

COVID-19 and its impact on the world of IP – a view on IP as a looking-glass of a globalised society

Abstract

COVID-19 has shown us a downside of a globalised world. The contagious virus has claimed and still claims many victims. It has paralyzed our economies, our infrastructures and our freedom. Simultaneously, it has brought to light unprecedented coordination and collaboration in handling a crisis. The virus has whirled around our understanding of normality. But against personal intuitions, the changes in the world of IP are not as major as one might think. Looking on the current landscape of IP-law, you can see that the foundation for dealing with the crisis was already built well in advance. From a different perspective, you can view reflections in the world of IP, showing measures and thoughts of a globalised and connected society handling the crisis.

Introduction

The world of Intellectual Property is a globalised one. It is characterised by the fact that international processes and cooperations are constantly being developed and digitalised. The world of Intellectual Property is also a future-oriented one. While IP-offices and professionals work to make IP-rights more accessible, more digital and global, the technologies, products and brands applied for always carry the hope for a better and more successful future. At the same time, the world of Intellectual Property creates a bridge to the global knowledge of the past. These characteristics shaped and shape the impact of COVID-19 on IP and - vice versa - the impact of IP on COVID-19.

The following article shows that the IP-protagonists could mostly fall back on already existing means and tools to manage the tasks created by COVID-19. In a second part an overview over the impacts of COVID-19 on IP-professionals and IP-jurisdictions is given, indicating the approaches to stay capable of acting. In a third part the essay reflects on current effects of the pandemic on the society and IP-strategies - mirrored by the public register databases.

Impact on IP-Professionals

The effects of COVID-19 on IP-professionals did not differ significantly from the effects on other legal advisory professions. COVID-19 and the connected social distancing measures caused the well-known and commonly experienced consequences: most IP-offices and a lot of IP-professionals were able to work remotely. This was based on the ongoing process of digitalisation most offices and most IP-professionals initialised in the last years. Who had laid the digital foundation for remote work, could gain a competitive advantage over anyone who had to react under time pressure. So, the statement to work from home soon became advertising material for the own organisational skills and even for moral integrity and solidarity.

Remote-working was accompanied by remote-learning and even remote-negotiating. Courts and Offices of several countries enabled virtual hearings.

It is safe to say, that digitalisation will remain a key issue in organising an office. Forward-looking, this phenomenon offers the opportunity to inspire IP-professionals and IP-institutions to create specialised digital education tools to include in the training plans of young IP-professionals.

Impact on legal systems, authorities and courts

The civil law legal systems provide numerous tools to handle unforeseen circumstances, and so do the common law systems. From force majeure-clauses in contracts to reinstatement in the previous stand procedures and deadline extensions, the concerned parties could find a way to find a legal anchor to pursue their interests during COVID-19 crisis - mostly with a certain delay.

What is to be emphasized is the visualisation of solidarity implemented in the legal response to the crisis. First of all, obvious acts of consideration towards the IP-professionals and IP-holders were the deadline extensions granted by offices and courts, granting an objective procedure and granting the possibility to rearrange workflows in response to governmental orders or curfews.

The possibility to file for reinstatement in the previous status regarding missed renewal fees due to illiquidity as a result of government orders shows another act of attention towards IP-holders.

These measures are also taken in international collaboration, as the example of the EPO and USPTO and the following statement by the EPO President and USPTO Director shows:

To support innovation during this crisis, the USPTO and the EPO stand shoulder-to-shoulder with the innovation community. Our Offices are now offering assistance through time extensions and fee deadlines, as well as flexibility on hearings, such as offering video conferences or postponements. By doing so, we hope to continue supporting inventors with high-quality intellectual property rights that help them attract investment and licence technology, create jobs, and enter new markets with confidence and predictability.¹

Furthermore, particular attention should belong to the information policy of the IP-offices. Not only is it a challenge to keep all the measures and guidelines up to date, but some offices managed to actively give an input for the solution of the corona crisis and to help find a cure, a therapy or a vaccine. Just to mention one of the measures, the European Patent Office (EPO) published an overview over existing and promising technologies to accelerate developments in this field:

The EPO is committed to share with the public the most advanced patent information and knowledge on technologies which are useful in combating the virus or treating the disease it causes, fulfilling our vision that our work will contribute to a safer, smarter and more sustainable world. For this purpose, EPO patent examiners who are experts in the technologies directed to the fight against coronavirus infections, together with our expert patent analysts, have created a variety of search statements to help scientists identify the most relevant documents in these technical fields.²

¹ Responding to COVID-19-A joint message of support for inventors from the USPTO and EPO, Indrei Iancu & António Campinos, (April 30, 2020), <https://www.epo.org/news-events/covid-19.html>

² Official Website of the European Patent Office, <https://www.epo.org/news-events/in-focus/fighting-coronavirus.html>, (September 01, 2020, 2:26 PM CEST)

The descriptive titles of the published statements alone show the public value of the patent databases gathered over the years: The EPO conducted researches about vaccines, overview of candidate therapies for COVID-19, candidate antiviral and symptomatic therapeutics, nucleid acids and antibodies to fight coronavirus.

Not unmentioned shall be the EUIPO gathering a pro-bono-Database for small and medium sized enterprises to contact, which offers them the possibility to save costs for necessary legal procedures.

Some jurisdictions also initialised fast-track applications for COVID-19 related matters to accelerate IP-procedures. By accelerating IP-procedures, the disclosure of technological progress as well as its commercialisation and usage are accelerated.

[Impact on society, a view through IP-strategies: Application numbers and application contents](#)

IP-registers should be expected to reflect the most moving and most animated fields of society and therefore show IP-strategies pursued by various companies. Surprisingly, application numbers and application contents for technology-related IP-rights do not show a big influence of the COVID-19 crisis - yet?

[Application Numbers](#)

The lockdown policies and health system challenges worldwide have slowed down the economy. Some fear a recession, some a depression, others see a great depression already as reality.

As a consequence, you might expect a certain reservation towards IP-investments, but the application numbers for the year 2020 mostly exceed the application numbers of the last years.

Subsequently, application numbers published by various offices are discussed and put in relation to those of the previous years.

The EUIPO noted an increase in European Union Trademark applications and Community Design applications. The trademark applications received in June 2020 surpass the trademark applications of June 2019 by 3,000. The Community Design applications varied only by roughly 400 applications.³ The average annual growth rate of the Trademark applications received by the EUIPO of 5.6 % was therefore exceeded for the trademarks, and met by the Community Design applications.⁴ Considered that the number of applications reflects the willingness to invest, financial strength and economic activity, it will be interesting to see whether a collapse or a stagnation in application numbers will become visible in the following years.

The European Patent Office (EPO) did not yet publish the statistics for 2020, but stated an increase of received applications of 4 % from 2018 to 2019. The ratio of applications numbers in 2019 and 2020 is still to be observed. An interesting detail will be, that the area 'digital communication' just overtook the area 'medical technology' by application numbers

³ *AlicanteNews- Newsletter of the EUIPO July 2020*, European Union Intellectual Property Office, July 2020: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/about_euipo/alicante_news/alicantenews_july_2020_en.pdf p. 6, (September 01, 2020, 2:38 PM CEST)

⁴ *EUIPO Trade Mark Focus Report: 2010-2019 Evolution*, European Union Intellectual Property Office, accessible via https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/news/EUIPO_TM_Focus_Report_2010-2019_Evolution_en.pdf , p. 2, (September 01, 2020, 2:38 PM CEST)

in 2019.⁵ The question is, whether a global health crisis can influence this head-to-head race of these two technology fields in 2020 and the following years.

The World Intellectual Property Organization (WIPO) already published the PCT-application numbers, comparing 2019 and 2020, thereby creating another source in addition to the laid-open application numbers. Regarding the international application for patents, no decrease in PCT-application numbers can be seen (yet?), whereas The Hague applications for Designs show a decrease since April 2020. Madrid application numbers for the International Registration of Trademarks showed a reduction in April and May - compared to the previous year, but already overgrew last year's application numbers in June.⁶

Viewing this data, one should not lose out of sight, that most IP-applications have an internal lead time of several months, even years. This arises the question, how long the already made decisions and the already planned budgets will last into the COVID-19 crisis.

It is most likely, that not only application contents around vaccine-related patents are going to change and application numbers might increase, but also that the number of acquisitions and therefore assignments will increase significantly, as a COVID-19-vaccine candidate will be highly desired.

Application Contents regarding technical IP-rights - and their public perception

COVID-19-related application contents will be shaped by the needs COVID-19 generates. Therefore, it is obvious to expect various medical inventions formed into applications,

⁵ "Facts and Figures 2020", European Patent Office, accessible via <https://www.epo.org/about-us/annual-reports-statistics.html> , (September 01, 2020, 2:38 PM CEST)

⁶ *Crisis Management Dashbord*, World Intellectual Property Office, monthly updated and published under https://www.wipo.int/pressroom/en/articles/2020/article_0006.html, (September 01, 2020, 2:42 PM CEST)

concerning medical equipment such as ventilators or testing kits, accessories and medicinal clothing, repurposing of drugs and new vaccines.

The assumed and expected patenting of a vaccine revives an old question concerning the 'property' part of intellectual property rights. A call for compulsory licensing will be heard as soon as a vaccine candidate is found. Compulsory licenses often require a predomination of a public interest. The most common public interest yet known to the patent courts is the one of 'patient health', as most compulsory license cases revolved in the pharma industry. Regarding the global economic consequences, one should consider to add a 'public economic interest' to the argumentative toolbox. It is also likely that there will be an increase in compulsory license cases not only in the pharma industry, but in the medical technology's industry, too.

Apart from this rather legal approach, the exclusive nature of intellectual property rights will move into focus of the public mind. Media reception tends to underline the public interests and might even force patentees to withhold from otherwise possible legal actions. Unjust or deemed unjust monopolisations are likely to come to light due to the broad media coverage, so as the questionable sorting of instruction or repair manuals for medical technology equipment under copyright law regimes.

On the other hand, the intellectual property system as we know it today has implemented a gigantic global knowledge-database, from which the public can now benefit from, which is also visible in the media.

In a bigger picture, not only the property of the IP-right applicant or holder will be part of the debate, but the 'property' of nations will become a serious issue. As can be seen with the race to find a vaccine, nations will try and already tried to put their own interests in the

centre of action. This can happen over trade restrictions or customs policy but can also start with the attempt to buy and secure the related IP-right itself.

In retrospect, the COVID-19 crisis can thus become a turning point in public perception. Will the public perceive IP-rights rather as a hindering or will it see IP-rights as a motor for development? On the one hand, the appliance of technical knowledge is restricted in favour of IP-right holders. This can offend the public, especially when health-related technologies are monopolized.

On the other hand, the knowledge about technical innovations are made available to the public, through which a global knowledge base grows. Furthermore, IP-jurisdictions around the world also provide tools to prevent unjust monopolisations and to respond to individual cases, such as compulsory licensing rules or common good clauses.

In consequence to the public discussions, you should not expect a revolution in the IP-systems, but rather a shift towards the public interests.

Applications contents regarding Trademarks

You would expect that the technical IP-right statistics would respond to the digitalisation wave and the medical challenges. As shown above, these processes need time and will only be displayed with a certain delay. But at the moment the 'soft' IP-rights such as trademarks rather have a story to tell. They can even illustrate the state of mind and the public mood.

The interrelation between IP-rights and the public's thought flow, can exemplary be seen looking at the trademark applications the German Patent- and Trademark Office (GPTO) received after the virus arrived in Germany. From March till the mid of July, the GPTO

received 69 'Corona'-related trademark applications.⁷ In the same time the EUIPO received 28 'Corona'-related trademark applications. The trademark applications show a chronology of the events:

The trademark applications 'Keep Calm Corona' (DE 3020202094256) or 'CORONA AFTER PARTY' (DE 3020202103379) in the beginning of march show a rather relaxed approach - only days before the lockdown in Germany began, but already weeks after the dangerousness of the virus was known from reports of China, Italy or Spain.⁸

Different trademarks follow: 'Corona-Baby' (DE 3020202106785) was applied for very shortly after the lockdown in Germany was issued, maybe in a wise foresight of locked up couples and gathered families.

'CORONA FAKE NEWS? NEIN DANKE' (english: 'CORONA FAKE NEWS? NO THANKS', DE 3020202124783) or the application 'CORONA, Sündenbock für alles -ohne Adresse' (english: 'CORONA, scapegoat for everything - without an address', DE 3020202251610) depict social and political discussions in real-time. These applications mirror the uncertainty many people felt - due to a pure overflow of information, maybe even contradicting information, let alone conspiracy theories.

The trademark application 'CORONA WARN APP' (English: 'CORONA ALERT APP', DE3020200111668), filed by the Federal Republic of Germany on May 25th shows the

⁷ First cases were noted in January 2020, extreme measures, namely the curfew were not announced until March 2020. A timeline of official measures taken in Germany can be found here <https://www.bundesgesundheitsministerium.de/coronavirus/chronik-coronavirus.html>, (September 01, 2020, 2:44 PM CEST).

⁸ It is very likely that the GPTO will reject most of the applications either on grounds of pure descriptiveness or on grounds of an offence against public decency regarding the victims of the disease.

adaptation of a revolutionary way in handling a pandemic, depicting the intention of using non-medical technology to track a virus via mobile phones.⁹

A trademark application 'Post Corona Reha' ('Reha' is short for 'rehabilitation', DE30202000116244) dated end of May shows the overall progress made in therapy, and the desire to commercialize related services. It also shows the sad reality that we had to learn that COVID-19 can have sensible negative late effects for the survivors.

These examples show how closely the world of Intellectual Property is connected with the economy and how close trademarks are connected and intertwined with technology and even with feelings of the people. By looking at the numbered and categorised world of Intellectual Property you can follow and sometimes even predict economic, political and social trends of the real world.

Prospects

The COVID-19 crisis challenges the world and with it the world of IP. But as a legal area that is not only used to change, but driven by change and driven by the belief in prosperity and well-being through inventions and cultural developments, the world of IP managed to continue its work without larger disruptions. Public perception of Intellectual Property Rights may change and therefore new legal frameworks might develop. Although no major systemic changes are visible, the COVID-19 crisis reveals itself in a more detailed inspection- but large impacts will only display in the following years.

⁹ This shall not imply that the tracing app is a German idea. Viewed from an international point, Germany was rather late to implement a tracing app. Several other countries started their apps several months earlier, e.g. Australia initialised the App "COVIDSafe" in April (<https://www.abc.net.au/news/2020-04-14/coronavirus-app-government-wants-australians-to-download/12148210>, September 01,2020, 3:07 PM CEST). In Germany, the app was downloaded over 16 million times at the end of July (https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/WarnApp/Zwischenfazit.html), (September 01, 2020, 2:46 PM CEST)

References

AlicanteNews- Newsletter of the EUIPO July 2020, European Union Intellectual Property Office, July 2020: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/about_euipo/alicante_news/alicantenews_july_2020_en.pdf p. 6, (September 01, 2020, 2:38 PM CEST)

Andrei Iancu & António Campinos, *Responding to COVID-19-A joint message of support for inventors from the USPTO and EPO*, (April 30, 2020), <https://www.epo.org/news-events/covid-19.html>

Andrew Probyn, *Coronavirus lockdowns could end in months if Australians are willing to have their movements monitored*, ABC News (April 14, 2020, 11:22 AM) <https://www.abc.net.au/news/2020-04-14/coronavirus-app-government-wants-australians-to-download/12148210>

Crisis Management Dashbord, World Intellectual Property Office, monthly updated and published under https://www.wipo.int/pressroom/en/articles/2020/article_0006.html, (September 01, 2020, 2:42 PM CEST)

EUIPO Trade Mark Focus Report: 2010-2019 Evolution, European Union Intellectual Property Office, accessible via https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/news/EUIPO_TM_Focus_Report_2010-2019_Evolution_en.pdf , p. 2, (September 01, 2020, 2:38 PM CEST)

"*Facts and Figures 2020*", European Patent Office, accessible via
<https://www.epo.org/about-us/annual-reports-statistics.html> , (September 01, 2020, 2:38
PM CEST)

Official Website of "Robert-Koch-Institut", central institution of the German Federal
Government in the field of disease surveillance and prevention,
([https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/WarnApp/Zwischenfazit.
html](https://www.rki.de/DE/Content/InfAZ/N/Neuartiges_Coronavirus/WarnApp/Zwischenfazit.html)), (September 01, 2020, 2:46 PM CEST)

Official Website of the European Patent Office, [https://www.epo.org/news-events/in-
focus/fighting-coronavirus.html](https://www.epo.org/news-events/in-focus/fighting-coronavirus.html), (September 01, 2020, 2:26 PM CEST)

Official Website of the German Federal Ministry of Health,
<https://www.bundesgesundheitsministerium.de/coronavirus/chronik-coronavirus.html>,
(September 01, 2020, 2:44 PM CEST).

Author information

Rebecca Hentrich is admitted to the German Bar and advises on IP-law. She studied law at the University of Passau, Bavaria, Germany with a special focus on Information and communication law, as well as data protection law.

