India Rejects a Cancer Drug Patent Protection

Arvind Subramanian says the Indian Supreme Court ruling was a careful balancing of interests and a judicious application of the rule of law.

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Steve Weisman: The India Supreme Court has rejected a bid by a major Western drug maker over intellectual property. Arvind Subramanian, senior fellow at the Peterson Institute for International Economics, is here to discuss the implications of that ruling for the future of intellectual property rights and the manufacturing of drugs in India and other countries in the developing world. This is Steve Weisman.

Arvind, first, explain exactly what the Indian Supreme Court said.

Arvind Subramanian: The India Supreme Court said that you, Novartis, had applied for a patent. We will reject the patent because we don't believe it is a sufficient advance over a previous patent that you received for the cancer drug Gleevec. It's a leukemia drug. Effectively what has happened is that Novartis is not going to enjoy any kind of proprietary rights or monopoly profits from selling this drug Gleevec or its successor in India.

Steve Weisman: This opens the way for producers to produce their own version of it, which would be cheaper.

Arvind Subramanian: Exactly. In fact, I think companies are already producing Gleevec in India because Gleevec is based on a patent, as I said, which India did not protect. This was a successful patent and therefore it opens the way for generic manufacture, which would be much cheaper than the original drug.

Steve Weisman: The cause of getting less expensive drugs for vital cures for diseases like cancer is very compelling, but the drug makers argue that if they don't have their patents and intellectual property rights protected, and they can't make profits off these drugs, then new drugs will not happen. What's wrong or what are the flaws in that argument?

Arvind Subramanian: I think fundamentally, one has to recognize that intellectual property has to balance the incentives for innovation, which is why you give a temporary monopoly against the needs of consumers who want cheaper drugs. Now prior to the TRIPS Agreement, India did not protect any intellectual property.

Steve Weisman: Let me interrupt you. TRIPs (Trade Related Intellectual Property) Agreement, explain what it is.

Arvind Subramanian: A TRIPs Agreement is the World Trade Organization's agreement on intellectual property after which large parts of the developing world had for the first time to protect pharmaceutical products, give IP protection to pharmaceutical products.

So in the balance between innovation and cheap uses of the drugs, before the TRIPs Agreement, India was basically not providing any protection; therefore, you could just copy

the drug and make it. Right? I think the TRIPs Agreement essentially was a kind of broad political deal or an agreement whereby India and many developing countries said that we will contribute to some of this research and development, which is necessary. You've got to have some in order to make the drug worthwhile in the first place. But they did not agree to saying they would provide the same level of protection as the rich countries do.

So they're balancing that. They want to produce cheaper drugs, but they also want to contribute something to the financing of the research and development that goes into it. And India hasstruck a balance somewhere in the middle, saying we'll give you a little, but not too much.

Steve Weisman: India, of course, has its own research arm. Its companies innovate. They have reason to protect intellectual property rights.

Arvind Subramanian: Right. India is transitioning from a country which, until recently, only produced generic drugs and copied drugs, to a situation where there are now some R&D based companies as well. And over time that will naturally, I think, influence India's attitude towards IP protection. Indeed, some Indian companies are actually taking out patents in the U.S. and other countries.

But at the moment, the generic manufacturers are politically very strong. Consumer advocacy groups say, look, we are still a poor country, and they say a typical cancer drug patented is sometimes 30 to 40 times what the generic drug manufactures. So those arguments at this stage are winning the day, but over time as R&D becomes important, I think it will shift over time as well.

Steve Weisman: Western companies that make these drugs were upset with the ruling, but I think you see some basis for even them to be satisfied that India approached this in a methodical and reasonable and transparent way with judicial oversight.

Arvind Subramanian: Yes. In fact, Steve, to me one of the wonders of the series of rulings on patents and pharmaceuticals over the last two years has been this: You think of foreigners, especially India, as in shambolic dysfunction, right? Nothing works. Bureaucrats obstruct, policemen harass, judges delay, and they say that India has rule, but China has law. That basically there's no rule of law in India.

But in this case I'm really surprised by the fact that the administrative and judicial procedures have been in place. Verdicts have been given that they've been explained. Evidence has been drawn upon. And for someone like me who thinks of India's judicial system as one where the backlog of cases goes back 32 years, these are decisions that by Indian standards are being produced at lightning speed. Even by international standards, they are being produced in a timely fashion.

So in terms of due process and rule of law, I think the whole patent and pharmaceutical-related thing has been a very surprising revelation for me and it should be to foreign companies as well.

Steve Weisman: Thank you, Arvind.

Arvind Subramanian: You're welcome, Steve.