

**Publicly Funded Innovations to Combat COVID-19: Achieving Balance Between Intellectual Property Rights and Global Common Good**

**Abstract**

In response to the COVID-19 pandemic, significant public funds have been invested worldwide into the research, development, and manufacturing of pharmaceutical products to combat the novel coronavirus. Traditionally, intellectual property (IP) rights have been justified in the pharmaceutical sector because of the time and cost associated with drug discovery and development. However, if (a) the cost of research for COVID-19 related innovations have largely been subsidized by the public through public research grants; (b) the time for development has been significantly reduced through publicly funded initiatives; and (c) manufacturing has been de-risked through taxpayer funded advance purchase agreements, should IP rights be asserted on innovations that have largely already been paid for by the public?

There needs to be clear legal and regulatory frameworks, informed by policy objectives such as principles of ‘responsible research and innovation’ and ‘global common good’, to ensure that outcomes of publicly funded efforts can ultimately reach the intended public. Without any access and production conditions associated with the investment of public efforts, worldwide access and supply to medical solutions that benefited from these public initiatives can be frustrated. This article explores the IP related reactive proposals adopted throughout the COVID-19 pandemic and explains why they are problematic and unlikely to be useful for future global health crises. Based on the lessons learned, the article then proposes legally supported mechanisms that can be adopted in the future to balance (a) the incentive function of IP to encourage high value innovations; (b) the public interest in gaining access to much needed medical solutions, as well as the underlying knowledge these products are based upon;

and (c) the private interests and competitive landscape of developing new innovations in response to a pandemic. A legal framework that is responsive and incorporates lessons learned from the challenges of the COVID-19 pandemic will help achieve a better balance between public, private, and national interests to address the critical issue of access and availability to medical innovations that benefitted from publicly funded initiatives.