



Getting Behind COVID-19 Vaccine Innovators (Summary Version)

May 21, 2021

By Noel Courage

There is a need to rapidly increase vaccine supply to defeat the global pandemic. The U.S. government recently supported a proposal at the World Trade Organization to waive certain COVID-19 patent rights.

It is understandable that people want to pull every lever that may alleviate a public health emergency. Patent overrides would miss the mark. It is an oversimplification to suggest that getting rid of patents would increase vaccination. This article explains why innovator companies should be considered as partners, not adversaries, in order to increase vaccine access.

Part I: Scaling up production fast

Rapid tech transfer

Initial patents are filed at a very early stage of development and do not include the necessary know-how to commercially scale up and produce vaccines. Much of the knowledge to make safe and effective vaccines is in the unpublished know-how of the experienced companies that originated them. It is not possible to turn off the patent taps one day and turn on the taps for vaccine copies the next. Development and regulatory approval of a vaccine “copy” takes time and money.

The most efficient route to increased vaccine supply is for innovator companies to license and engage other experienced vaccine manufacturers and transfer their knowledge to those manufacturers. This is shown by GSK and Novavax entering into an agreement for GSK to provide fill and finish services for the COVID-19 vaccine developed by Novavax. This is a more productive and certain way to increase vaccine supply than by overriding Novavax IP and waiting to see if other companies develop their own copy of the Novavax vaccine and get approval from regulators.

Innovator vaccine companies are co-operating

Many co-operative arrangements have been put in place to increase vaccine supply. Vaccine supply has increased so quickly that the rate limiting step has sometimes been supply of raw materials.

In some cases, private companies have struck deals between themselves. Moderna, J&J and BioNTech have all licensed a leading multinational vaccine company, Sanofi, that will produce hundreds of millions of COVID-19 vaccine doses. AstraZeneca has licensed the Serum Institute of India, which is one of the largest vaccine manufacturers in the world.

These partnerships are not limited to first world countries. Vaccine manufacturers have made partnerships with non-governmental organizations, such as the Coalition for Epidemic Preparedness Innovations (CEPI) and a vaccine organization, Gavi, backed by the Gates Foundation. Over a billion doses are being allocated to low- and middle-income countries. Innovators have also licensed manufacturers in developing countries.

Holding innovator companies' feet to fire



It is clear that both government and non-governmental organizations on the front lines of the pandemic recognize that a rapid and massive scale up in vaccine production should primarily rely on COVID-19 vaccine originators as partners, as well as leveraging other experienced vaccine makers. The job of building manufacturing capacity is getting done. Keep building on these efforts that are working.

Part II: Increasing vaccine acceptance

There are public safety benefits of relying on innovators, which will increase vaccine acceptance.

Safety, public acceptance of vaccines

Producing sufficient supply of vaccine is only one major obstacle in trying to vaccinate the world out of the pandemic. Another major challenge is ensuring that enough people are willing to be vaccinated to create “herd immunity.” These days, every delivery delay or significant rare adverse event with a COVID-19 vaccine can become front page news and undermine confidence in vaccines.

Any solution to vaccine shortage has to address both supply and hesitancy. It is not easy to make a massive amount of high-quality vaccine. The vaccine originator should therefore be closely involved in this process of building vaccine capacity, to avoid reinventing the wheel. Originators are more likely to successfully transfer technology to licensed manufacturers, minimizing risk of incidents that would undermine public confidence in vaccines. Overriding IP to allow other companies to take a shot at making their own version may well backfire if those companies, less experienced with the vaccine, end up with quality problems that create vaccine hesitancy.

IP licences ensure quality and control

An IP licence agreement can include limited and strict permissions to make, use and sell under an originator company’s patents, know-how and trademarks. These licence terms allow the originator to effectively control the licensee. If there is no patent or other IP on a vaccine, then no licence is needed, and any company can develop its own vaccine formulation, for better or worse. If the originator company is involved in the technology transfer as licensor, then the licensee benefits from the originator’s knowledge and experience with the product, and problems can proactively be avoided. If problems cannot be resolved, the licence can be terminated to revoke permission to make the vaccine.

Part III: There is much new supply from innovators not being equitably distributed

Licensing and technology transfer for innovative vaccines can address vaccine equity. Typically, large vaccine companies own, or can partner with, vast distribution networks to get innovative vaccines distributed globally. Governmental and non-governmental organizations can help vaccines penetrate even farther. Patents are not the reason why these networks are currently being underutilized.

In some cases where innovator companies have already increased vaccine supply, their efforts have been undermined by governments prioritizing their own countries’ interests. Governments can loosen contract restrictions and export restriction laws, if they choose to do so. Licensing innovator vaccines further could help fill global distribution networks while diplomatic negotiations try to free up vaccines for countries most in need. Licensing and technology transfer from innovator companies is faster and safer than overriding patents and waiting on “home brew” solutions to arrive.

When diplomatic negotiations do not provide fair vaccine access, patents become a scapegoat, and patent overrides become a desperate do-it-yourself solution. Licensed, safe vaccine supply should be available. Equitable access to vaccines is essential before the world can move past COVID-19.

This article was first published by [The Lawyer's Daily](#) on May 19, 2021.

[Click here to read the original article.](#)



Content shared on Bereskin & Parr's website is for information purposes only. It should not be taken as legal or professional advice. To obtain such advice, please contact a Bereskin & Parr LLP professional. We will be pleased to help you.