DEPARTMENT OF JUSTICE

"Light My Fire"*: Incentivizing Innovation in the Life Science Sector

MAKAN DELRAHIM
Assistant Attorney General
Antitrust Division
U.S. Department of Justice

United States Patent and Trademark Office and
United States Department of Justice
Promoting Innovation in the Life Science Sector and
Supporting Pro-Competitive Collaborations

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Good afternoon. On behalf of the Department of Justice, along with the United States Patent and Trademark Office, I want to welcome you to the second day of this workshop on promoting innovation in the life science sector. I am looking forward to today's excellent line-up, which follows on a fantastic set of presentations and panelists yesterday.

I want to start by thanking Dr. Elias Zerhouni for agreeing to deliver our keynote speech this afternoon. As the 15th Director of the National Institutes of Health, Dr. Zerhouni established a bold strategic roadmap for medical research that ensured the NIH, and thus the United States, remained an international leader in researching and developing life-saving medicines. As an inventor himself, an academic at the forefront of research, and a business leader, I could not think of a better speaker to participate on these important issues. We are lucky to have him here to discuss these topics with us today.

Now is a fitting time to discuss innovation, collaboration, and competition in the life science sector. As we speak, people around the world are undertaking an incredible effort, at historic speed, to develop safe and effective treatments and vaccines for COVID-19. Their work is a reminder that innovation in the life science sector is not just important in theory. It is important in practice. It shapes how we can respond to and recover from crises.

Today, about half of the world's research and development for new drugs is funded by U.S. firms.[1] For many, these drugs are an essential part of their everyday life. For many more, the research and development pipeline offers hope for the future. Hope to live to see that grandchild; hope to see that daughter's wedding; or hope to see the next graduation.

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[*] The Doors, THE DOORS (Sunset Sound Recorders 1967).

[1] *Biopharmaceutical Spotlight: The Biopharmaceutical Industry in the United States*, SELECT USA, https://www.selectusa.gov/pharmaceutical-and-biotech-industries-united-states (last visited Sept. 22, 2020).

Count me among those with hope and optimism. I believe breakthroughs in genetics and gene therapies will pave the way for drugs that treat or cure diseases like cystic fibrosis, diabetes, and perhaps even cancer. Artificial intelligence and machine learning, as well as advances in molecular biology, will help to accelerate these breakthroughs. The breakthroughs in computing technologies are opening up new frontiers in the life science sector, as they have in so many other fields.

These breakthroughs are not inevitable, as this audience knows full well. They depend critically on innovators' incentives to take risks—to invest valuable time and resources in uncertain endeavors. Every good researcher is a risk taker. They have to be. They embark without knowing where their work will take them. As Albert Einstein adroitly put it, "if [they] knew what it was [they] were doing, it would not be called research, would it?"[2]

As so many of the presenters and panelists noted yesterday, and Director Iancu articulated well, intellectual property rights are a critical tool for encouraging this type of risk taking. Their remarks echo what our country's founders also understood: that strong IP rights are critical to an innovative, developing society. That is why patents and copyrights are mentioned explicitly in the United States Constitution. Abraham Lincoln, the only president with a patent to his name, understood this well. He explained in 1858 that patents "add[] the fuel of interest to the fire of genius."[3]

Intellectual property rights indeed add fuel to the innovative, creative fire. In doing so, they also encourage critical competition. As Justice Scalia explained, the promise of a limited monopoly "is an important element of the free-market system" antitrust law protects, because it

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[2] *See They Say Einstein Said*, http://web.cs.ucla.edu/~klinger/tenpp/11_einstein.html (last visited Sept. 22, 2020) (quoting ALICE CALAPRICE, THE EXPANDED QUOTABLE EINSTEIN (Princeton U. Press 2000)).
[3] *See Second Lecture on Discoveries and Inventions*, 363 (Feb. 11, 1859), *in* COLLECTED WORKS OF ABRAHAM LINCOLN, VOL. 3 (1809-1865), https://quod.lib.umich.edu/l/lincoln/lincoln3/1:87?rgn=div1;view=fulltext.

"induces risk taking that produces innovation and economic growth."[4] Thus, as I've said many times before, intellectual property law and antitrust law work in tandem to encourage innovation and competition.

Collaboration can also encourage innovation and competition. For example, the Antitrust Division recently issued a business review letter analyzing a collaboration between companies who wanted to share information about their ability to manufacture monoclonal antibody treatments for targeting COVID-19.[5] Working together, these companies will be able to scale up manufacturing more rapidly.[6] That means life-saving medicines making it into the hands of American consumers sooner. Because these companies committed to important safeguards, like not exchanging information about the price of the treatments they develop or the inputs they use, American consumers get these benefits faster, without sacrificing competition.

To be sure, some "collaborations" can harm consumers, suppress competition, or impede innovation. For example, some firms use joint ventures or collaborations to conceal efforts to fix prices, allocate markets, or avoid having a merger subjected to antitrust scrutiny. In these cases, we will not hesitate to enforce the antitrust laws. Collaboration should provide a benefit to consumers, include safeguards—as appropriate—and have a procompetitive objective.

Distinguishing between collaborations that benefit consumers, and those that merely mask anticompetitive conduct, is a difficult task. It is also a familiar one for the Antitrust Division. Workshops like this one help us find the right balance in our enforcement activities to ensure maximum incentives for innovation.

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[4] Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 407 (2004).
[5] Letter from the Hon. Makan Delrahim, Ass't Att'y Gen., Antitrust Div., U.S. Dep't of Justice, to Thomas O. Barnett, Eli Lilly and Company, AbCellera Biologics, Amgen, AstraZeneca, Genentech, and GSK (July 23, 2020), https://www.justice.gov/atr/page/file/1297161/download.
[6] *See* News Release, Lilly and Amgen Announce Manufacturing Collaboration for COVID-19 Antibody Therapies (Sept. 17, 2020), https://www.amgen.com/media/news-releases/2020/09/lilly-and-amgen-announce-manufacturing-collaboration-for-covid-19-antibody-therapies/.

I look forward to our discussion today, and to hearing more about how enforcers, life science companies, and other stakeholders can get it right. Procompetitive collaborations, like balanced intellectual property rights, play a vital role in fueling innovation in the life science sector. That innovation is as important now as ever.

Now, it is my privilege to invite Director Iancu and Judge Kathleen O'Malley of the U.S. Court of Appeals for the Federal Circuit to join me in our virtual "fireside" chat. Judge O'Malley has contributed greatly to the development of patent law during her 25 years on the bench—a period marked by significant innovation and technological development, in which our IP law system played a critical role. She has tremendous experience relating to the issues we are here today to discuss, and I'm pleased she is able to join us.