

醫藥產業的專利法(一)： 專利制度的核心價值與 醫藥產業的特殊地位

Patent Law for the Pharmaceutical Profession (I) :
The Fundamental Goals of Patent Law and
the Pharmaceutical Industry's Unique Significance

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摘 要

本系列文章旨在從醫藥產業的角度切入，探討專利法的各項基本概念，是為「醫藥產業的專利法」。第一篇介紹專利制度的核心目的及功能，並說明醫藥產業議題在專利法制中乃格外受到重視，甚至有許多規定乃是為其量身訂作。透過排他保護創造研發誘因，以及公眾能適度使用技術，兩者間的衝突與權衡，貫串專利法的各項議題。醫藥產業因為研發活動具有高風險、高成本，卻又涉及健康、生命的重要價值，在專利法中具有“VIP”的地位。因此，要全方位了解專利法，醫藥產業的視角自然是不可或缺。

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關鍵詞：公共財 (public good)、近用 (access)、產業政策 (industrial
policy)、誘因 (incentive)

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“Patent Law for the Pharmaceutical Profession” is a series introducing key doctrinal concepts of patent law, with particular focus on the context of the pharmaceutical industry. This first entry outlines the fundamental purpose of patent law, and highlights how the pharmaceutical sector warrants special attention, to the point where many patent law provisions are tailor-made for it. At the core of all patent law doctrinal controversies lie the tradeoff between creating incentives to innovate through granting an exclusive right, and opening up technologies for public use. With this in mind, it follows that the pharmaceutical industry is patent law’s “VIP,” given the high costs and risk in drug development, as well as the crucial values of health and life-saving associated with its products. As such, a comprehensive understanding of patent law must not omit the pharmaceutical industry perspective.

壹、前言

本系列文章標題訂為「醫藥人的專利法」，旨在以醫藥產業的視角、醫藥產業的案例，介紹專利法的各項核心概念。以醫藥產業為出發點，絕非天馬行空，而是因為在專利法中，醫藥產業有著彷彿“VIP”般的地位，不僅格外凸顯專利法的重要價值所在，更因為實務運作的特殊性，使得專利法這部原本對各類產業一視同仁的法律，有許多針對醫藥產業量身訂作的專門規定。

醫藥產業的研發過程歷時久、成本高、失敗風險大，因此需要比其他產業更為擴張的專利保護，以確保研發誘因，這似