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# 5<sup>th</sup> LAWASIA International Moot

## CORRECTIONS AND CLARIFICATIONS TO THE MOOT PROBLEM

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# CORRECTIONS AND CLARIFICATIONS

The following corrections and clarifications have been issued by the Author and have been agreed to by the LAWASIA Moot Standing Committee. They should be considered amended accordingly.

## CORRECTIONS

Paragraph 3, line 4: Change “GLC developed a new drug” to “GHC developed a new drug”

Paragraph 3, line 10 add (following January 5, 2010) “is reproduced in Appendix A.”

Paragraph 5, line 1: Change CHLC- Mara to GHC-Maru

Paragraph 6, line 1 Change “the new manufacturing plant” to “the new manufacturing facility.”

Paragraph 13, line 14: Change Fitzer to Fizer

Paragraph 20(a): Change: "Whether the action of Intellectual Property Department was valid and justifiable..." to "Whether the actions of Intellectual Property Department were valid and justifiable..."

## CLARIFICATIONS

1. Is there a formal agreement between GHC and Maru in relation to GHC investment to establish GHC-Maru? If so, what are the contents of the agreement?

Reply: There was a formal agreement between them and the actions of both Maru and GHC were consistent with the respective rights and obligations of the parties.

2. Was Fizer's understanding that all the Miracle Cure produced in Porta would initially be sent to Maru, but once the "killer flu" was under control in Maru, it would be entitled to produce the Miracle Cure for distribution and use in Porta

and neighboring countries" [¶14] unilateral or did Maru explicitly authorize Fizer to continue producing Miracle Cure once the "killer flu" was under control?

Reply: The record in this proceeding does not show that the Director of the Intellectual Property Department specifically authorized the continued production of Miracle Cure but he took no action to prevent its continued production or export to Porta.

3. Does the Minister of Health have the same legal standing as the Director of Intellectual Property?

Reply: The Minister of Health and the Director of Intellectual Property both report directly to the President of Maru and serve at his pleasure

#### Governing Law

4. Under what law was GHC Maru incorporated in, and what law is it *in pari materia* with?

Reply: GHC-Maru was incorporated under the laws of Maru which are *in pari material* with the laws of the Republic of India.

5. Did the Minister of Health act beyond his authority in disclosing the process of Miracle Cure to Fizer?

Reply: The Minister of Health's actions were within the authority given him under the Constitution and Laws of Maru.

#### Intellectual Property

6. Was the permission granted to Fizer to produce "Miracle Cure" (in para 13) given under "compulsory licensing"?

Reply: The Director of the Intellectual Property Department, after consultations with the Minister of Health, concluded that the country faced a "national emergency" and that his actions were permitted under Article 31b of TRIPS.

7. Does the fact that Miracle Cure has not been approved by the Hori Food and Drug Administration effect the status of the patent?

Reply: No. The validity of a patent on pharmaceutical products does not depend on government approval for its use in the country.

8. Are there any “regional laws” governing patency in both Hori and Maru?

Reply: No.

Friday, 18 June 2010