'Use requirements’ of patent laws during pandemic – ‘litmus test’?

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‘Exceptions’ and ‘limitations’ to IP rights are varied in different legislations. Exclusive rights provide a withholding ability with socio-economic implications. Access and availability of technologies covered by IP has been a much debated aspect world over. The need for addressing TRIPS flexibilities in the context of the current pandemic is undeniable. Countries face a twin challenge of incentivising innovation for pandemic solutions on one hand and ensuring universal access to medicine on another. The elaboration of the ‘development dimension’ in the post TRIPS regime seeks to promote developing country concerns under the WIPO Development Agenda. Imposing use requirements on IP right holders provides an important opportunity for governments to take up public welfare measures. Countries across the globe are witnessing an unprecedented need for medicines, vaccine and healthcare infrastructure. Access to IP is urgent and this justifies the need for imposing use requirements on IP holders. The paper attempts to analyse the amendments effected to patent laws of several countries during the pandemic from the standpoint of restriction on IP rights. The incorporation of governmental use clauses, expansion of the notion of access to medicine, enlarging the scope of governmental use provide interesting insights into national policy considerations. The study also compares the response in the case of epidemics vis a vis pandemic (from the swine flu to the current pandemic). Imposing use restrictions on IP ought to be a measured response based on public consultation, national and international cooperation. Trust in IP rights can be justified only when they are available and accessible at the right time; this is the ‘litmus test for IP and its public purpose’. There cannot be second thoughts about it as human health as a human right enjoys primacy.