

Barking Up the Wrong Tree? Public Health, Patents and TRIPS Flexibilities: The Case of Argentina

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Abstract

Over the last several years, much has been written about TRIPS flexibilities and the importance of interpreting and implementing this agreement in a manner which does not prevent the WTO Members from taking measures to protect public health and promote access to medicine.

Based on these flexibilities, in 2012 the Argentine Patent Office issued a set of internal guidelines for examining pharmaceutical patents. With the aim of improving public health and reducing drug prices, these guidelines severely limit the patentability of inventions in the pharmaceutical and chemical fields.

These guidelines have been in force for almost 7 years and it is already possible to draw a few conclusions on their real impact on public health. Surprisingly, there is still no indication of price reductions or improvements in access to medicine.

Against this backdrop, the question inevitably arises as to the reasons for the failure of these legal amendments to achieve any of their goals. The presentation will attempt to answer this question and analyze whether, at least in Argentina, an excessive focus on IP could be diverting attention from alternative legal tools, such as competition law and key health regulations, which could indeed be effective for improving public health.