

# **“Patent vs Patients”: A case on Novartis patent application in India**

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## **TEACHING NOTES**

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The authors prepared this case solely as a basis for class discussion and not as an endorsement, a source of primary data, or an illustration of effective or ineffective management. Although based on real events and despite occasional references to actual companies, this case is fictitious and any resemblance to actual persons or entities is coincidental.

## Introduction

The purpose of this document is to provide the instructor with information on how to present the case in order to support the students in helping them solve the case in accordance with the learning objectives. Furthermore, this document consists of a case synopsis, an overview of the learning objectives and additional questions to support the class in the discussions. Moreover, this document also includes a time plan and a teaching plan to facilitate the instructor in structuring the case. Ultimately, the authors of this case will present their reflections about writing and finalizing this case.

## Case Synopsis

In 2006, the pharmaceutical company Novartis patent application for Glivec in India got rejected. This resulted in that later the same year Novartis applied for two legal challenges against the Indian government to change the patent law and to revise their patent application. This raised a lot of attention from media and non-governmental organizations. In order to pressure Novartis to withdraw the lawsuit, the non-governmental organization Doctors Without Borders (MSF) organized a campaign called “Drop the case” involving other strong organizations and individuals. They feared that a change in the patent law, preventing Indian pharmaceutical organizations from making generic versions would affect people's access to medicine. Another fear was that this would also affect other low-income countries. Every ignited debate was on balancing public goodwill with affordable pricing and innovation affordability.

Novartis chose to not to “Drop the case” and instead carried on with the lawsuit. Novartis argued that a clearer patent law would increase innovations and thereby give more people in developing countries access to medicine. In the company's communication strategy, they took actions to prevent a declining reputation by focusing on providing information and increase the trust among stakeholders and refocus the debate on medical innovation instead of people's lives. In 2007, the Madras High Court rejected Novartis challenges. However, Novartis did not give up. They went on by filing a new case against the rejections with the Indian Supreme Court. In 2013, the Indian Supreme Court decided to reject the case which put an end to the case.

## Relevance

This case provides a deeper understanding on the importance of corporate reputation and how it can affect an organization. It also highlights the relation between corporate reputation and corporate communication, and the importance of relating them to each other. Even though this case happened a long time ago, we still think it is relevant today since it sets an example for the pharmaceutical industry and how they still have to balance between innovation and affordability, especially in the developing world.

This case also shows how companies can be “put under pressure” and the power that external stakeholders can have. Thus, this case is also relevant for other industries when investigating the power of external stakeholders.

## Learning Objectives

### Corporate reputation

The reputation of an organization is one of the most important aspects, and is according to Roper and Fill (2012) “a snapshot that reconciles the multiple images of an organization held by all of its constituencies. It signals the overall attractiveness of the company to employees, consumers, investors and communities” (p. 7). Usually, a bad reputation can damage the company’s image and equity, and in the long term the whole company, which is why it is important to have a good reputation (Roper & Fill, 2012).

#### *What makes a good reputation?*

Fombrun (1996) summarizes the main factors which can build a strong and favorable reputation; credibility, reliability, trustworthiness and responsibility.

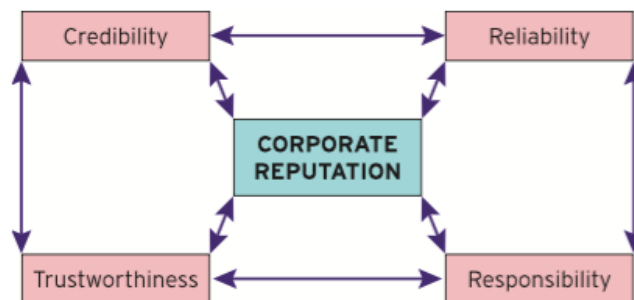


Figure 1: What makes a good reputation? (Fombrun, 1996). Source: Roper & Fill (2012)

Firstly, *credibility* is a mix of how trustworthy an organization is and how much expertise they have in their field. It is about not engaging in defamatory activities and making decisions that are grounded on moral factors (Fombrun, 1996). When it comes to Novartis, they have a great amount of credibility for a reason: they are a global pharmaceutical company. Pharmaceutical companies usually have a lot of credibility since they are trusted in creating medicines for individuals, and thus have expertise in that area.

However, it can be argued that Novartis credibility was affected since they did not listen to what the majority of their stakeholders wanted, and decided to continue taking the case to court, which would not be considered moral. Moreover, according to the stakeholders, this showed that they would rather choose money and profit over patients’ lives.

Secondly, *reliability* is based on how organizations make decisions that are consistent, predictable and inspired by the expectations of the external stakeholders (Fombrun, 1996). In Novartis case, their reliability was affected since the decision of taking the case to court a second time was neither predictable or what their external stakeholders wanted. Moreover, by trying to change the Indian patent laws, it can be argued that Novartis external stakeholders questioned how reliable they really were if they would go that far.

Thirdly, *trustworthiness* is defined as making organizational decisions that all stakeholders can trust and depend upon. Organizations need to have stakeholders that can trust them to be able to survive (Fombrun, 1996). When it comes to Novartis, many of their external stakeholders lost trust in them since they did not feel like Novartis was listening to or supporting their opinions. Moreover, by making a decision that was not supported by the external stakeholders, Novartis trustworthiness decreased. However, it can be argued that they tried to regain their trustworthiness by creating their 'information center' to provide their stakeholders with information and facts regarding the case and the importance of medical innovation. They also included statements from CML-survivors where they talked positively about Novartis and their research. This was another way to regain their trustworthiness as a pharmaceutical company.

Lastly, *responsibility* is based on how organizations are able to make decisions that are transparent and have external and internal factors in mind. As a multinational organization, one needs to make decisions that are good for the organization, but also good for the society in the long run (Fombrun, 1996). Since Novartis is a pharmaceutical company, one of their main stakeholders are individuals who buy their medicines to be able to survive. When applying for patent in another country, it is vital to take into consideration the consumers who live there and if they are able to afford the products. In this case, the Indian consumers could not afford Glivec, which was why they bought generic versions instead. Thus, the scope of their responsibility was affected since they could not decrease the price of Glivec in India for people to afford. However, as mentioned before in the *Written Case and Management Decisions*, Novartis had a partnership with The Max Foundation, where they provided many CML-patients in India with free medicine. It can be argued that this was a way for them to show that they were able to make decisions that could benefit society and thus also a way to increase their responsibility.

These factors all affected Novartis and their choice to take the case to court and try to change the Indian patent laws. Even though they tried to increase their responsibility and trustworthiness, it can be argued that their overall reputation was impaired, since the other factors were negatively affected.

## *External influences on corporate reputation*

The external forces are according to Roper and Fill (2012) the uncontrollable factors that organizations can face. These forces are defined in terms of the PESTLE-framework which includes: political, economic, social, technological, legal and ecological influences affecting the building blocks of corporate reputation. Firstly, the *political* factors are tied to governments and the influence on a certain industry (Roper & Fill, 2012). In the case of Novartis, the Indian government rejected their patent because of section 3(d) in the patent law, which ultimately led Novartis to apply for patent again. This law did not only affect Novartis, but the pharmaceutical industry in general.

Secondly, the *economic* factors depend on the performance of the economy in society and the economic growth patterns in different countries (Roper & Fill, 2012). When it comes to Novartis, they did not take into consideration the economy and prices in India when pricing Glivec, and so thus people could not afford it. The fact that if Novartis would have been successful in patenting Glivec in India, it would have been very expensive as compared to the generic drugs already available on the Indian market, and it would have affected a lot of individuals needing the medicine.

Thirdly, the *social* factors are decided by the social environment of the market (Roper & Fill, 2012). Novartis was accused of harming the pharmacy of the developing world by trying to change the Indian patent law to get easy extension of their patents. Many of their external stakeholders came forward in support of MSF's "Drop the case" campaign. The extensive media coverage and awareness in society was a major reason in affecting the corporate reputation of Novartis.

Fourth, the *technological* factors are affected by innovations that can affect the industry (Roper & Fill, 2012). According to Novartis, the reason why they decided to file a lawsuit against the Indian government was because the Indian government "discouraged innovative drug discovery essential to advancing science for patients". Thus, they wanted to protect their innovation by patenting Glivec, so it can be argued that by rejecting Novartis patent application, the technological factors were affected.

Fifth, the *legal* factors can affect the organization in the form of different laws, policies and standards that organizations have to keep in mind (Roper & Fill, 2012). In Novartis case, section 3(d) of the patent law in India were formulated in a way so that remakes of medicines would not be patented. This made sure that the entry of generic competition would still be available in India, because of the affordability. Thus, it was not possible for Novartis to get patent on Glivec because of those regulations.

Lastly, the *ecological* factors include all other influences in the surrounding environment and also consists of ethical factors. Ethical factors are important and guides an organization's actions and behaviors in implementing corporate and social actions. (Roper & Fill, 2012). In Novartis case, they wanted to patent Glivec in India, where individuals could not afford it. Thus, it can be argued that choosing 'patents over patients' leads to a debate on if Novartis actions were ethical or not.

## Corporate communication

According to Roper and Fill (2012), corporate communication is a key tool to use when managing the way in how stakeholders identify an organization. Corporate communication is also related to the reputation of the organization, and can be used to improve an organization's reputation (Roper & Fill, 2012). However, to create a successful communication strategy, it is important to identify and categorize the stakeholders that are important for the strategy (Roper & Fill, 2012). According to Roper and Fill (2012), Nutt & Blackoff (1992), identify four different categories of stakeholders: problematic stakeholders, antagonistic stakeholders, low-priority stakeholders and supporter stakeholders.

In Novartis case, we believe that their key stakeholders were *antagonistic stakeholders* since the majority of them were powerful and influential and opposed the choices Novartis made.

However, in Novartis case, they did not have a communication strategy planned beforehand, which ultimately led to them facing a lot of criticism and attention from their antagonistic stakeholders such as non-governmental organizations, media, legislators in the European Union and individuals. Furthermore, it would show that Novartis did not expect the uproar and criticism, since they only responded after receiving backlash that affected their reputation.

After the backlash from their external stakeholders, Novartis created an 'information center' and a 'Frequently Asked Questions' page about the case on their website. On this page, they included information, facts and statements about the case. They also listed the most asked questions regarding the case and had included answers to every question (Novartis, 2012). By creating a page on their website dedicated to the case, they hoped to change the stakeholders' attitudes and behaviors, and turn the criticism into a positive event (Roper & Fill, 2012).

## Criteria for effective corporate communication

Roper and Fill (2012) discuss the different criteria for creating an effective communication strategy and include form, style timing and tone.

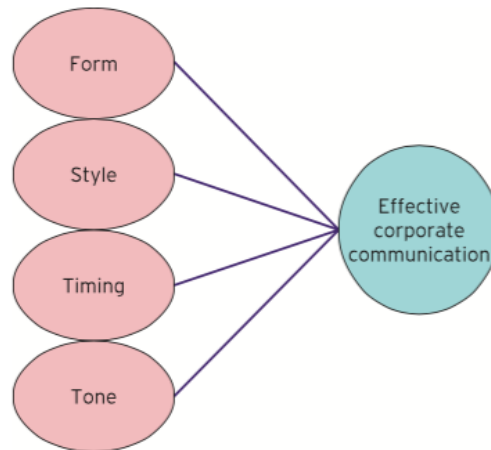


Figure 2: Criteria for effective corporate communication (source: Roper & Fill, 2012)

The *form* of a communication is highly important and affects the outcome of the communication. If the communication is not suited to the expectations of the external stakeholders, it will not be successful (Roper & Fill, 2012). Moreover, according to Grunig and Hunt (1984), there are various communication *styles* which are used when companies set up their communication plan, which they introduce as the *2 x 2 model of communication*.

The communication styles include: the press agency/publicity model, the public information model, the two-way asymmetric model and the two-way symmetric model. In this case, we believe that the two-way asymmetric model was used by Novartis. This model has a two-way communication flow, and focuses on scientific persuasion. However, the communication between the stakeholders and the organization is asymmetric, which means that the power is not equally distributed among the stakeholders (Roper & Fill, 2012).

Novartis received support and help from stakeholders such as The Max Foundation, and CML-survivors to create the 'information center' so thus it could be argued that the power between their stakeholders were not equally distributed since they did not ask for help from their other external stakeholders. The information that was included in the 'information center' and the 'FAQ' were very informative and included a lot of facts. It can also be noted that all their answers on the 'information center' and the 'FAQ' had references in the form of scientific articles to make their answers more reliable and transparent (Novartis, 2012). Thus, Novartis aimed to influence their other stakeholders by scientific persuasion (Roper & Fill, 2012).

Furthermore, the *timing* is of importance since organizations have to find the perfect timing to release their communication (Roper & Fill, 2012). In this case, Novartis decided to release their communication after they received criticism and backlash from their external stakeholders and after the protests against them, which was too late. We believe that Novartis should have planned a communication strategy during the time they decided to take their case to court for the second time in 2006. Thus, they would have been prepared for the criticism.

Lastly, the *tone* of the communications refers to how formal and informal the organization is. The tone usually depends on the image of the organization (Roper & Fill, 2012). When it comes to Novartis, they held a very formal and scientific tone in their communication, which is to be recommended for a pharmaceutical company.

### *CSR in communication*

Media can have a great effect on companies' reputation (Roper & Fill, 2012) and during the scandal were Novartis often portrayed as villains. CSR communication can be used as a tool to defend the company during a crisis (Vanhamme & Grobben, 2009). The communication can help protect and reshape a company's reputation and goodwill. Roper and Fill (2012) explain different ways to communicate a company's social responsibility including code of conduct, training and education programmes. Novartis had a well developed code of conduct and values that guided the company, which they focused on in their communication strategy to their antagonistic stakeholders. For example, Novartis focused a lot on showing that they had a collaboration with The Max Foundation and that they actually helped CML-patients in India by providing them Glivec free of charge. They also released statements from CML-survivors, where the individual stated that Novartis had saved their lives by providing them with free medicine. Thus, these individuals acted like spokespersons for Novartis, in the hopes of changing people's perspective on Novartis.

### *Summary*

By analyzing Novartis communication strategy, we believe that they responded to the criticism with an *advocacy strategy*. According to Roper and Fill (2012), the advocacy strategy is used when an organization faces issues that can threaten the organization from reaching their objectives. The backlash that Novartis faced threatened to ruin their reputation in India and their second patent application. Moreover, Roper and Fill (2012) mention that in cases like this, the best option is to try to change the stakeholders' opinions and perceptions of the organization, which is exactly what Novartis tried to do. They tried to change the preconceived perception that they only cared about making money, to showing their antagonistic stakeholders that they actually cared about people's lives and medical innovation more than profit.



## Key learning objectives

This case has many learning objectives. The main focus of this case study is the reputation and so thus the various parts of the learning objectives are all connected to reputation in one way or another; but from different perspectives. This will allow the students to gain a deeper understanding of corporate reputation and how it can be connected to corporate diplomacy and corporate communication. By linking the case and the management decisions to theory, our goal is to give the students a bigger picture of this case, and the opportunity for them to analyze further. We are aware that corporate reputation can be connected to other theories as well, however, we recommend to focus on the theories mentioned below:

KEY LEARNING OBJECTIVES	GENERAL LEARNING	THIS CASE
UNDERSTANDING	THE LINK BETWEEN CORPORATE REPUTATION AND CORPORATE COMMUNICATION	THE IMPORTANCE OF COMMUNICATING YOUR PERSPECTIVE (MEDICAL INNOVATION)
APPLYING	THEORIES PROVIDED BY THE COURSE LITERATURE	<ul style="list-style-type: none"> <li>- WHAT MAKES A GOOD REPUTATION?</li> <li>- PESTLE-FRAMEWORK</li> <li>- CRITERIA FOR CORPORATE COMMUNICATION</li> </ul>
ANALYZING	HOW EFFECTIVE AN ORGANIZATION'S COMMUNICATION IS	NOVARTIS COMMUNICATION STRATEGY

Table 1: Key learning objectives

## Discussion Questions

To reach the learning objectives and help the students come up with the solution, we recommend starting discussions in the class. This will give the case a greater depth and perspective. The following questions are recommended to initiate discussions:

### Main Question

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?

## Assisting Questions

### *Question 1:*

What are the arguments for and against dropping the lawsuit? Evaluate how the two different alternatives can affect your organization.

### *Question 2:*

How can organizations try to satisfy their external stakeholders?

### *Question 3:*

How do you think Novartis would have handled the situation if it had happened today?

## Teaching Suggestions

This particular section provides the lecturer with some suggestions to enhance the teaching process. The aim is to support the teaching method and to make it more interactive and motivating. This would lead to an interesting as well as informative discussion on the case. The structure of presentation should be like a story by dividing in three phases:

### **Beginning: To Inform**

The beginning phase should start with a short story to put the students in the perspective. We suggest to start with 'imagine you are working as a marketing executive at a pharmaceutical company' to make it more dramatic and exciting. This will make the case more interesting and it will be easier for the students to come to conclusions. Moreover, after the 'story' we recommend to state some information about what Novartis is so that the students get more information about the organization. After the introduction of Novartis, there should be an introduction of the Indian pharmaceutical industry to also gain some knowledge about how big it really is. Lastly, we recommend that the 'case' is introduced. When introducing the case after the information session about Novartis and the Indian pharmaceutical industry, it will be easier for the students to understand the case itself. The purpose of this phase should be "to inform" and give the necessary information needed to make it easy for the students to come up with good recommendations.

## Middle: To Persuade

This particular section should be more persuasive and engaging with the class. We recommend that the management question is asked in the same manner as the story in the beginning: they are the marketing executives at Novartis. This is to give more life to the case. The lecturer should ask the management question leading to discussion with the class and come up with probable managerial decisions. We also recommend to use a board plan so that the case gets more life.

## Ending: To Inspire

In this phase, it's more of what we learn from the case and what were the outcomes of the managerial decision. The students should be able, after the discussions, have come up with good recommendations. For more discussions, we recommend to use one of the assisting questions to analyze the case further.

## Time Plan

A well-structured time plan has been incorporated for the lecturer that will support in the presentation of the case. It is a step-by-step guide for the lecturer to maintain a standard teaching pattern covering all the material in the case. The figure below (Figure 3) is the proposed time plan that is scheduled for approximately 45 minutes.

The presentation starts with introducing yourself followed by introduction to the case, which should take about 15 minutes. The management question to the class should last about a minute so that you get around 20 minutes to have a good discussion on the case with the class. After the discussion, the remaining 5 minutes could be used to discuss the management decision followed by conclusion or any further questions which would take roughly 3 minutes.

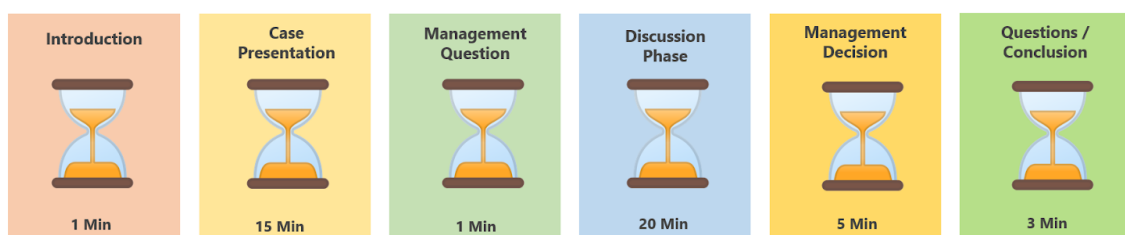


Figure 3: Proposed time plan

## Board Plan

In order to allow the class to evaluate the case, a pre-organized table structure would be useful to discuss the outcomes. The suggested board plan is divided in four parts: Novartis, Challenges, Actions and Recommendations.

According to this structure, the class can list down the challenges and possible actions as per their observations on the case thereby recommending suggestions. Remember, this board plan is used as a way to initiate solutions and recommendations and suggestions from the case to draw different perspectives and evaluations.

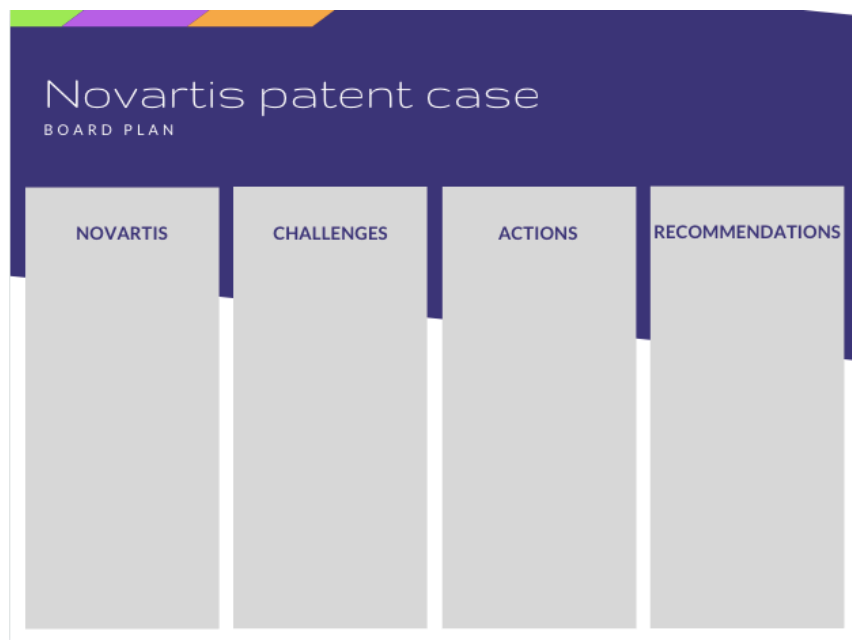


Figure 4: Proposed board plan

## Reflections

For this assignment, we had to choose a case with an interesting managerial decision that provides new learning perspectives for the readers. We gathered a lot of new interesting insights when writing the case. One of the key insights were the number of factors involved in a case and the complexity compared to writing a “normal” report. When writing a case there are many things you need to take into consideration to learn how to see things from a different perspective. It was an interesting experience to learn how to apply the theories from the book to a real case event and evaluate the outcomes. It was fascinating to meet the complicity from the working environment. We learned how to see things from a different perspective and realize that everything is not just black and white, in some situations something in between can also appear. In the process, we learned how to think like professionals and how to handle if a similar situation would appear.

It is thought-provoking yet challenging to be “put in somebody else's shoes”. During the case writing process, we understood the importance of staying neutral and see things from different perspectives. In our case, we found that writing about an ethical issue is a bit challenging as we had to consider both business and non-business factors.

We realized that writing a case is no easy task and we occurred on some challenges as our case was a couple of years old, making it difficult to find relevant information. The complexity of the case and the industry were high so we invested a lot of time to understand the industry and different laws surrounding the case. The fact that we didn't have any previous knowledge about the industry was challenging yet inspiring. Simultaneously, we came up with questions that would lead to a discussion and create engagement in the classroom.

We gathered all the information and made it concise as we wanted to present a clear case with not too much or too less information to deliver clear learning objectives.

Like mentioned before, the case was a couple of years' old which made it complicated to find relevant management decisions to link to the theory. It was a challenge to choose which of the theories that worked best with our case. However, we believe that this case would be inspiring and engaging to learn how brands deal with societal or political changes in order to impair their corporate reputation. Lastly, we would like to say that this case writing assignment has enhanced our ability of critical thinking, time management and teamwork. Also, this particular case would be useful in future to evaluate cases of similar situations.

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