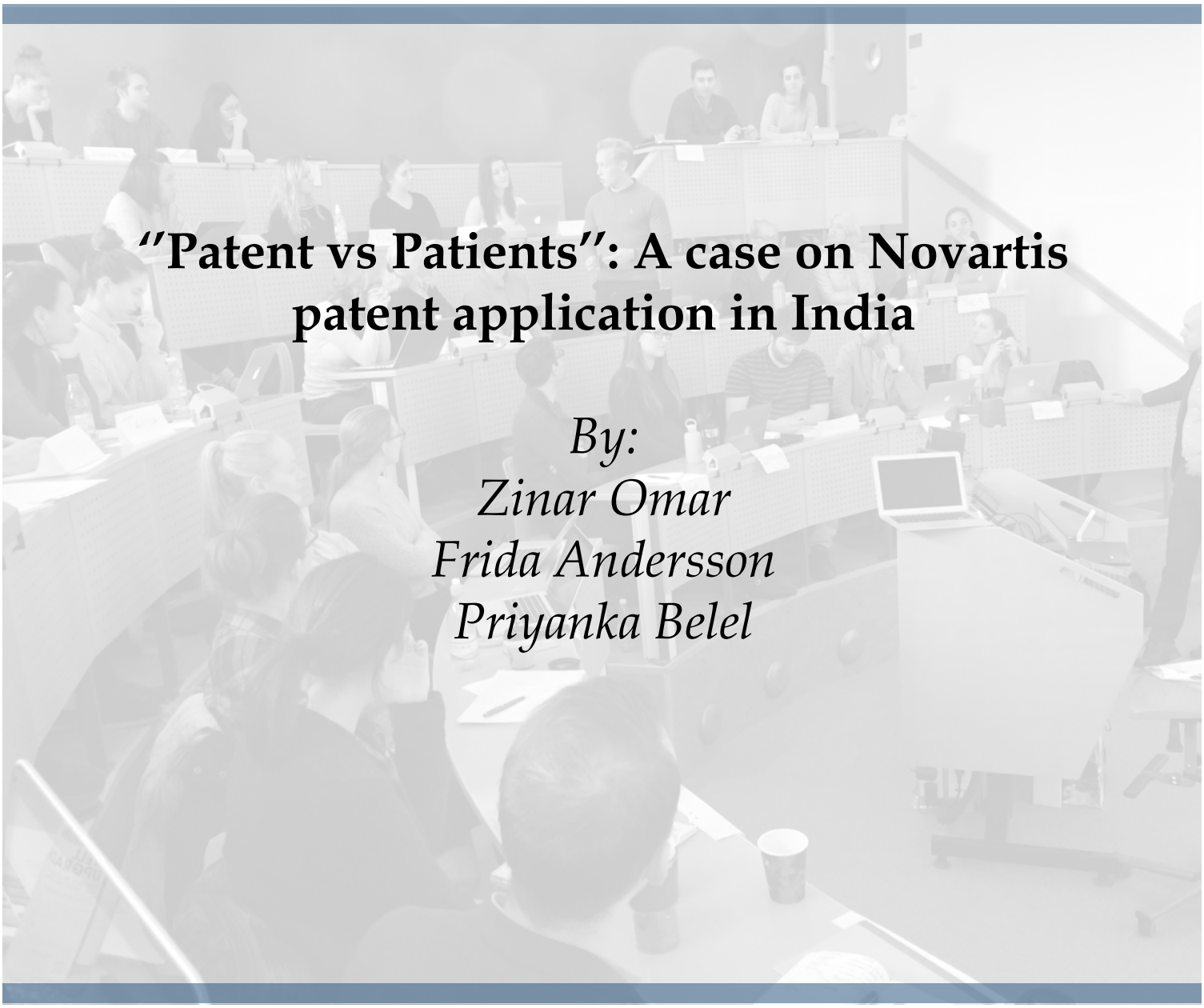
CORPORATE BRAND MANAGEMENT AND REPUTATION

MASTER CASES



''Patent vs Patients'': A case on Novartis patent application in India

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Student Case Papers

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Corporate Brand Management and Reputation: Master's Cases

The "Corporate Brand Management and Reputation: Master's cases" is a case series for applying the case method of teaching and learning in higher education. The cases are relevant to brand strategists in private and public sector organizations, as well as academics and students at universities, business schools, and executive education.

The cases are written by groups of master's students as a course project. The specially developed case format is defined as: *"A management decision case describes a real business situation leading up to a question(s) that requires assessment, analysis, and a decision reached by discussion in class. The alternative approaches and recommendations from the class discussion are followed by a description of the choices made by the case company. This description is then discussed by the class."*

The student groups select the topics of their case providing updated and relevant insights into the corporate brand management. The cases can be used as "written cases" (handed out and read in advance, later to be discussed in class) and/or as "live case" (presented by the teacher following a discussion in class). Each case includes teaching notes, visuals with speaker's notes, learning objectives, board plans, and references.

The mission of the series is "*to develop cases for discussion providing insights into the theory and practice of corporate brand management and reputation, with the intent of bridging the gap between academic teaching and managerial practice.*"

The series is a result of co-creation between students and teachers at the elective course Corporate Brand Management (BUSN35 – five-credit course/eight-week half-time studies), part of the master's program International Marketing and Brand Management at Lund School of Economics and Management, Sweden. The cases represent the result of the intellectual work of students under the supervision of the head of course.

Although based on real events and despite references to actual companies, the cases are solely intended to be a basis for class discussion, not as an endorsement, a source of primary data, or an illustration of effective or ineffective management. The cases are free to be used and are to be cited following international conventions.

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''Patent vs Patients'': A case on Novartis patent application in India

The year is 2006. You work as a marketing executive at Novartis, a multinational pharmaceutical company. It is a cold day in January and you are about to go home when you get a call from a colleague. ''I have bad news. They are organizing a protest campaign against our patent lawsuit in India'', he says nervously. You can hear the despair in his voice. Suddenly you feel yourself going back to your desk to sit down. You think about all the years of hard-work that the company put into developing the medicine Glivec, just to be copied by Indian generic drug makers. ''How will this protest affect the company's reputation?'', you ask yourself. Instead of going home, you start your computer and write down possible solutions. Something has to be done and there is no time to waste…

Company Background: Novartis

Novartis is a Swiss global healthcare company that develops, manufactures and sells generic drugs. In 1996 Ciba-Geigy merged with Sandoz and created Novartis. The company is one of the world's largest pharmaceutical companies with a broad product portfolio that treats and prevents a range of diseases. Novartis products globally reach over 750 million individuals and they are always looking for new and innovative ways to expand the access to their products. The purpose of the company is "to reimagine medicine to improve and extend people's lives" (Novartis, 2019). Novartis has around 109,000 employees with representatives of 140 nationalities.

In 2003, Novartis launched *Glivec*, a medicine prescribed for patients with Chronic Myeloid Leukemia (CML), a type of blood cancer, which was recognized as a major medical breakthrough in the 20th century. The medicine had a price of $2,600 per patient per month in the US market.

Novartis also had a collaboration with *The Max Foundation,* which is a non-profit organization with a mission to ''increase global access to treatment, care and support for people living with cancer''(The Max Foundation, 2019). Together with them, Novartis helped around 7000 people in India who have CML, by providing them Glivec, free of charge from 2002 to 2007.

Industry Background: The pharmaceutical industry in India

If you have ever taken a pain killer, there is a good chance it came from India, one of the largest producers of generic drugs globally. Nearly 80% of prescriptions filled in the US are for generic drugs. Generic drugs are cheaper than, but just as effective as brand name drugs. India is often dubbed "the pharmacy of the developing world'' (Jose, 2016) as 33% of the US generic medicine market comes from India. medicine on the global market. India is the third largest pharmaceutical industry in the world and is estimated to have a growth rate of 13% per year and thus holds a very important position within the global pharmaceutical sector.

The Indian government did not have any patent laws for medicine until 2005, after an agreement with the World Trade Organization's *Trade Related Aspects of Intellectual Property Right* (TRIPS). This agreement meant that the Indian government had to grant patents on products from 2005. However, according to section 3(d) of their patent law, only medical innovations were allowed patent, which meant that reformulated medicines were not allowed to be patented in India. This was mainly to encourage Indian pharmaceutical companies to replicate generic versions of the original medicines, mainly to give Indian population the opportunity to be able to afford and have access to life-saving medicines.

Many Indian pharmaceutical companies also make generic medicine for other markets in many developing parts of the world such as some parts of Africa, South Asia etc. It's not only about earning money but also about providing medicine to those who really need it and can't afford the original version and also make it affordable to families with low income.

The case: Novartis journey towards legal patent protection

In the beginning of the 21st century strong winds blew against the global pharmaceutical industry. The big players in the industry were involved in a number of cases involving pharmaceutical regulations in low-income countries. This resulted in a negative effect on big pharmaceutical companies' public image that they chose patents over human life (Dingo & Blake, 2009). One of these pharmaceutical companies was Novartis.

To understand this case fully, it is important that we go back in time to 1993 (**see Exhibit 1 for timeline)** when Novartis (former Ciba-Geigy Corporation) applied for patent worldwide for the ingredient *imatinib*, which they were developing for a medicine. At that time, India did not allow patents and thus Novartis could not apply for patent there.

A year later, in 1994, the Indian government signed an agreement with the World Trade Organization's *Trade Related Aspects of Intellectual Property Rights* (TRIPS), which meant that the Indian government had to grant patent on products. However, it would take until 2005 for this change to come into effect.

In 1997, Novartis developed another form of the ingredient imatinib; *imatinib mesylate*, which had been found to be more effective than imatinib. Novartis applied for patent again, including in India. However, India still did not allow patents, and the application was put on hold in a ''mailbox'' of different patent applications from companies. The mailbox was a way for companies to apply for patents in India while the government was changing their laws to comply with the TRIPS-agreement.

In 2003, Novartis launched the final version of imatinib mesylate: Glivec. Novartis had at this time already filed patent applications and obtained patents in several countries for Glivec, and aimed at obtaining more patents around the world.

Before Novartis could get patent on Glivec in India, generic versions of Glivec started appearing in India's pharmaceutical market. Because of this, the Indian government granted Novartis exclusive marketing rights (EMR) until their patent application would get reviewed. By granting Novartis EMR, they had the right to sell the patented version of Glivec in India for $200 per patient per month. However, this decision affected the generic versions of Glivec, making it harder for generic drug makers to sell their versions of Glivec. In turn, this also affected many individuals in India who could not afford the original version of Glivec. Because of this, many generic drug makers and organizations such as the Cancer Patients Aid Association (CPAA) and Doctors Without Borders (MSF) protested against Novartis and filed an opposition against Novartis patent application.

2 years later, in 2005, India officially changed their laws to adhere to the TRIPS-agreement and medicines could be patented. The Indian government started to review both new and older applications that had been put in the 'mailbox'. However, according to the patent law, only medical innovations would be allowed patents. In section 3(d) of the patent law it is stated that new forms of already known substances will not be patented, unless there is a demonstrated increase in efficiency of the medicine.

In 2006, one of the High Courts in India, the Madras High Court, reviewed Novartis patent application for Glivec and decided to reject it, arguing that Glivec did not have any significant differences in efficiency compared to its pre-existing versions imatinib and imatinib mesylate, which had already been patented in other countries. According to Novartis, the patent law in India, was a setback for patients that endure medical progress.

Novartis against the Indian government

Later in 2006, Novartis replied by filing two legal challenges against the Madras High Court: one addressing the rejection of the patent, and the other appealing against section 3(d) of the patent law, claiming that this law did not adhere to the TRIPS-agreement.

As mentioned before, Novartis had already faced backlash from organizations such as CPAA and MSF. Every ignited debate was on balancing public goodwill with affordable pricing and innovation affordability. By filing the lawsuit which challenged the patent law in India, Novartis drew media attention to the situation and added more fuel to the already existing protest-fire. Doctors Without Borders (MSF) created a protest movement and a petition called ''Drop the case'', calling for Novartis to drop their challenges against the Indian government (**see Exhibit 2)**. Protest organizations saw a threat that if India changed their patent laws, other countries would follow and this could have a huge impact on medicine accessibility in low-income countries. The debate of 'patent over life' extended and reignited the world-wide problem of the low access of medicine in low-income countries.

The protest movement grew rapidly and powerful organizations such as Oxfam joined. The petition received close to half a million signatures around the world (**see Exhibit 2**). Oxfam even called Novartis lawsuit ''an attack against India's sovereign right to protect public health' and warned that this lawsuit could affect Novartis reputation forever. The protesters accused Novartis of choosing 'patent over life', arguing that they cared more about money than people's lives.

Moreover, the scientist and founder behind imatinib, Brian Druker, publicly stated:

> ''The price at which imatinib has been offered for sale by Novartis around the world has caused me considerable discomfort. Pharmaceutical companies that have invested in the development of medicines should achieve a return on their investments. But this does not mean the abuse of these exclusive rights by excessive prices and seeking patents over minor changes to extend monopoly prices. This goes against the spirit of the patent system and is not justified given the vital investments made by the public sector over decades that make the discovery of these medicines possible" (Médecins sans Frontières, 2007).

As a response, Novartis argued that a clearer patent law will increase innovations and thereby give more people in developing countries access to medicine. But the protest movement 'drop the case' grew intensely by every day and Novartis was under a very high pressure to do something. As you reflect on everything that has happened, you want to solve this problem without impairing the reputation of Novartis.

Taking the role as a marketing executive at Novartis, what are your next steps and how can you answer the criticism without impairing the corporate reputation?

Exhibit 1 Timeline of the Novartis case

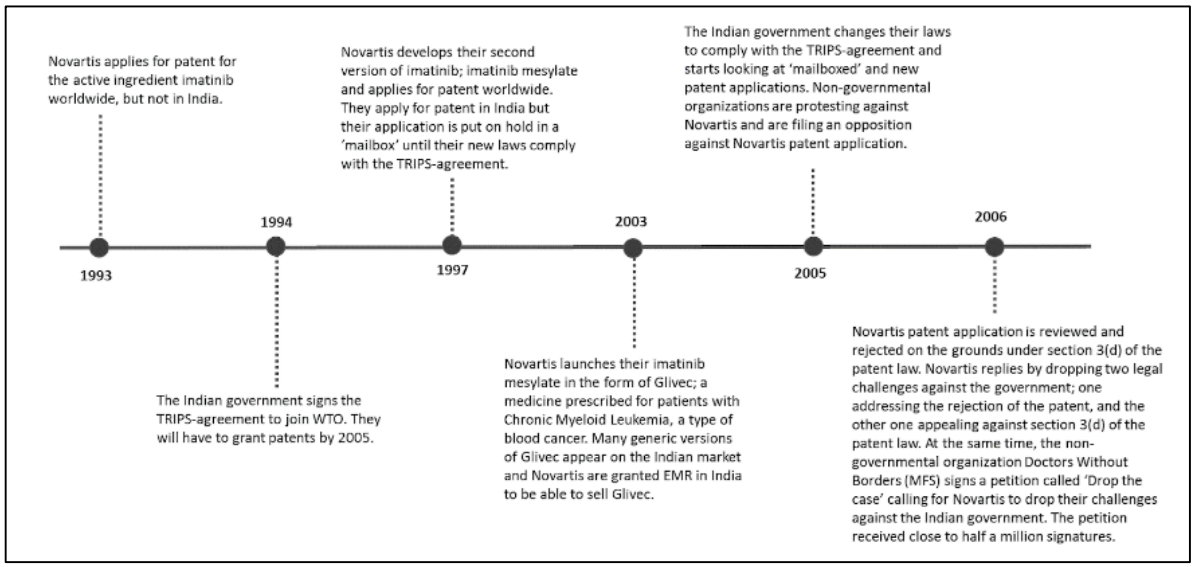

Exhibit 2 Protest from the campaign 'Drop the case'.

Dingo, R. and Blake Scott, J. (2012). The Megarhetorics of Global Development (Composition, Literacy, and Culture). University of Pittsburgh Press; 1 edition.

Jose, T. Why India is known as the pharmacy of the developing world? *Indian Economy*. 2016-10-10. https://www.indianeconomy.net/splclassroom/why-india-is-knowns-as-the-pharmacy-of-the-developing-world/ [Accessed 11 February 2020]

Max foundation (2019). Available online:https://www.themaxfoundation.org/our-work/
[Accessed 1 February 2020]

Médecins sans Frontières. Former Swiss president joins callfor Novartis to drop its case in India. 2007-02-16. https://www.msf.org/former-swiss-president-joins-call-novartis-drop-its-case-india

Novartis.(2019). Available online: https://www.novartis.com/our-company
[Accessed 25 January 2020]