

**Mrs. Vanessa Ferguson**  
**President: SAIPL**  
**Lakeview Building,**  
**Ground Floor,**  
**1277 Mike Crawford Avenue,**  
**Centurion,**  
**Gauteng**

**BY EMAIL ONLY**

Dear Mrs. Ferguson

**SOUTH AFRICA: URGENT APPROACH FOR REINSTATEMENT OF ESSENTIAL AND NECESSARY  
IP SERVICES**

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I have considered the content of your letter dated 30 March 2020, and I have duly consulted with the relevant IP managers, prior to sending this response to you.

Yes our country and its citizens are indeed finding ourselves in uncharted waters, unprecedented times, and times in respect of which no rule book – currently – exists. As such, this difficult time has called for very difficult decisions to be made on various levels of national government, chief being the decision by President Ramaphosa to impose a national lockdown on the country and all of its citizens. The President in taking this decision had due consideration for the impact such would have on not only the lives of the citizens of South Africa, but also the social and economic impact this decision will hold for the country, in the immediate future as well as months to come.

Similarly the difficult decisions taken by my office since Tuesday 24 March 2020 was taken fully aware of the impact thereof, but also recognizing the potential impact on CIPC staff and CIPC as an organization overall, if drastic measures to ensure the health and safety of our staff were not taken and implemented without delay.

I reiterate my standpoint hereon, which is a standpoint supported by the Minister of Trade, Industry and Competition, and which I am aware had been conveyed to you by some of the IP managers as well prior to the office closure: of paramount importance throughout the decision making process was the health and safety of CIPC staff, and any decisions taken could not and were not based on any commercial interests of any party. The lives of staff cannot be monetarized and this was the premise from which all decision making stemmed.

I wish to here below deal with some of the paragraphs in your letter specifically, and my non-response on other paragraphs are not to be construed as that the content of such paragraphs were not noted nor considered.

Ad para. 7: It is not clear why the closure of the office from 25 March 2020 had a disastrous effect on the preservation and protection of IP rights of IP holders, as all closure dates were declared *dies non* in terms of the respective legislations. Therefore all IP rights remain protected during this period of *dies non*.

Ad para. 8: I am again well aware that SAIPL had already been informed by the IP managers that if the national lockdown ends on 16 April 2020, then all IP services will be available and all normal operations will resume from 20 April 2020. As such the reason for the statement contained in this paragraph is not clear.

Ad para. 9: The reason for the systems not being available from 25 March 2020 was not only set out in an official and separate notice published by CIPC, but I am again advised that you were informed prior to the office closure that this was required for the annual shutdown which occurs every year for financial year-end purposes. It was unfortunate that the usual annual financial year-end processes had to occur at the same time as the national lockdown time period, but this was a decision outside of everyone's control and definitely one that can be compared to an instance of *vis major*.

Ad para. 10: The reference to IP related litigation in this paragraph is not clear as such litigation is not included in the list of essential matters to which the national courts would be attending to during this period of lockdown. It is further not clear, in the light hereof, why any party would deem this lockdown period as the opportune time to commence or proceed with IP related litigation. In addition, there was no reference made in any of the media briefings by the President that the continued operation of a litigation practice during this period was first and foremost of national concern at this point in time.

Ad para. 11a: As you correctly point out, IP is not considered an essential service, and therefore the office is subject to the prescript of the national lockdown. The state of disaster declared by the President implies that certain rights are limited in scope, and this not only effects IP rights, but also *inter alia* the rights of freedom of movement and the right to trade etc. during this period. The Constitution recognizes that certain rights, may, under the appropriate circumstances be limited in scope and the effect of the national lockdown is to limit certain rights. Many industries must bear the unfortunate impact and consequences of the national lockdown declared by the President, and IP is equally affected by the imposition of this national lockdown. Notwithstanding the above, the applicants whose rights are limited by the national lockdown may as you correctly point out file in other jurisdictions that remain open to receive applications.

Ad para. 11b: Refer to 11a above.

Ad para 11c: I am of the opinion that in this time of worldwide crisis, of a worldwide pandemic, which has seen thousands of people already losing their lives due thereto, worldwide trade mark filing strategies would pale on the scale of what is to be considered important and what not. I cannot agree with you that the lives of CIPC staff should be risked simply for worldwide trade mark filing strategies of your clients.

Ad para. 11d: The instances you refer to in this paragraph will surely be the exception and not the rule, and such instances will be dealt with as and when needed, on a case-by-case basis.

Ad para. 11e: You correctly state that you are uncertain whether any practice note will override a court judgement. These are unprecedented times that we find ourselves in and I am certain that the courts, in making any ruling, will have due regard to the circumstances prevailing at the time.

Furthermore, the Act gives the Registrar powers to extend certain deadlines, where good cause can be shown. I don't think that anyone will have difficulty acknowledging that any application that falls into the latter category should be automatically extended as we have sought to do, and will continue to do.

Ad para. 12: The IP managers and I agree that your list of essential IP services in no manner or form outweighs the essential services as regulated by national government. CIPC as a government entity cannot flout the rules of national government imposed on all its citizens by making or compiling its own list of essential services, and no stakeholder in government can be seen to be dictating to national government as to what should be essential services or not. Such would completely nullify the purpose of the national lockdown as each and every industry could argue for its services to be seen as essential services. It is disappointing to note specifically that you require the publication of the monthly Patent Journal as an essential service; as you know this cannot be done without intervention of CIPC staff.

Ad para. 13: None of the services/functions listed in this paragraph could under any circumstances be viewed as being essential IP services, whilst a *dies non* notice is in place.

Ad para. 14: I have full confidence that as always in the past, the IP managers and staff in the various IP divisions will go beyond what is expected of them to deal with all matters as quickly and as efficiently as they are able to, and have been known to do.

Ad para. 15: It would seem as if SAIPL members in their preparations did not consider a scenario of national lockdown which would also apply to CIPC as an office and CIPC employees. At no point did CIPC give any undertaking that business will continue undisturbed irrespective of measures put in place by national government.

Ad para. 16: As a government entity CIPC heeded the call of the President to put measures in place to mitigate the economic impact of the national lockdown, and to this end developed the registration platform for essential businesses through the BizPortal platform. As such CIPC is contributing skills and resources where possible, within the regulatory framework imposed by national government, and at all times keeping in mind what is considered essential services.

Ad para. 21.1: This matter has already been addressed and responded to in my letter above.

Ad para. 21.1 to 21.4: Consider what is and what is not permissible by the various Acts which the CIPC administers. Some of your proposals are not provided for in our law and will therefore not be implemented.

Ad para: 21.5: None of the options listed in your letter under reply are unfortunately workable or reasonable options open for consideration, especially in view of my assurance herein already that normal business operations will resume on 20 April 2020. If the national lockdown ends on 16 April 2020. Again it is reiterated that CIPC services are NOT covered by the essential services as declared by national government. SAIPL making its own list of essential IP services which you now wish to impose on CIPC, based on your own needs and wishes, and which would require CIPC staff to go to the office on a daily basis, is not only completely against the national regulations which CIPC are bound by, but shows no regard for the health and safety of CIPC employees.

Ad para. 21.6: It is not clear in considering your letter as to why there is a need during this time to obtain and/or verify IP rights details. Reference to the CIPC policy on access to information appears wholly misplaced, in view of these unique and unprecedented circumstances that the world at large is being faced with.

Ad para. 21.7: Similarly it is unclear why there is a need to conduct online IP searches during this time. It unfortunately seems as if all of this is purely driven by commercial interest and not the interest relating to the health and safety of CIPC employees.

In closing, I wish to point out (though again I am aware that you were fully made aware hereof by IP managers prior to the office closure) the limited electronic services being made available *via* the CIPC website from 1 April 2020 are those services which require NO HUMAN INTERVENTION and which are through-and-through electronic and fully automated. Thus the provision of such services requires no CIPC staff to place their health and safety at risk to be working at the CIPC offices during this time of lockdown. You as IP stakeholders should be very well aware that there are no such fully automated services in the IP e-platforms, and thus your comparison of the IP services to the limited e-services in the Companies and Co-Operatives domain again appear to be wholly out of place.

It must be kept in mind that CIPC as a national IP office cannot be compared to other IP offices with infrastructure in place for several years already which now allows such offices to provide very limited and restricted online services during this time period, especially in countries where national lockdowns or quarantines are in place.

Therefore after full and detailed consideration of the content of your letter, I reiterate that the office closure as per the published notice remains in place. The matter will be reconsidered, if needed, should the national lockdown be extended beyond 16 April 2020.

*Electronically sent; unsigned*

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**Rory Voller**

**COMMISSIONER**

**31 MARCH 2020**