



REPUBLIC OF SOUTH AFRICA



## **Regional Seminar for Certain African Countries on the Implementation and Use of Several Patent-Related Flexibilities**

***Topic 15: The Impact of National Exhaustion of Rights on the  
Economy***

**Durban, South Africa  
January 29 to 31, 2013**



**REGIONAL SEMINAR FOR CERTAIN AFRICAN COUNTRIES ON THE  
IMPLEMENTATION AND USE OF SEVERAL PATENT-RELATED FLEXIBILITIES**

**DURBAN, SOUTH AFRICA, JANUARY 29 TO 31, 2013**

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**EXHAUSTION OF PATENT RIGHTS  
GHANA**

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# Summary

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# Introduction

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## *Basic Economic Facts*

- Ghana is said to be one of the leading fastest growing economies in the world – projected GDP growth for 2013 is 7.7% (African Economic Outlook)
- GDP - US39.2bn (2011 World Bank estimate).
- Ghana is predominately an agricultural economy - half of the country's workers engage in farming .
- Major industries/Exports - cocoa, gold, oil and timber.
- Ghana in mid-December 2010 began the production of oil at its offshore Jubilee field in the western part of the country.



## Introduction cont.

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- To promote economic growth, the Government of Ghana's policies on trade, science, technology and health seek to advance innovative and research activities, enhance competition in trade and also reduce costs of medicines in the health sector in line with its millennium development goals and social obligations.
- Review of all Intellectual Property laws – currently on-going.
- The importance of intellectual property system and the TRIPS flexibilities in making pharmaceutical products available to the public are indicated in the Ghana Pharmaceutical Country Profile (2012) – (WHO)



# Patents Legal Framework

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Current Law - The Patent Act, 2003 (Act 657)

Patent under Ghanaian law means - the title granted to protect an invention – a Products or Process, which are new, involve inventive step and are industrially applicable.

- Period of protection is 20 years
- Patent applications received in Ghana are mostly foreign applications.
- Patent applications are mostly for pharmaceutical products.



# Patent Rights and Exceptions

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## *a. Rights conferred by Patent*

Section 11(2)(a) of the Patent Act:

- A patent grants the Patent holder exclusive rights to prevent others from:

product:           making,  
                          importing,  
                          offering for sale,  
                          selling and using the product; or  
                          stocking the product for the purposes of offering for sale, selling  
                          or using;

- a process:           using the process;



# Patent Rights and Exceptions

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## *b. Exceptions*

Patent Act provides exceptions to the rights - rights conferred do not extend to some activities of third parties – such activities do not constitute infringement of the patent right.

- e.g.: Acts in respect of articles which have been put on the market in any country by the owner of the patent or with the owner's consent; or

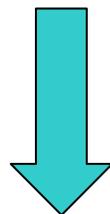
Acts done only for experimental purposes relating to a patent invention; etc.



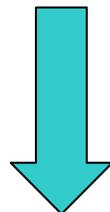
# Exhaustion of Patent Rights in Ghana

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*Exhaustion of patent rights*



*An exception to the patent rights granted*



*TRIPS Post-grant flexibility*



# Exhaustion of Patent Rights in Ghana

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## *a. National Exhaustion*

Previous Patent Law - Section 30 (a) of Patent law of 1992 (PNDCL 305A) provided for a system of national level of exhaustion.

*“The rights under the patent shall – extend to acts in respect of articles which have been put in Ghana by the owner of the patent or with his express consent.*

- A Patent holder’s rights are exhausted only when he put his patented product on the Ghanaian market.
- The patent holder can oppose the importation of original goods marketed abroad based on the right of importation.
- This rendered parallel importation impossible, especially for low-priced pharmaceutical products for the poor.



# Exhaustion of Patent Rights in Ghana

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## *b. International exhaustion*

- To meet all TRIPS obligations
- Take advantage of its safe guards

Article 6 of TRIPS  
Paragraph 6 of Doha  
Declaration on the TRIPS  
Agreement and Public  
Health

- To promote access to medicines

1992 Law was reviewed – changes introduced in the 2003 Act

Section 11(4)(a) - *“The rights conferred under the patent shall not extend to - acts in respect of articles which have been put on the market in any country by the owner of the patent or with the owner's consent, ”*



# Exhaustion of Patent Rights in Ghana

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## *International Exhaustion*

The 2003 Act allows for the International exhaustion of patent rights.

- This means that the rights of the patent holder is deemed to be extinguished on first sale of the patent product in any country.
- The owner of a patent article in Ghana cannot oppose the importation by third parties of his own products previously sold in another country by himself or with his consent.
- “any country” – indicates that the exhaustion of the patent holder’s exclusive distribution rights also applies to products marketed with the holder’s consent in countries where the products do not enjoy patent protection.



# Exhaustion of Patent Rights in Ghana

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## *Impact (positive)*

- This legalizes the parallel importation of lower-priced pharmaceuticals from other countries into Ghana – access to cheaper drugs.
- Consumers will gain access to products they need from other countries.
- Access to basic inputs (pesticides & fertilizers) to agricultural production – at lower prices – improve poor farmer's incomes and livelihoods.



# Exhaustion of Patent Rights in Ghana

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## *Impact (negative)*

- Goods put in one market (country) with the consent of the owner may not stand the weather of another country and as a result compromise the quality and efficacy of the product.
- It creates the opportunity for the influx of sub-standard products.

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# Exhaustion of Patent Rights in Ghana

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In terms of imports of pharmaceutical products, Ghana has provided solutions under its laws:

- Food and Drugs Board responsible for import control of pharmaceuticals (mandate)
  - Importers require authorization to import medicine.
  - Laws exist that allow sampling of imported products for testing .
  - Require importation of medicines through authorized ports of the country.
  - Inspection of the imported pharmaceutical products at the ports.
- \* The above applies to importation of other products such as food and textiles.



## Conclusion

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- International exhaustion of patent rights or parallel importation will be rendered effective and useful if administrative, institutional and managerial structures are put in place and strengthened to ensure that substandard and counterfeited products do not enter the market.
- No court case on International exhaustions of patent rights.



*THANK YOU FOR YOUR  
ATTENTION!*