

Closing copyright offices for Covid-19 could have unintended consequences

By [Bernadette Versfeld](#).

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One only has to look back in history to appreciate the extent to which necessity is indeed the mother of invention. Some of the greatest inventions were the product of pandemics, wars and recessions.



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Following from this, closing of the Trademarks, Designs, Patents & Copyright Offices in South Africa over the national lockdown period might have unintended consequences and require reconsideration.

Mother of invention

During the 1918 Spanish flu pandemic efforts to improve general levels of sanitation led to the introduction of indoor plumbing systems, sewage lines and direct to home piped water supplies. The pandemic also precipitated the better regulation of foodstuffs, which in turn led to a substantial increase in the need for refrigeration and accordingly led to substantial advancements in associated technologies. The focus on sanitation also precipitated health reform initiatives, including the introduction of dedicated paediatric and maternity hospitals. Scrabble, chocolate chip cookies and *Fortune Magazine* were the "progeny" of the Great Depression and computers, aircraft carriers, jet engines, mobile x-ray machines and atomic energy are just some of the significant inventions associated with World War II.

Since 17 November 2019, when the first person was diagnosed with Covid-19, some inspiring technology has emerged. Camera surveillance which can measure a persons' temperature from afar; drones and robots have been repurposed to disinfect hospitals and other high risk spaces; drones are being utilised to police the streets in China to correct the behavior of those not adhering to regulations; indoor air purification technology is being adopted to remove viral material from the air and home Covid-19 test kits have been developed.

Re-purposing

Businesses have also appreciated the need to re-purpose themselves. By way of example, Rolls Royce has started manufacturing ventilators, Zara is making hospital scrubs and a 3D printing company in Italy is printing respirator valves for hospitals. These are of course just a few examples.

It is safe to say that we are also likely to witness significant innovations in South Africa across all sectors. We are after all a nation which is recognised for its ability to adapt and innovate. It cannot be stressed enough how important it will be for the owners of these innovations to seek appropriate advice in order to protect their intellectual property and in particular ensure that they capitalise on this significant opportunity to commercialise their products.

Closed for business

Given the opportunities that are available to business in South Africa, it is a concern that the Patents and Designs, Copyright and Trade Mark divisions issued a notice on 23 March 2020 advising that all internal systems would not be available from Tuesday 24 of March from 16:00 and will only be made available again on 30 April 2020.

This means that in the absence of this decision being reversed it will unfortunately not be possible to file for trademark, design or patent protection during this time. The negative consequences are potentially enormous for those seeking to protect and commercialise their intellectual property. Businesses have a difficult decision to make. They will either have to release their intellectual property to the public without any protection being filed and risk third party infringement, forcing them to litigate, or they will have to wait until 1 May to file for protection. The latter would be a most unfortunate outcome particularly where the innovation in question could either save lives, or jobs or better yet both.

It would be remiss of me not to mention that while our local institutions have failed us, an invention can still be protected by way an international Patent Cooperation Treaty application. The downside of protecting one's patent in this fashion is that it costs significantly more than a patent filing in South Africa.

During a time when business is faced with so many challenges, where our main goal should be to prevent job loss as far as possible, businesses should have been given the opportunity to at least file applications by way of email thereby securing a filing date to protect their rights. This would give business the ability to commercialise their intellectual property sooner, ultimately benefitting employees and in turn the South African economy.

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