professor in the Division of Human Genetics at the University of Cape Town's Medical School and Non-residential Senior Fellow at Bard College’s Hannah Arendt Centre, Ph.D. from University of Wisconsin at Madison, “In an Age of Zika and a Threat of Biochemical Terror, Health Security Must Be Everybody’s Concern”, Daily Maverick, 4-2, <https://www.dailymaverick.co.za/article/2017-04-02-op-ed-in-an-age-of-zika-and-a-threat-of-biochemical-terror-health-security-must-be-everybodys-concern/#.WOY8xTvDHHw> [language modified]

With Zika there too was political failure to act quickly, give honest advice and confront the abortion conundrum head-on, the result being that 3,000 and likely more children with microcephaly will test the emotional resilience and financial resources of their families to breaking point.We should never cease to invest in the public health and medical science of disease, but it seems to me that our fundamental problem is not the quality of the health sciences but the grim mediocrity of our politics. Party-political bickering for short-term gain paralyses and drains the national effort in South Africa as much as it does in the United States, undermining our ability to see with compelling clarity the solutions the issues of the day deserve.Health security is humanity’s shared concern. Promoting health and preventing death define us at our most altruistic and advanced. The Hippocratic Ideal, the concept of the physician as the guardian of human health, encapsulates a fundamental human quality common to all the world’s great religions. Medicine is one of the earliest and greatest human achievements because it is a co-operative enterprise involving highly skilled individuals; and it is as a result of cooperation – and our unusual ability for complex language – that cumulative civilisation is possible.In the age of globalisation, it is health security, a recent Lancet editorial stated, that “is now the most important foreign policy issue of our time”. The rapid emergence and re-emergence of pathogenic infectious disease, of which Zika is the most recent, the slow but steady cumulative acts of nature associated with climate change, high-risk forced migration caused by desperation and war, the creeping reality of biochemical [use] ~~terror~~ and the threat of nuclear war, propel human survival and well-being to the frontline of what today must be everybody’s concern.The field of health diplomacy provides an unprecedented opportunity to build human solidarity. It is an area of human endeavour that cuts through inherited antagonisms. Governments that offer health improvements as part of aid to nations with whom they wish to develop stronger diplomatic links succeed in cultivating deeper cultural relationships precisely because of their direct benefit to citizens. To advance health diplomacy requires health leaders with an inclusive global vision...

## 4

#### CP text: The member nations of the world trade organization should add more stringent requirements for filing secondary patents by requiring secondary patent filers to demonstrate increased efficacy as compared to the original. Solves all your offense by reducing purely strategic patents while permitting R and D for genuine improvements.

Newsome 17, A [(JD candidate George Washington School of Law). (2017). Side effects of evergreening may include decreased competition & increased prices in the pharmaceutical industry. AIPLA Quarterly Journal, 45(4), 791-822]

The current framework for evaluating a patent application, particularly the requirements of utility and nonobviousness, is insufficient for evaluating whether a secondary patent should be issued for a drug. Given that courts are tied to the low bar for utility and inconsistent with their application of nonobviousness,1 04 it is necessary to pass legislation creating a new utility requirement tailored to secondary pharmaceutical patents. This Note's Author proposes legislation language as follows: 35 U.S.C. § 106: Patentable Pharmaceutical Inventions

(a) Utility requirement for secondary patent: In the case of a pharmaceutical invention claiming an improvement on a patented invention, the applicant shall demonstrate through clear and convincing evidence in the written description that such invention has increased efficacy as compared to the original.

(b) Increased efficacy defined: As used in part (a), "increased efficacy" refers to a proven improvement in the mechanism of action, as disclosed in the patent claims. 0 5

(c) Mechanism of action defined: As used in part (b), "mechanism of action" refers to the process by which a drug functions to produce a therapeutic effect, as disclosed in the patent claims. 06

Under this legislation, the USPTO could grant a secondary patent only if the new formula's mechanism of action, or production of the intended pharmacological effect, in fact improves upon the patented drug's mechanism of action. For example, because VidaDrug is a chemotherapy drug, the new formula must include a change in the mechanism of action which causes an improvement in the efficacy of the drug's tumor-shrinking abilities to be eligible for a secondary patent. A formula tweak that reduces side effects is insufficient, because the underlying purpose of the drug - to treat cancer - remains unaffected.

Lowell provides some precedent for creating a higher utility standard. 07 This new standard would focus on a drug's overall improved efficacy, rather than a minor tweak in the formula that would mitigate or resolve a previously caused side effect. This standard would require holding the pharmaceutical industry to a higher standard than other industries, which could potentially conflict with the United States' TRIPS Agreement obligations with the WTO.

#### IT solves best

Newsome 17, A [(JD candidate George Washington School of Law). (2017). Side effects of evergreening may include decreased competition & increased prices in the pharmaceutical industry. AIPLA Quarterly Journal, 45(4), 791-822]

Pharmaceutical patents are inherently different from software or manufacturing patents. 144 Pharmaceutical companies create life-saving drugs that carry a very serious benefit for a vulnerable group of consumers - patients. Because of this, the pharmaceutical industry should be held to a higher standard if its companies seek to prohibit affordable generic drugs from coming to the marketplace.

1. An Efficacy-Focused Standard Will Motivate Pharmaceutical Companies to Channel Resources to Creating Real Innovation Pharmaceutical companies argue that patent-life-cycle-management strategies (their preferred name for those tactics described herein as evergreening) are essential to ensuring they recoup R&D costs. 145 However, creation of a standard such as the one proposed here would ensure that pharmaceutical companies are properly incentivized to channel R&D resources to creating measurable change in the drugs, rather than creating minor changes that prolong the time they can profit off of monopolies at the expense of patients. For those industries in which R&D is more productive, like the pharmaceutical industry, "patent procedures should be refined to tighten the relationship between patents and the underlying inventions."14 6
2. A Higher Standard for Secondary Pharmaceutical Patents Will Increase Competition & Lead to Lower Prices The patent system enables pharmaceutical companies to retain market exclusivity for their drugs, allowing them to set high prices without an eye toward competition.1 47 The companies cite the need to recoup R&D costs as the driving factor for their pricing decisions,148 but critics say their main motivation is making a profit.'49 While the pharmaceutical companies' argument may hold weight, high prices for drugs have a negative impact on those patients who need those drugs, but cannot afford them.150 Tightening patent laws to prevent pharmaceutical companies from retaining patent protection for minor changes in their patented drugs will allow other companies to enter the marketplace sooner and drive prices down through competition. 5z

# Case

#### No 1ar theory –

#### [1] 7-6, 2-1 skew proves its always skewed to the aff.

#### [2] resolvability double bind – either the judge has to intervene to decide whether the 2ar’s answers to the 2nr’s Counter interp are sufficient or they auto accept every answer and you auto win. Intervention o/ws since it takes the round out of the debaters hands. That also means DTA on 1ar theory – they can initiate offensive DTD theory in the aff and in the 1ar while no judge would vote on 2n theory on severance.

#### [3] Responses to my C/I will be new, and I don't have a 3NR to respond, o/ws on reciprocity.

#### [4] 2AR persuasion always win – ethos, meta weighing, and answers to 2NR weighing means a good theory debater will always win so it o/ws on norming. [5] It scares novices from checking abuse via 1NC shells, because of fear of 1AR meta theory like combo shells or 'multiple shells bad' – o/ws on chilling and inclusion.