Is IP Good for Our Health? ‘Conceptual Framing’

CIPIL Spring Conference

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Objectives and Motivations

• To bring together IP practitioners and academics, including teachers, researchers and students;

• To share information about statutory and case-law developments in IP;

• To explore recent academic research in the field.
Cambridge CIPIIL-LML-CeBIL activity

- Novo Nordisk Foundation 2018-2022
- Collaborative Biomedical Innovation Law
  - Biologics
  - Precision Medicine
  - Antimicrobials
  - Repurposed drugs
  - Orphan drugs
- Collaborators
  - Copenhagen
  - Harvard
  - Michigan
Health and Intellectual Property

• Intellectual property rights function as incentives for socially-beneficial innovation in areas including health.

• Health cannot be taken for granted in any country:
  • Incentives to improving people’s health are a critical social goal.

From https://neuralswarm.com/labs/covid-19/
Figure 6.5. Aggregate Profits from Patents and Aggregate Litigation Costs for U.S. Public firms

- Chemical and pharmaceutical firms
  - Profits from associated worldwide patents
  - Aggregate U.S. litigation costs to alleged infringer

- Firms in other industries
  - Aggregate U.S. litigation costs to alleged infringer
  - Profits from associated worldwide patents
Like our health, the IP system should not be taken for granted.

The system evolves over time, taking on different forms.

The system’s check-ups must be holistic, multi-disciplinary, and evidence-based.
Structure of the Day

• **Morning**: legal updates from leading practitioners.

• **Afternoon**: views from leading researchers on whether IP law is good for our health.
  - Focus mainly on patent law;
  - How can empirical research contribute to the debate?

• **Discussion session**
Key Questions

Objective:
To share information about whether IP is evolving in a direction that is good for our health

1) What does ‘good’ mean?

2) What is meant by ‘our health’?

3) What is meant by ‘intellectual property’?

4) Which technique/approach if we wish to calibrate the IP system?

5) What is the impact of legal uncertainty?

6) Is it worth asking whether IP is good for our health if we cannot reach clear answers?
1) What does ‘good’ mean?
   i. Greatest good for the greatest many? Sufficient good for all?
   ii. How can it be measured?

- Key criticisms:
  • Excessive prices;
  • Steering health research towards ‘profitable’ fields.
2) What is meant by ‘our health’?
   i. Who is the ‘our’? The UK or the wider world?

- What do we mean by ‘health’?
  - Pharmaceuticals? Prevention, diagnosis, device?
  - Environmental and animal health?
3) What is meant by ‘intellectual property’?
   i. Patents, trade marks, and copyright.
   ii. Trade secrets and regulatory exclusivities?
   iii. Fair competition?
Key Questions

4) Which technique/approach if we wish to calibrate the IP system?
   i. How can we manipulate various policy levers w/in IPRs to better calibrate the system?
   ii. What is the relationship between IP rights and market transactions?
5) What is the impact of legal uncertainty?
   i. How do we track and evaluate ‘recent developments’?
   ii. How many of our conclusions are speculative?

6) Is it worth asking whether IP is good for our health if we cannot reach clear answers?
   i. Admittedly limited but plausibly beneficial?
Thank you for coming!