### International IP Law (0:30)

#### The aff’s international approach to the patent system is the essence of the capitalist empire. It seeks to deprive local power while bolstering the influence of the global market over them, securing its position of dominance in the world. Knezevic 07,

Intellectual Property or Intellectual Poverty? Between Colonialism and Empire in the Context of AIDS and Public Health Crises

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**The corporate-industrialized world nexus project in pushing the global IP agenda with a view to adopt a “common standard”85 or “one size fits all”86 model for patents regardless of the field of technology (in this case medicine) or socio-economic circumstances in question (AIDS epidemic in Africa) is not only hypocritical but dangerous,** and not just to immediate public health concerns. **It constitutes an attempt to sever the juridical notion of patent from its material historical source** – to deprive us of the language to articulate the un-ethics of the situation. **It seeks to monopolize the very language and thought-processes that permit us to ethically and effectively question the ‘rational’ decision-making of world leaders and corporations**. **This is what Hardt and Negri refer to (in a reading of Foucault) as a ‘biopolitics’ of control, which permeates below the level of consciousness to the bios in order to manipulate** 87 [T]he problem of the new juridical apparatus is presented to us in its most immediate figure: a global order, a justice, and a right that are still virtual but nonetheless apply to us...**our internal moral disposition...tends to be determined by the ethical, political, and juridical categories of Empire...The means of the private and individual apprehension of values are dissolved**: with the appearance of Empire, we are confronted no longer with the local 89 This latter tension represents most faithfully the precise tension between the position of developing nations and that of industrialized nations in relation to pharmaceutical patents. **It is the tension between an adaptive conception that is modified as it is historically and socio-economically contextualized or ‘locally mediated’ – and on the other hand a conception that is in juristic terms rigid and by claiming for itself ‘concrete universality’ extinguishes all contextualized conceptions**. This tendency of the very limits of what we are capable of thinking. The sentiment is echoed in the comment cited above by Spiegel regarding the ‘Cuba taboo’ – a conspicuous silence which reflects an “inclination to narrow the boundaries of what are deemed to be possible approaches”88 to public health. Out of this universalized silence, the global order of ‘Empire’ unfolds [my italics]: [T]he problem of the new juridical apparatus is presented to us in its most immediate figure: a global order, a justice, and a right that are still virtual but nonetheless apply to us...our internal moral disposition...tends to be determined by the ethical, political, and juridical categories of Empire...The means of the private and individual apprehension of values are dissolved: with the appearance of Empire, we are confronted no longer with the local mediations of the universal but with a concrete universal itself. Empire to extinguish and erase context and ‘local mediation’ is not directed merely at the Other – **the industrialized world which here is the agent of empire seeks to expunge its own context and history from the record, too, so long as the order that is universalized is the one it dominates at present**. The characteristic of Empire is that it is “formed not on the basis of force but on the basis of the capacity to present force as being in the service of right and peace.”90 **The only truly effective means to resist this process of Empire then is to deny it its ethical foundation by insisting on history**, both that of the developed and developing world, and in particular the complicity of the former in the plight of the latter, for example: Besides introducing new diseases, European colonial incursions created devastating ecological changes in Africa. Mining, plantation agriculture, irrigation schemes, and drainage ditches created good habitats for malaria- bearing mosquitoes. As Africans died from smallpox and famine, cultivated areas returned to bush, promoting the spread of tsetse flies... That, in short, is the sort of thing European ‘transfer of technology’ to Africa achieved in the 19th and early 20th century. Hunter goes on to note some further examples, among them this: it took until the 1960s to rid the Serengeti plain of the rinderpest virus brought there by the British and Italians in the 1880s, by which time most of the native domestic cattle and wild ungulates on which the Masai population depended were dead. From 1880 to 1933 the population of the Belgian Congo declined from around 40 million to 9.25 million. In another French colony it went from 20 million to 2.5 million in the space of 20 years, 1911-1931. On the heels of these ravages, “Western medicine matured at just the right time to be used as a ‘tool of empire’.”92 This configuration, it seems, persists today in what Hardt and Negri call the new ‘imperial paradigm’, which has migrated from “disciplinary society to a society of control.”93 It is the latter that operates at the level of bios, which rather than merely employing physical coercion, attempts to regulate from afar our very thought processes “to narrow the boundaries of what are deemed to be possible approaches.”94 **What is taking place here is the transition to an order wherein the agents of Empire need not instruct colonial subjects what to do or coerce them to it, but are able to ensure that goals are carried out merely by limiting the horizons of thought.** **It is clear that industrialized countries have taken every opportunity to adapt their patent systems and evolve them according to their immediate socio-economic or public health needs in different epochs**. **Developing countries should be allowed to do the same, especially given the historical complicity of developed countries in their demise and in the retardation of their development**. **The global model imposed by industrialized countries cannot serve the immediate public health needs of the developing world**. In this process and particularly in dealing with existing public health crises such as the AIDS epidemic, Cuba provides the best existing model for developing countries to learn from, given both its success and the country’s socio- economic identity with other developing countries, and there is no reason why this model could not be implemented without replicating its political environment. Over this entire complex, however, looms the hegemonic global order of Empire, with the industrialized world as agent, seeking to universalize its own conception. **In order to resist this universalizing process, developing countries should insist as a matter of right on managing their own public health networks matched by suitable patent regimes crafted to their immediate needs (i.e. compulsory licenses, import of generics) – rather than accepting the universalising imposition in return for ad hoc donations and other aid as a matter of charity or good will**. **Developing nations** should, in other words, **reject ad hoc utilitarian approaches of enforcing patents unconditionally at the service of the industrialized world designed to alleviate their suffering** but never allow them to stand on their own two feet, **leaving them always a step behind and at the mercy of corporate and international donors**. They should continue to assert their moral rights in the face of the global pharmaceutical lobby and insist on their unfettered discretion to determine the existence of health crises on their territories and design patent regimes appropriate to their immediate needs. They should implement “social and organizational priorities” shown to produce results toward the “social production of health” simultaneously investing (socially and financially) in their public health networks and in publicly financed institutions to conduct R&D programs crafted to their concerns, guided by public health needs and motives and not profit possibilities**. The attainment of public health goals is financially well within their reach merely by the implementation of appropriate policies**, as discussed above. This of course raises a number of issues relating to the willingness of African officials and governments to deal with the AIDS crisis in an effective way, and the various cultural and political 96 obstacles to this, however that this only makes the compendium of obstacles to the resolution of the AIDS crisis more complex;97 by removing the global obstacles (stringent pharmaceutical patent protection) and reducing the crisis to the level of national politics, the immediate technical responsibility is placed on the shoulders of leaders who in most cases are in one way or another politically accountable to the very populace afflicted by the epidemic, rather than on the shoulders of corporate executives thousands of miles away who answer primarily to shareholders. Thus if there is unwillingness among African politicians and elites to engage effectively with the epidemic (as some writers suggest), a more systematically ethical and less profit- oriented approach to patent enforcement by industrialized countries would be much more likely to expose this unwillingness and eliminate such politicians. **So long as industrialized countries insist on a ‘common standard’, they will remain the main scapegoat.** If they believe it to be in their interest to produce a greater confluence of norms relating to intellectual property, they should work from the opposite end to where they are now – by investing in the public health networks of developing countries with a view to making them sustainable and self-sufficient both in providing for immediate health needs and conducting R&D in the long term; that is, by working toward a ‘common standard’ in public health rather than in patent protection, for the former would in turn produce greater confluence in patent systems.

### Extinction

#### Global capitalism and industrialization cause climate change and extinction. McDuff 19,

McDuff, Phil. "Ending climate change requires the end of capitalism. Have we got the stomach for it." *The Guardian* 18 (2019).

Climate change activism is increasingly the domain of the young, such as 16-year-old Greta Thunberg, the unlikely face of the school strike for climate movement, which has seen many thousands of children walk out of school to demand that their parents’ generation takes responsibility for leaving them a planet to live on. In comparison, the existing political establishment looks more and more like an impediment to change. **The consequences of global warming have moved from the merely theoretical and predicted to observable reality over the past few years, but this has not been matched by an uptick in urgency. The need to keep the wheels of capitalism well-oiled takes precedence even against a backdrop of fires, floods and hurricanes**. Today’s children, as they become more politically aware, will be much more radical than their parents, simply because there will be no other choice for them. This emergent radicalism is already taking people by surprise. **The Green New Deal (GND**), a term presently most associated with 29-year-old US representative Alexandria Ocasio-Cortez, **has provoked a wildly** **unhinged backlash from the “pro free market” wing**, who argue that it’s a Trojan horse, nothing more than an attempt to piggyback Marxism onto the back of climate legislation. Think we should be at school? Today’s climate strike is the biggest lesson of all Greta Thunberg, Anna Taylor and others Greta Thunberg Read more **The criticism feels ridiculous. Partly because the GND is far from truly radical** and already represents a compromise solution**, but mainly because** the radical economics isn’t a hidden clause, but a headline feature. **Climate change is the result of our current economic and industrial system.** GND-style proposals marry sweeping environmental policy changes with broader socialist reforms because the level of disruption required to keep us at a temperature anywhere below “absolutely catastrophic” is fundamentally, on a deep structural level, incompatible with the status quo. **Right now we can, with a massive investment of effort by 2030, just about keep the warming level below 1.5C. This is “bad, but manageable” territory. Failing to put that effort in sees the world crossing more severe temperature barriers that would lead to outcomes like ecosystem collapse, ocean acidification, mass desertification, and coastal cities being flooded into inhabitability. We will simply have to throw the kitchen sink at this. Policy tweaks such as a carbon tax won’t do it. We need to fundamentally re-evaluate our relationship to ownership, work and capital. The impact of a dramatic reconfiguration of the industrial economy require similarly large changes to the welfare state. Basic incomes, large-scale public works programmes, everything has to be on the table to ensure that the oncoming system shocks do not leave vast swathes of the global population starving and destitute. Perhaps even more fundamentally, we cannot continue to treat the welfare system as a tool for disciplining the supposedly idle underclasses. Our system must be reformed with a more humane view of worklessness, poverty and migration than we have now.** Unfortunately for our children, the people they have to convince of all this are the people who have done very well out of this system, and are powerfully incentivised to deny that it is all that bad. Already, Joke Schauvliege, a Belgian environment minister, has been forced to resign after falsely claiming that she had been told by Belgian state security services that “ghosts” behind the scenes were behind demonstrations in Belgium. This conspiracism of the elite, these claims that genuine mass movement can’t possibly really exist and must be in some way being guided by agents provocateurs, is just one of the ways in which those currently running things have resorted to a kind of political gaslighting in an attempt to maintain their grip on power. 3:18 Dianne Feinstein rebuffs young climate activists' calls for Green New Deal – video **Gaslighting is a term I don’t use lightly, because it describes a genuine form of emotional abuse, where an abuser will deny reality in an attempt to get their victim to literally doubt their own sanity, and this should not be diluted by overuse. Yet I struggle to think of another word that adequately sums up the way in which “sensible” adults are doubling down on their tactic of manufacturing a political reality which bears no relationship to the world we see around us. It’s the Marxism of Groucho rather than Karl: “Who are you going to believe? The serious political professionals or your own lying eyes?”** US Senator Dianne Feinstein’s meeting with schoolchildren petitioning her to take action over the issue went viral because of the way she condescended to them for, basically, asking her to leave them a planet behind to live on. “I’ve been doing this for 30 years,” she said, “I know what I’m doing.” The obvious response is, of course, that messing something up for 30 years is quite long enough, thanks. Long tenure without results is not the same thing as expertise. This is a tough and bitter pill to swallow for the political professionals whose feet are firmly under the table. It is increasingly obvious that all their tactics have done almost nothing except run down the clock, but still they insist that it’s the young who just don’t get it and that things aren’t that simple. They’re the living embodiment of the famous New Yorker cartoon, with a suited man sat in a post-apocalyptic landscape telling his young audience “Yes, the planet got destroyed. But for a beautiful moment in time we created a lot of value for shareholders.” Capitalism can crack climate change. But only if it takes risks Larry Elliott Larry Elliott Read more **This is reality v the vested interests of the powerful. Any meaningful policy has to upset the established power base and the political donor class. Any policy that doesn’t upset these people will be useless. To pretend that we can compromise our way through this while we wait for a magical, technological bullet that will keep temperatures down without costing us anything is beyond wilful ignorance now. It is a question of basic morality.** Many of today’s climate strikers won’t even be 30 by the time the 1.5C deadline comes around in 2030. They are asking us to consider a simple question: is their future worth more than preserving our reputations? What will our response to them be?

### Earth Democracy

#### The alternative is earth democracy. It prioritizes local values and production over globalization, dismantling global capitalist power while maintaining the ability to produce at large scales and ensure wellbeing of citizens, but it is incompatible with the aff’s view on global trade and the WTO. Fukuda 10,

Fukuda, Yasuo. "WTO regime as a new stage of imperialism: Decaying capitalism and its alternative." *World Review of Political Economy* 1.3 (2010): 485.

There is considerable ongoing debate between “globaphobes” and “globaphiles.” **The decaying nature of modern capitalism shows that free trade is not a panacea for citizen welfare**. The task of this section is not however to recount the arguments between globaphobes and globaphiles. Rather, **the aim is to outline an alternative system**. **The matter at hand is how to restore viability, independence, and sustainability to local communities**. But before arguing how this may be achieved, it is worthwhile to clarify the social conditions necessary for realizing such an outcome. **V. Shiva (2005: Ch. 2) advocates “earth democracy” as an alternative to corporate globalization**. **Earth democracy is composed of four basic principles of sustainable society**. **The first is “ecological sustainability.”** That is, **the recognition that all species have intrinsic worth and that their life-cycles are interdependent of one another.** **The second is “community control of the commons.”** **Resources vital to sustenance, including public services and infrastructure, should not be privately owned; public resources must remain in the commons**. The **third is “security of livelihoods.”** That is, the idea that **all people have the right to basic needs, such as food, water, housing, and jobs**. **The fourth is “local sovereignty,” which amounts to community self-governance in regards to local economic affairs.** **Localization of the economy does not mean a closed economy; rather, it is the idea that local production should have priority over trade**. These four principles are necessary conditions for sound and sustainable community life. The second principle, community control of the commons, and the fourth, local sovereignty, are necessary conditions for the third, security of livelihoods. The first principle, ecological sustainability, guarantees preservation of the environment, thereby protecting sustainability of livelihoods as well. **These principles are not just the necessary conditions for sustainable society (Cavanach and Mander 2004), they are also the policy guidelines for realizing it** (Korten 2001). **It is a requirement of earth democracy that corporate globalization be dismantled**. This is because **corporate globalization denies all of the principles of earth democracy**. Therefore, the **power structure of corporate globalization must be broken up**. **First, the Anti-Trust Act must be reformed so that governments can mitigate the power of large firms in the global marketplace**. Large companies that have no technical reason for maintaining such large organizations should be broken up into more governable segments. **Second, market rules such as WTO agreements, should be rewritten**. **Introduced in the name of deregulation and trade liberalization, the aim of these rules has been nothing other than to allow large companies to use monopolistic power to control the global marketplace**. **Local governments must take back the right to formulate policy on matters affecting their own communities, reclaiming the policy space which has been hijacked by the WTO, the IMF, and the World Bank**. **Third, the ability of corporate power to design market systems must be checked**. The political power of big business is principally based on cozy relationships with government. Therefore, **political contributions from corporations must be prohibited**, **lobbying tied to political money should not be allowed**, **and revolving doors between big business and government must be closed** (Marx et al. 2007). Finally, **corporations should be deprived of the entitlement to express their political opinions through media, think tanks, etc**. Simultaneous to the dismantling of the excesses of corporate power, **it is also necessary that communities regain their independence on matters of economic policy**. The arguments presented below are intended to itemize the policy tasks needed for the rebuilding of community-based society. The **first task is to strengthen the foundations of the local economy**. Here, **the policy matter is how to secure productive investment in local communities**. **Local governments need to protect and support their home firms by adopting policies such as local contents regulations, and reinvestment rules in regards to profits gained locally.** The **second task is to support and nurture local businesses, such as small to medium-sized firms, the self-employed, family farming, and so forth**, as these represent core elements of the local economy. The **priority of industrial policies must be to shift power from big business to these local actors**. The objective of such a policy shift should be to strengthen reproductive circulation within the local economy. Local actors are interdependent on one another through the internal circulations which occur at the local level. Therefore, **the strengthening of local actors leads to the independence of the local economy**. But this policy does not amount to locally closed economies (autarky). To the contrary, **it is essential that local industries establish linkages with external markets to ensure viability of the local economy**. **What is important here is for local actors to take the initiative in establishing these linkages**. Therefore, large firms need to be regulated so as to prevent them from damaging the interests of local economic actors. **Large companies should be made to support local actors rather than inhibit them**. The **third task is for local communities to regain control of the commons.** The commons, including **natural resources** (water, soil, seeds, gene information), **public services and utilities** (municipal water supplies, electric power sources, educational services, medical care), **are indispensable to peoples’ lives**. **It is thus a prerequisite to the establishment of economic independence that local communities retain their policy space on issues which concern the commons**. Even in cases of private ownership, **local communities should have the final say with respect to governance of the commons**. In addition, it should be strongly encouraged for citizens to develop a stake in the local economy through, for example, promotion of the co-ownership of cooperatives and the establishment of municipal holding companies. Localization is a way for people to realize democracy on a higher level. Upon this new dimension of democracy, local citizens can make strides toward more healthy and sustainable lives.

### ROB

#### The role of the ballot is to vote for the debater that best contests capitalist values. These values are necessary to the global capitalist system but are still contestable by the multitude. Capitalism employs extreme violence to maintain their values corrupting social understandings of it but continued minoritarian resistance of the multitude is key. Southall 10,

Southall, Nicholas. "A multitude of possibilities: the strategic vision of Antonio Negri and Michael Hardt." (2010).

Hardt and Negri‘s (2004:13) explanation of war as a mechanism of containment, where ―**war has become a regime of biopower and a permanent social relation**‖ is challenged by Alex Callinicos (2004: 11) who argues that this is only a trend because ―at least in the 160 advanced capitalist societies, what binds people to the existing order is still much more the ideology of liberal democracy, the benefits that are still to be had through the welfare state, and the material and spiritual comforts offered by consumerism‖. But for Hardt and Negri **there is no tendency towards mediation between the proletariat and capital**. **The now expanded proletariat**, rather than consenting, **is continuously antagonistic, its constituent power countered by repression, terror and global war**. **There is no subordination without coercion as coercion pervades the whole of Empire.** Yet in spite of some of what Hardt and Negri say, this is not a recent development, or evidence of real subsumption, for capital is always founded on violence. ―**The ultimate disciplinary instrument of the world market is, as it has always been, force**. **War is always critical to capitalist control, as a means for extending its circuits over new domains, dividing opposition, and destroying any threat to the operation of the market**‖ (Dyer-Witheford: 1999: 140). In the twentieth century, at least 110 million and possibly 200 million people, most of whom were civilians, died in armed conflicts (Renner: 1999). Yet these are not all the victims of the **constant global class war which causes continual destruction, death and social misery through the organised violence of capital** and its state forms. Vinay Lal (2002: 9, 49) highlights the ―true ‗unknown soldier‘ of the twentieth century‖ as the victim of development. **The violence of the past one hundred years was not confined to warfare, genocide, political insurrection** or other conventional categories, since **development has often been an act of violence involving the killing of millions of people**. Similarly for Linebaugh (2003: 445), **the workplace must be seen as ‗producing death‘ and the ―punishment of capital must include not only the mutilations, homicides, injuries, stress of the office, mine, and mill, it must also include the migrations, the uprootings, the forced confinements**, the slavery of the sex industries that have become planetary phenomena‖. The Midnight Notes Collective (2002) counts as **casualties of war the people who suffer from ill-health and death due to cuts to public health, medical care and occupational and environmental safety because of rising war budgets.** They further highlight how **the violence of continued mass starvation and price rises that put basic requirements beyond the means of many, ―are the denouement of a long war on the 161 people of the planet to eliminate the most elementary right: the right to eat to live**‖ (Federici: 2000; Caffentzis: 2008). **Although the violence of capitalist development is uneven in intensity and scope, it is a continuous, constant presence**. **The victims of the class war are a**n **example and warning to those who resist, refuse and rebel, demonstrating the outcome of capital‘s strategy of decomposition and intensifying global competition rather than cooperation**. Today, capitalism‘s permanent crisis causes an intensification of the daily, global class war. Hardt and Negri recognise that the **class war serves capital and that the ending of class war is a strategic imperative of the proletariat**. The class war is not a war the multitude requires or desires; it is a product of the capitalist system. The multitude‘s class war is simultaneously a war against class and a war against war. The questions of how to fight a ‗war against war‘ and how to end class are at the centre of Hardt and Negri‘s strategic vision for peace as an alternative to class war. As Massimo De Angelis (2007: 42) explains, the problem for alternatives to capital is how conflict can become ―a force for the social constitution of value practices that are autonomous and independent from those of capital‖ (emphasis in original). Discussing class conflict around capitalist labour and value, De Angelis (2005) and David Graeber (2005) point out that **the politics of alternatives to capitalist society lie not in the struggle to appropriate value but in the struggle to establish what value is**. ―Similarly, the ultimate freedom is not the freedom to create or accumulate value, but the freedom to decide (collectively or individually) what it is that makes life worth living‖ (Graeber: 2005: 58). Various types of value are produced, realised, defended or challenged in ―intense social struggle‖ over ―the ability to define what‘s important in life‖ (Graeber: 2005:15). For De Angelis (2005: 70) ―commodity values are about processes of class struggle‖ but if we understand value in general as the importance people give to their action and understand the norms and standards through which people judge this ‗importance‘ as emerging from a continuous interacting process of social 162 constitution, then in conditions in which this process takes the capitalist form Negri‘s claim (that value is beyond measure) simply does not make sense (De Angelis: 2005: 70) But, as De Angelis (2005) himself points out, value cannot be understood ‗in general‘. **The multitude creates a variety of proletarian use values and capitalist norms and standards depend on social controls, which are continually contested**. For Hardt and Negri **the capitalist form is intertwined with the communist form, with class struggle over value occurring throughout society**. Because of the growing antagonism of the communist form within Empire, they argue that **capitalist value is imposed by violence to deal with capitalist crisis**. Harry Cleaver (1979: 83) explains that capitalist crisis appears ―because **capitalist production is not concerned with production as such but with social control through the imposition of work through the commodity-form and thus the realisation of value**‖. For Cleaver (2005: 127) the problem with Hardt and Negri‘s view of value ―is that it separates the concepts of labour as producer of wealth and labour as means of domination, associating only the former with value‖. Cleaver argues that Marx‘s concept of value . . . has always designated primarily the role of labour as undifferentiated capitalist command rather than its production of wealth. Indeed the very distinction between use value and value is that between wealth understood as that which labour produces of use to the working class and that which labour produces of use to capital, i.e. command. **Class relations are relations of struggle not of domination and command**; this is why the contemporary crisis of capitalist value is not a crisis of value in general, but a crisis of value as command and domination. **Economic and political relations are relations of force between capital and labour and capital‘s ability to impose its value is the power to maintain its system**. However, **while capital attempts to repress communist use values, it is also forced to try to assimilate them, because of the unbreakable power of the multitude. But the power of the multitude is not containable and no amount of violence can completely secure capitalist value.**

**First, “incremental” innovations are a key aspect of R&D, Jones 6**

Nigel Jones (International Chamber of Commerce; Barrister for Gatehouse Cham‐ bers). “The importance of incremental innovation for development.” Submission to the World Health Organization’s Commission on Intellectual Property Rights, Innovation and Public Health. March 2006. JDN. https://www.lesi.org/publications/les‐ nouvelles/les‐nouvelles‐online/2006‐2015/2006/march‐2006/2011/08/08/the‐importance‐ of‐incremental‐innovation‐for‐development

As already mentioned, **the costs and time necessary to bring a drug to the market are considerable**. While the initial patents covering the basic chemical or protein entity are important to encourage the further investment to bring the drug to the market, **the length of time afforded protection** by such patents ‐ due to the considerable amount of time necessary to develop a suitable formulation and presentation of the drug, and the time to conduct clinical trials ‐ **usually does not provide sufficient protection to balance the overall financial investment.** Further, **many inventions** made during the develop‐ ment of the drug formulation or presentation, while possibly **viewed as ’incremental inventions’ by some, are actually critical to bringing the drug to the market**. Indeed, as a proportion of all patents granted worldwide, very few relate to what may be termed “breakthroughs”. **The vast majority cover innovations which build on inventions of others, with the benefit of full disclosure of those inventions in patent specifications**. That is what the patent system was designed to encourage. **By its very nature**, there‐ fore**, it encourages inventors to adapt and modify the developments** patented by others **incrementally** or in any other way. It would therefore, in ICC’s view, be wholly in‐ appropriate not to allow patents for such forms of innovation; and any such change would adversely affect the ability to finance future drug research. **The innovation process in the pharmaceutical sector, as for all other scientific sectors, is one of evolution**. The criteria for patentability are clear. Patents are available for any invention, whether product or process, in any field of technology, provided it is new, involves an inventive step and is capable of industrial application. **If an invention meets these criteria, it is entitled to patent protection. If it does not, it is not patentable. Of these criteria, the most relevant here is inventive step**. The invention must not have been obvious to a person skilled in the relevant art at the time the application for a patent was first filed, taking into account the state of the art at that time. There is no common understand‐ 192 7 Negative Evidence ing around the world on how this criterion should be applied and TRIPS provides no guidance. The precise manner in which it is applied differs from country to country. It even differs over time within the same country. Significant progress has, however, been made in harmonizing the standard, particularly in the US, Japan and Europe. This harmonized standard should, in ICC’s view, in time become the “gold standard” for patents globally. In the meantime, it may be necessary and appropriate, to encourage investment in local research and manufacturing, for developing countries to adopt a lower threshold to provide easy access to patents for local entrepreneurs. But in ICC’s view, it cannot be right to require such countries to adopt a higher standard of inventive step. In any event, neither the inventive step requirement, nor the other basic criteria, make any distinction between different types of innovation œ for example between “in‐ cremental” and “discrete”, or between “me too” and “breakthrough” innovations. As with any innovation, all of these have to be judged against the same basic rules, and that, in ICC’s view, is entirely appropriate. To the extent that genuine concerns about patent quality exist, they relate to the whole range of patents**. They are not specific to patents for healthcare products, nor to patents for so‐called incremental innovations. If such inventions fail to meet the fundamental criteria set out above, patents should not be granted for them; and where patents have wrongly been granted, courts should (and have) corrected those errors** œ all as part of the international efforts referred to above to ensure that an appropriate balance is achieved between all entities affected by patents. **However, the fact that there have been some examples of patent‐granting authorities ap‐ plying the criteria incorrectly does not justify fundamental change to those underlying principles.**

### Uniqueness

**Second, evergreening only proves flaws in the application process, not the legitimacy of patents themselves, Jones 6**

Nigel Jones (International Chamber of Commerce; Barrister for Gatehouse Cham‐ bers). “The importance of incremental innovation for development.” Submission to the World Health Organization’s Commission on Intellectual Property Rights, Innovation and Public Health. March 2006. JDN. https://www.lesi.org/publications/les‐ nouvelles/les‐nouvelles‐online/2006‐2015/2006/march‐2006/2011/08/08/the‐importance‐ of‐incremental‐innovation‐for‐development

**In the context of pharmaceuticals, it has been suggested** that **patent protection should not be given to inventions comprising different salts, esters or other derivatives of known drugs,** different dosage forms or means of administration of existing products, combinations of known products (including fixed dose combinations), nor “mere” new uses of known compounds, (all of which might qualify for the misnomer “incrementally modified drugs”); nor for modifications to medical devices (such as a single‐, rather than multiple‐dose, syringe). **These suggestions are, in ICC’s view, misconceived. As stated above, if any such inventions do not satisfy the basic patentability criteria, patents should not be granted for them**; and if patents are found wrongly to have been granted, courts and patents offices should correct those errors, just as they should for patents in any field and for any category of innovation. This approach should address, and is addressing, concerns about illegitimate extension of patent term, or “evergreening”. **There is no need for separate, or new, legislation to deal with this issue. Further, the suggestion that such inventions do not benefit society is wrong. These types of so‐called “incremental” innovation generally result in better health outcomes2, for example by increasing efficacy, reducing side effects and/or making administration easier, resulting in improved compliance and greater effectiveness**