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INVENTA INTERNATIONAL

INTELLECTUAL PROPERTY

Coronavirus Digest: Patents and other intellectual property rights

The world is desperately seeking a vaccine and treatments against COVID-19 and the answer will also be found in intellectual property. For this reason, PLMJ and Inventa International have joined forces to prepare a Digest on these issues that is continuously updated. Readers of this Digest will have complete and up-to-date information on the crossover between the area of intellectual property and the challenges of COVID-19, especially regarding patents and utility models, as well as all the information on the path to obtaining a vaccine.

1. Provisional measures by national and international public institutes and new functions to assist in the field of patents:

In the context of the current pandemic and by legal imposition, the Portuguese National Institute of Industrial Property (INPI) has started to operate exclusively through the online services available on its website. As a consequence, time limits began to run again on 16 April 2020 and, as a result, acts by interested parties have to be done within the legal time periods set out in the Industrial Property Code or in notifications issued by the INPI. For further information, please consult the [INPI's website](#).

The European Union Intellectual Property Office (EUIPO) already has a plan for a return to a physical presence at its offices. Around 70 members of staff have voluntarily, while the rest are still working remotely. The extension of deadlines that had been granted since the beginning of the pandemic by Christian Archambeau, the Executive Director of the Institute, ended on May 18. Subsequent extensions and the possibility of using other solutions to continue registration processes can be found on the [Institute's website](#).

In the current context and until further notice, the European Patent Office (EPO) has decided to postpone all oral sessions in examinations and oppositions scheduled up to 14 September 2020 which have not yet been held by videoconference. The EPO has also postponed all the events it has organised, until 14 September. This and other information on the processing of patent applications can be consulted on the [EPO's website](#).

As a result of the pandemic, the World Intellectual Property Organization (WIPO) has postponed or cancelled the events and meetings it had organised or coordinated until the end of May. It has also introduced remote working for most of its staff. For more information on the measures adopted, please consult the [WIPO's website](#).

On 20 April, the WIPO launched a new search tool for its global patent database, which is called PATENTSCOPE. The main objective of this WIPO COVID-19 search tool is to make it easier to locate and obtain information in published patent documents that may be of use to researchers who are developing new technologies to fight the COVID-19 pandemic. Read the news article [here](#).

"The WIPO launched a new tool that monitors policy changes relating to COVID-19 or other measures being implemented by the WIPO member states in their response to the global pandemic."

More recently, on 5 May, the WIPO launched a new tool that monitors policy changes relating to COVID-19 or other measures being implemented by the WIPO member states in their response to the global pandemic. In the words of Francis Gurry, the WIPO's Director General: "*The COVID-19 IP Policy Tracker is an information repository that will help all stakeholders navigate changes implemented by the worldwide IP community as it adjusts to the COVID-19 pandemic*". This new tool will be updated regularly and access to it is free. Read the news article [here](#).

2. Trade secrets:

The pandemic caused by the new Coronavirus has led to increased difficulties for companies, which have been forced to adopt new methods to keep their information confidential and secret. The constraints created by remote working and lay-offs – which make it very difficult to meet the requirement to take “reasonable steps” to keep information secret so that it can be considered a trade secret – have been analysed by Freshfields Bruckhaus Deringer. FBD published an article with guidelines to help companies mitigate the above risks. Read the article [here](#).

"The World Health Organization (WHO) created a “voluntary patent pool” to collect patents, data and other information relating to the research and development of a cure for COVID-19."

The search for a vaccine to combat COVID-19 has raised questions relating to the protection of inventions inherent to scientific discovery. An article by Crowell & Morning LLP looks at the advantages and disadvantages of protecting a possible cure using a patent, as opposed to protecting it as a trade secrets. Read the article [here](#).

3. Patent Pools:

Patent pools have been identified by many as being essential to the rapid development of a vaccine against the new Coronavirus. Several European leaders have suggested that the European Union take steps to facilitate access to information relating to COVID-19, so that access or licensing conditions can be created for all countries more quickly and at lower cost. IAM has published an article about this. Read the article [here](#).

On 29 May, the World Health Organization (WHO) created a “voluntary patent pool” to collect patents, data and other information relating to the research and development of a cure for COVID-19. The objective is to ensure this information can be accessed and shared by all those engaged in research and creation of vaccines, drugs and forms of diagnosis of the new Coronavirus. STAT has published an article discussing the implications of this “voluntary patent pool”, the countries that have already signed up to it, and the lack of support from pharmaceutical companies. Read the article [here](#).

The “Solidarity Call to Action” (voluntary patent pool) created by the WHO on 29 May can be consulted [here](#).

4. Compulsory licences:

The possibility of using compulsory licences in the context of the current pandemic has been explored since March. The reason is that there are fears that when a cure is discovered for COVID-19, be it through a vaccine or a drug, IP rights will prevent access to the cure at an affordable price for the countries that so desperately need it. An article by Gün + Partners looks at the debate on compulsory licences and some of the legislative measures adopted in the meantime in several countries in this regard. Read the article [here](#).

5. Risk of infringements

In the context of the current pandemic, the urgent need to produce medical equipment, in particular ventilators, to treat patients infected with the new Coronavirus, has increased the risk of infringement of IP rights relating to these inventions. As a result, the British Government has decided it will compensate the designers and builders of ventilators if third parties holding IP rights in respect of the inventions enforce their rights in court. Arnold & Porter addresses the details of the UK Government's measure in an article which can be found [here](#).

6. International initiatives – Patent partnerships

The United States Patent and Trademark Office (USPTO) has created “Patents 4 Partnerships”, a database that allows a fast and cost-free search of patents relating to COVID-19 that are available for licensing.

The objective of this initiative, which is described in more detail in a Morgan Lewis article, is to facilitate and promote voluntary licensing and commercialisation of technologies relating to the prevention, diagnosis and treatment of COVID-19. Read the article [here](#).

7. Government initiatives

Given the current worldwide public health situation, the power of states is playing a pioneering role in government initiatives to combat the Coronavirus. In this regard, it is important to highlight the article published by IAM, with regard to the “Open COVID Pledge” initiative, argues that the most developed countries should not promote free access to IP rights or encourage their holders to give up these rights for the fight against the new Coronavirus. Read the article [here](#).

"Trademarks can tell us a lot about the global political, social and economic situation, and the COVID-19 crisis is no exception."

In the context of government initiatives, but not relating to patents, the news from CNN Washington the new possibility of remote voting (proxy voting) in the US House of Representatives stands out. This is an example of how the pandemic has “forced” legislatures to reassess the way of exercising legislative power itself. Read the article [here](#).

8. Utility models

In terms of industrial property, alongside the patent, the utility model also plays a central role in combating the pandemic. In this context, the equipment or constituent parts of mechanical respirators and ventilators are of particular importance.

In this regard, the British government's call for industries to produce ventilators to treat COVID-19, as described on pages 15 and 16 of the March/April 2020 Patent Lawyer, stands out. Read the article [here](#).

A number of questions are raised about the scope and legal limits applicable to the above inventions. The following Hoffmann Eitle article answers many of these questions in FAQ format. Read the article [here](#).

9. Trademarks and domain names

Trademarks can tell us a lot about the global political, social and economic situation, and the COVID-19 crisis is no exception. The arrival of the global pandemic has opened the door to “opportunism” in the IP field with various trademarks and domain names associated with the name of the virus. The development of new sub-brand names invariably raises a number of questions...

See the following article (PDF) with a list of trademark applications relating to the new Coronavirus in several countries around the world, prepared by S.S. Rana & Co. See the PDF [here](#):

The above is highlighted by a Novagraff article. It explains that brand owners such as Coca-Cola, Nike, McDonald’s and Audi have temporarily redesigned their logos to include a reference to social distancing and to help promote the message that we need to come together while remaining physically separate. Read the article [here](#).

"IP Twins has developed some guidelines with strategies that companies, in particular pharmaceuticals, should adopt to protect their brands and domain names from the cybersquatting phenomenon."

The sudden emergence of online communication tools to respond to the imperatives of social isolation imposed by the new Coronavirus has also inspired an increase in malware and the misappropriation of domain names. In its article, Novagraaf specifically highlights opportunistic registrations of domain names including terms such as Coronavirus, COVID, vaccine, diagnosis and testing. Read the article [here](#).

IP Twins has developed some guidelines with strategies that companies, in particular pharmaceuticals, should adopt to protect their brands and domain names from the cybersquatting phenomenon that has occurred during the pandemic. Read the article [here](#).

10. The road to vaccines

Given the current COVID-19 pandemic, the burning question is: who will produce a vaccine – and when? Although this question is difficult to answer, Johnson & Johnson, Gilead and Roche are the leading pioneers in the antiviral field. This is the conclusion of the IAM article that is based on PatentSight’s recent analysis of the subject. Read the article [here](#).

11. Litigation

The abrupt appearance of new litigation in the judicial system stands out as a predictable and inevitable result of COVID-19. Solicitors Journal presents a report that warns of the build-up of a backlog of civil cases, and ineffective claims relating to IT and COVID-19, which will trigger a real “tsunami” of litigation in the civil justice system. Read the article [here](#).

"Technology has proved to be of great use in many different areas of human life. Health is no exception and the fight against the new Coronavirus is even less so."

An article in The Verge reports that a front company called Labrador Diagnostics LLC, which claims to have the rights to two patents of Theranos, has sued BioFire, a company that was doing COVID-19 testing, for violation of those rights. Read the article [here](#).

12. Copyright

Copyright issues have also been influenced by the pandemic. According to some, this is an opportunity for authors, composers, publishers or copyright holders for musical works to find a source of livelihood here. How? By getting paid for live streaming, for example. Read the BLITZ article [here](#).

The newspaper El País has reported on the headaches caused to lawyers by the songs sung by numerous artists during the quarantine to support people under lockdown. Many have forgotten the copyright of the existing songs as well as the new song created. Read the article [here](#).

Jornal de Notícias reported that the Journalists' Union filed a formal complaint with the Judicial Police and the Public Prosecutor's Office against what it considers to be "copyright theft". Read the article [here](#).

13. Artificial intelligence

Technology has proved to be of great use in many different areas of human life. Health is no exception and the fight against the new Coronavirus is even less so. An article by McCarthy Tetrault addresses the most recent technological innovations developed and adopted in several countries in the area of artificial intelligence that help predict infection and detect and diagnose COVID-19. Read the article [here](#). ■

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