Public list for Health GAP

Date: 6 September 2011

Source: KEIonline.org

I Have been thinking over the years of a set of patent modifications which ought to be supported by most legislators and which fits within the mindsets of the lawmakers and wanted to ask you if others have been thinking along similar lines--I would like to run the set by you in the slow process of getting it into hands in DC that might ultimately change the patent laws in a way which would help us all.

Among the ideas are:

/Money to continue basic research:/

1. Going along with the stated philosophies of PhRMA and conservative thinkers, that all products developed at the NCI, under any NIH grant, at the NIH or at any institution which has 'substantial' public support (financial) inclusive of non tax paying institutions of higher education, or any process, product, or way of doing things that in the private sector would be considered 'patentable' or worthy of a copyright etc. have a de facto patent, copyright etc. and that any party using such methods, compounds, assays, equipment etc. be required to license them from the government and/or various institutions and that any patentable end product which receives a patent (e.g. a new protease inhibitor) be required to pay a portion of any revenues it secures through sales to the various parties holding various percents of ownership calculated by way of analysis of costs of all of the work it took to create the end-product including the basic research necessary to produce the end product. Under this change many products such as AZT would have almost all its patent owned by the NCI for example.

Underlying this idea is the concept that the productivity of the investments made into basic research can be appropriately rewarded by having the public agencies directly receive a portion of the financial successes of its own intellectual grandchildren so to speak.

/Patents to reflect actual cost of development/:

2. That all patents reflect in terms of time, the cost of the actual research NOT the marketing expenditures and market analyzes, so that the length of time a patent is granted reflects the amount of energy in the form of money and time that actually went into the development of a product thus a patent could be for 4 years (look alike me too drug with little improvement over existing drugs) to 30 years (breakthrough therapies that cost hundreds of millions to treat extremely serious conditions very hard to treat) with agreements that price hikes above cost of production and actual recapture of documented investment dollars dedicated to development not marketing and sales be inversely correlated to length of patent (i.e. trade off between length of monopoly and price of product: you get to monopolize for a lot longer but you have a price ceiling)

/Competition for new uses of old products , improvements in efficiencies
in production of existing products:/

3. That any product can be copied and no patent violation exists if the generic product meeting FDA standards of production and efficacy is equivalent to existing patented product and if the company producing the generic equivalent gets a license from the patent holder which cannot be denied, delayed or conditioned other than to require 30% of the gross proceeds accrued to the generic equivalent be paid as licensing fee to the patent holder if the product is used for existing label and 5% of gross proceeds if the product is being used for indications other than those specified on the label(s)of the existing patented product.

There are many other ideas but if you have time to help me know who might be working on patent reform (I am sure there are terrific people engaged in this) I would be grateful.

David Scondras

Keywords: Healthcare / Patents / FDA /