GILEAD'S LICENSE & IMPLICATIONS FOR ACCESS (LENACAPAVIR - LEN-LA)

FAQ as at 10 December 2024

BACKGROUND

- Access to long-acting HIV medicines like lenacapavir (LEN-LA) is vital to reducing HIV infections and protecting people most at risk from HIV, including young women and people from marginalised communities.
  - The research trials for LEN-LA (PURPOSE 1 and 2) were conducted in Uganda, South Africa, and US, Brazil, Mexico, Peru, Argentina, Thailand.
  - Gilead Sciences, the US pharmaceutical corporation filed for several patents in South Africa, India and other middle-income countries to block low-cost generic versions and prolong its monopoly beyond the typical 20-year patent term.

	HIV Drug	India	South Africa	Expiry
Patent 1 (Basic)	Lenacapavir and analogues (Markush formula) and their use in HIV	IN7440/DELNP/2015 Related PCT WO2014134566A3 Pre-grant opposition filed in India by PLHIV networks to narrow the claims	*ZA201506098* *Related PCT* *WO2014134566A3* *(Granted)*	2034
Patent 2 (Evergreening leading to extension of monopoly)	Lenacapavir compound and its use in HIV (oral and parenteral)	IN202018020805 Related PCT WO2018035359A1 Pre-grant opposition filed in India by PLHIV networks to prevent the extension of monopoly by 3 years.	*ZA201901430* *Related PCT* *WO2018035359A1* *(Granted)*	2037 (monopoly extension by 3 years)

Example of evergreening once base compound expires in 2034.

PATENTS ARE A MAJOR BARRIER FOR ACCESSING AFFORDABLE GENERIC LENACAPAVIR:

Under pressure from PLWHA, clinicians, activists, UNAIDS, UNITAID and others, Gilead announced bilateral *voluntary licenses:*

- Gilead Sciences, the US pharmaceutical corporation, filed for patent monopolies in several jurisdictions, to block access to low-cost generics of LEN-LA.
- Gilead decided that six generic manufacturers will supply 120 low—and lower-middle-income territories:
  1. Dr Reddy's Laboratories Limited (India)
  2. Hetero (India)
  3. Emcure (India)
  4. Eva Pharma (Egypt)
  5. Ferozsons Laboratories Limited (Pakistan)
  6. Mylan, a subsidiary of Viatris (a US company with a subsidiary in India)

VOLUNTARY LICENSES: A RUSE FOR MARKET CONTROL

- Gilead has negotiated these licenses directly with six generic manufacturers.
- They are royalty-free.
- While prevention is covered, there are serious limitations on use for treatment ("highly-resistant" cases).
- The licenses allow the six generic manufacturers to supply only 115 low—and middle-income countries and 5 territories. Supply outside of the territory is considered a diversion by Gilead, potentially inviting damages and termination of the license.
- Unjust exclusion: Several countries that participated in the PURPOSE2 clinical trial, such as Argentina, Brazil, Mexico, and Peru have been excluded from the license territories.
- Broad patent scope: The licenses cover granted patents and includes pending applications. This blocks treatment providers in countries (not listed in the licensed territories) without patents (not filed or granted) from importing generics from licensed generic manufacturers.
- The Gilead agreement excludes most of South America, where the HIV epidemic in marginalised communities is growing rapidly. Also, countries in the Middle East, and Eastern Europe, have been excluded. In Asia, major exclusion is China in East Asia and Malaysia from the South-East Asian region.
    - Countries outside the license cannot access generics from licensees even if they issue a compulsory license—this is a direct attack on TRIPS Flexibilities and the 2001 Doha Declaration on TRIPS and Public Health.
    - Strict liability, damages, and termination clauses for licensees if they supply countries outside of the 120 licensed territories.
    - Anti-diversion clauses could have an impact on treatment providers, too.
- No consideration for regional and local manufacturing capacity, especially vis-à-vis Sub-Saharan Africa, Latin America and South-East Asia.
- Quality standards are buried in the trade secret - technology transfer package.
- License terms prevent licensed generic companies who take the technology transfer from seeking an Abbreviated New Drug Application (ANDA) before the US FDA for their generic version, restricting potential early competition in the US.

FLEXIBILITIES AND LIMITS ON USE

- The licenses should have covered future indications including approvals by drug regulatory authorities, off label use and operational research that document the use of LEN-LA with other antiretrovirals.
- The licenses exclude co-packaging, which may be needed to simplify LEN-LA procurement and dispensing and adherence. The licenses should have limited themselves to addressing patent barriers, and not enter the domain of restricting indications for treatment.

Note: There is an increasing call for a trial/research on the long-acting combination of lenacapavir and cabotegravir, which could offer new, effective treatment options for people living with HIV, especially given their potential long-acting properties to facilitate adherence.

KEY MANUFACTURING CAPACITY EXCLUDED

- Many countries with manufacturing capacity, such as South Africa, Thailand, Brazil, Argentina, and China – did not receive a license despite having domestic manufacturers.

  These restrictions prevent local populations from benefiting from the country's production capabilities.
    - South Africa and Thailand, for example, will have to import generics from the stipulated licensees.
    - There is currently no flexibility in the licenses to import the active pharmaceutical ingredients (API) from these licensees (listed above) for local production. Should South Africa and other applicable countries consider addressing intellectual property (IP) barriers, this will have to be addressed.

ANTI-DIVERSION CLAUSE - CONCERNS

CLAUSE 2.5 (e) (ii)

> *"[The] Licensee shall require any Third Party Reseller to agree, in a written agreement with the Licensee: (i) to comply with the applicable terms of this Agreement, (ii) to provide Customer sales data, including name and address of Customer, date of transaction for Product(s), quantity and associated lot numbers and serial numbers (where applicable) sold (on a Customer by Customer basis) ("CustomerSalesData")...*

Third-party resellers include distributors or Customers [Customers mean Government, Hospital or Alternate Care Sites] who must provide the licensee with certain details:

> *" ..date of transaction for Product(s), quantity and associated lot numbers and serial numbers (where applicable) sold (on a Customer by Customer basis) ("CustomerSalesData")"*

This imposes a heavily controlled system requiring treatment providers to spend considerable amounts of time meeting conditions, adding costs that the patient/state will have to cover.

PATIENT CONFIDENTIALITY CONCERNS

CLAUSE 6.1 (d):

A licensee required to affix a unique product identifier in the form of a serial number to both the secondary and primary packaging of each individual unit that is produced and intended for sale in the relevant territory. ("Individual Saleable Unit").

- Complications for humanitarian contexts include the chilling effect on any medicine supply outside the licensed territories, even in small quantities.
- Complicates treatment access for refugees, migrants, and other vulnerable populations who move between different countries and regions.

Track and trace can have a chilling effect on the uptake of services in populations concerned about their confidentiality and the subsequent impact on their lives (stigma, violence).

CONFIDENTIALITY AND PRICE SECRECY CONCERNS

While generic supply opens gradually, Gilead will be the only supplier:

- So, procurers (health departments, donors) can arguably be pressured to sign a *Confidentiality Clause*, akin to a Non-Disclosure Agreement (NDA), on price and supply terms:
- This perpetuates a system that undermines transparency and limits civil society activism for lower drug prices.
  - In COVID, HJI sued for transparency on vaccine contracts which included NDAs, and won, by opening them up – it showed one sided bullying of governments.
- Secrecy affects future price negotiations too.
- Has Gilead asked Governments and major donors (PEPFAR, GFATM) to sign NDAs?

PRICING CONCERNS

- Gilead's price is still unknown in low-middle-income countries and for donors (PEPFAR, GFATM).
- Gilead is marketing LEN-LA in the US at $42,250 per patient per year (for highly resistant Tx) (PrEP FDA registration is pending).
- However, recent expert analysis has shown that LEN-LA can be produced affordably, for even as little as $40-100 per patient per year.

THIS IS AN UNPRECEDENTED MOMENT

JOIN OUR DEMANDS ON GILEAD TO:

- **Remove geographic exclusions**—Include all Middle Income Countries currently excluded by Gilead's voluntary licensing deal.
- **Remove prohibitions on exports even if a compulsory license is issued or there are no patent barriers**—Permit countries cut out of Gilead's deal to import generic lenacapavir made by the 6 licensed companies.
- **Announce one "access price"** for all whether in licensed territories or not, comparable with oral PrEP. Gilead's access price should not be more than $40. The price must be transparent, and Gilead must not require price secrecy from any procurement entity.
- **The license must permit all indications,** not just PrEP and salvage therapy.
- **Remove restrictions** that prohibit licensees from co-packaging or co-formulating generic LEN.
- **Supply researchers** with LEN at low cost so that they can urgently study the treatment combinations people with HIV need and want.
- **Expand the number** of licensed generic producers to include qualified generic producers in sub-Saharan Africa, Latin America and South Asia.
- **De-link quality standards** applicable to licensees from the clauses on technology transfer.
- **Allow access** to Gilead's regulatory submissions, samples of LEN and approvals to obtain rapid marketing approval for generic entrants.
- **Support** rapid registration of LEN-LA in all low-middle-income countries, not merely the 18 priority countries identified, and apply promptly to the WHO prequalification programme and participate in WHO collaborative registration procedures.

INDIA, SOUTH AFRICA, BRAZIL: DEFEAT PANDEMICS WITH REAL SOLIDARITY

- Gilead's evergreening patent applications extending its monopoly beyond 20 years in India – and in other places – should be rejected by patent offices.
- Brazil, Argentina, Columbia, Malaysia and other countries excluded from the voluntary license should issue compulsory licenses to allow access to low-cost generic versions.
- South Africa, India, Brazil and other countries must demand that the license deal should not block supply under a compulsory license - a hard fought health safeguard in the Doha Declaration on TRIPS and Public Health.
- Fast track national registration of LEN across drug regulatory authorities.
- Launch and fund new PrEP scale-up campaigns to build community literacy and demand for injectable PrEP, particularly among those groups facing the greatest need for effective prevention options.

USEFUL LINKS

1. Gilead's Twice-Yearly Lenacapavir Demonstrated 100% Efficacy and Superiority to Daily Truvada® for HIV Prevention
2. Long-acting injectable lenacapavir continues to show promising results for HIV prevention
3. HIV drug trial shows injection twice-yearly 100% effective against infection
4. Gilead under fire over HIV drug licensing
5. Why the fuss about long-acting antiretrovirals for HIV?
6. Why Gilead's 'generosity' on HIV jab belies a betrayal
7. How South Africa can help secure immediate, global access to HIV prevention drug lenacapavir
8. Activists at AIDS2024 Demand: Break Gilead's Lenacapavir Monopoly Gilead's Price 100,000% Higher than Target Generic Price for 100% Effective Prevention Shot
9. Gilead's Access Strategy for Lenacapavir Will Unnecessarily Prolong the HIV Pandemic Activists Call for Affordable Access for all Low- and Middle-Income Countries
10. 300 world leaders, celebrities, scientists and activists urge Gilead to share new HIV medicine with low- and middle-income countries
11. London activists push Gilead to lower price of new HIV drug
12. LEN Generics — Can we go faster?
13. Health Gap resources
14. https://g20.org.za/events/
15. Will Trump cut funds for SA's HIV programmes?