Pharma committee proposes to revisit experimental use exemptions

Pharma Committee: John Todaro, András Kupecz and Eliza Saunders

A sub-committee of the Pharma committee considers that it is time to revisit the 1992 Tokyo Experimental Use Resolution and the 2008 Public Health Resolution, and to undertake a report/study on developments in the use of experimental use as a defence to patent infringement in member countries. It has now been 30 years since AIPPI specifically looked into experimental use as a defence to patent infringement – see Resolution on Q105 ("Experimental use as a defence to a claims of patent infringement", Tokyo, 1992). 16 years later, in 2008, experimental use as an exception to exclusive patent rights applicable to medicines and other medical products, was discussed in Resolution Q202 ("The impact of public health issues on exclusive patent rights", Boston, 2008). Since then, we have seen rapid advancements in technology, including HealthTech. In addition, access to medicines and general public health have become increasingly important issues, especially in light of the global COVID-19 pandemic. Therefore, as part of the study the sub-committee also wishes to consider the impact of COVID-19 on the experimental use exemption. In particular, whether an experimental use exemption should be more freely available during a global pandemic and if so the extent of patentable subject matter to which such exemption should apply.

Up-to-date, consistent and predictable experimental use exemptions are an important factor in advancing medicine and public health, providing investors, governments and other stakeholders with certainty that the actions they take for the benefit of humans, are not infringing upon the legitimate rights of patent holders. Therefore, it is proposed to carry out an enquiry into the experimental use exemption laws of member countries, provide a new Resolution which clarifies to what extent the experimental use exemption should be available and whether experimental use should be more freely available in times of a global pandemic.

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