Abbott Laboratories and Property Rights in Thailand
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Objectives

- Develop an understanding of the interplay of the legal, business, and nongovernmental forces affecting Abbott's decision-making
- Apply the shareholder vs. stakeholder model of business
- Critically analyze the ethical implications of each party's actions

Overview

In March 2007, Abbott Laboratories found itself in a global tug-of-war among its shareholders and stakeholders. Abbott Laboratories is a health care company with operations and distribution channels worldwide. Abbott was providing Thailand with HIV treatments, including the popular drug Kaletra.\(^1\) Kaletra is used to treat people with human immunodeficiency virus (HIV) which causes AIDS (acquired immune deficiency syndrome).\(^2\) Kaletra is considered part of the pharmaceutical segment and is one of Abbott's biggest international sellers (Exhibit 1. 2009 Sales).

Kaletra falls into the realm of intellectual property of Abbott Inc. Intellectual property includes ideas, inventions, processes (trade secrets), copyrights, patents, trademarks, and other legally protected intangible assets. These are internationally protected in order to maintain incentives for corporations to continue to do research and development and move into foreign markets. To use Abbott’s intellectual property, the Thai government issued a compulsory license to gain access to the information under international intellectual property laws. In a compulsory license, a government forces the owner of a patent or other intellectual property to grant use to that state or others. Normally the patent holder receives some royalties, which are either set by law or determined through
negotiation. In this case, Thailand's government issued the compulsory license on HIV/AIDS treatments including Kaletra because it deemed AIDS a national emergency.

The prevalence of HIV/AIDS in adults was 1.4 percent, meaning an estimated 610,000 people were believed to be living with HIV/AIDS in 2007. The number of people that died as a result of the AIDS virus was 30,000 as of 2007. The Thai government's move to issue a compulsory license stemmed from its experience with an HIV/AIDS outbreak between 1992 and 1997.

**Between 1992 and 1997, Thailand experienced a significant increase in the number of people living with HIV/AIDS**

Exhibit 2. HIV/AIDS in Thailand). Nearly 800,000 people were diagnosed with the virus, creating what the Thai government deemed a national emergency. New occurrences of HIV/AIDS decreased in 2000 to approximately 600,000 Thai people as a result of government actions to increase the availability of treatment and prevention programs. Many Thai people rely on drugs such as Kaletra for treatment; however, only ten percent of the population can actually afford the drug.

As a result, Abbott’s executives were faced with a decision to either allow Thailand to start producing its own generic drugs for the good of the Thai people, or to stand its ground on the basis that Abbott's intellectual property and right to make a profit had been violated. Abbott’s situation represents the leadership implications of determining whether to use a stakeholder or shareholder model of business. The shareholder model of business argues that the “business of business is business.” Essentially, an organization has an obligation to maximize wealth for its shareholders. The stakeholder model argues that a company should consider the wants and needs of everyone it may affect, including not only shareholders but also government organizations, nongovernmental organizations, customers, employees, competitors, etc. The stakeholder model requires more of the organization but may make the organization more socially responsible in the eyes of its stakeholders.

**Abbott Laboratories**

Abbott Laboratories is a health care company with operations worldwide. They distribute products in over 130 countries. Products fall into three main categories: pharmaceutical, nutritional, and medical. Abbott’s headquarters is located in Abbott Park, Illinois, near Chicago. Since its creation in 1900 by Dr. Wallace C. Abbott, Abbott Laboratories has been a global leader in the innovation and creation of products that help customers around the world.

**Abbott’s Promise**

Abbott has issued a “Promise for Life” statement as their mission/vision. The statement is directed towards all stakeholders and shareholders and describes “what we believe in, what we value, and what we strive to deliver in our day-to-day work.” Employees are
guided by this statement and make decisions accordingly. Abbott strives to “turn science into caring” by following these tenets:

- “We advance leading-edge science and technologies that hold the potential for significant improvements to health and to the practice of health care.
- We value our diversity – that of our products, technologies, markets and people – and believe that diverse perspectives combined with shared goals inspire new ideas and better ways of addressing changing health needs.
- We focus on exceptional performance – a hallmark of Abbott people worldwide – demanding of ourselves and each other because our work impacts people’s lives.
- We strive to earn the trust of those we serve by committing to the highest standards of quality, excellence in personal relationships, and behavior characterized by honesty, fairness and integrity.
- We sustain success – for our business and the people we serve – by staying true to key tenets upon which our company was founded over a century ago: innovative care and a desire to make a meaningful difference in all that we do.”

*Abbott's Intellectual Property Stance*

Abbott declares its stance on intellectual property on its website. Intellectual property needs to be protected in order to provide the incentive for the people and companies who create new technologies. It takes billions of dollars and years to create a new product from conception to public sale. In 2007, Abbott spent $2.5 billion on medical research and development. Patents protect intellectual property by only allowing the creating body to use the new technology for a set period of time. Governments, like that of Thailand, have begun to use compulsory licenses to allow others to use that new technology during the protected period of time. Abbott states three reasons why compulsory licenses inhibit intellectual property rights.

1. Compulsory licenses are sometimes used to promote the production of generic drugs in order to lower the price of the medicine. This is because some medicines are so complicated and complex that generic manufacturers cannot create the drug themselves. Generic manufacturers might also decide that though they have the compulsory license to produce the medication, they do not want to make the investment to actually produce it.
2. Generic medications can be of poor quality when they enter the consumer market, posing a risk to those who use it. Lack of regulation only increases this issue.
3. Generic medications do not always have the lowest price. Abbott states the example that their protease inhibitor, used in Africa and other underdeveloped countries, is the lowest priced.

Overall, Abbott believes that the intellectual property system provides an incentive for the development of new technologies and rewards those who do create something new and useful. The money made on intellectual property goes to fund the development of
new technology. “We respect the intellectual property rights of others and expect others to respect ours.”

**Kaletra**

Kaletra is a prescription drug manufactured by Abbott Laboratories. Kaletra is used to treat people with human immunodeficiency virus (HIV) which causes AIDS (acquired immune deficiency syndrome). Kaletra is a protease inhibitor, meaning the drug helps to prevent the development and spread of HIV infected particles.

With $1.3 billion in sales in 2007, Kaletra was the second highest selling anti-HIV medication. This was a 16.5% increase on 2006 sales. Kaletra continued to grow in 2008 with $1.5 billion in sales, an 11.3% increase over the previous year. A SWOT (strengths, weaknesses, opportunities, threats) analysis by the independent Datamonitor listed Abbott’s “blockbuster HIV franchise” as one of the company’s strengths (See Exhibit 3. SWOT Analysis of Abbott Laboratories).

Aluvia is a new form of Kaletra. Aluvia is also a protease inhibitor, but has the distinct advantage of being heat stable. Heat stable drugs ensure the integrity and medical properties of the drug while in hot and humid climates, like that of Thailand.

**Intellectual Property Laws**

**WTO TRIPS Agreement (1994):**


The wording of the TRIPS Agreement is somewhat ambiguous and open on the issue of under what circumstances a state may take licenses. According to the WTO’s Doha Statement in 2001, the TRIPS Agreement fully allows for a state to enact compulsory licensing without declaring a national emergency or negotiating with patent owners (if the use is nonprofit). Because many governments were initially unsure about the level of flexibility in the agreement, the Doha Statement assured governments that they may utilize compulsory licensing when the generic copy is produced mainly for the domestic market, not for export. The patent owner still has rights over the patent, including the right to be paid for authorized copies of the product(s). The Agreement does not list the reasons that could justify compulsory licensing, and the Doha Declaration states that countries can freely determine the grounds for compulsory licensing.

The conditions that must be followed in issuing compulsory licenses that are stated in the TRIPS Agreement are that normally: The “person or company applying for a license has to have tried to negotiate a voluntary license with the patent holder on reasonable
commercial terms. Only if that fails can a compulsory license be issued, and "Even when a compulsory license has been issued, the patent owner has to receive payment" (WTO FAQ TRIPS).

The TRIPS Agreement says “the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization” but does not define “adequate remuneration” or “economic value.” In addition, compulsory licensing must not be given exclusively to licensees and should be subject to legal review in the country.

Notice that the conditions are stated with a “normally” attached. This is because in cases of national emergencies or government use, these conditions do not have to be followed closely. For example, in a condition that a government deems an emergency, as Thailand deemed the condition of its healthcare system and the rate of infection with HIV/AIDS an emergency, that government can skip the steps of attempting voluntary licensing in order to save time. However, there is no clear definition of what constitutes an emergency in the TRIPS Agreement or the Doha Declaration. Even in an emergency, however, the Agreement states that the owner of the patent must still be paid. Again, the authorities in the country concerned have the power to decide what is an adequate payment, but the patent owner has the right to appeal the decision.

**Thai Law**

Thai competition law also prohibits a dominant firm from “suspending, reducing, or restricting services, production, purchase, distribution, deliveries, or importation without justifiable reasons” (Section 25(3)). This means that Abbott was breaking Thai competition law by refusing to market the new heat-stabilized version of Kaletra.

Abbott is in this case a dominant firm because only one drug is available within the market for fixed-dose ritonivir-boosted protease inhibitors: Kaletra.

**The Impact of Nongovernmental Organizations**

*Local (Thai) NGOs*

As a result of Abbott’s decision to withhold its products from Thailand, various national and international health organizations and non-profits launched retaliatory campaigns in March of 2007. The Rural Doctors Society in Thailand, an organization that represents pharmacists throughout Thailand, moved to boycott Abbott products until the company changed its stance. Head of Rural Doctors Society Kriengsak Vacharanukulki-eti stated, "What they did is synonymous with holding our patients hostage, it's not just a threat to Thai patients, it's a threat to patients in poor countries everywhere".12

As the leader of the boycott movement, the Rural Doctors Society gathered support from a large NGO base in Thailand as well as powerful international organizations such as Doctors without Borders. The national boycott campaign threatened to send letters to doctors in every Thai hospital that strongly encouraged the doctors to use generic
HIV/AIDS treatments until Abbott agreed to settle. Upon news of the national boycotts, various organizations vowed to take the boycotts to the global level.13

**International Cooperation Among NGOs**

Doctors without Borders, otherwise known as Medecins Sans Frontieres (MSF), has a history of involvement with the HIV/AIDS issues in Thailand. Tido von Schoen-Angerer, the Executive Director of Doctors Without Borders in 2003, was one of the first to take up the fight against Abbott. Many of the AIDS patients receiving treatment needed to switch to the second-line AIDS treatments such as Aluvia to combat the resistance built up to the old drugs as a result of the prolonged use. Nearly 20,000 individuals living with AIDS in Thailand were in need of a new heat-stable form of Kaletra. However, the Thai government claimed it was unable to pay the price demanded by Abbott. Without access to the new drugs, many medical professionals and nongovernmental organizations were concerned another outbreak of HIV/AIDS resembling the outbreak in the late 1990s would occur. Schoen-Angerer noted his opinion regarding Abbott's behavior in a teleconference conducted on April 25, 2007:

"We've been very disappointed to see how Abbott has been holding Thai patients really hostage on this issue--how they have stopped the registration of the new heat-stable form of Kaletra in Thailand and how they have not been willing to move. What we see really plain with Abbott in Thailand--and now even after they have been called on by Margaret Chan, the WHO Director General--they have reduced the price, but only conditional on Thailand actually withdrawing the compulsory license. So, my impression really today is that Abbott is not a company that is serious about the people in developing countries, and Thailand particularly."14

Jon Ungphakorn, the Executive Secretary of the AIDS Access Foundation in Bankok stated in the same teleconference:

"People living with HIV/AIDS now have a good future; but their lives depend on access to the second-line treatment. And, that is why Thailand has had to carry out the compulsory licenses, which is perfectly legitimate in accordance with the World Trade Organization and with Thai law. But, there's been retaliation, because from Abbott--from other sources, because developed countries don't like developing countries to use this for life saving purposes while in developed countries, compulsory licensing is regularly used against anti-competitive practices. In Thailand, it's used for life saving practices, which in my view is even more important than anti-competitive."11

In response to Abbott’s actions, various international nongovernmental organizations took action via protesting. Protests coordinated by organizations including the Student Global AIDS Campaign, HealthGAP, American Medical Students Association Essential Action, Global AIDS Alliance, Universities Allied for Essential Medicines, and many more took place around April 26-27, 2007, coinciding with Abbott's annual shareholder meeting. The actions involved traditional protesting tactics such as picketing, marches, and demonstrations near Abbott offices throughout the United States as well as teach-ins that featured Thai individuals living with AIDS.15
Conclusion/Leadership Issues

Abbott continued to provide products to Thailand including Kaletra, but in response to Thailand's compulsory licensing requirements, Abbott decided to withhold its release of new products into Thailand. The new products included the heat-stable form of Kaletra, Aluvia, which would have undoubtedly been more effective due to Thailand's tropical climate. The below questions should be considered to analyze the leadership implications highlighted throughout the case.

1. What are the pros and cons of employing a shareholder or stakeholder model of business?

2. How is Abbott balancing the need to make a profit vs. corporate social responsibility?

3. What are the public relations implications for Abbott?

4. What are the ethical implications of Abbott’s choice to refuse offering new drugs to Thailand?

5. What are the ethical implications of Thailand’s action to issue compulsory licenses?

6. What implications does this case have on companies looking to enter Thailand in the future?
Exhibits

Exhibit 1. 2009 Sales
The following is a summary of Abbott’s full-year 2009 sales for selected products.16

<table>
<thead>
<tr>
<th>Twelve Months Ended 12/31/09 (dollars in millions)</th>
<th>U.S.</th>
<th>% Change</th>
<th>U.S.</th>
<th>% Change vs. FY08</th>
</tr>
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<tbody>
<tr>
<td>Pharmaceutical Products</td>
<td></td>
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<tr>
<td>HUMIRA</td>
<td>$ 2,519</td>
<td>11.7%</td>
<td>$ 2,969</td>
<td>43.5%</td>
</tr>
<tr>
<td>Kaletra</td>
<td>$ 446</td>
<td>(12.9)%</td>
<td>$ 920</td>
<td>4.5%</td>
</tr>
<tr>
<td>TriCor/TRILIPIX</td>
<td>$ 1,337</td>
<td>(0.3)%</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Niaspan</td>
<td>$ 855</td>
<td>8.8%</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Lupron</td>
<td>$ 540</td>
<td>43.2%</td>
<td>$ 260</td>
<td>5.9%</td>
</tr>
<tr>
<td>Synthroid</td>
<td>$ 415</td>
<td>(4.5)%</td>
<td>$ 87</td>
<td>9.0%</td>
</tr>
<tr>
<td>Depakote(a)</td>
<td>$ 331</td>
<td>(73.8)%</td>
<td>$ 94</td>
<td>6.1%</td>
</tr>
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16 The sales figures for 2009 have been restated for certain products due to changes in the company's reporting basis.
Exhibit 2. HIV/AIDS in Thailand

Exhibit 3. SWOT Analysis of Abbott Laboratories

<table>
<thead>
<tr>
<th>Strengths</th>
<th>Weaknesses</th>
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<tbody>
<tr>
<td>Continued uptake of Humira across autoimmune disorder market</td>
<td>Narrow launch prospects</td>
</tr>
<tr>
<td>Diverse lipid management portfolio</td>
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<tr>
<td>Blockbuster HIV franchise</td>
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<table>
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<tr>
<th>Opportunities</th>
<th>Threats</th>
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<tr>
<td>Exciting prospect for lucrative vascular intervention segment in Xience V</td>
<td>Patent expiries could weaken prescription pharma portfolio</td>
</tr>
<tr>
<td>Early stage pipeline programs in oncology, CNS and immunology</td>
<td>FTC investigation into generic defence strategies</td>
</tr>
<tr>
<td></td>
<td>New biologic launches for autoimmune disorder market</td>
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