# Topic

**I affirm resolved: the members of the world Trade Organization ought to reduce intellectual property protections for medicines.**

**Definitions**

·        **Reduce: to diminish in amount, extent, or number - Merriam Webster**

·        **Intellectual property protections, from** [**Georgetown University Law**](https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-areas/intellectual-property-law/)**, include Copyright, Trademarks, patents, and Trade Secrets.**

# Framing

**Prefer the value of negative utilitarianism**

**Any idea of morality is fundamentally utilitarian:**

[Sanchez 11](https://mises.org/library/utilitarian-foundation-morality) **(editor of Mises.org, the world center of the Austrian School of economics and libertarian political and social theory, and director of the Mises** The utility of social cooperation is the foundation of morality. **The notion of right and wrong is … a utilitarian precept designed to make social cooperation possible. As the foundation of morality, the utility of social cooperation is [ultimate] end** of all questions of justice and property. The ultimate yardstick of justice is conduciveness to social cooperation. **Conduct suited to preserve social cooperation is just, conduct detrimental to that is unjust.**

**Walker 74** (https://www.jstor.org/stable/pdf/2252744.pdf?ab\_segments=0%2Fbasic\_search\_gsv2%2Fcontrol&refreqid=fastly-default%3A0e99f438191c00389a43e0bf2309b968)

{**Negative utilitarian} conviction {dictates}** **that the relief of pain takes priority over the promotion of pleasure**; as Acton puts it, **'moral urgency to help those who are suffering is greater than any moral demand to help those who are not suffering to become happier**' ('Negative Utilitarianism', Aristotelian Society Proceedings, supp. vol. I963). Acton's paper, though, examines only the relative moral urgency of the relief of pain for someone who is already suffering and the production of pleasure for someone who is not, and does not remark on the use subject to considerable extent of such asymmetries. Thus, for example, **when the decision lies between producing pleasure in the future for A and avoiding or preventing future pain for B, the latter takes priority**. (I assume here and throughout the paragraph that the pleasure and pain involved are roughly equal in amount and that no other considerations are relevant to the agent's decision, that, for instance, he has no natural or moral ties to either party.) Where the relief of pain can be achieved only at the cost of curtailing pleasure matters are more complicated. It does not seem true without qualification that one ought to relieve A's pain at the cost of curtailing B's pleasure, though sometimes such a course might be justified. (As a rule, to do this would count as interference or as an in- fringement of B's rights.) On the other hand, the best state of affairs would generally be recognised as one where B had been persuaded to abandon his pleasure in order that A's pain should be relieved. Finally among asymmetries of this particular type, if one considers the infliction of pain rather than simply the failure to relieve it, Ross is not guilty of overstatement when he says that 'the infliction of pain on any person is justified ... by the conferment not of an equal but of a substantially greater amount of pleasure on someone else' (Foundations of Ethics, p. 75).

**Policies can only be justified through utilitarian frameworks**

Gary **Woller 97** (BYU Professor). “An Overview by Gary Woller.” A Forum on the Role of Environmental Ethics. June 1997. pp. 10.

**all public policies entail some redistribution of resources, such that gains must come at another group's ex- pense**. **Consequently, public policies in a democracy must be justified to the public**, and especially to those who pay the costs of those policies. Such **justification** **cannot simply be assumed a priori by invoking some higher-order moral principle.** Appeals to a priorimoral principles, such as environmental preservation, also often fail to acknowledge that public policies inevitably entail trade-offs among competing values. Thus since policymakers cannot justify inherent value conflicts to the public in any philosophical sense, and since public policies inherently imply winners and losers, the policymakers' duty [is] to the public interest requires them to demonstrate that the redistributive effects and value trade-offs implied by their polices are somehow to the overall advantage of society. At the same time, **deontologically based ethical systems have severe practical limitations as a basis for public policy. At best, a priori moral principles provide only general guidance to ethical dilemmas** in public affairs **and do not themselves suggest appropriate public policies**, and at worst, they create a regimen of regulatory unreasonableness while failing to adequately address the problem or actually making it worse.

**Thus, the value criterion must be achieving the greatest good for the greatest number.**

**In this view, the greatest number may still be a minority, but that minority is still better off than they would be in the NEG world.**

# Offense

**Contention 1 – Patent Abuses**

**Evergreening**

[Feldman 18](https://academic.oup.com/jlb/article/5/3/590/5232981)**- Rather than creating new medicines, pharmaceutical companies are largely recycling old drugs. 78% of the drugs associated with new patents were not new drugs, but existing ones, and extending protection is particularly pronounced among blockbuster drugs. Once companies start down the road of extending protection, they show a tendency to return to the well, with the majority adding more than one extension and 50% become serial offenders.**

**Repatenting old drugs  kills competition and births monopolies**

Gurgula 20 **[Olga Gurgula, lecturer of intellectual property law at Brunel University London, 10-28- 2020, "Strategic Patenting by Pharmaceutical Companies – Should Competition Law Intervene?," IIC - International Review of Intellectual Property and Competition Law,** [**https://link.springer.com/article/10.1007/s40319-020-00985-0**](https://link.springer.com/article/10.1007/s40319-020-00985-0) **]/Kankee**

**With extensive patenting, the incentive to innovate diminishes as the inventor enjoys monopoly due to secondary patents that shield from generic competition. Monopolists want to keep their monopolies by resorting to any measures that can keep new entrants out.In its absence the dominant undertaking will lack adequate incentives to continue to create and pass on efficiency gains.” Evidence from the pharmaceutical industry confirms that strategic patenting reduce incentives to engage in genuine innovation.Secondary secondary patents are of marginal quality and are typically the result of routine research activities. Their main aim is to increase uncertainty for generics as to the possibility of their market entryA slow transition from new medicines from the protected status of a proprietary medicine to the status of generics manufactured and distributed in open competition does not simply mean a loss of static efficiency, namely  [means] a loss of consumer well-being [as] to a slowdown in the reduction of process. Rather, such a slowdown also involves the risk of a loss of dynamic efficiency in that it extends the duration of a monopoly rent situation, thus reducing the pressure to innovate more quickly. Following the rationale of the General Court’s statement in AstraZeneca, the practice of the originator that extending monopoly [via] patents “potentially reduces the incentive to engage in innovation**, since it enables the company to maintain its exclusivity**”.** Such practices act “contrary to the public interest”**.Therefore, the practice of strategic patenting that protects originators’ monopolies from competitive pressures and significantly reduces their incentives to engage in genuine innovation is contrary to the rationale of the patent system, has a significant negative effect on competition and should raise competition law concerns. Strategic Patenting Impairs Follow-on Innovation of Generic Companies Strategic patenting also has a chilling effect on follow-on innovation by generic competitors in the form of developing alternative versions of an off patent compound. As was discussed earlier, the expiry of a basic patent that protects an active compound facilitates generic competition. This is because even if the product is still protected by process, specific form or formulation patents, generic companies may develop alternative ways of producing or formulating the product and start competing with the originator. In the absence of strategically accumulated patents by the originator, generic companies are typically open to innovating to launch alternative generic products as soon as the basic patent expires. However, by pursuing** strategic patenting discourages generics from innovating because of the uncertainty about the patent protection and a fear of infringing on numerous patents. Consequently, the fact that **competitors of originators [not developing] generic products results in weakening competition and strengthening monopolies. As Maggiolino put it- … [all while lowering] consumer welfare by charging over-competitive prices”**

**Impacts include reduced development of lifesaving medical treatments and a lack of novel-to-generic transfer that keeps costs high for patients. This is clearly prioritizing pleasure of a few over preventing harm to the masses, violating negative utilitarianism.**

#### Approving drugs from name brand to generic can take only 6 months

FDA 21 [https://www.fda.gov/drugs/news-events-human-drugs/generic-drug-approval-process]

#### It depends on the complexity of the drug product and the completeness of the application. Some generic versions of priority drugs – drugs that CDER has determined to potentially provide a significant advance in medical care -- have been approved in six months or less. Other times it may take years before FDA’s scientific and medical team is 100 percent confident in an approval decision. It often takes several rounds of communication between FDA and the generic drug company before the product is shown to be safe, effective, high quality, and substitutable for the brand name counterpart. Some generic drugs are never approved, because the company is unable to meet FDA’s rigorous standards for approval.

[Bansal 09](Medicine%20IP/Bansal%2009.pdf)

**Patent evergreening promotes development of unfair means of competition** and related abuse. Enhanced IP scrutiny may remove the curse of these unfair practices which are widely followed by the innovator companies to create a roadblock for generic companies that are trying hard to provide safe and efficacious medicines to the masses at cost effective prices. Landmark case decisions may serve as an aid to understand the complex domain of ‘Evergreening’. **There is a need for developing countries to develop and foster effective mechanisms to counter evergreening practices. It is important to promote efforts of the generic companies so that cost effective products are launched in the market, thereby benefiting the masses.**

**Subpoint B: Orphan drugs**

#### Orphan drugs are a major expense

Feldman 18 again**: The cost of drugs for small patient groups, orphan drugs, is particularly high. These are known as orphan drugs, and drug companies are rushing into the field. In fact, orphan drugs account for 40% of the actually new drugs approved in the United States. As one commentator has noted, in today's pharmaceutical market, everyone seems to be an orphan.**25 A 2017 study found that **the median price of orphan drugs was annually $140,000 per patient.26 The price of ordinary drugs was nothing to sniff at, either. The median price for drugs outside the orphan category had climbed to almost $28,000 per patient, per year.27**

[National Organization for Rare Disorders 2](https://rarediseases.org/wp-content/uploads/2021/03/NORD-Avalere-Report-2021_FNL-1.pdf)1**: With 552 drugs on the market having an orphan designation, 394 products enjoyed some form of patent or orphan exclusivity protection. Of the remaining 158 products, which had no protection generics are on the market for only 81 products.**

**According to the National Institute of Health (NIH), 30 million Americans have a rare disease. *A disease is defined as a rare or orphan disease when it affects fewer than 200,000 people in the United States.***

**Those afflicted have poor financial stability.** [Yang et al 20](https://everylifefoundation.org/wp-content/uploads/2021/02/The_National_Economic_Burden_of_Rare_Disease_Study_Summary_Report_February_2021.pdf)

**Total non-medical costs associated with rare diseases are $548 billion. Combining cost of absenteeism, early retirement, lost productivity, and other costs to patients and caregivers. The cost of absenteeism to both persons with RD and their caregivers is nearly $149 billion and losses due to forced retirement are $136 billion, among other costs. Significant productivity losses associated include $135 billion from adults whose disease progression and diagnoses require time away from the workplace and $152 billion from their caregivers.**

**Impact: Creating suffering for millions already suffering from rare diseases. Clearly, using rare disease patients as cash cows for a few wealthy pharma companies violates today’s framework.  By reducing IP controls and allowing more generics to come onto the market, we create access and benefits for rare disease patients, upholding the greatest good for the greatest number.**

# Contention 2 – Poverty

**Subpoint A- Poor countries**

#### More IPR equals less medicine access in poor countries

[Jung 15](https://sci-hub.se/https:/doi.org/10.1177/0020731415584560)

**, , strengthening IPR led to lower access to medicines in developing countries, and particularly lower access for the poorest of the poor. medicine prices increased and [citizens] suffer from a deficiency of pharmaceutical supply and limited access to medicines, since they {could not} produce them** There is growing evidence that stronger protection of IPR for pharmaceuticals may adversely impact medicine prices. Duggan and Goyal4 found a significant increase in the market share of patented drugs and an increase in average prices after the introduction of stronger product patents by exploring the effects of introducing product patents for central nervous system drugs. **patents increased drug prices,[as seen in price data concerning] (HIV)/ (AIDS) drug costs in 34 developing countries between 95 and 2000. [the impact of] patent protection for pharmaceuticals in poor countries is delaying the import of generic medicines. As a result**

#### Regulation, not patents, leads to better medication quality

**Moszynski 11** [Peter Moszynski- researcher for Globewise Communications, Feb 2011, “New Patent Rules Boost Profits While Safe Drugs Elude the World’s Poor, Says Oxfam,” BMJ, vol. 342, p. d815. www.bmj.com, <https://doi.org/10.1136/bmj.d815> ]/ Triumph Debate

**The proliferation of substandard drugs in poor countries is being used as an excuse to tighten rules on intellectual property, boosting the profits of large drug companies while making it harder for poor people to get access to** the **treatments they need, the charity Oxfam says in a new report.The report, launched in Paris this week in association with Interpol and the World Intellectual Property Organization, says that more than two billion people “lack regular access to affordable and quality medicine.” The World Health Organization estimates that 30% of countries have no functioning drug regulatory authorities. In the absence of effective regulation, says the report, “poor-quality or ‘substandard’ medicines, together with falsified, or fake and falsely labelled, medicines,” may be widely traded and consumed, which can have “devastating consequences for patients and for public health.”The report says that although no conclusive data exist regarding the prevalence of substandard and falsified drugs in the developing world, “studies indicate that in some countries as much as 44% of certain types of medicines, such as anti-malarials, are substandard.”Therefore, it adds, prioritising drug regulation by governments in developing countries, with “the technical and financial support” of rich countries, is “badly needed.”However, the report claims that rich countries, “under the guise of helping to address dangerous and ineffective medicines are pushing for new intellectual-property rules and reliance on police**—rather than health regulatory—action.”Rohit Malpani, a senior policy adviser at Oxfam and one of the report’s authors, says that poor countries “are facing a crisis of substandard and falsified medicines that can harm or even kill those who take them.” **Yet, rather than help developing countries to “address the problem to ensure safe, effective, and quality medicines for all,” rich countries are “putting commercial interests ahead of public health.”** The report argues that **only a “subset of substandard and falsified medicines in developing-country markets is linked to criminal trademark infringement.” Therefore improved regulation of drugs by poor countries, not enforcement of intellectual property rules, is “the best way to ensure safe, effective, quality medicines,”** it concludes.

**Specifically, the TRIPS  agreement uniquely harms developing countries:**[Management Sciences for Health 12](https://www.msh.org/sites/msh.org/files/mds3-ch03-intellectual-property-mar2012.pdf)

**TRIPS makes prices higher for new medicines in countries with no previous patent protection. Generic competition will be delayed in countries with the previous patent term less than 20 years. local pharmaceutical industries are weakened and dependence on developed countries increases. Standards required by TRIPS resulted in developing countries losing capacity to regulate patents and cost of Medicine;  however the agreement left some flexibility for them to take measures to protect public health. Because of Provisions relating to patents and pharmaceutical regulation or confusing and contentious Regulators must acquire relevant technical expertise To use these flexibilities within trips to improve access to Medicine.**

**By creating harms and difficulties in poor countries’ medical systems, the squo undermines negative utilitarianism and cannot be considered positive.**

**B: Poor / minority communities**

ACRE 20 **[Action Center on Race and the Economy, August 2020, “Poi$on: How Big Pharma’s Racist Price Gouging Kills Black and Brown Folks,” Action Center on Race and the Economy,** [**https://acrecampaigns.org/wpcontent/uploads/2020/08/new-poison-final.pdf]/**](https://acrecampaigns.org/wpcontent/uploads/2020/08/new-poison-final.pdf%5d/)

**Under the U.S. model of monopoly drug patents, Black and Brown people are exposed to more price gouging by pharmaceutical companies. Across insurance status, age, and disease type, Black and Latinx patients report higher rates of medication rationing—delaying filling a prescription, and reducing doses due to cost. Even before the current pandemic,. Price gouging excludes Black and Brown communities from access to medications for the chronic diseases that put patients at higher risk of death; medication rationing due to high cost leads to unconscionable levels of preventable disease and death in POC Majority communities.**

**Creating suffering, even if it's for minorities, goes against my Criterion of creating good for the maximum number of people, violating utilitarianism.**

# Contention 3 – Public Health Emergencies

[Lindsey 21](https://www.brookings.edu/blog/up-front/2021/06/03/why-intellectual-property-and-pandemics-dont-mix/)

**intellectual property protections [oppose] the policy requirements of effective pandemic response. Although patent law, properly restrained, constitutes one important element of a well-designed national innovation system, the way patents [stimulate] technology is not suited to public health crises. Securing a TRIPS waiver for COVID-19 vaccines and treatments would establish precedent that, in emergencies, governments should employ more direct means to incentivize the development of new drugs. For public health emergencies, giving drug companies the power to block competitors and raise prices is the completely wrong direction.**

[Garrett 21](https://foreignpolicy.com/2021/05/07/stopping-drug-patents-pandemics-coronavirus-hiv-aids/)

Consider what happened in the years **after 1996**, when a [consortium of **pharmaceutical companies**](https://www.niaid.nih.gov/diseases-conditions/antiretroviral-drug-development) took the unprecedented step of **shared their HIV/AIDS treatment data and manufacturing**, resulting in a collaboration that was the turning point for what had been a catastrophically grim pandemic. By working together, the companies demonstrating that any one anti-HIV/AIDS drug, taken as monotherapy, would fail, possibly even hasten the pace of the disease process. But when taken in combinations of three or four drugs, made by usually rival companies, the antiviral assault were so powerful that people bounced back from the edge of death like the Biblical Lazarus who was resurrected by Jesus.

As millions of HIV positive people living in wealthy countries switched overnight from planning their funerals to building up retirement accounts, the miracle of combination antiviral therapy was denied to millions more living with AIDS in sub-Saharan Africa and other poorer regions. A battle unfolded, pitting a reluctant—even obstinate—pharmaceutical industry against AIDS activists, physicians, and political leaders from developing countries. In 2002, former U.S. President [Bill Clinton](https://www.who.int/workforcealliance/members_partners/member_list/clinton/en/) intervened, using his bully pulpit in consultation with a team of academic experts convened by his philanthropic foundation to contrive with a tech-transfer scheme that had Western pharmaceutical companies provide their patented drug formulas to Indian generic manufacturing companies, ultimately bringing down annual [treatment costs](https://frontlineaids.org/how-patents-affect-access-to-hiv-treatment/) from nearly $10,000 to less than $100.

Far from bringing chaos to the pharmaceutical industry and stifling innovation, the Clinton Foundation’s maneuver around the strict enforcement of intellectual property laws [ushered](https://www.uspharmacist.com/article/newly-approved-hiv-medications) in a dramatic era of HIV [drug invention](https://www.aidsmap.com/about-hiv/a-z-antiretroviral-medications) that improved the antiviral power of treatment, lowered drug side effects, developed new drug forms that are now taken to prevent infection, and increased options for pediatric care, and greatly improved the methods for which HIV positive individuals could take their life-sparing treatments. Despite the loss of guaranteed patent protection protection and pressure to transfer technology to, primarily, Indian pharmaceutical companies, wealthy nations’ drug [companies have profited](https://www.statista.com/statistics/273434/revenue-of-the-worlds-most-important-aids-drugs/#:~:text=Globally%2C%20the%20top%20drug%20for,billion%20U.S.%20dollars%20in%20revenue.) and [continue to innovate](https://www.aidsmap.com/sites/default/files/2019-07/ARV_drugchart_2019_final_web.pdf) on the [HIV/AIDS](https://www.fda.gov/news-events/press-announcements/fda-approves-new-hiv-treatment-patients-limited-treatment-options#:~:text=Today%2C%20the%20U.S.%20Food%20and,resistance%2C%20intolerance%20or%20safety%20considerations.) front.

**millions of increased deaths from treatable illnesses around the world is clearly a detriment to the greatest good. This goes against my utilitarian framework.  I have further proven that by reducing intellectual property  restrictions decrease treatment costs and increase treatment access in my Garrett evidence. Affirm to improve access to medicine for all.**

# Theory Underview

## Disclosure

Interpretation: My opp can’t read disclosure theory **against me**- I updated the wiki with the most up-to-date cases as soon as I found out my first side. My note about disclosure is on the wiki- blame my opponent for not reading it and doing proper prep then.

Standard: Clash & Arg depth- Squabbling about theory wastes time and research and doesn’t engage with any real debate material; kick disclosure theory in order to increase clash and argument depth

Voter: If my opponent ignores this warning and the warning on my wiki, drop them to preserve the integrity of debate as the clash of ideas instead of details.