

Technology, Human Rights, and Equality Seminar

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J.D. Thesis Abstract

SEEING HUMAN RIGHTS IN 3(d): MODELING INDIA'S CONTROVERSIAL PATENT  
LAW TO IMPROVE ACCESS TO MEDICINES IN VIETNAM

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A patent strategy known as evergreening contributes to increased medical costs by keeping lower-cost generic alternatives out of the marketplace, and criticism of the strategy is warranted in asking whether its abuse amounts to overzealous profiteering that disproportionately affects poor populations. Without addressing the potential dangers that evergreening poses, the most recent amendments to Vietnam's Law on Intellectual Property came into effect in early 2010. What follows is the possibility for pharmaceutical patent holders to squeeze generic competition out of the Vietnamese market, putting increased pressure on a nation already strained by the price of medicines. The price of medicines in Vietnam remains high in comparison with average incomes, and the Vietnamese people bear the lion's share of healthcare expenses while government spending on health is insubstantial.

Meanwhile, India has already ventured to avoid the threat that evergreening once posed to its relatively poor population. Under the auspice of public health, the 2005 Indian Patent Act outlawed patentability for minor, insignificant alterations to known pharmaceutical inventions under Section 3(d). The controversial provision has been challenged on the grounds that it violates the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) as

promulgated by the World Trade Organization. But the provision has survived legal scrutiny in India and is being looked at by other developing countries as a model provision for their own patent laws.

By amending its Law on Intellectual Property to include an explicit prohibition on evergreening that is based on Section 3(d) of India's Patent Act, Vietnam can lay the foundation for an intellectual property regime that adequately respects patent rights while enhancing access to affordable medicines for its people. Though importing a provision akin to Section 3(d) into Vietnamese patent law is not without challenge, doing so is i) doctrinally sound under international agreements and domestic law, ii) morally grounded in the maxim that all people have a right to health and iii) practically attainable without offending Vietnam's socialist orientation and centralized government.