

Albert Bourla  
Chairman and Chief Executive Officer  
Pfizer  
235 E 42nd St  
New York, NY 10017

November 29, 2022

Dear Mr. Bourla,

We are writing to urge Pfizer to disclaim any ability to require developing countries to pay for intellectual property lawsuits. Forcing developing countries struggling from the economic impact of COVID-19 to spend even more money on COVID-19 vaccines will enrich Pfizer at the expense of its reputation.

Our concern is based on the sweeping indemnification clauses that Pfizer obtained from some developing countries in vaccine contracts signed in 2020 and 2021. For example, in its contracts with Brazil, Chile, Colombia and Peru, Pfizer required the governments to “indemnify, defend and hold harmless Pfizer” from and against “any and all” suits, claims, damages, costs, and expenses related to vaccine intellectual property at any stage, including manufacturing.<sup>1</sup>

On August 26, 2022, Moderna filed a patent infringement suit against Pfizer in the U.S. District Court for the District of Massachusetts.<sup>2</sup> The corporation is, in part, seeking damages for revenue Pfizer derived from some foreign supply produced in the U.S. after March 8, 2022.<sup>3</sup> For example, Moderna’s claim appears to cover Pfizer vaccine produced in the U.S. and purchased by middle-income countries. We do not know what specific countries Pfizer has supplied with vaccines produced since March 8, and under what contractual terms. However, several middle-income countries, including Brazil, Chile, Colombia and Peru, have previously signed contracts with Pfizer that contain broad indemnification clauses. While to

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<sup>1</sup> See Public Citizen, Pfizer’s Power, <https://www.citizen.org/article/pfizers-power>. For example, see Colombia 2021 contract, Article 8.1. Indemnification by Purchaser. (“Purchaser hereby agrees to **indemnify, defend and hold harmless Pfizer**, BioNTech, each of their Affiliates, contractors, sub-contractors, licensors, licensees, sub-licensees, distributors, contract manufacturers, services providers, clinical trial researchers, third parties to whom Pfizer or BioNTech or any of their respective Affiliates may directly or indirectly owe an indemnity based on the research, development, manufacture, distribution, commercialization or use of the Vaccine, and each of the officers, directors, employees and other agents and representatives, and the respective predecessors, successors and assigns of any of the foregoing (“Indemnitees”), **from and against any and all suits, claims, actions, demands, losses, damages, liabilities, settlements, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys’ and other counsels’ fees and other expenses of an investigation or litigation)**, whether sounding in contract, tort (delict), **intellectual property**, or any other theory, and whether legal, statutory, equitable or otherwise by any natural or juristic person (collectively, “Losses”) **caused by, arising out of, relating to, or resulting from the Vaccine, including but not limited to any stage** of design, development, investigation, formulation, testing, clinical testing, **manufacture**, labeling, packaging, transport, storage, distribution, marketing, promotion, sale, purchase, licensing, donation, dispensing, prescribing, administration, provision, or use of the Vaccine, any information, instructions, advice or guidance provided by Pfizer or BioNTech or any of their respective Affiliates and relating to the use of the Vaccine, or any processing or transfer of anyone’s personal information processed and transferred by Purchaser to the Indemnitees (“Covered Activities”). (emphasis added)

<sup>2</sup> *Moderna v Pfizer*, Case 1:22-cv-11378 (Mass. 2022).

<sup>3</sup> *Moderna v Pfizer*, Case 1:22-cv-11378 38 (Mass. 2022). More specifically, the company is seeking damages for foreign supply to countries outside the COVAX AMC 92 countries. The AMC category excludes many middle-income countries.

<https://www.gavi.org/news/media-room/92-low-middle-income-economies-eligible-access-covid-19-vaccines-gavi-covax-amc>

our knowledge no court has interpreted this clause, Pfizer may argue that the Moderna suit falls within the indemnified activities listed in the older public Pfizer contracts.<sup>4</sup>

If the existing frameworks are still in place—or similar terms are included in new agreements—we are concerned that Pfizer might push developing countries to partly foot the bill for intellectual property infringement, including damages, costs, and expenses. This is particularly concerning because Moderna in the U.S. is seeking “enhanced damages up to three times the amount of compensatory damages found.”<sup>5</sup> Moderna has also filed separate infringement proceedings in Germany, Netherlands, and the U.K.<sup>6</sup>

Your COVID-19 vaccine has benefited from important publicly funded breakthroughs and brought in close to \$37 billion in revenue last year alone.<sup>7</sup> We urge you to publicly pledge that you will not require developing countries to pay once again for COVID-19 vaccines by requiring them to compensate Pfizer for intellectual property claims.<sup>8</sup>

Sincerely,



Peter Maybarduk  
Director, Access to Medicines Program  
Public Citizen

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<sup>4</sup> We do not know how courts will interpret these Pfizer contractual commitments, whether they will restrict application of indemnification to national claims, and whether Pfizer would ultimately be able to extract money from developing countries for the stated claims.

<sup>5</sup> *Moderna v Pfizer*, Case 1:22-cv-11378 38 (Mass. 2022).

<sup>6</sup> <https://investors.modernatx.com/financials/sec-filings/sec-filings-details/default.aspx?FilingId=16174778>

<sup>7</sup> [https://www.pfizer.com/sites/default/files/investors/financial\\_reports/annual\\_reports/2021/performance/](https://www.pfizer.com/sites/default/files/investors/financial_reports/annual_reports/2021/performance/)

<sup>8</sup> Losses from the following categories contained in some of the Pfizer should be disclaimed: Suits, claims, actions, demands, losses, damages, liabilities, settlements, penalties, fines, costs and expenses.