Intellectual Property Rights and Access to Health in Brazil

Carlos André F. Passarelli
Brazilian Interdisciplinary AIDS Association (ABIA)
Brazilian Network for the Integration of the Peoples (REBRIP)
A chronology

- 1980: First case of AIDS in Brazil;
- 1988: The 1st Brazilian Constitution after the dictatorship: health as a right for all and a duty of the State;
- 1990: Unified Health System (SUS)
- 1991: Federal Government starts AZT free delivery
- 1993: Brazilian public and private labs start to produce ARV
The advance of Liberalism

- 1995: The creation of WTO and TRIPS;
- 1996: Brazilian Industrial Property Law (9279/96): the government protects pharmaceutical products by patenting them;
- 1996: The promulgation of the law that guarantees the federal responsibility in providing ARV treatment to all people in need (9313/96);
1999: Searching for solutions

- Promulgation of the Law of Generics (9787/99) and creation of the *previous consent* of ANVISA;
- The 52\textsuperscript{nd} WHO Assembly proposes the revision of free trade agreements in order to protect the access to essential medicines;
- Presidential Decree 2301/99 defines the situations of national and public interests, in which it is allowed the compulsory licenses of patented products;
2001: the patent battle

- US panel against Brazil at WTO;
- The ministry of health threats two transnational industries of compulsory licensing ARV drugs (Nelfinavir e Efavirenz);
- 39 pharmaceutical companies sue the South Africa government to prohibit it to proceed parallel importation of ARV;
2001: Some reactions

- UN Human Rights Commission: access to essential medicines as a human right;
- UNGASS and the launch of the Global Fund for AIDS, Malaria and Tuberculosis;
- 4th Inter-ministerial Conference of WTO: the public health should prevail over commercial interests (Doha Declaration).
2003: still waiting for solutions

- Brazilian government continues to negotiate price reduction for second line ARV treatments;
- WTO August, 30th Resolution in order to encourage the exportation of essential medicines to the development countries;
- Presidential Decree nº 4.830/2003 sets out the criteria to compulsory licensing.
Present Scenario

- 16 ARV are freely distributed through public network of health;
- National Labs produce 7 ARV;
- 150 thousand patients are under AIDS treatment in Brazil, but...
- In the rest of the world people continue to die daily of a treatable disease
- US Free Trade agreements and the TRIPS plus chapters.
- Until now, the Brazilian Government DID NOT use the compulsory license for any ARV. WHY NOT?
The sustainability of the national response to AIDS

- The way by which BigPharma uses the patent system has a significant impact on the Brazilian capacity of buying ARV and other patented drugs because of the high prices;
- The intellectual property framework does not allow the transfer of technology;
- The BigPharma has a powerful influence on the Brazilian Parliament and press by the means of intellectual property agencies, such as Interfarma and ABPI.
Networking...

- To denounce the abuse of economical power and to mobilize the public opinion: health before private interests!
- Life must not be under patent!
- The Brazilian Patent Office (INPI) must review its criteria, in order to avoid patents to second use and new formulations of pharmaceutical products;
- ANVISA’s previous consent must be reinforced;
Networking...

- The Brazilian law must incorporate the TRIPS safeguards, such as parallel import as well as to use more frequently what already exists, such as compulsory license and *Bolar* exception;
- Free trade agreements must not include Intellectual Property chapters;
- The compulsory licenses of ARV are the only way to sustain the Brazilian AIDS program and to foster technology transfer in the pharmaceutical sector.