I affirm resolved: the member nations of the WTO ought to reduce intellectual property protections for medicines.

Definitions **Cornell University:**

In general terms, **intellectual property is any product of the human intellect that the law protects from unauthorized use by others.**  **The ownership of intellectual property inherently creates a limited monopoly in the protected property.**  Intellectual property is traditionally comprised of four categories:  [patent](https://www.law.cornell.edu/wex/patent), [copyright](https://www.law.cornell.edu/wex/copyright), [trademark](https://www.law.cornell.edu/wex/trademark), and [trade secrets](https://www.law.cornell.edu/wex/trade_secret).

[Intellectual property | Wex | US Law | LII / Legal Information Institute (cornell.edu)](https://www.law.cornell.edu/wex/intellectual_property)

This is what I define as intellectual property and this is what I am reducing

The agent of action in the resolution is the World Trade Organization.

First, the WTO is a voluntary associative organization with defined standards for membership. The resolution is a question not of what states should do generally, but of what states should do *as WTO members.* The agent that defines standards of organizational membership for the WTO is, by definition, the organization itself. It is constitutively true that the “member nations of the WTO” can only be made up of those nations that meet the constitutional requirements for membership, so establishing that a topical obligation is requisite for WTO membership proves the resolution true.

Second, agential judgements can only be made in the context of a unified actor. One can’t make a unitary judgement about the obligations of multiple independent agencies simultaneously, because those agencies don’t act in concert, and thus judgements about how each ought to act involve assessments of how all the others will act; no agent makes a policy decision about its action in an environment of certainty with regard to the actions of others. Thus debating a question of how any number of independent agencies ought to act independently of each other requires magical thinking. Instead we must identify a unified decision-making agent; in this case, the WTO.

Thus the affirmative burden is to show te WTO has an obligation to require member nations to reduce intellectual property protections for medical patents.

ADVOCACY TEXT:

Moral requirements must be based in reason. **Tubert:**

**“**One may think that beliefs aim at accepting what is true and only what is true. That is, **in order for an attitude to be one of belief, it must be truth-directed** in this way. **Given that logical rules of inference are truth-preserving,** insofar as we are committed to accepting only what is true, **we are also committed to following** certain **logical rules** (e.g. the law of noncontradiction, modus ponens, etc.). And so **we are required to follow these rules because we** are committed to them insofar as we **have beliefs; if we were not committed to them, we would not be believers at all.** But, could we fail to care about being believers? **And** if so, *should* we care? In response to these concerns, one may argue that **having beliefs is**, again, **constitutive of agency. The rational requirements of theoretical reason are requirements on the formation of belief, for example, that we be sensitive to evidence or follow** certain **rules of inference. The normativity of these requirements may be linked to the fact that they are truth preserving** or the best means for arriving at what is true. The connection seems to be as follows: **Pursuing the truth entails being sensitive to the best available evidence;** **this in turn** seems to imply at least **[implies] a commitment to** some basic **rules of inference.** So, in representing one’s attitudes as aiming at or being sensitive to the truth, one is committed to certain rational requirements**.”**

Tubert, Ariela. “Constitutive arguments.” *Philosophy Compass,* 5/8, 2010, pp. 656-666.

Our status as agents binds us to a process of reasoned inference. Thus the normative motivations for our action have to be rooted in reason, not in superstition, desire, or visceral reaction.

Normativity governs action, thus a cogent theory of action has to come before normative evaluation. Any functional theory of action has to account for the internal means/end calculative  structure of action-oriented choice. **Millgram:**

**“**Intentional actions are picked out and segmented into their parts by applications of Anscombe's ‘Why?’-questions. (‘Why are you chopping the nuts?’ ‘I'm making a salad.’) **The internal structure of actions is** consequently **a series of steps towards a** termination **point** (or ‘end’), a place **where the action *stops*.** **When you make** Deborah Madison's persimmon and **hazelnut salad, you first** coarsely **chop the nuts**; then you thinly slice three Fuyu persimmons crosswise and put them in a bowlalong with the nuts; **then you add** in three handfuls of trimmed **watercress**; then you toss with the **[and] dressing — and you're done. A step can be shown to be rational by showing it to be** a step **on the way to the termination point of the action** that you are in the course of performing. A step can be shown to be **[and] *ir*rational by showing that it's not: for instance, if you've finished** making **the salad, but you obsessively keep chopping nuts.”**

Millgram, Elijah, "Practical Reason and the Structure of Actions", *The Stanford Encyclopedia of Philosophy* (Summer 2012 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2012/entries/practical-reason-action/>.

Further, commitment to action binds one to the normative force of means/end calculation. This is a constituting requirement of agency; unless one accepts the characteristic means/end force of actions, one is not an actor at all. **Millgram 2:**

**“**The connection only runs one way, however. **Since considerations of other sorts organize, modulate and** generally **control actions, they presuppose calculative reasons. But calculative structures** (and the reasons they give you) **do not presuppose** these **other sorts of consideration**: you can *just* tie your shoes, and Vogler regards theories on which such actions must be informed by, for example, a large-scale conception of the good as modeling rationality on a psychopathology akin to paranoia. This asymmetry is what Vogler takes to be the deep insight underlying instrumentalism. **Because any action** large enough to be something **we care about must, if it is to *work*, be calculatively well-formed, the means-end**/part-whole **articulation of actions is nonoptional**, and consequently, **we have to pay** due **attention to calculative reasons. We cannot shrug off** others' **criticism of our calculative reasons, as we can shrug off** their **criticism of**, say, **our pleasures. Calculative reasons are** thus nonoptional, or **binding.”**

Millgram, Elijah, "Practical Reason and the Structure of Actions", *The Stanford Encyclopedia of Philosophy* (Summer 2012 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2012/entries/practical-reason-action/>.

And, all actions operate within a practice framework that generates these calculative reasons. **Millgram 3:**

**“**In an early, influential, and Wittgenstein-influenced paper, John Rawls introduced the notion of a *practice* as a generalization or extension of the notion of a game (Rawls 1955). The important feature of **a practice** for our purposes is that it **introduces statuses** which are **internal to it. For instance, in baseball,** such **statuses might include** being **a ‘foul’, [or] a ‘strike’**, and so on; whatever what you're doing looks like, **it can't be a** [baseball} **foul [ball] if you're not playing baseball.** **A practice** thereby **introduces standards; since something is a ‘home run’ only [because]** by virtue of the fact that what is being played **[this] is baseball, there are standard**s, given by the rules **of baseball, to which a home run has to live up. A practice** also **introduces** reasons which are internal to it; these reasons may be means-end or **calculative reasons** (as when the rules specify the object of the game: in baseball, as Yogi Berra famously put it, to win, by scoring more points than the opposing team), or reasons of other kinds. (In squash, that the other player's head is between your racquet and the ball is a reason to call a ‘let’, but not because it is the best way to win; if you were to exercise your option of hitting your opponent in the head, you would win the point. In squash, calculative reasons are modulated by gentlemanly reasons.) Tamar Schapiro has extended Rawls's treatment, developing it into a theory of action (Schapiro 2001; she attributes the view to Kant, but again the historical question will not be taken up). On her view,**”**

Millgram, Elijah, "Practical Reason and the Structure of Actions", *The Stanford Encyclopedia of Philosophy* (Summer 2012 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2012/entries/practical-reason-action/>.

Also, these practice-specific norms are the only logically coherent way that normative requirements can be generated. **Millgram 4:**

**“‘[A]ctions’ are just moves in the** completely **generic practice**; that is, ‘action’ is a status within the generic practice in something like the way that ‘move’ is a status within chess. Schapiro does not name the generic practice, but because it will be convenient to have a short way of referring to it, **let's call it ‘Intendo’. Intendo is the game you** are **play**ing **whenever you do anything at all; ‘agent’ is thus the generic role in the** generic **game** (the analog of ‘player,’ in chess or baseball). **Practices specify standards and reasons, and so ‘practical reason’** turns out to be **[is] a practice status as well. Intendo** consequently **determines what forms practical reasons can take**, and so patterns of practical inference are to be read off of what turns out to be the theory of action. Practical **reasons are *practical* only if they could** be brought to **bear on some decision resulting in action;** **being an action is a status** (the generic move) **within Intendo; so there could be no practical reasons coming from outside** the practice of **Intendo.** (Other, more local practices have to accommodate reasons that come from outside the practice; for instance, in chess, the object of the game is to win, but I may have personal reasons for not playing to win.) Therefore, **if you can show that Intendo imposes some standard on its reasons** (for instance, and to anticipate, that they have to be universalizable), **then you will have shown that all reasons have to meet it.’** ‘Schapiro's article is evidently the first piece of a project whose finish line is some version of Kantian morality. She writes that ‘if it is right to think of universal laws on the model of practice rules, then the law of freedom can be thought of as an indeterminate practice rule, one which simply requires us to make every movement as if it were to count as a move in some possible global practice’ (108); this is a paraphrase, in the vocabulary of this theory, of the Kantian demand that one act only on maxims of which one could will that they be universal laws. The patterns of practical reasoning are to be those acknowledged by Kantian theory of practical rationality, and the substantive moral consequences, those endorsed by Kantian moral theory**.”**

Millgram, Elijah, "Practical Reason and the Structure of Actions", *The Stanford Encyclopedia of Philosophy* (Summer 2012 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2012/entries/practical-reason-action/>.

A move that is not connected in a sense-making way to the totality of an action is not just a “wrong” choice, but no choice at all.

And, each socially defined practice has a set of internal ethical goods that are determined by the overall social function of that practice and control the ethics of decision making internal to the practice. **Pellegrino:**

**“Internal goods are** those **realized** when trying to achieve the **[by a] standard of excellence definitive of** that **[a] practice.** External goods are those which do not contribute directly to attainment of the aims characteristic of a practice. A profession like medicine can be viewed as a practice in MacIntyre’s sense. **Excellence** **in healing is**, then **a good internal to [the]** that **practice [of medicine]**; making money is a good external to that practice. MacIntyre places **[with] emphasis on [the] societal context** and construction in the absence of **[without] which the activity** in question **would not come into existence.** Certain societal decisions are necessary to sustain the virtues essential in practices. **A profession is** a particularly **distinctive** activity from a social point of view **since it is related to the common good and embedded in an institution**al matrix. MacIntyre’s notion implies that **those within a** practice (or **profession**) **function within** a community with **defined standards, skills and virtues, which are not individually determined by its practitioners.”**

Pellegrino, Edmund. [Georgetown University]. “The internal morality of clinical medicine: a paradigm for the ethics of the helping and healing professions.” *Journal of Medicine and Philosophy,* vol. 26, no. 6, 2001.

Thus it is possible to speak of “proper functions” specific to a practitioner. Actions directed at the fulfillment of these functions are correct while actions that disregard these functions are wrong. **Linderman:**

**“**There, I developed an account of evaluative kinds that could ground norms using an account of proper function adapted from the philosophy of biology. **A proper function is a function an object has because of its nature, rather than because of** its **circumstances** or its accidental **or relational properties.** Proper functions turned out to be precisely the sort of function the constitutivist needs to explain norms. In Chapter Two, I argued that only **an** etiological **account of proper function** - one **that appeals to the history of** individuals and **kinds** - is able to account for the constraints raised by **explain[s]**ing **how functions could be responsible for evaluative norms.** Etiological proper functions require a specific sort of **history**: one that **accounts for why [a]** the **kind of object** in question **has the form it does by appealing to its selection history. The individual must be a member of a** reproductively established **family whose form was selected because it served** a **particular functions.** **Having a proper function, then, is** a matter of **having been created in a way that relates the form to an end**; it’s thus teleological. **So** we have the beginnings of a sketch of how the constitutivist might explain how **evaluative kinds are functional kinds.** To have a proper function is to be a member of a group whose individuals are created with forms in a way that accounts for those members having that form because the form was selected because it produced an effect, which is the proper function**.”**

Lindeman, Kathryn M. [AB, Mount Holyoke College, 2005; PhD in philosophy, University of Pittsburgh, 2014] “Grounding constitutivism.” Submitted to the Graduate Faculty of the Kenneth P. Dietrich School of Arts and Sciences in partial fulfillment of the requirements for the degree of Doctor of Philosophy, University of Pittsburgh, 2014.

Thus the standard is **consistency with the constitutive standards of the WTO.**

First, the constitutional purpose of the WTO is to ensure the smooth and free flow of trade.

Per **The World Trade Organization:**

**“The World Trade Organization (WTO) deals with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible.”**

The World Trade Organization. *The WTO.* Accessed September 3, 2021. <https://www.wto.org/english/thewto_e/thewto_e.htm>

And, constitution level standards that define the basic nature of an organization supersede more specific standards because the former define the nature of the institution. For instance in the US laws are voided if they are deemed unconstitutional. Thus for the purpose of analyzing obligations of the WTO greatest weight is given to the organization’s constitutive aims rather than to any specific rule or policy.

Second, current law and practice in pharmaceuticals allow for strategic accumulation of questionably ranged or follow-on patents that create patent “walls” or “thickets” and inhibit the free flow of trade and innovation. **Gurgula 20:**

**“**As a result, in addition to the already high barriers to entry into the pharmaceutical market due to patents that protect an existing product and the need to obtain a marketing authorisation, **strategic patenting raises** these **entry barriers** further, making it very difficult for generic companies to overcome them. This strategy, therefore, **[and] ’may** without further enforcement action by originator companies … delay generic entry until the patent situation is clearer or even **discourage** more risk-sensitive generic **companies from entering altogether.’** **Consequently**, the fact that actual or potential competitors of originators would not be able to develop alternative generic products means that **no one could** enter the market and **challenge originators’ monopoly positions. This** results in a **weaken[s]**ing of **competition in the** relevant **market** and a strengthening of the originator’s already dominant position. As Maggiolino put it, **‘patent accumulation** … may work as a pre-emptive entry-deterrence strategy to **protect[s] monopoly power and** … **lower[s] consumer welfare by allowing dominant firms to** keep on **charg[e]**ing **over-competitive prices’.** Therfore, when an array of accumulated secondary patents ‘blocks monopolists’ rivals from producing follow-on innovations, this strategy prevents the whole society from enjoying … these further innovations’. While practices that facilitate innovation are encouraged by competition law, practices that are aimed at blocking follow-on innovation by competitors should raise competition law concerns**.”**

Gurgula, Olga. “Strategic patenting bypharmaceutical companies - should competition law intervene?” *International Review of Intellectual Property and Competition Law,* vol. 51, 1062-1085, 2020. [ELLIPSES IN ORIGINAL]

A core problem is that in the squo the standard of non-obviousness is not rigorously enforced.  **Feldman** observes:

“One-and-done would apply to both patents and exclusivities. A more limited **[One] approach**, a baby step if you will, **would be to invigorate** the existing **patent obviousness doctrine** as a wayto cut back on patent tinkering**.** Obviousness, one of the five standards for patent eligibility, says that inventions that are obvious to an expert or the general public can’t be patented.Either **by congressional clarification or judicial interpretation, many pile-on patents could be eliminated** with a ruling that the core concept of the additional patent is nothing more than the original formulation.Anything else is merely an obvious adaptation of the core invention, modified with existing technology. As such,the patent would fail for being perfectly obvious. Even without congressional action, **a more vigorous** and robust **application** **of** the existing **obviousness doctrine could significantly improve the problem of** piled-up patents and **patent walls.** **Pharmaceutical companies have become adept at** maneuvering through the system of patent and non-patent rights to **creat[ing]**e mountains of **[patent] rights that** can be **appl[y]**ied, **one after another. This** behavior **lets drug companies keep competitors out of the market** and beat them back when they get there. We shouldn’t be surprised at this. Pharmaceutical companies are profit-making entities, after all, that face pressure from their shareholders to produce ever-better results. If we want to change the system, **we must change the incentives driving the system. And right now, the incentives for creating patent walls are just too great.”**  
Feldman, Robin. “‘One-and-done’ for new drugs could cut patent thickets and boost generic competition.” *STAT,* February 11, 2019.

In US patent law there is currently no specific standard governing the evaluation of obviousness in pharmaceutical patents. **Richards:**

**“**No statute currently specifically forbids evergreening. Instead, substantive patent law, particularly **the law of obviousness**, provides **limits** on whether the PTO may grant later-filed **patents**. Specifically, a patent may not be granted if ‘the differences between the claimed invention and the prior art are such that the claimed invention as a whole would have been obvious’ before the patent application was filed. **The Supreme Court has not articulated a specific test for** whether an invention would have been **obvious[ness]**, instead **preferring a flexible approach** that takes the facts and circumstances of the state of the art into account. The Court has identified, however, some situations in which an invention likely would have been obvious. For example, if the invention involves ‘the simple substitution of one known element for anogther or the mere application of a known technique to a piece of prior art ready for the improvement,’ the invention likely woul dhave been obvious. At bottom, if the invention is ‘a predictable variation’ of what came before, then the law of obviousness ‘likely bars its patentability**.’”**

Richards, Kevin T. et al. “Drug pricing and pharmaceutial patenting practices.” *Congressional Research Service,* February 11, 2020.

Thus the advocacy:

Member states of the WTO should subject nonobviousness in patent litigation to an inducement test, that is, the standard that *but for* the profit inducement conferred by a potential patent, an innovation would not likely have been arrived at.

That plan is consistent with the constituent standards of the WTO for two reasons:

First, its aim is to improve the free and predictable flow of trade by structurally creating an ideal balance between innovation incentives and avoiding monopolistic inefficiencies.

Second, it restructures patent law in a way that subjects it to economic, instead of psychological, analysis, which is the specific area of concern of the WTO. **Abramowicz:**

**“**A second and more important motivation is the promise of **the inducement standard** in providing significant insights into **[addresses]** some of the most **difficult** theoretical and practical **problems in** the field. Economic analysis of **patent law** frequently begins with the assertion that **patents present a social tradeoff between** providing **incentives for innovation [and]** at the expense of accepting the 18 **deadweight loss associated with** monopoly-like **exclusive rights.** And even beyond the law-and-economics literature, legal scholars often frame intellectual property law generally and patent law in particular as presenting a conflict between the public and private domains—a choice between openness and exclusivity. If, however, **the** law follows Graham’s **inducement standard**, **[eliminates] such tradeoffs** and conflicts do not necessarily exist. **Under a rigorously enforced inducement standard, patents would cover only those innovations that otherwise would not be created** or disclosed—in other words, patents would cover only innovations that, without the patent system, would not have been in the public domain. **The patent system would** then **have only positive effects** on the public domain: patents would cover only inventions that would otherwise not be in the public domainand, when the patents expire, the inventions would enter into and enrich the public domain. Similarly, **the** apparent **deadweight losses created by patent rights would be an illusion because, if patent rights had not been available, the invention would not have been available** from competing firms but instead would have been either unavailable or covered by trade secrecy. As we will show in this Article, the optimal implementation of the inducement standard may not achieve such a Panglossian resolution because, at least in some circumstances, patents should be allowed even if they merely induce earlier innovation. Thus, the analysis suggested by the inducement standard helps to identify more clearly the precise economic tradeoff at issue: patents produce earlier innovation but at the cost of higher prices and associated deadweight loss in a later period (when the invention would have existed even without the inducement of the patent). This point highlights another deep theoretical strength of **the inducement standard**, for it holds out the hope of **ground[s]**ing **patent**ability **decisions in** **a** more **rigorous economic framework and** thereby **bring[s]**ing **patent law closer to** the vast body of **modern regulatory law that** commonly **uses economic analysis in making specific decisions about the scope** and extent **of regulation.”**

Abramowicz, Michael and John Duffy. “The inducement standard of patentability.” *The Yale Law Journal,* 2011.