

From the imitator's licence to the patent as an asset

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Part D described how the Basel dye industry grew up in a country without patent protection for chemical inventions. It also showed how the Federal Patent Act of 1888 excluded chemical processes because they could not be represented by a model, and how Switzerland extended protection to chemical processes in 1907 under German pressure.¹ Protection for chemical and pharmaceutical substances as such followed only with the revision of the Patents Act that entered into force in 1978, in the same period in which Switzerland joined the European patent system.² Within ninety years the industry of Basel had moved from a position in which the absence of patents was a competitive advantage to one in which patents became the most valuable assets on its balance sheets.

This chapter treats intellectual property as a financial subject. A pharmaceutical patent is a legal right granted by a state, but for the company holding it the patent is primarily a claim on a future stream of income that is protected against competition for a limited time. The scope and duration of that protection determine the price that a health system pays for a medicine and the royalty that a licensee pays to a university. They also shape the valuation of a biotech company in a financing round and, ultimately, the tax base of the canton of Basel-Stadt. Because the financial value of a medicine is concentrated in the years of exclusivity, the rules that determine when exclusivity begins and ends have a direct bearing on the cash flows that the Basel groups report and on the willingness of investors to finance new companies.

The chapter proceeds in three steps. It first describes the legal architecture of protection in Switzerland, from the Patents Act and the European Patent Convention to supplementary protection certificates and data exclusivity under the Therapeutic Products Act. It then turns to the current debates on pricing and access that the earlier parts of this book promised to examine. These are Swiss price regulation, the American pressure on drug

prices since 2025, generics and biosimilars, and the controversy about compulsory licences and the waiver of patent obligations during the COVID-19 pandemic. In a third step, which fills the second half of the chapter, it deals with the commercial use of intellectual property in licensing transactions, its valuation, and the financing of the biotech companies that have grown up around the large groups in Basel.

1 Notes

1. See Part D, chapter II, section "The patent question", with the references given there on the Federal Patent Acts of 1888 and 1907. To be verified. ↩
2. Revision of the Federal Act on Patents for Inventions of 17 December 1976, in force 1 January 1978, which introduced product protection for chemical substances and abolished the earlier exclusion; see the standard commentaries on Swiss patent law. Date to be verified. ↩

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