

PATENTS, HUMAN RIGHTS, AND ACCESS TO MEDICINES

Patent rights on pharmaceutical products are one of the factors that may contribute to the problem of the lack of access to affordable medicines in developing countries. In this work, Emmanuel Kolawole Oke provides a systematic analysis of the tension between patent rights and human rights law, contending that, in order to preserve their patent policy space and secure access to affordable medicines for their citizens, developing countries should incorporate a model of human rights into the design, implementation, interpretation, and enforcement of their national patent laws. Through a comprehensive analysis of court decisions from three key developing countries (India, Kenya, and South Africa), Oke assesses the effectiveness of national courts in resolving conflicts between patent rights and the right to health, and demonstrates how a model of human rights can be incorporated into the adjudication of patent rights.

Emmanuel Kolawole Oke is a lecturer in International Intellectual Property Law at Edinburgh Law School, University of Edinburgh. His research explores the interface between intellectual property and other branches of international law such as international trade law, international investment law, and international human rights law.

Patents, Human Rights, and Access to Medicines

EMMANUEL KOLAWOLE OKE

University of Edinburgh



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press & Assessment
 978-1-108-45898-6 — Patents, Human Rights, and Access to Medicines
 Emmanuel Kolawole Oke
 Frontmatter
[More Information](#)



CAMBRIDGE
UNIVERSITY PRESS

Shaftesbury Road, Cambridge CB2 8EA, United Kingdom
 One Liberty Plaza, 20th Floor, New York, NY 10006, USA
 477 Williamstown Road, Port Melbourne, VIC 3207, Australia
 314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
 103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment,
 a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of
 education, learning and research at the highest international levels of excellence.

www.cambridge.org
 Information on this title: www.cambridge.org/9781108458986

DOI: 10.1017/9781108654685

© Emmanuel Kolawole Oke 2022

This publication is in copyright. Subject to statutory exception and to the provisions
 of relevant collective licensing agreements, no reproduction of any part may take
 place without the written permission of Cambridge University Press & Assessment.

First published 2022
 First paperback edition 2025

A catalogue record for this publication is available from the British Library

Library of Congress Cataloging-in-Publication data

NAMES: Oke, Emmanuel Kolawole, author.

TITLE: Patents, human rights, and access to medicines / Emmanuel Kolawole Oke, Edinburgh Law
 School, University of Edinburgh.

DESCRIPTION: Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2022. | Based
 on author's thesis (doctoral - University College, Cork. Law Department, 2015) issued under title:
 Preserving patent policy space and securing access to medicines in developing countries : the role of states
 and pharmaceutical corporations. | Includes bibliographical references and index.

IDENTIFIERS: LCCN 2021039275 (print) | LCCN 2021039276 (ebook) | ISBN 9781108472104 (hardback) |
 ISBN 9781108458986 (paperback) | ISBN 9781108654685 (epub)

SUBJECTS: LCSH: Drugs—Patents | Drug accessibility—Law and legislation. | Patents (International law) |
 Foreign trade regulation—Health aspects. | Right to health.

CLASSIFICATION: LCC K1519.D78 O34 2022 (print) | LCC K1519.D78 (ebook) | DDC 346.04/86—dc23
 LC record available at <https://lcn.loc.gov/2021039275>
 LC ebook record available at <https://lcn.loc.gov/2021039276>

ISBN 978-1-108-47210-4 Hardback

ISBN 978-1-108-45898-6 Paperback

Cambridge University Press & Assessment has no responsibility for the persistence
 or accuracy of URLs for external or third-party internet websites referred to in this
 publication and does not guarantee that any content on such websites is, or will
 remain, accurate or appropriate.

Contents

<i>Acknowledgements</i>	<i>page vii</i>
1 Introduction	1
2 Patent Policy, Access to Medicines, and the Regulatory Theory of Patent Rights	32
3 The Interface between Patent Rights and the Right to Health under International Human Rights Law	69
4 Incorporating a Model of Human Rights into the Adjudication of Pharmaceutical Patent Cases (Part One): Kenya as a Case Study	104
5 Incorporating a Model of Human Rights into the Adjudication of Pharmaceutical Patent Cases (Part Two): South Africa as a Case Study	118
6 Incorporating a Model of Human Rights into the Adjudication of Pharmaceutical Patent Cases (Part Three): India as a Case Study	133
7 Conclusion	164
<i>Index</i>	<i>167</i>

Acknowledgements

This book is a product of my doctoral research at the School of Law, University College Cork, Ireland, which was completed in 2015. I am therefore immensely grateful for the financial support provided for my research by the School of Law. I also convey thanks to my supervisors, Professor Steve Hedley and Professor Louise Crowley, for their excellent guidance and support during my doctoral research. I also acknowledge the support of Professor Conor O'Mahony whilst I was studying in Cork. I am equally grateful to my doctoral examiners, Professor Aurora Plomer and Dr Fidelma White, for their comments and suggestions. I must acknowledge the assistance and support I received from my fellow doctoral researchers during our time together in Cork. I thank Anthony O'Dwyer, Dug Cubie, Fariborz Safari, John McNally, Alejandra Calle-Saldarriaga, Lydia Buckley, and Rachel Hanly.

Since the completion of my doctoral research and prior to the conclusion of work on this book, I have received useful comments and feedback from a number of senior scholars in the field of intellectual property law. In this regard, I am grateful to Professor Brad Sherman, Professor Laurence Helfer, Professor Paul Torremans, Professor Shubha Ghosh, and Professor Peter Yu. I am equally thankful to my colleagues at Edinburgh Law School, especially Dr Smita Kheria, Professor John Cairns, and Professor James Harrison. My thanks also go to Matt Gallaway of Cambridge University Press for his patience with me and kind assistance since the start of this project. Matt has been quite helpful through the various vicissitudes of completing this book.

This book is dedicated to the memory of my late dad, Professor Olubode Oke, who finished his race on this terrain before I finished my work on this book project.