Expect a Wave of Pro-IP Proposals from Industry in the Wake of the COVID-19

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Access to Medicines, COVID-19
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The U.S. can expect a wave of opportunistic proposals from apologists in Congress and from the biopharmaceutical and medical device industries to expand intellectual property protections in the wake of the COVID-19 pandemic. These proposals must be rejected to assure that health needs, not Pharma greed, are met.

As a recent example, Senator Ben Sasse (R-Neb.), has just proposed adding 10 years of extra patent protection to new and existing medical devices and drugs used to treat COVID-19. The bill proposes that new patents aimed at treating COVID-19 won't become effective until the national COVID-19 emergency is called off but that thereafter 10 years would be added on to the ordinary 20-year patent term. The patent extension section applies to "a new or existing pharmaceutical, medical device, or other process, machine, manufacture, or composition of matter, or any new and useful improvement thereof used or intended for use in the treatment of the coronavirus disease 2019." The proposal is included in the Facilitating Innovation to Fight Coronavirus Act, which

also deals with shielding health providers from liability in treating COVID-19 patients.

Congress had earlier considered legislation to address the expanded use of the judicial exceptions to limit patents on diagnostic testing. In April and May, a bipartisan and bicameral group of legislators released proposals and a draft bill to revise the patent law. ("Patent-Eligible Subject Matter Reform in the 116th Congress," R45918, Prepared by Kevin J. Hickey. Sept. 17, 2019.) We should certainly expect a revival of this and similar proposals.

In addition to pro-intellectual property (IP) proposals from members of Congress, we can expect a loud chorus of self-congratulatory and self-serving statements from major biopharmaceutical companies and medical device manufacturers about how quickly they sprang into action, how important it was that an IP-protected environment incentivized emergency COVID-19 research, and how much those IP-protections should be strengthened to provide funds needed to respond to future pandemics and other unmet health needs.

The world can be happy that scientific resources have been mobilized so quickly without capitulating to false claims that the only way to organize incentives for research and development is on the foundation of exclusive rights. Those exclusive rights most commonly lead to monopoly prices that make new medicines and devices increasingly unaffordable worldwide.

Most of the best COVID-19 science being done now is open-source where antiquated notions of siloed and secret research are being thrown out the window — and doing so has accelerated the pace, not slowed it down. Society needs to pay for this wave of research – and frequently is

through government and charitable funding – but that doesn't mean we should pay through the nose. We could and should move towards a delinked system that relies more and more on public funding of prioritized research and development (R&D) that focuses on neglected and emergent needs, at the same time that we strengthen national and global capacity to produce needed medicines and devices with assured quality at lowest possible costs so that access for all can be assured. Although we can expect some pricing moderation by industry in response to the COVID-19 pandemic as it seeks to refurbish its tarnished reputation, the industry's long-term goals are clear: more monopoly protections for a longer period of time and more opportunities to charge ever higher prices. If industry succeeds, we will reap the consequences: R&D driven solely by the prospect of super-profits and prices that are increasingly unaffordable and long-lasting – needlessly impacting lives and wellbeing around the globe. These efforts must be rejected at every turn.