



FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION
VON PATENTANWÄLTEN

Resolution of the Executive Committee, Cape Town, South Africa, 13 and 18 April 2015

“*Follow on patents in the pharmaceutical area*”

FICPI, the International Federation of Intellectual Property Attorneys, broadly representative of the free profession throughout the world, assembled at its World Congress and Executive Committee held in Cape Town, South Africa, 13 and 18 April 2015, passed the following Resolution:

Observing that *follow on* pharmaceutical patent rights are considered to be those patent rights covering inventions relating to a previously patented pharmaceutical active principle, such as new dosages, new combinations, new forms (e.g. polymorphs or enantiomers) or new methods of use;

Further observing the raised concern that the use of *follow on* pharmaceutical patent rights might prolong patent protection in an inappropriate manner, thus creating a negative effect on access to medicines as well as on further innovation;

Noting that some countries have changed or are considering changing their laws or practices in order to prevent *follow on* pharmaceutical patent rights from being granted or enforced;

Emphasizing that according to Art. 27(1) of the TRIPS agreement, *patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application;*

Further emphasizing that the grant of *follow on* patent rights on a given pharmaceutical active principle will not prolong the duration of the previous patent covering the pharmaceutical active principle as such, beyond its statutory term;

Recognizing that according to Art. 27(2) of the TRIPS agreement *Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect health, provided that such exclusion is not made merely because the exploitation is prohibited by their law;*

Further noting that according to Art. 5 of the DOHA Declaration *Each Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences*



FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION
VON PATENTANWÄLTEN

are granted and has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises can represent a national emergency or other circumstances of extreme urgency;

Firmly believing that both innovator and generic companies are essential for a proper functioning healthcare system, for example by providing new medicines and eventually cheaper versions thereof, and that there is a need for strong market exclusivity and business certainty in order to justify investment in pharmaceutical R&D;

Urges relevant authorities at a regional and/or national level to refrain from introducing any new restrictions in their laws, practices and/or regulations and to remove any existing restrictions concerning the patentability of inventions on a known or patented pharmaceutical active principle;

Further urges relevant authorities at a regional and/or national level to implement their laws, practices and/or regulations in order to achieve a competent, strong and consistent patent examination process as well as a reliable, predictable and affordable patent enforcement and invalidation system, equally with respect to both previous and follow on patent rights