

President Biden support for waiving COVID-19 vaccine patent rights prompts IBA commentary



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The **International Bar Association** (IBA) – the global voice of the legal profession – from different perspectives and legal disciplines analyses **President Joseph R Biden's and the United States Government's decision to support the lifting of intellectual property (IP) rights for COVID-19 vaccines.**

IBA President Sternford Moyo, Senior Partner and Chairman at Scanlen & Holderness law firm in Zimbabwe, commented: *'In supporting the movement to waive IP rights for the manufacture of COVID-19 vaccines, President Joe Biden has shown great leadership in working towards healing a world ravaged by a disease that makes no distinction as to who it destroys. This pandemic has revealed in stark measure our interconnectedness, which we should now harness to find solutions for the benefit of humankind. Undoubtedly, the manufacture and distribution of vaccines are complex, but states across our shared planet must prioritise the protection of life and health above all else. Reaching agreements to stabilise this unprecedented global health emergency, while still respecting property rights, is possible if the will to do so is in place.'*

Mr Moyo added: *'The division between industrially developed and industrially developing nations has no place in tackling this crisis. It is encouraging that heads of governments, including President*

Emmanuel Macron of France, and hugely influential figures, such as Bill and Melinda Gates have altered their positions to become proponents of the waiver. Hopefully, this bodes well for true cooperation between countries and the monolithic pharmaceutical companies that will be necessary at many stages. “Building back better”, must include doing so more equitably. This is the hour to replace platitudes with action.’

In October 2020, India and South Africa submitted a proposal to the **World Trade Organization** (WTO) requesting states waive patent protections on COVID-19 vaccines, as a measure to help address the inequitable distribution of the inoculations by allowing other pharmaceutical companies to make copies of the vaccine without the fear of being sued by the vaccines’ creators. In the intervening months, the proposal has gained support from more than 100 industrially developing nations, with states urging officials to make vaccinations accessible and affordable for all countries regardless of wealth.

However, the temporary suspension of COVID-19 vaccines’ IP rights alone will not solve the challenge facing the international community. Negotiations will likely take months to finalise. There will also need to be access to raw materials to make the vaccine, the transference of know-how, technology and infrastructure built or modified to create the vaccines. A more immediate solution is to be found that could include scaling up production, licensing agreements and richer nations distributing stocks to lower income nations. – President Biden recently announced that the US will send 80 million doses of vaccines abroad in the next few weeks: 60 million from its large stockpile of the not yet US-approved Oxford/AstraZeneca vaccine and 20 million approved vaccines.

In a joint statement, **IBA Intellectual Property and Entertainment Law Committee** Co-Chairs, **Gregor Buehler** and **Ozge Atilgan Karakulak**, and Senior Vice Chair **Alejandro Luna**, stated: ‘*Now more than ever, during the COVID-19 pandemic, the world has witnessed the relevance of pharmaceutical innovation; not only in the prompt reaction and response to offer various vaccines to confront the invisible enemy, but also with promising new products to cure the illness. New vaccines, products and medical devices to face the pandemic do not arise spontaneously, but rather derive from the virtuous circle of previous innovation, research and development, whose main engine stems from a healthy patent system. Facing a demand derived from a global pandemic, there are not enough raw materials, manufacturing plants, distribution and materials for preservation of products to solve the problem that is not attributable to the patent system.’*

They added: '*Evidence of the problem to overcome the pandemic, arises from scarce goods and services, not from the patent system. On the other hand, the clear evidence is that the new treatments and vaccines arose from this innovation industry stimulated by the patent system, therefore, we consider that the problem is not the patent system, nor the solution lifting patents, but the establishment of measures to facilitate access to inputs through a system that fosters a balance between stakeholders, innovators and governments.'*

The exponential rise in COVID-19 cases in over the last month has been cause for great concern. In early May, India became the first country to register more than 400,000 new infections and 3,689 deaths in a 24-hour period. It is the highest recorded daily death toll since the pandemic began. The actual number of cases is likely to be higher. Neighbouring countries, including Bangladesh, Nepal, and Sri Lanka are reporting an increase in the number of cases and deaths. Also, the **World Health Organization** has described the new strain of COVID-19 found in India as a global 'variant of concern' due to its potential for increased transmissibility.

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Notes to the Editor

1. The **International Bar Association** (IBA), *the global voice of the legal profession*, is the foremost organisation for international legal practitioners, bar associations and law societies. Established in 1947, shortly after the creation of the **United Nations**, it was born out of the conviction that an organisation made up of the world's bar associations could contribute to global stability and peace through the administration of justice.

The IBA acts as a connector, enabler, and influencer, for the administration of justice, fair practice, and accountability worldwide. The IBA has collaborated on a broad range of ground-breaking, international projects with the **United Nations**, the **European Parliament**, the **Council of Europe**, **The Commonwealth**, the **Organisation for Economic Co-operation and Development** (OECD), the **World Trade Organization**, the **International Monetary Fund** and the **World Bank**, among others.
2. The **International Bar Association's Human Rights Institute** (IBAHRI), established in 1995 under Founding Honorary President Nelson Mandela, is an autonomous and financially independent entity, working to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.
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