

A Study on Pharmaceutical Patents: Some Observations from Evergreening Patent of Pharmaceutical Sector in Taiwan

Su-Hua Lee *

Abstract

Patent law plays a decisive role in stimulating the development of new medical products by offering an exclusive right as incentive for investing in expensive and long-term research. Without patents, existing medical products would not have been invented, and innovative and better medical products needed to overcome the diseases would not be developed. However, the tendency of patent protection expansion and the inadequate enforcement of patent rights in the pharmaceutical fields seem to impede the access of medicine and adversely affect the implementation of public health. Also the issues over patent-related barriers to market entry for generic medicines and "evergreening patents" in pharmaceutical industry have aroused strong opinions from the public in recent years. It is noteworthy that the inappropriate development and implementation of pharmaceutical patent strategy occur in Taiwan too. This article reviews the patentability of pharmaceutical inventions and enforcement of patent rights from Taiwan Jurisprudence, using the active metabolite, combination preparation and compositions of combination therapies as examples.

Keywords: pharmaceutical invention, pharmaceutical patent, metabolite, combination preparation, combination therapy, generic medicine, patent right, public health, patentability

* Associate Professor in the Department of Law, National Taipei University, Taiwan.
Email: leesh@mail.ntpu.edu.tw