



18 AUG. 20

Prepared in partnership with:  
**INVENTA INTERNATIONAL**

**INTELLECTUAL PROPERTY**

# Coronavirus Digest no. 3 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 of the national and international Public Institutions and new features to assist in the matter of patents:**

Within the context of the current pandemic, the National Industrial Property Institute (INPI), by legal imposition, started to operate exclusively through the online services available on its webpage. Thus, the calculation of deadlines was taken up once again on April 16, 2020, acts performed by interested parties are carried out by the legal deadlines provided in the IPC or in the notifications issued by the INPI. For further information consult [INPI's web page](#).

Within the context of the current pandemic, the European Union Intellectual Property Office (EUIPO) adopted a plan for the personnel to return to facilities, nearly 70 workers having voluntarily returned to the Institute, while the others continue under the telework regime. The extension of time limits that had been granted since the beginning of the pandemic, by the Executive Director of the Institute, Christian Archambeau, ended on May 18. Subsequent extensions and the possibility of recourse to other solutions to continue the registration process can be consulted at the [webpage of the Institute](#).

The Executive Director, Christian Archambeau, in a video recently published (on July 24) on the Institute's web page provided information on the plan to return, at the beginning of September, to physical work at the EUIPO facilities. He also referred to mentions the latest trademark registration trends at the Institute (with an increase in EU trademark registration applications for this time of the year, when compared to previous years) and provided information on the new "*Ideas Powered for Business*" portal, which aims to support small and medium enterprises within the context of the pandemic, providing PRO BONO help. The said video is available [here](#).

**"Within the context of the current pandemic, the National Industrial Property Institute (INPI), by legal imposition, started to operate exclusively through the online services available on its webpage."**

Within the context of the current pandemic, the European Patent Office (EPO) decided to postpone until further instructions, all the oral sessions in exams and scheduled oppositions until December 31, 2020, that have not yet been carried out by videoconference, as well as the postponement of all events organized by the Institute also until December 31. These and other information about the processing of patent applications can be consulted, in the most recent publication of the Institute (that of August 3) in the respective [web page](#).

Within the context of the current pandemic, the World Intellectual Property Organization (WIPO) implemented a protocol to lend continuity to its services, having opted for teleworking, maintaining, however, just a small part of its employees at the headquarters in Geneva, Switzerland. More information about the organization's response to COVID-19 can be found on its web page, [here](#).

WIPO has created what it calls "COVID-19 IP POLICY TRACKER", a repository with information on the measures adopted by the IP Institutes all over the world in response to the pandemic caused by the new coronavirus. See the repository [here](#).

WIPO also launched a new search tool for its global patents database, PATENTSCOPE. The main objective of this WIPO COVID-19 search tool for PATENTSCOPE is to make it easier to locate and retrieve information in the published documents of the patents, which may come to be useful for researchers who are developing new technologies to fight the COVID-19 pandemic. The news can be found [here](#).

## 2. Trade Secrets

COVID-19 created difficulties at various levels for companies, which have been obliged to adopt new working methods, in particular, use of teleworking, therefore risking undermine the confidentiality and secrecy of their information. In a video posted on the MINTZ webpage, there is a discussion of what steps companies should take to ensure that they implement reasonable steps to keep the information secret so they can be regarded as trade secrets. Access the video [here](#).

**"The WHO created a “voluntary patent pool” in order to collect patents, data and other information related to research and development of a cure for COVID-19."**

The race to find a cure for COVID-19 increases the tension between the countries. In a Financial Times article, we can read that the United States accuses China of trying to appropriate confidential information about research related with the new coronavirus, including information on potential vaccines. Read the article [here](#).

Russia, too, has been accused by the United Kingdom, the US and Canada of being involved in a computer attack on pharmaceuticals and research centres linked to the development of a vaccine against the new coronavirus in those countries. The news can be consulted on the [CNN web page](#).

## 3. Patent Pools

The patent pools have been identified by many as essential to the rapid development of a vaccine against the new coronavirus. Several European leaders have suggested that the European Union adopt measures to simplify access to information related to the COVID-19 disease so that conditions can be created for access or licensing for all countries, faster and at lower cost. The IAM published an article in this regard. The article can be read [on here](#).

On May 29, the World Health Organization (WHO) created a “voluntary patent pool” in order to collect patents, data and other information related to research and development of a cure for COVID-19. The goal is that this information can be accessed and shared by all those engaged in the research and creation of vaccines, drugs and ways to diagnose the new coronavirus. STAT published an article which discusses the implications of this “voluntary patent pool”, the countries that have joined it and the lesser support of the pharmaceuticals. Read the article [here](#).

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

#### 4. Compulsory licences

Possible recourse to compulsory licences, within the context of the current pandemic, has been exploited ever since March. The reason is related to fears that, upon discovery of a cure for COVID-19, be it by a vaccine or a drug, the IP rights prevent access to the cure at an affordable price for those countries that so desperately need it. An article by GÜN + PARTNERS explores the debate on compulsory licences and some of the legislative measures adopted in the meantime, in several countries in this regard. The article can be consulted [here](#).

#### 5. Risk of Infringements

With the context of the current pandemic, the urgency in the production of medical equipment, namely ventilators, to treat patients infected with the new coronavirus increased the risk of infringement of IP rights related to such inventions. The British Government has determined, therefore, that it would compensate the designers and builders of the ventilators, in the event that a third party holders of IP rights on inventions legally claim their rights. ARNOLD & PORTER addresses the outlines of the measure adopted by the British Government in an article that can be consulted [here](#).

#### 6. International initiatives – Patent partnerships

The United States Patent and Trademark Office (USPTO) created the “*Patents 4 Partnerships*”, a database that allows a quick search, at no cost, for patents related to the COVID-19 disease that are available for licensing. The objective of this initiative, better detailed in an article by MORGAN LEWIS, is to simplify and promote voluntary licensing and marketing of technologies related to the prevention, diagnosis and treatment of COVID-19. Read the article [here](#).

#### 7. Governmental initiatives

The impact of COVID-19 on the economy has been devastating. To mitigate the effects of an impending global economic crisis, countries have adopted policies to encourage the economy and capture wealth. One example of this is Estonia, which created a Digital Nomad Visa to promote and stimulate freelancers and other employees who work remotely to settle in the country. The POLITICO article can be consulted [here](#).

#### 8. Utility Models

Utility models are particularly relevant in protection of ventilators that have been created to assist in the fight against COVID-19, lending support to the treatment of patients with respiratory failure caused by the disease. In Portugal, the Atena ventilator, produced by the Engineering and Development Centre in Matosinhos (CEiiA) received authorization by Infarmed to be able to be used in hospitals in the fight against COVID-19. Read the article on the Visão website, [here](#).

**"Possible recourse to compulsory licences, within the context of the current pandemic, has been exploited ever since March."**

#### 9. Brands and Domain Names

Trademarks can tell us a lot about the political, social and global economic and the Covid-19 crisis is not indifferent. The installation of the global pandemic has opened doors to “opportunism” in the IP field, with a number of trademarks and domain names associated with the name of the virus itself. The development of new sub-brands names invariably raises a number of issues.

**"The sudden appearance of online communication tools to respond to the imperatives of social isolation forced by the new coronavirus also inspired an increase of malware and misappropriation of domain names."**

See the following article (PDF) with listing of applications for registration of brands related to the new coronavirus in countries around the world, prepared by S.S. RANA & CO. Consult the PDF [here](#).

The aforesaid use is highlighted by a Novagraaf article. It states that the owners of brands such as Coca-Cola, Nike, McDonald's and Audi, 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](#).

The sudden appearance of online communication tools to respond to the imperatives of social isolation forced by the new coronavirus also inspired an increase of malware and misappropriation of domain names. Specifically, Novagraaf points out in an article, opportunistic registration of domain names including terms like coronavirus, covid, vaccine, diagnosis and tests. The article can be consulted [here](#).

IP TWINS created some guidelines with strategies that companies, with particular emphasis on the pharmaceuticals, must adopt in order to protect their trademarks and domain names in the cybersquatting phenomenon that has occurred during the pandemic. Read the article [here](#).

**10. The path of the vaccines**

There are already several countries showing promising results in research and development of a vaccine against the new coronavirus. National Geographic, in an article that it publishes, reveals which vaccine prototypes we should pay more attention to, for the good results that they have presented in the test phase. Read the article [here](#).

According to the Milken Institute, there are already 202 vaccines and 316 treatments under development within the context of the current pandemic. Follow the progress of each of the prototypes on the web page of the Milken Institute, [here](#).

Some of the vaccine candidates to be helped in the fight against the new coronavirus can be found on the website of the World Health Organization (WHO) [here](#).

The EU, too, trying to safeguard the distribution of a future vaccine against the new coronavirus, has announced that it has reached an agreement with the French laboratory Sanofi to supply 300 million doses of a future vaccine. The news is available on the Euronews web page, and can be consulted [here](#).

Nevertheless, the news that occupies most prominent place in the search for a vaccine to assist in combating COVID-19 is the very recent statement made by Russia as to how it is the first country in the world to create and even register a vaccine against the new coronavirus. Despite the enthusiasm with which the world received this news, there are several countries with reservations about the efficacy and safety of Sputnik-V vaccine. The details of the said vaccine developed by Russia can be read this CNN article, [here](#).

## 11. Disputes

As a predictable and inevitable result of the COVID-19 we would highlight the abrupt appearance of new litigation. The SOLICITORS JOURNAL presents a report that warns of the accumulation of civil cases in arrears, ineffective complaints related to IT and to COVID-19, which will trigger a real “tsunami” disputes in the civil justice system. Read the article [here](#).

An article by The Verge provides information on a front company called Labrador Diagnostics LLC, which claims to have the rights to two Theranos patents, having sued BioFire, a company that performed COVID-19 tests, for breach of those rights. The article can be read [here](#).

**"There is increasing recourse to artificial intelligence technologies (AI) to assist in the prediction, detection and diagnosis of COVID-19."**

## 12. Copyright

Copyrights are also influenced by the pandemic. According to some, this is an opportunity for the “authors, composers, publishers or holders of rights in musical works also find a source of livelihood here”. How? By paying the “live streaming”, for example. Read the BLITZ article [here](#).

The El País newspaper has drawn attention to the headaches caused by lawyers because of the songs sung by numerous artists during the quarantine to encourage the population in confinement. Many forgot the copyrights relating to existing songs as well as to the new song created. Read the article [here](#).

The Jornal de Notícias stated that the Journalists Union filed a formal complaint with the Judicial Police and the Public Prosecutor against what it considers to be “copyright theft”. Read the article [here](#).

## 13. Artificial Intelligence

There is increasing recourse to artificial intelligence technologies (AI) to assist in the prediction, detection and diagnosis of COVID-19. A group of scientists from countries around the world have joined forces to create a database that brings together thousands of sounds of the cough of people infected with the new coronavirus and people not infected, which will allow an AI algorithm to distinguish the sound of the cough of both. The article can be consulted on the SIC Notícias webpage [here](#).

Deep Learning, a type of IA, reveals that it is effective in predicting the risk of progression of the infection by the new coronavirus to severe illness in infected patients. In an article published by the newspaper *Nature Structural & Molecular Biology*, Deep Learning techniques were used in a study using clinical data of 1590 patients of 575 hospital centres that have proven effective in the calculation of probabilities that patients infected with the coronavirus new feature in the development of serious illnesses. The researchers say this will ensure that patients most at risk receive appropriate care faster. Read the article [here](#).

## 14. Privacy and Data Protection

Digital mobile applications have also seen to be very useful in combating the new coronavirus, in that permit tracking with greater accuracy and speed the contacts established by someone who tested positive to the virus. However, the use of these systems entails processing personal data, in particular health data and may therefore, as in any processing of personal data, pose risks to the holder of such data.

In Portugal, the STATAWAY COVID system was created, developed by the Instituto de Engenharia de Sistemas de Computadores, Ciência e Tecnologia (INESC TEC) in partnership with the Public Health Institute of the University of Porto and companies Keyruptive and Ubirider, within the scope of the National Initiative in Digital Skills e.2030. For further information about the system, consult the web page [stayaway.inesctec.pt](http://stayaway.inesctec.pt).

By the way, very recently, Decree-Law 52/2020 of August 11 was enacted, establishing the data controller and regulating the intervention of the doctor in the STAYAWAY COVID system. The said Decree-Law can be accessed [here](#).

FIPRA, the independent European public affairs consultant, created a website where one can see which European countries are developing or have already developed mobile tracking applications within the context of the pandemic. To consult the website, click [here](#).

On April 21, this year, the European Data Protection Board (EDPB) published guidelines for contact tracing systems within in the context of COVID-19 and, in particular, the use of location data in such systems. To access the said guidelines click [here](#).

## 15. Scientific Discoveries

A surprising discovery announced in an article of the *Nature Structural & Molecular Biology* newspaper on July 13, explains what makes sludge a new ally in the fight against COVID-19. Researchers of the Rosalind Franklin Institute and the University of Oxford report the scientific discovery of two antibodies of sludge that may prevent the new coronavirus attacking human cells. Read the article [here](#).

Also the Iberian green frog of the Azores presents an interesting physiology in this regard. Researchers of the Portuguese start-up Biopropectum found that two molecules secreted by said frog are able to prevent the S protein, which confers a crowned aspect on the new coronavirus, from fitting the receptors of the human cells and thereby neutralize it. The article of the Observador newspaper providing information on the curious discovery can be found [here](#).

One study suggests that the antibodies of persons ill with COVID-19 can suppress the SARS-CoV-2, the new coronavirus that causes the said disease. An article in the Belfast Telegraph says that researchers have isolated antibodies from infected individuals and found that are able to neutralize the virus. The article can be read [here](#). ■

### Coordination

Pedro Lomba (PLMJ), Manuel Lopes Rocha (PLMJ), Eduardo Nogueira Pinto (PLMJ) and Vítor Palmela Fidalgo (Inventa International).

### Collaboration

Inês Coré (PLMJ), Carolina Cunha Martins (PLMJ), João Francisco Sá (Inventa International), Diogo Antunes (Inventa International) and Joana Teixeira (Inventa International).