LESSONS FOR THE SADC FROM THE INDIAN CASE OF *NOVARTIS AG V UNION OF INDIA*

L Ndlovu*

SUMMARY

In the pharmaceutical context, many Southern African Development Community (SADC) members grant patents on drugs without substantially reviewing applications first, thus routinely granting patents for new versions of old medicines, thus extending patent life beyond the normal 20-year period. In contrast, Brazil and India, homes to major generic drug manufacturers in the BRICS grouping, examine each application before a patent is granted. It has been argued by health activists and academics that excessive patenting results in too many patents for minor innovations in medical technology and this in turn leads to higher prices of medicines, thus frustrating SADC citizens' right to access affordable essential medicines. This paper highlights how the legislative inclusion of World Trade Organisation (WTO) Trade Related Aspects of Intellectual Property Rights (TRIPS) flexibilities around the requirements for patentability can be effectively used to curb incremental patenting and limit the proliferation of evergreen patents. This is achieved through a critical analysis the 2013 Supreme Court of India case of *Novartis AG v Union of India* before extracting useful lessons for the SADC. The highlighted lessons will in all likelihood inform the current intellectual law reform projects in most SADC members, including South Africa.

KEYWORDS: Access to medicines; evergreening; incremental patenting; intellectual property rights; TRIPS flexibilities; Southern African Development Community.

* Lonias Ndlovu. LLB, LLM (Fort Hare), LLD (Unisa). Associate Professor, Faculty of Law, School of Postgraduate Studies, North West University, Mafikeng Campus. Email: Lonias.Ndlovu@nwu.ac.za. This article is based on a doctoral thesis submitted by the author for the completion of the degree Doctor of Laws at the University of South Africa.