

Session B1--The patent system: making it better

Research tools: Defining problems and solutions

Anthony D. So, MD, MPA

Program on Global Health and Technology Access

Duke University

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Starting Framework for Discussion

- **Research tool in its broadest sense to “embrace the full range of resources that scientists use in the laboratory”**
- **Value of research tools “varies greatly from one tool to the next and from one use to the next”**
- **“One institution’s research tool may be another institution’s end product.”**

Source: Report of the NIH Working Group on Research Tools, 1998

Typology of Problems

- **Refusal to license**
- **Onerous royalty obligations**
- **Restrictions on dissemination of materials and information**
- **Restrictions on the ability to collaborate with commercial firms**
- **Advance commitments regarding IPR in future discoveries**

Source: Report of the NIH Working Group on Research Tools, 1998

Impact on Resource-Poor Settings or Targets

- **Availability of work-around solutions**
- **Position of patent holders in such settings**
- **Emulation of Bayh-Dole Act outside U.S.**
- **Upstream licensing affects downstream access**
- **Conduct of research for neglected diseases in industrialized countries**

Research Exemption

- **Knowing vs. unknowing infringement**
- **Unstable dichotomy between commercial vs. non-commercial**
- **Experimenting on vs. experimenting with**
- **Enablement (know-how) + materials**

Humanitarian licensing

- **Elements: field of use, target population (geography, income, market), reasonable pricing, march-in rights, future rights**
- **Exclusivity vs. non-exclusivity**
- **Reservation of rights vs. Exception vs. Licensee obligation**
- **PPP: One World Health**
- **Funder: NIH, Doris Duke Charitable Foundation**

Pooling of IP

- **Fragmentation of IP—transaction cost of patent mapping**
- **Malaria vaccine vs. SARS patent pool**
- **Framework of a technology trust**
 - **Lower transaction costs**
 - **Normative leverage of public sector holdings**
 - **Responsive structure and governance**

Changing Norms in Research

- **Grantmaking policies**
- **Governance of reagent repositories**
- **Technology transfer and licensing practices**
- **Collaborative, open science research**