



## **Executive Board**

**11<sup>th</sup> Session**

**14-15 December 2009**

**WHO Geneva, Switzerland**

### **Resolution n°5**

#### **Patent Pool Implementation Plan**

Following its resolutions EB-TC2-2008/1, EB8/9, and EB6/6, the UNITAID Board thanks the UNITAID Secretariat for UNITAID/EB/11/2009 detailing the implementation plan for the establishment of a voluntary medicines Patent Pool for antiretrovirals (ARVs).

The Board, recalling resolution EB8/9, in which it agreed to the principle of establishing the patent pool, recognizes the potential public health benefits which would come from the increased availability and affordability of ARVs needed in developing countries as a result of the successful establishment of a voluntary patent pool.

The Board welcomes the analysis in UNITAID/EB/11/2009, and concludes that there is now a sufficient basis to proceed to the next stage of the programme planned for 2010. In particular, the viability of a voluntary patent pool cannot be properly tested until a legal entity is established, which is a pre-requisite for formal negotiations with licensors and licensees to take place, and agreements to be finalized.

The Board stresses that the Patent Pool will not inhibit in any way countries' abilities to use TRIPS flexibilities.

The Board requests an analysis of the appropriate legal structure as well as its close relationship to UNITAID. The Board will review this analysis. After the Board reaches agreement on this by 31 January 2010, it will require that the performance of the patent pool is judged in December 2010 against the following criteria:

- Identification of a small Interim Board to be approved by the UNITAID Board, if possible subject to the outcome of the legal analysis (February 2010)
- The establishment of such legal entity, according to agreement
- At least three patent holding entities committing in writing to license their patents to a Patent Pool entity by October 2010
- Licence agreements concluded covering at least five products by December 2010
- Preparation of a medium term funding plan incorporating and justifying provision of finance by donors and/or licensees by December 2010 with a view to attaining financial sustainability
- Revised economic justification based on products licensed to the pool in 2010 (December 2010)

- Revised revenue and cost estimates for the period 2011-2014 (December 2010).
- Definition of additional incentives that might be needed

The Board accordingly approves the sum of up to \$4 million for the setting up of the patent pool in 2010 subsequent to approval by the FAC.



Philippe Douste-Blazy