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## GRANT'S TAKE ON IP LAW

**O**ne more victim of COVID-19 may be innovation. Although a number of privately- and federally-funded research programs directed to finding treatments or a vaccine for COVID-19, the impact of COVID-19 on other scientific research has been difficult to assess.

Certainly, a large amount of the impact has fallen on startups of all kinds, particularly technology-based startups. An April survey conducted by Startup Genome found that the number of startups with less than three months of cash has increased by over 35% due to COVID-19 (from 30% to 41%) and that 74% of startups had to terminate full-time employees. Further, the study found that of investor term sheets that were entered into prior to COVID-19, 20% were pulled by investors after the COVID-19 outbreak.

And a Brookings Institution report concurs, noting that job losses due to COVID-19 will fall even more disproportionately within the small-business sector than they did during the Great Recession.

But the impact is not just falling on startups and small businesses. To the contrary, a survey by Gartner found that only 12% of 1,500 respondents believe their businesses are "highly prepared for the impact of coronavirus." According to a study by Dresner Advisory Services, 61% of enterprise line-of-business and technical leaders report COVID-19 is having a significant impact on their budgets, initiatives, and programs. And according to Nature Magazine, although the American Cancer Society reported that it is "too early to quantify what any impact may be," the UK Cancer Society is cutting its budget by up to 10%, and, closer to home, the Canadian Cancer Society is forecasting an alarming 50% drop in funding.

A Congressional Research Service study determined that, separate and apart from outright suspension of research and development, COVID-19 has impacted federal research efficiency and quality, imposed additional costs and disrupted access to supplies and services. Anecdotally, we are hearing similar reports from our corporate clients, as corporate R&D departments are faced with researchers working remotely, skeleton crews in research laboratories, and reductions in non-critical intellectual property filings and acquisitions to conserve budgets.

Research at universities, too, has had to adjust. In the state of Washington, an early site for the COVID-19 epidemic, the University of Washington issued a directive on April 24 "allow[ing] for all research carried out remotely to continue, and in addition, for critical on-site research to continue, with additional restrictions..."



## VIRUS PUTS DAMPER ON R&D

By GRANTLAND DRUTCHAS

On the other hand, some changes — which are likely to be permanent — will undoubtedly spur further innovation. The reliance on employees working from home and on remote learning may never fully dissipate, and increased broadband access in response to COVID-19 may have transformative effects on the workplace and education.

Information technology developments spurred by the need for remote access may proliferate. So too may many of the advances being made today in shortening vaccine development. But on balance, the COVID-19 epidemic presents a number of challenges to innovation, and some sectors will have a difficult time recovering.

On the patent side of the equation, patent offices around the world have been facing administrative difficulties as well. Some offices have suspended any applications being filed on paper; many more have postponed deadlines or given extensions on times to respond. Federal courts — the venue for enforcing patents — are still generally accepting cases, but many deadlines, including virtually all trials, have been postponed until the COVID-19 situation is clarified.

In the meantime, several countries have taken steps to limit the assertion of patent rights — including by imposing compulsory licenses — for any treatment that relates to

COVID-19. Here in the U.S., members of Congress have asked the Department of Health and Human Services to "not ... provide an exclusive license to any private manufacturer for a coronavirus vaccine or treatment in any government grants, contracts, or licensing arrangements. Providing exclusive monopoly rights could result in an expensive medicine that is inaccessible, wasting public resources and putting public health at risk in the United States and around the globe."

The U.S. government has other ammunition in its arsenal as well, ranging from march-in rights for federally-funded innovations to deciding to infringe by making or selling patented vaccines or drugs and pay "reasonable and entire compensation" to the patent owner under 28 U.S.C. Sec. 1498. These, too, could establish a dangerous precedent that affects investors' willingness to invest in technology and affect innovation going forward.

In short, innovation — like the rest of us — is struggling with the impact of the COVID-19 epidemic.

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