

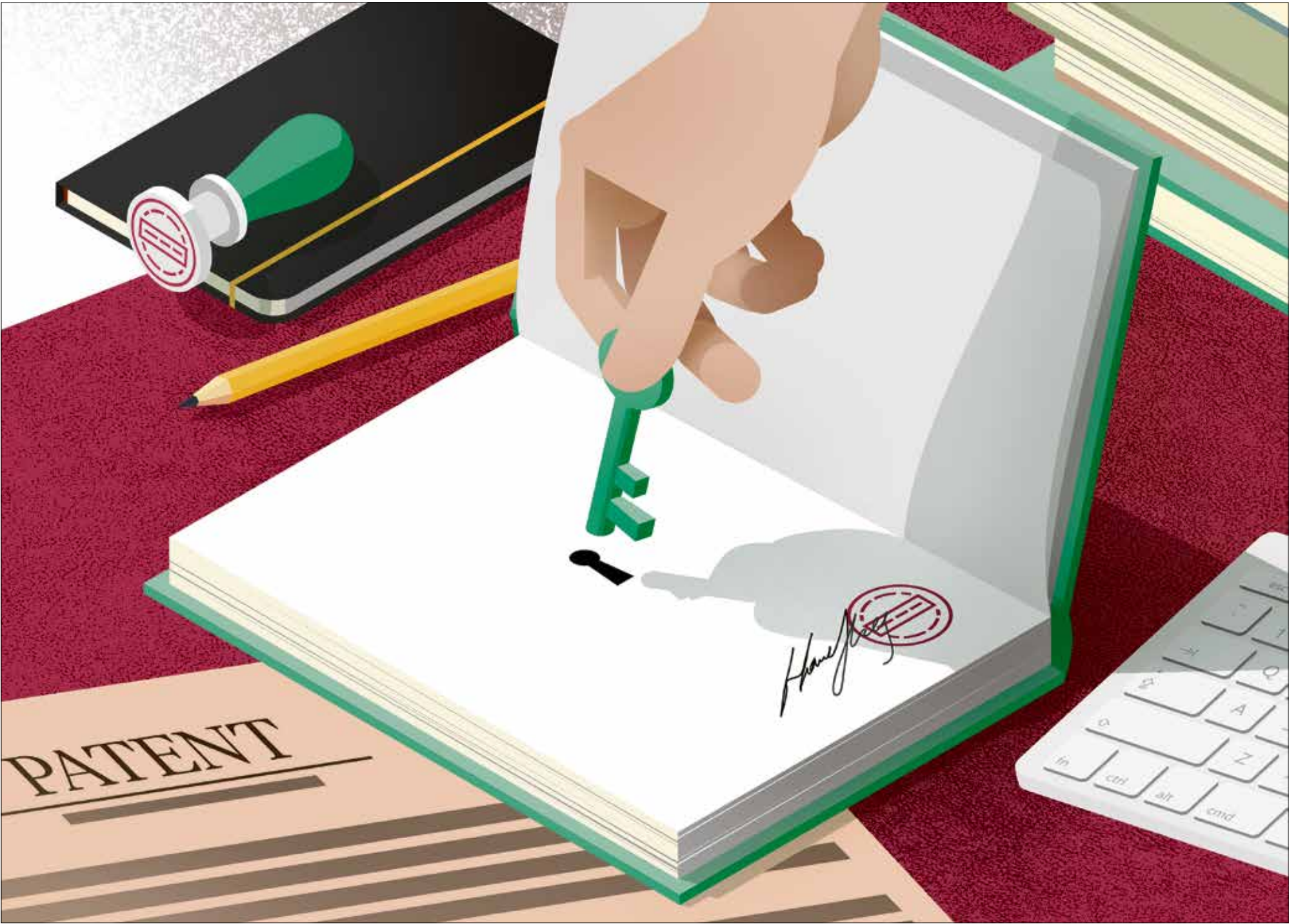
INTELLECTUAL PROPERTY

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Take care of valuable company secrets

Companies should draw up a comprehensive and robust strategy to protect the intellectual property of valuable design and manufacturing secrets

Trunki owner Magmatic last year lost a Supreme Court battle to protect the design of its kids' luggage product

Overview

JONATHAN AMES

It's a fair bet that none of the thousands of owners of the Trunki has ever heard of Lord Justice Neuberger or the UK Supreme Court.

The suitcase is designed for children or as the manufacturer – a *Dragons' Den* reject – describes them, “globe-trotting tots”. Indeed, the Trunki's core customer base presumably have better things on their minds than the cogitations of five judges who, to them, must seem to have the combined age of about three million.

But last March, Lord Neuberger and his band of four other Supreme Court justices handed down a ruling that certainly pricked the ears of intellectual property lawyers.

Trunki's British designer Magmatic lost its battle to protect the product's design from imitation by Hong Kong businesss PMS and its Kiddee Case range. Intellectual property (IP) lawyers and other experts immediately predicted that the ruling would be “disastrous” for those aiming to protect designs through the European Union's registration process.

The case (no pun intended) highlights the importance for all businesses, especially cutting-edge startups, to construct a comprehensive and considered IP strategy. Entrepreneurs and executives who take the view that IP is one of those dull subjects best left to the pasty-faced legal team will be playing fast and loose with possible catastrophe.

In a globalised economy, ideas are money and protecting them is vital. And the IP landscape is constantly evolving.

Dealing with the impact of the internet on infringement of IP rights continues to be a primary focus of businesses and their lawyers. Nick Aries, a partner at Bird & Bird, a London-based international law firm, describes the terrain. “The internet has created an easier and quicker route to market for counterfeit goods, the ability to copy and share music and films on a huge scale, and facilitates illegal streaming of TV footage including high-value sports matches,” he says.

“Courts all over the world are having to set appropriate boundaries for measures responding to this, such as the proper scope of website-blocking injunctions ordered against internet service providers.”

A rundown of issues cropping up in just the last few months demonstrates how fast moving the sector has become. For example, recent research showed that attempts to trademark Twitter hashtags – a device and phenomenon that didn't even exist a decade ago – have rocketed.

Some 1,400 applications were made worldwide last year as companies bid to protect brand identities on social media. Examples of the most prominent successful attempts by corporations to protect hashtags include #likeagirl, which the multinational Procter & Gamble has trademarked for its line of Always female sanitary products, and Salesforce, the US cloud-computing business, which has trademarked #dreamjob.

Elsewhere, Pele, still the world's most famous former footballer, has effectively become a brand that he strives to protect, with the Brazilian currently suing Samsung over use of a lookalike in an advert.

But he's not the only one. Pop star Rihanna recently launched a claim against high street clothing chain Topshop over the use of her photograph on a T-shirt. Both cases shine a light on the efforts of celebrities' lawyers to invoke laws around the IP concept of “passing off” to protect their clients from incidents of false advertising endorsements.

Looking ahead into the near future, a change in UK copyright law will herald greater protection for industrially produced designs, including iconic furniture. But that is arguably not such a welcome development for consumers, who have grown used to buying cheaper retro replications of classic designs.

Lawyers forecast that the reform will afford designers protection over their creations at least 70 years after their death instead of the current 25 years. And that means that several manufacturers will have to stop making replicas of iconic historical designs, such as the anglepoise lamp.

On the broader horizon, the European Commission's digital single market strategy will be an important issue in the inboxes of business

leaders and their lawyers. Many proposals for reform are being considered, potentially affecting the “liability of service providers for unlawful content, which they store or transmit”, Mr Aries predicts.

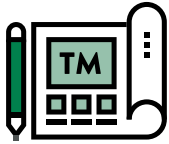
The eurocrats are aiming to harmonise mechanisms for rights holders to take down unlawful content online, as well as the ability of European consumers to watch their home country's online TV services, for example via Netflix, when travelling abroad.

While the Trunki dispute went all the way up the conventional route to the highest court in the UK, specialist lawyers increasingly suggest that IP cases are ripe for the alternative dispute resolution route of arbitration.

“Intellectual property is all about protecting valuable design and manufacturing secrets,” says Peter Flint, head of arbitration at the London office of international law firm Gowling WLG. “The creators and developers of intellectual property are increasingly recognising the value of the confidentiality of arbitration in resolving contractual disputes.”

Arbitration is also seen as preferable by some lawyers because, with some notable exceptions, there are comparatively few specialist judges on the High Court bench. “With arbitration you get to choose your arbitrator and that can be very important when dealing with a dispute involving highly technical matters,” says Mr Flint.

Perhaps the next Trunki-style dispute will be argued and decided behind closed doors and in secret.



1.4k applications were made worldwide in 2015 to trademark hashtags

Source: Thomson Reuters CompuMark

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IP AND BRAND VALUE

Companies should be specialising in strategic, holistic and cost-effective approaches to brand protection and enforcement, says Julius Stobbs

stobbs

In my lifetime, the role, scope and value of “brand” has changed significantly. World rankings show brand valuations as assets in the billions – these are the most valuable assets of many businesses – but it is not just the economic value that has changed. In the modern world brands also carry social value. Brands have always carried with them the promise of quality or consistency, but now consumers expect more – the brand stands for the ethical, social, environmental approach of a company and acts as a sort of guardian in relation to this behaviour.

I have seen an increase in understanding in corporates of the importance of intellectual property (IP), but it is rare that brand value is focused on over and above a focus on technology. Unlike any piece of tech, the brand has indefinite life, is what allows a business to stand out in increasingly crowded markets and encapsulates the business and all it stands for to the consumer. And yet it is often not given the attention that its value would suggest it demands.

The concept of what makes up a brand has also broadened. This is no longer simply a name and/or a logo, but a combination of these things with “look and feel”, brand architecture, tone of voice, typography and even “personality”, among other things.

For companies specialising in advice on and protection of brands, this development makes the task harder. Traditional IP – trademark, design, copyright, confidential information – doesn’t map straight on to this modern view of brand and this creates a need for more creative strategies.

Brand protection is no longer about standard trademark protection – think about unusual marks (colour, sound, shape, trade dress), design protection, domain strategy, supply chain management, contractual terms with suppliers, partners and licensees, and even enforcement activity. All of this, and more, goes towards an effective brand protection strategy.

The proliferation of access to online marketplaces all over the world, use of social media, the ability to own and set up websites and domains easily, and get in front of consumers without an expensive physical presence, as well as the internationalisation of trade, makes it more and more straightforward to mimic brands and do things that can divert trade or undermine brand value.

“Brand owners should enforce their rights in order to prevent dilution of the brand and ultimately retain brand value

Research from MarkMonitor in 2009 values counterfeit product online at \$133 billion. The issue has grown by orders of magnitude since then. And it is not just about product.

Brand owners should enforce their rights in order to prevent dilution of the brand and ultimately retain brand value. However, the volume of problems in



Julius Stobbs, Stobbs IP

the modern online world makes this very difficult, especially as traditional legal approaches to enforcement are so expensive. This often puts companies off from trying to deal with the problem. Instead brand owners need to be as creative as those running the parasitic businesses in their efforts to put a stop to their activity.

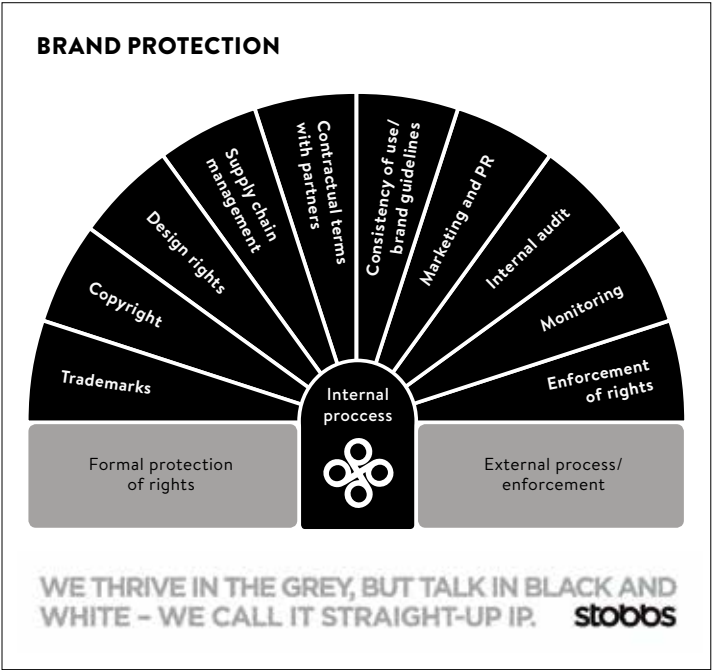
But modern technological tools and platforms help. Companies such as Incopro and Yellow, for example, make it easier than ever to monitor online activity properly, but the volume of information makes it difficult to prioritise effectively. Standard low-level “take-downs” on marketplaces and domain recovery techniques are cost effective and a good start, but do not address real long-term, underlying issues.

At Stobbs we specialise in strategic, holistic and cost-effective approaches to brand protection and enforcement. This has to start with a creative and complete approach to obtaining the right sets of rights. Many make the mistake of protecting what is in front of them rather than asking the question, “What do we want to use these rights for?”

Enforcement standardisation is key to keeping costs manageable, but it cannot be the only approach. Companies should explore the range of options available. Cost-effective commercial tools and standard take-down techniques should be coupled with proper filtering and prioritisation of the information to work effectively. All this needs to be done in close co-operation with the marketing and public relations departments.

Companies need to recognise the growth in importance of brand in the modern world and not be put off by what might seem an apparently unmanageable task. With the right approach, significant and cost-effective progress can be made.

Stobbs is a new consultancy firm specialising in all things relating to brand protection, management and enforcement. Stobbs won the 2016 Managing Intellectual Property Award for Best Trademark Firm in the UK



What is intellec

Although a difficult process, achieving a n
business success, avoiding possible overv

VALUATION
JAMES HURLEY

Tim Rea, an experienced technology investor, has his fair share of horror stories from a career spent working for and investing in early-stage companies.

Sometimes these tales involve the intellectual property (IP) that entrepreneurs, often mistakenly, assumed would be the bedrock for their plans to earn a fortune.

Mr Rea, currently boss of Palringo, a mobile group messaging business, recalls helping a hardware-oriented company, which had been actively encouraged to patent their work and by doing so build a portfolio of IP as a foundation of their growth strategy.

When the scientists who ran the startup decided to sell the portfolio to fund a change of direction, they were in for a nasty surprise. “They could only realise a fraction of the perceived value,” says Mr Rea.

The lesson, he says, is “it is easy to get patents, but not easy to get patents on things that are [actually preventing copying] of something important”.

Dr Justin Hill, a partner at Ols-wang, the media, telecoms and technology focused law firm, says there is a tendency for early-stage companies, particularly technology businesses and their investors, to overvalue IP.

“There is a tension between economic valuation of IP-based businesses and valuations derived from speculative investing,” he says.

“In early-stage technology companies, it can be difficult to set accurate benchmarks or make concrete

predictions. The value of a patent depends on the scope of claims – whether it covers something important – and whether it is valid and enforceable in practice. It also depends on alternative technologies.

“The inherent pace and disruptive nature of the sector makes valuation of technology assets more challenging. External influences, like changes in regulatory environments, can materialise suddenly.

“When valuing IP that otherwise looks good, it is important to consider the commercialisation risks properly. For example, it is essential to also consider the size of company, pace of growth and rival technologies, access to capital, the product offering, the barriers to market that the IP actually provides, to name a few.”



It’s understandable then that the risk of undervaluing or overvaluing IP is an occupational hazard in early-stage businesses. But just because something’s difficult, it doesn’t necessarily mean you shouldn’t do it.

Dr Hill says there are considerable risks involved in ignoring the issue altogether. “Startups necessarily prioritise their time and resources, but all too often, a failure to get to grips with IP issues means opportunities

are missed or potential risks aren’t managed effectively and are therefore allowed to develop into material risks,” he says.

“The nature of IP means it can be very difficult and expensive to recover and keep pace with peers. You only get one chance to do it right.

“IP underpins the value of most technology startups. Companies should, therefore, identify key IP and register it early, but also conservatively value exactly what they’ve got.

“An array of intangible assets is recognised by valuers, but the core IP for consideration remains trademarks, patents, designs, copyright and trade secrets.”

Dr Hill recommends getting a simple, low-cost IP audit or “health check” before formal valuation of IP so it is understood, for example, what the immediate sales opportunities linked to these assets are.

Then, an early-stage company with a handful of rights across patents, trademarks, copyright, design and trade secrets can receive a

“There is a tension between economic valuation of IP-based businesses and valuations derived from speculative investing

Intellectual property worth?

Realistic valuation of intellectual property can be central to business strategy. Valuation based on speculative investment



valuation for between £5,000 and £15,000, he says. Larger portfolios will cost more.

However, Mr Rea says becoming too distracted by building IP value in a young venture can be as dangerous as ignoring it completely.

He cites the example of an early-stage company he observed “charging off with a process that was going to see them try to get tens of patents in their space by simply protecting everything they could think of, with no thought as to what value each individual patent was going to bring”.

Mr Rea calls this the “how high can we make our stack of paper” approach, whereby companies end up hoping people look at the sheer volume of protection and won’t see there isn’t much of value at the core of the business.

“Often startups waste too much time and money trying to patent stuff and there are advisers out there who will happily tell them it is a worthwhile exercise and ‘it only costs you \$5,000 to get a patent’,” he says.

This kind of advice should be heavily caveated because it can sometimes merely represent the start of a process “that could take and cost you quite a bit of money”, says Mr Rea. Better to have one valuable patent than scores of dubious ones.

Komixx, a production company which buys options on IP rights for books to turn them into family and children’s film and TV shows, relies on identifying the right IP and then paying a sensible price for it.

Joint chief executive Andrew Cole-Bulgin admits valuing IP can

be tricky. “It’s about creativity, it’s about subjectivity and someone’s trash is another’s treasure,” he says. “Identifying IP with commercial potential and assessing the level of investment needed to realise this is complex, but vital to getting the valuation correct.

“The metrics we use to add and assess value are unique to every idea that we look at. For example, we use trend data analysis often looking into markets and product trends as far as two years in advance of where we are today.

“We also use a lot of data analysis through independent research companies to help inform us of family trends and changes to attitudes connected to our audiences.”

Mr Cole-Bulgin points to Komixx’s recent optioning of rights from 15-year-old author Beth Reeks, who writes under the name Beth Reekles and self-published her work on Wattpad, the online writing community.

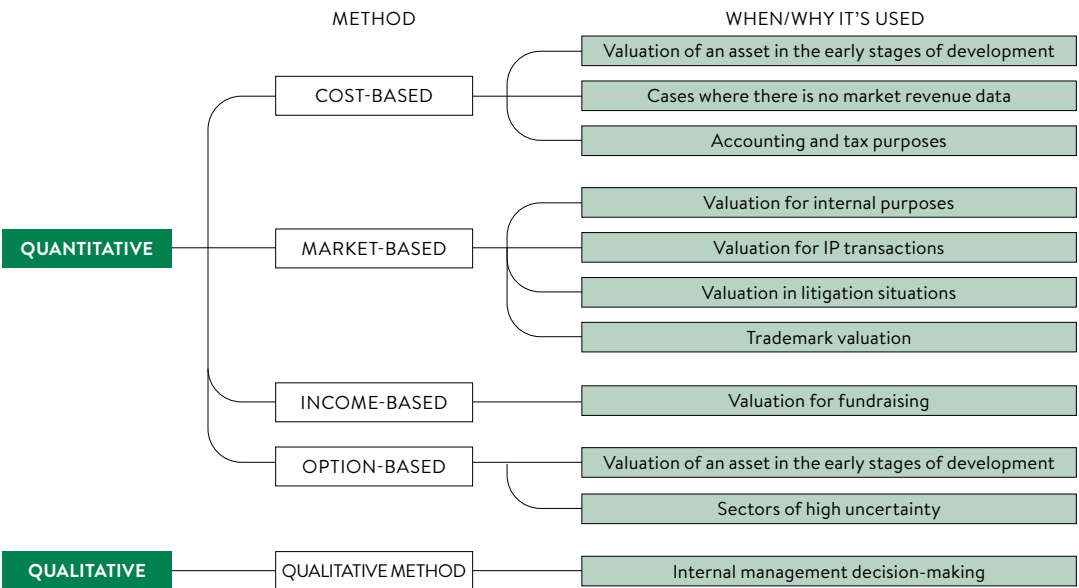
“With 19 million ‘reads’, we knew this would be hot property if we applied a digital strategy to our development of the work and kept the interest from the readers already invested in it,” he says.

“The skill to create valuable IP is in the initial identification, the research and a clear strategy for the channels of exploitation.

“Couple this with the understanding that the money you invest doesn’t just stop with the initial acquisition, it will also involve continued planned expenditure, then you are well on your way to delivering valuable returns for years to come.”

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DIFFERENT METHODS OF IP VALUATION



Source: European IPR Helpdesk

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Euro-changes aim to simplify patents law

Changes in the law, notably a unitary European patent and Unified Patent Court, are set to transform the legal landscape of intellectual property

PATENTS
JOSHUA ROZENBERG

If you know anything about protecting your intellectual property across Europe, you'll be aware that you can apply for a European patent under a treaty signed as long ago as 1973.

At the moment, though, all you get under the European Patent Convention is a bundle of individual national patents. You still need to validate those patents in the countries where you want your invention protected. That's likely to involve translation into the local language as well as more paperwork and higher fees.

Worse still, if your invention is any good and your competitors try to copy it, you have to bring infringement proceedings in each country where your intellectual property is at risk. You may end up arguing the same case against the same defendants at the same time in different national courts.

Sometime early next year, all that is expected to change. Single European patents will continue to exist but, if everything goes according to plan, there'll be the option of a "European

patent with unitary effect", popularly known as a unitary patent. It will have effect in up to 25 countries – all the European Union states except Croatia, Poland and Spain. Translation requirements will be much less onerous. The cost will be proportionately less.

These reforms will take effect after 13 of those 25 countries, including the UK, Germany and France, have



It's hard to see how we could leave the European Union and remain in the Unified Patent Court

ratified an agreement signed in 2013. In Britain, the necessary secondary legislation has largely completed its passage through parliament.

Inventors will still be able to obtain classic national patents in separate European countries, which they may register in as many countries as they

JUDGING THE BREXIT EFFECT



The agreement setting up a unified patent court is clearly a European Union treaty. Article 84 says that the agreement is open for signature, ratification and accession by any member state of the EU.

The agreement does not say, in terms, that it is not open to non-members or to former members. But that must be implicit.

In March, culture minister Ed Vaizey told parliament that

if we left the EU then the UK would no longer be in the Unified Patent Court (UPC). In that event, he thought it would be for the government to decide whether it wanted to rejoin and for the other EU states to decide whether the UK should be allowed back in.

But an opinion from an EU court in 2011 requires the UPC to be part of the EU framework. It follows from this that non-EU states cannot be members.

If the referendum results in a leave vote, the UK would come under pressure to ratify the agreement anyway. That's because the UPC cannot come into effect until it has been ratified by the three EU states with the largest number of patents. They would include the UK until it formally left.



wish. That would still be necessary if they wanted protection in European countries that have not joined the deal. Alternatively, they can obtain single-country patents through national patent offices.

But the most dramatic change of all will be the launch of a Unified Patent Court (UPC). This will have exclusive jurisdiction over disputes about classic European patents as well as the new unitary patents. A single system will make it easier and cheaper for people to protect innovations and enforce patents against most of the EU single market.

All this has been a long time coming, but it was far from easy to achieve. One problem was that different European patent courts have developed different approaches. It's normal in the UK, France and the Netherlands to try infringement of a patent and its validity at the same time. The Germans dealt with these issues separately, but this so-called bifurcation process is not expected to find favour in future.

As a supranational court, the UPC will become part of the judicial systems of the 25 states that have agreed to join it. However, it will be possible for patentees to opt out of the court's exclusive jurisdiction during a transitional period. The new court will have some technically qualified judges as well as others who are legally qualified. Recruitment is now under way.

As far as the UK government is concerned, all this is very welcome, not least because the UK has won a piece of the action. There'll be a London section for the UPC, based at the new Aldgate Tower on the edge of the City.

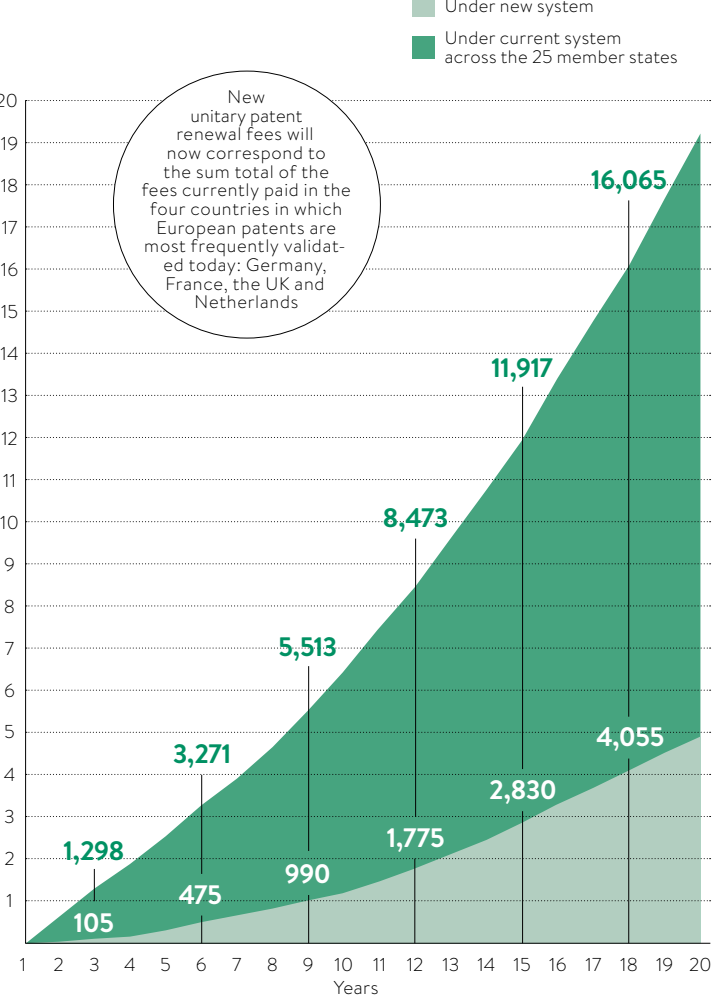
We're not quite at the top of the tree, though. The appeal court and the UPC's registry will be in Luxembourg. Below that is the court of first instance with a central division as well as regional and local divisions. The central division will be based in Paris, with sections in London and Munich. Paris will have specialist responsibility for electronics and other topics. London will look after pharmaceuticals and life sciences. And Munich will take care of mechanical engineer-



European Patent Office

EU member flags outside the European Patent Office headquarters in Munich

PATENT RENEWAL FEES ARE SIGNIFICANTLY REDUCED UNDER NEW PROPOSALS (€K)



Source: European Patent Office

ing. All of them will be part of a single multinational court, but national judges will not be required to aspire to grey uniformity as each division is permitted to reflect a degree of *couleur locale*. At heart the UPC is an EU court. Like a national court, it must refer requests for preliminary rulings on the interpretation and application of EU law to the Court of Justice of the European Union. So it's hard to see how we could leave the EU and remain in the UPC. For now, though, the prospect for companies that seize the moment is a system that will give Europe

the edge over the United States. It will have a larger consumer base of more than 400 million people in the 25 countries, and a court with faster and cheaper hearings as well as procedures designed to discourage patent trolls. It's not often that a legal affairs writer can get the words "exciting", "European" and "patents" in the same sentence, but doesn't that make it an exciting time for European patents?

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COMMERCIAL FEATURE



PROTECT AND PROFIT

Is your intellectual property policy putting your company at risk?
Does your IP policy maximise potential within your company?
Are too many companies overlooking valuable IP they need to protect?



For most people intellectual property and patents in particular are associated primarily with major pharmaceutical companies or those involved in high tech. But, these days, organisations from all sectors can find that they own valuable IP and those who fail to protect it properly could put themselves at financial risk. It's a message that Helga Chapman, director of chapman+co, a specialist firm of UK and European patent and trademark attorneys, which also specialises in IP strategy and consultancy, is keen to promote. "Too many companies still believe their new ideas simply are not worthy of patent protection, that they aren't interesting or inventive enough," she says. "But very often they're wrong. Any company that invests in at least some R&D or has created a branded product or service has almost certainly created some IP. Even minor improvements to existing technology can be patentable." She points to research by the UK Intellectual Property Office (previously known as the Patent Office) which reveals that a shocking 79 per cent of firms did not know, for instance, that disclosing new technology before applying for a patent could invalidate any patent that is subsequently filed. Rebecca Dobson, trademark attorney at chapman+co highlights another common misconception that brands should describe the relevant product. In fact quite the opposite is true as the strongest brand names have no indication of origin and are wholly non-descriptive – think of Google, Persil

or Shell, for example. Choosing such distinctive trademarks gives the owner the opportunity to protect their IP via trademark registrations and to create a stronger barrier of protection around their brand. "Reviewing your IP protection and obtaining expert advice on a regular basis is essential," says Ms Dobson. She argues that decisions around IP must be taken at board level to ensure the value of R&D and branded products can be protected and not squandered. Advisers at chapman+co work alongside companies to establish IP rights and assist in their commercialisation. "Too many companies still believe their new ideas simply are not worthy of patent protection" In order to create an effective IP policy, companies should ask themselves three questions, Ms Chapman advises. First, have they created something new and hence potentially patentable? Second, is this IP something that can add value to their business, for example by becoming a form of market disruptive technology? Third, have they addressed the risk of infringing IP owned by a third party? "The bad news is that mismanaging your IP can cost you dear," says Ms Chapman. "However, the good news is that doing it right, and protecting your innovations

94% of respondents think it is important for businesses to understand how to protect their IP

79% of firms do not know that disclosing new technology before applying for a patent could invalidate any patent filed later

28% of firms check they are not infringing other people's IP

60% knew about automaticity of copyright protection in the UK

Source: UK Intellectual Property Office

and brands, is not as difficult as many people imagine, especially when expert help is at hand." For more information please visit www.chapmanip.com

Resorting to law can be a cost

Litigation can be unpredictable, the financial cost is uncertain and there is also an emotional price to pay if things go

LITIGATION

CHARLES ORTON-JONES

In theory companies ought to defend intellectual property to the hilt. But in practice there is a word which sends a shiver down the spine of any potential litigant – costs. In too many cases the costs of taking action against IP infringement run higher than expected. It’s a variable which makes any company think twice about how to proceed.

So what’s going on? And how can companies make a sensible decision on when to act, and when to let an infringement slide?

Theoretically the potential costs ought to be foreseeable. For smaller cases the lawyers should provide cost estimates. In larger cases lawyers produce a “budget”, which is approved by the court. This budget factors in the number of witnesses, the complexity of the case, the size of the team working on the case and other items.

Phil Gorski, a lawyer specialising in IP at Blacks Solicitors explains: “In many cases, budgeting has reduced the surprise factor for businesses in relation to the costs of litigation; lawyers should provide a copy of their budget to their clients. Parties also have to apply to the court if they want to change their costs budget and there are penalties for not sticking to it.”

From this promising starting point things can quickly go awry. A case may be more complex than at first supposed. Hugh Hitchcock is an IP specialist at DJM Solicitors with first-hand experience of unexpectedly complex cases, including the action for a small family firm called Qual-Chem against steelmaker Corus over a steel treatment process.

That case went to the court of appeal. Mr Hitchcock observes: “Even if firms think they have a clear-cut case, whether litigating or defending, it’s dangerous to assume the case can be settled quickly. Even if a case is lost in court it can then go to the Court of Appeal, which can take up to 18 months, with legal costs mounting all the while.”

This is what happened with the Qual-Chem dispute. “IP legislation and case law is hugely complex, and it’s easy for either side to raise complicated issues that are timely and costly to explore,” says Mr Hitchcock. “Just because a patent is registered, it can still be challenged. In the case of Qual-Chem v Corus, Corus claimed that the involvement

of its staff in trials of the process at the heart of the case meant the patent had not been confidential. This shows how easy it can be to pick holes in patents.”

A cost forecast, it is vital to note, will not include a number of indirect costs. John Coldham, design and brands specialist at lawyers Gowling WLG, points to a number of issues a company needs to factor in when considering an action. There’s a brand cost. “An aggressive and indiscriminate approach to enforcing a brand online can easily backfire,” he says. “Campaigning groups such as Greenpeace have taken on brands like Shell, LEGO and Kit-Kat, using or misusing their intellectual property to make a wider point about drilling for oil or deforestation. Attempting enforcement action in response is likely just to fuel the bad PR.”

And there’s the danger of losing. Mr Coldham says: “When looking at registered rights, there is almost always a counterclaim for revocation of the right in question. If this succeeds, the rights are no longer available to use against others.”

An action may expose IP to public scrutiny. Nicholas Blackmore, a solicitor at Kennedys law firm, points out: “Even if you win, the judgment may reveal a way to copy your prod-

uct legally by doing things in a different way than the defendant in that case did. A good example is the case the entertainment industry ran against Grokster [software company] in the United States a decade ago. The industry won and Grokster was shut down, but the judgment of the Supreme Court provided very specific guidance on how someone might operate a peer-to-peer network without infringing copyright.”

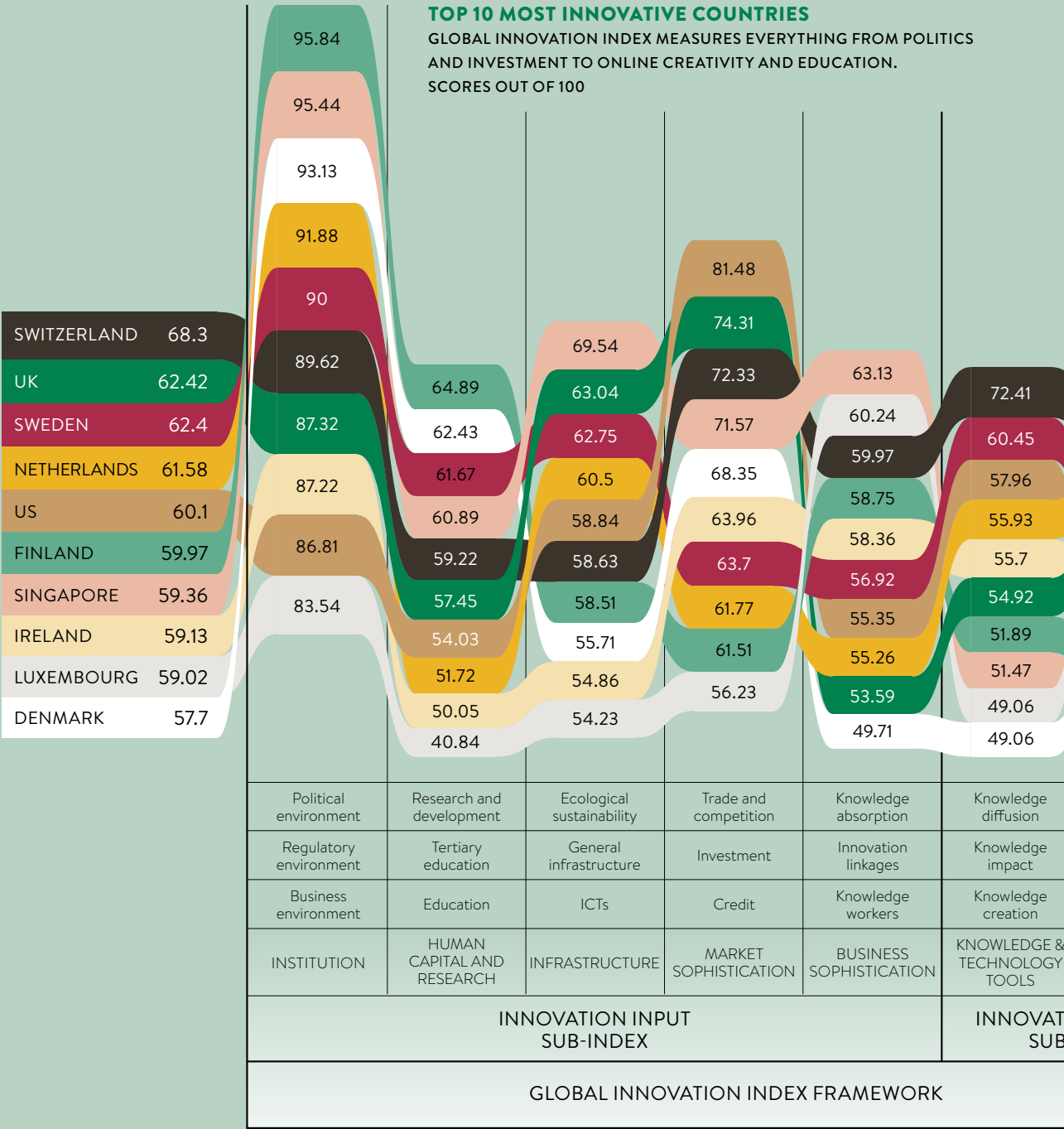
The emotional cost of a case is important to consider. David Vaughan-Birch, director of Cleggs Solicitors, has seen at first-hand what can happen. “For some people, the pressure can cause loss of sleep, anxiety, anger and problems dealing with others, including their own families,” he says. “There may even be serious psychological consequences such as depression.”

Tracey Singlehurst-Ward, head of IP at Hugh James law firm, thinks it takes six months for priorities to change. Then, she says, “the strain on management time, employees and witnesses becomes the primary concern”.

Handling emotional stress is an essential part of a complex IP battle. Mr Vaughan-Birch advises: “Find-

TOP 10 MOST INNOVATIVE COUNTRIES

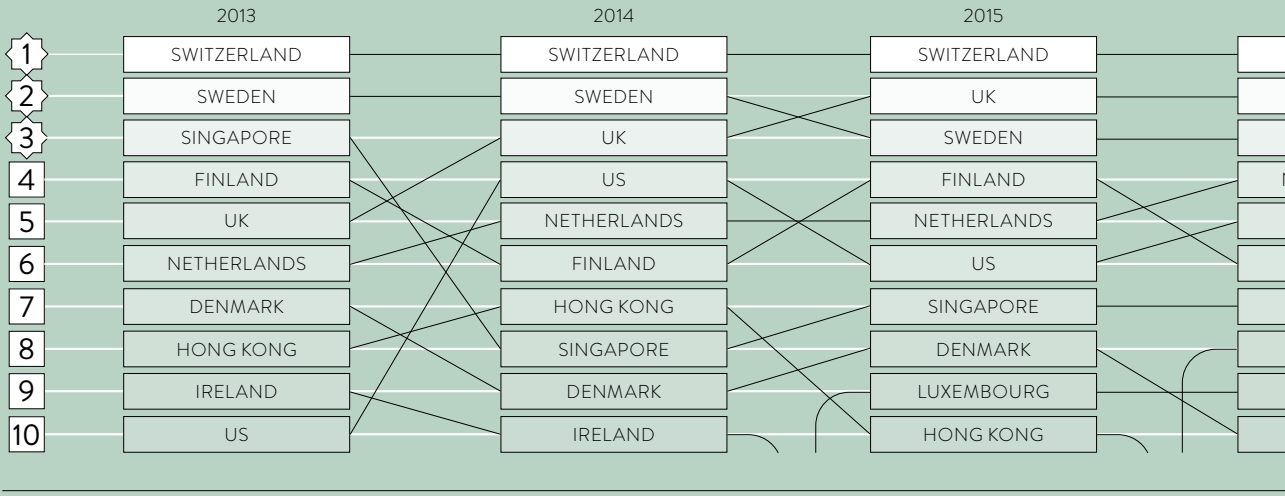
GLOBAL INNOVATION INDEX MEASURES EVERYTHING FROM POLITICS AND INVESTMENT TO ONLINE CREATIVITY AND EDUCATION. SCORES OUT OF 100



Source: World Intellectual Property Org

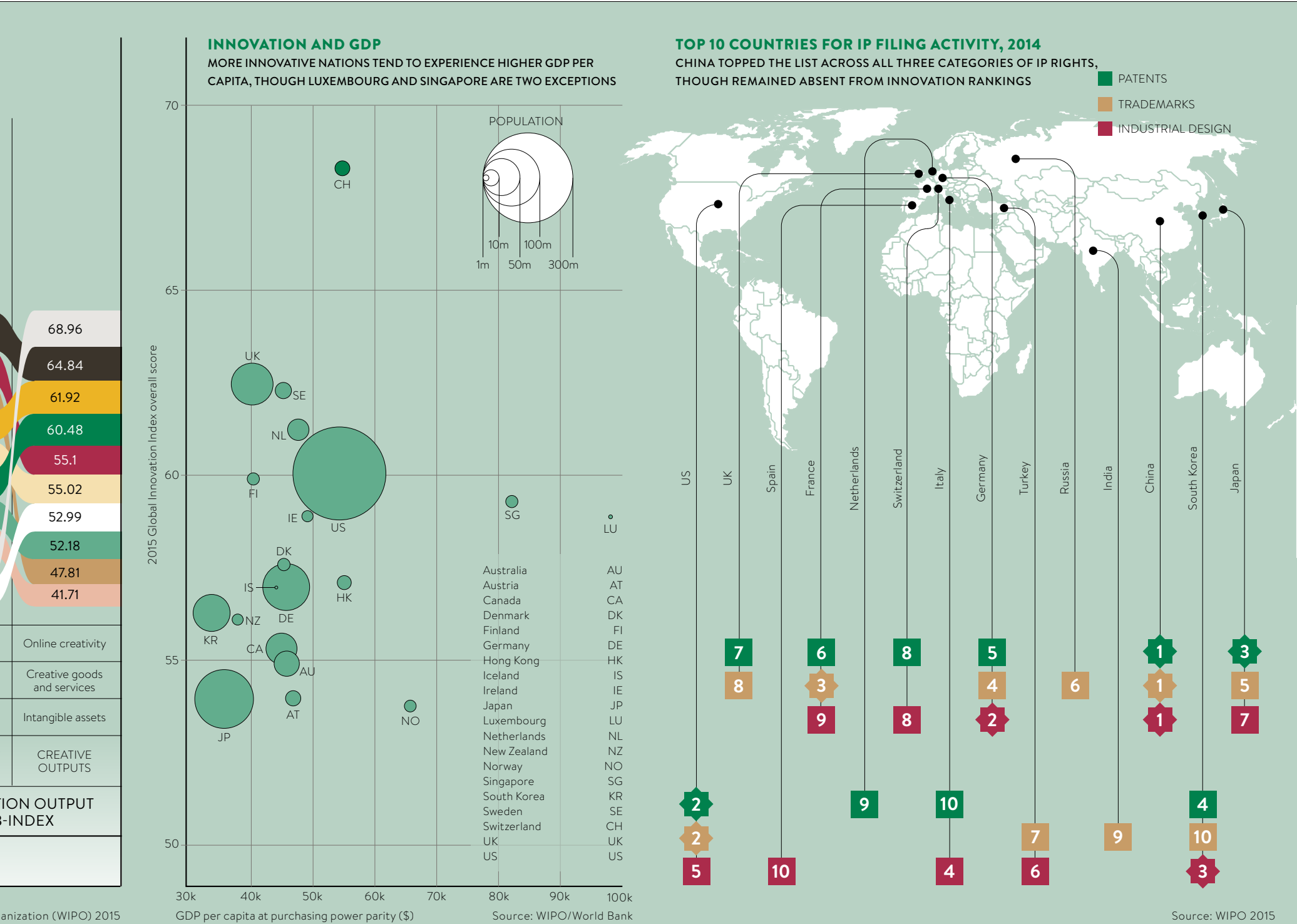
GLOBAL INNOVATION INDEX RANKINGS

SWITZERLAND, SWEDEN AND THE UK HAVE STAYED IN THE TOP THREE FOR THE PAST THREE YEARS



ly and unpredictable business

t personal - arbitration or an out-of-court agreement might be preferable



Determined hackers pose a growing risk

Cyber theft can be an easy way to steal valuable secrets with sometimes devastating effects, so organisations must remain vigilant against an increasing threat

CYBER SECURITY

CATHERINE BAKSI

Shock waves from the tsunami of the biggest personal data hack, into Panamanian law firm Mossack Fonseca, are still hitting politicians and celebrities worldwide. Believed to have been orchestrated at the behest of the US government, it is but one of an almost weekly assault on organisations' digital data, joining the line-up which already included the likes of Carphone Warehouse and Ashley Madison.

But for many businesses, it is the growing threat that cyber crime poses to the security of not their personal or customer details, but to their intellectual property or IP.

Robert Williams, partner and co-head of the London IP group at lawyers Bird & Bird, says: "The value of intangible assets is such a significant proportion of a company's market value these days that it is critical to protect."

A 2015 report from US consultants Ocean Tomo reveals that the average intangible asset value of the Standard & Poor's top 500 firms is 84 per cent.

Theft of IP is a growth industry, providing good returns at low risk. And the impact on those affected can be devastating to their reputation, profitability and survival.

Beyond the loss to the individual companies, Ed Lewis, partner specialising in cyber, data and privacy at Weightmans, says IP crime has a wider impact on innovation and on the ability of western companies that are frequently the targets, to sell their goods at a competitive price.

"It has a direct impact on the GDP of western economies, but people do not make the macro-economic link," he says.

Estimating the cost to businesses is tricky, as most incidents go unreported. A report from US global computer security software company McAfee estimated that high-income countries lose on average 0.9 per cent of their GDP because of it.

But, says Mr Lewis: "You need to take the statistics with a pinch of salt as the scale of the problem is more significant than they suggest."

It is not a new phenomenon, but the internet has made it easier, and methods have become more sophisticated and harder to detect, says Michael Edenborough QC, IP barrister at Serle Court chambers.



Getty Images

"In the old days, you had to physically break into an office and steal or photocopy pieces of paper. Nowadays you can be sitting in Romania and hack into a computer in Australia," he says.

The threats come from three main sources – external, internal and bad or old IT that means your systems lack resilience – says Stewart Room, partner and global head of cyber security and data protection at PwC Legal.

The insider threat is commonly employees exhibiting Laurel and Hardy-style cyber security. With "fat-fingered negligence" they send an e-mail to the wrong person or accidentally open a contaminated message, says Mr Room.

There may also be motivated insiders, who are disgruntled, have criminal intent or see themselves as whistleblowers.

Externally, hacks can be from organised criminal gangs. It is far easier and safer to steal trade secrets than it is to smuggle heroin, and the penalties if you get caught are lower, observes Mr Edenborough.

There are those in the hacking community who do it just to show that they can; hacktivists, who do it to further an agenda. Then there is the most sophisticated of all, state-sponsored industrial espionage; hacking that is sanctioned and funded by nation states in order to get technology from more advanced countries.

Surveillance state whistleblower Edward Snowden claimed Chinese hackers had stolen Pentagon blueprints for the F-35 stealth fighter jet, similar in design to the subsequently built Chinese J-31. Chinese officials denied the allegations and the Pentagon admitted breaches, but said no secret information had been taken.

North Korea dismissed the notion that it played a hand in the Sony hack in retaliation for its release of the film *The Interview*, depicting a fictional assassination of North Korean leader Kim Jong-un.

The techniques to gain a foothold in targeted organisations are manifold, says David Kennerley, senior manager for threat research at online security experts Webroot. They range from opportunistic "phishing" e-mails containing malicious files, to e-mails pointing to websites that fraudulently collect login credentials.

Tom Phipps, a partner in the IP team at law firm Ashfords, adds "man-in-the-middle" attacks where the attacker secretly intervenes in communications between two parties who believe they are directly communicating with each other.

Other methods, says Mr Kennerley, require more planning. For example, "watering hole attacks" where a website that employees are known to visit regularly is compromised with the intention of serving malware to the employees through the site.

"The initial aim of any attack is usually to obtain login and network credentials or run malware with remote access capabilities, so it can be controlled from another location," he explains.

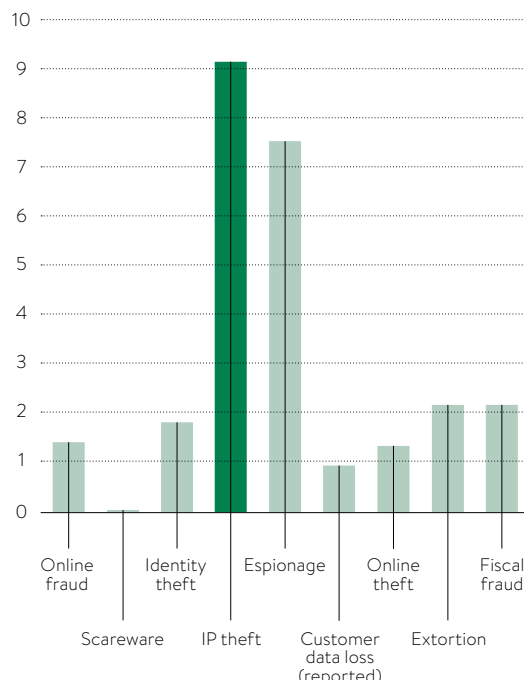
Most commonly, hackers target a link in a company's supply chain, usually a trusted partner, on the basis that their security may be weaker, says Andrew Beckett, managing director of cyber and investigations at Kroll.

In the event of a serious breach, the initial impact will be the "organisational chaos and distress" felt at a human level, says Mr Room.

"The stress levels are truly awesome in a serious case. I've had people at their wits end, in tears and who haven't slept for days," he says. "Everything you have to do after a

China denied accusations that hackers stole Pentagon blueprints for the F-35 stealth fighter jet, similar in design to the Chinese J-31

ANNUAL COST OF CYBER CRIME IN THE UK (£BN)



Source: Cabinet Office/Detica

breach will be so new – calling the police and dealing with the regulators and angry business suppliers. The peculiarities, uniqueness and novelty of it have a massive strain on the mind."

And when the worst happens, says Mr Phipps, you must have plans and procedures in place to respond and mitigate the impact, including a strategy to minimise adverse press coverage.

The rise of mobile working and reliance on cloud computing heightens risks and increases the need to minimise threats. Mr Room advises first understand what is important to you and what is IP.

Thorough risk assessments, and robust policies and procedures are essential, Mr Phipps adds.

While Mr Kennerley advises organisations to build a comprehensive "living" security strategy, keeping abreast of industry information and security bulletins, and following best practice.

"Security and IT staff need be trained in how to maintain and manage any deployed systems; they need to understand the alerts and log information, and to act appropriately when abnormal behaviour is detected, as well as regularly testing their incident response plan," he says.

But technology is only part of the solution. What is required is a combination of internal systems, monitoring and, crucially, education to ensure all staff understand the risks.

Kroll's Mr Beckett recommends companies write security standards into contracts, either information security standard ISO 27001, published by the International Organization for Standardization and the International Electrotechnical Commission, or the Cyber Essentials Scheme, developed by the UK government.

In addition to firewalls and appropriate security systems, IP barrister Mr Edenborough says companies may have two computer systems – one linked to the internet and an intranet that can only connect to the internet through an authorised gateway or is entirely isolated.

He also suggests companies hire "poachers turned gamekeepers". "I'd expect organisations of any size to have a dedicated internal anti-fraud unit, staffed by a mixture of legitimate scientists and former police officers, and people of a less transparent background," he says.

However, Mr Edenborough concludes: "Whatever you do, there is very little that the determined person can't get."

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Understanding the true economic value of trademarks

Trademarks and intellectual property play a vital role in developing brands, promoting competition, driving economic growth and protecting consumers

ETIENNE SANZ DE ACEDO

International Trademark Association
Chief executive



66 Every day billions of people are engaging with brands and trademarks. You can easily be exposed to thousands of brands on the way to work alone. Yet most people are unaware that underlying a strong brand is a strong trademark.

Lack of knowledge between the correlation of brands and trademarks is one of the primary reasons why trademarks are often misunderstood by the public at large. Trademarks are one of the most valuable "intangible" assets a company owns – they can be confusing. We need to demystify trademarks and the role they play in the development of brands and the protection of consumers.

We also need to encourage lawmakers worldwide to pay closer attention to trademark matters, and raise the profile of trademarks and related intellectual property (IP) to business, consumers and global trade.

What is a trademark? It is a legal right. It is any word, name, symbol or device (or any combination) that identifies and distinguishes the source of the goods of one company from those of others.

For consumers, trademarks help to promote freedom of choice, and enable quick and safe purchasing decisions. They also fuel competition, drive innovation and play a critical role in consumer protection.

IP-intensive industries – those having an above-average use of IP rights per employee – support millions of jobs across multiple sectors. Moreover, these jobs have notably higher wages than those in non-IP industries – 40 per cent higher in the EU and 42 per cent higher in the United States.

These were the findings of separate studies published by the EU and US IP Offices in 2013 and 2012 respectively. The same studies found that

IP-intensive industries accounted for 39 per cent of the EU GDP (worth €4.7 trillion) and 34.8 per cent of US GDP (\$5.06 trillion).

While consumers are not usually thinking about how trademarks are informing their purchasing decisions, they are increasingly brand conscious. Consumers are also demanding greater transparency and social responsibility from the brands they buy.

A recent Gallup poll reported that "consumers will give more money to the businesses

they feel emotionally connected to". Today, shoppers wish to engage the brands they support. They also expect more from brands as corporate citizens. Over half the consumers surveyed in a 2014 Nielsen Global Survey on Corporate Social Responsibility chose to buy from brands that demonstrated a commitment to positive social and environmental impact.

Trademarks protect consumers, provide endless opportunities to promote and encourage innova-

tion and ideas, increase jobs and fuel global economic growth. Trademarks also provide the legal framework for a strong brand.

Consumers' affinity to brands provides an opportunity for education about trademarks and IP. At the same time, it is crucial that our lawmakers value IP when looking at issues such as

counterfeiting and enforcement, innovation-incentive regulations, consumer protection, and the economy.



We need to encourage lawmakers worldwide to pay closer attention to trademark matters



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Car patents shift gear on a bumpy road

While car manufacturers are protecting more of their commercial secrets, they are also going public to collaborate on some key design strategies

AUTOMOTIVE

LEO KING

It is a ferocious era of development for the car industry. The rise of electric cars and hydrogen fuel cells, and the race to build connected and driverless vehicles, are leading to a transformation in how and when ideas are protected.

General Motors (GM) chief executive Mary Barra predicts the car sector will “change more in the next five to ten years than it has in the last fifty”, and the US Center for Automotive Research says the trade is effectively becoming a software industry.

In such an environment, companies are fervently protecting their intellectual property (IP) and in 2013 the automotive sector rose as high as third in a Thomson Reuters report on patent filing, only trailing IT and telecoms.

Nevertheless, car manufacturers have had to share some of their designs to speed up adoption. Realising they are not the only major players in their industry, they have also begun co-developing with tech specialists.

The most radical change for car IP has been in green propulsion, either from batteries or hydrogen. This area, the largest for patent filing, is witnessing extensive sharing of ideas.

Two years ago, electric car manufacturer Tesla announced it was making public nearly 200 battery patents, in the face of less than 1 per cent of rivals’ car sales being electric. Founder Elon Musk claimed a need to remove the delay to electric cars’ success.

Opening the patents was a shrewd move. Tesla positioned itself as a top specialist and its revenues will grow with more electric cars on the road.



Getty Images

01 Tesla made nearly 200 battery patents public two years ago to encourage progress in the electric car market

02 Toyota, the world’s largest car patent filer, made nearly 6,000 hydrogen fuel cell patents public in early 2015

The company spurred a major response. Last year, Ford opened approximately 650 electric car patents and 1,000 applications, making them available for a fee. The ideas include battery life technology and a system to teach efficient driving.

Both companies are pushing a major opportunity. Tesla, however, is also defending its battery-orientated ideas as Japanese automaker Toyota, with which it had worked, has been moving towards the competing green power source hydrogen.

Seven months after Tesla’s announcement, Toyota, cited by the Thomson Reuters report as the largest car patent filer, made its position clear. It opened up nearly 6,000 hydrogen ideas, for free. The Japanese giant insisted that “unconventional collaboration” would push hydrogen’s growth.

Despite the rise of green technology, the continued dominance of petrol-powered cars is creating an awkward patent stance between companies. They are less keen to share ideas based on generations of prior invention.

Manufacturers are under increasing pressure to meet tough emission targets and this has the potential to change their mindset. By 2025 cars in the United States will need a fuel efficiency of 54.5 miles a gallon. The UK is among European nations insisting that from 2050 only zero-emission cars can be sold.

Volkswagen and Mitsubishi famously cheated emissions tests. But across the industry, designs for a genuinely efficient small engine petrol car are high in number.

Propulsion patents soared to 12,000 in the five years to 2014, according to Thomson Reuters. In fuel economy, Hyundai was the top patents filer, having grown the most quickly. The number of patents secured by the company was followed by Ford with its much-touted EcoBoost engine. GM and Toyota were next.

The rising interest in connected vehicles is equally spurring more patent applications. GM and Hyundai are particularly active in protecting their designs, and Ford is encouraging employees to build prototypes; last year its staff submitted several thousand inventions for consideration.

Meanwhile, the technology’s complexity is driving a need for collaboration between connected tech experts as its scope spreads from safety to personalisation, shopping, finding restaurants, surfing the web and entertainment. SNS Research estimates that the opportunity for these connected vehicle services will be worth more than £27 billion by the end of the decade.

Connected cars depend on integration with city environments and mobile phones, so system interfaces are being carefully opened up to other companies.

Car manufacturers are increasingly doing deals with telecoms firms around mobile internet, the most urgent feature. There are also tie-ups with technology makers, such as Toyota’s link with Microsoft, a union that aims to connect cars with wearable devices and to interpret drivers’ needs.

Security technology is paramount.

There are serious threats to the cars, which are effectively computers carrying passengers, and there are also risks to the mass of data collected from their use. There is sure to be a substantial rise in security designs and patents.

But it is with the race to develop autonomous, or self-driving cars, that there is the most rapid patenting. As many as 22,000 inventions of this type were protected in the five years to 2015, Thomson Reuters notes.

Contrary to popular belief, the traditional car manufacturers are protecting far more inventions than their Silicon Valley competitors.

Toyota leads, at 2,000 patents in the five years to 2015. It is followed by industrial technologist Bosch, then Hyundai and Denso, the world’s largest maker of car parts.

GM, in fifth, made the greatest increase in patent filings. This year it also invested \$500 million into car sharing firm Lyft, demonstrating where it sees substantial potential.

IT firms are creating impressive software, but are not yet able to mass produce a car. Google, the top such company to feature in the patent list, is back in 26th.

Google recently exhibited a clear sign that it requires manufacturing support, agreeing a deal with Fiat Chrysler for autonomous minivans. The move is expected to be the precursor to similarly clever cars.

Apple, while hotly rumoured to be creating a self-driving car, has not officially partnered with an automotive manufacturer, though Tesla is often cited as a potentially similar-minded sidekick. In the meantime, earlier this month it invested \$1 billion in China’s dominant rival to Uber, ride-sharing app Didi Chuxing.

Manufacturers and coders remain dwarfed by the scale of the self-driving mission, and they know they must collaborate. This requirement is transforming how the industry will turn ideas into a buyable reality.

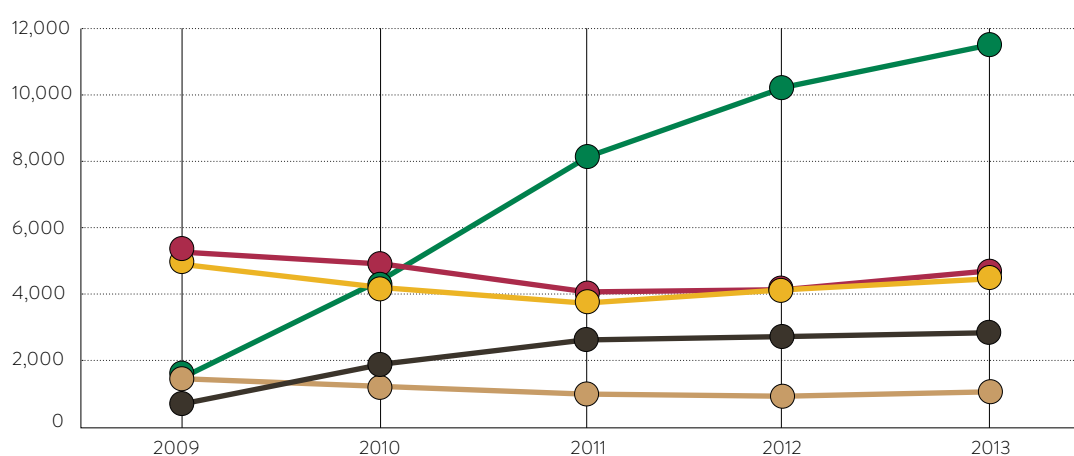
More broadly, across the many areas of car IP, patent strategies differ enormously. But there is a strong trend towards increased collaboration.

For concepts with less certain uptake, making designs public can fast track development and adoption. The approach of each manufacturer, of course, will depend upon what best motivates customers to buy.

“Manufacturers and coders remain dwarfed by the scale of the self-driving mission, and they know they must collaborate”

AUTOMOTIVE INVENTIONS BY PUBLICATION YEAR

● Propulsion ● Navigation ● Handling ● Safety & Security ● Entertainment



Source: Thomson Reuters 2015



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COMMERCIAL FEATURE

TURNING UP THE VOLUME ON A QUIET REVOLUTION

While intellectual property professionals have long been a major force in the creation of value through innovation for businesses across many sectors, their own industry has been somewhat slower to embrace innovation and change

Innovative technologies are driving a transformation that is turning up the volume on a quiet IP revolution.

In times gone by, IP was often regarded as a back-office business support function by the C-suite. Detail driven and heavy on paperwork, IP was often perceived as an uninspiring but necessary corporate house-keeping function. IP is now being rightfully catapulted to the top of the boardroom agenda and putting the work of IP people under much greater scrutiny.

The assets in today's IP portfolios are managed and traded in a way that makes them the currency of a burgeoning ideas economy. The pace is faster, competition is more intense and the stakes are higher in IP than ever before. Little wonder that recent and extensive research undertaken by CPA Global shows an industry of experts calling out that the biggest recent change in the IP industry is the pace of change itself – fast accelerating and totally unrelenting.

CORE CHALLENGES

Talking to a broad cross-section of global IP practitioners and opinion formers, CPA Global's survey evidences a set of shared pain points in modern IP management. Divergent systems, a lack of standardisation, ever-intensifying pressure on resources and scrutiny on results are all cited as typical headaches faced by corporate IP departments and the law firms that serve them. All evidence points to the fact that it's time for a game-changing shift in approach.

SHARED AMBITIONS

The research suggests that IP professionals are looking for support across the entire IP life cycle. They want software, services and information that can foster IP collaboration and value-creation across the full breadth and complexity of their organisations. They are looking for simple, seamless solutions that deliver enhanced visibility and support better, more joined-up workflows and communication that make the business of IP management

easier and altogether more effective. Moreover, they want to see information management that is better integrated and combines internal and external data and insight to support smarter IP decision-making.

Unsurprisingly, IP people see technology as the lynchpin that will transform working practices, making the business of IP simpler, faster and more conducive to achieving real-time results. But they also recognise that IP will always be a people business, where codified knowledge, experience and intuition have a role to play. Thus technology must play an important, but empowering role in the delivery of next-generation IP management excellence – connecting people, processes and information in new and agile ways

MULTIPLYING IP VALUE

The wish-list for professionals describing the future of IP is extensive – simple, intuitive, joined-up products and services; information at their fingertips; expert resources on tap with broad and deep knowledge that is easy to access and apply. Product and service synergies from a single supplier that multiply the value IP departments are able to deliver. Partners that help to create clear competitive advantage at a pace which puts practitioners well ahead of the game.

Evidence suggests that IP professionals are already shifting their focus in response to market pressures. Last year, Innography, CPA Global's innovative information and analytics division, asked customers how they were using their products. Back in 2014, patent portfolio management, licensing, and research and development were top priorities for the application of IP insight. But by 2015, competitive intelligence, a business-focused use case, had jumped to the top of the leader board. Mergers and acquisitions, and other business-focused use cases, had also increased dramatically.

But what is driving this change to business-focused use cases? In short, it



BELOW
User-case rating for Advanced Analysis and Innography Customer Satisfaction Survey 2015

“With a 45-year heritage and unmatched scale and scope across a trusted global network, no one is better equipped to deliver end-to-end support and unlock the true value of IP

is the increasing threat of competition across almost every industry, driven by technology convergence and the explosion of information in the public domain. Moreover, globalisation and the growing strength of China in the world economy may be delivering new market opportunities, but these come hand-in-hand with a body of patent data that is growing at an unprecedented rate.

Organisations are having to respond quickly. Change is no longer an option, it is clearly a necessity. Herein lies the burning platform that is forcing the IP revolution to the front pages and front of mind for C-suite executives the world over.

TAKING ACTION

CPA Global's chief executive Simon Webster explains the action his organisation is taking based on the project outputs. “Our recent research has taken us closer to our customers than ever before,” he says. “They’ve

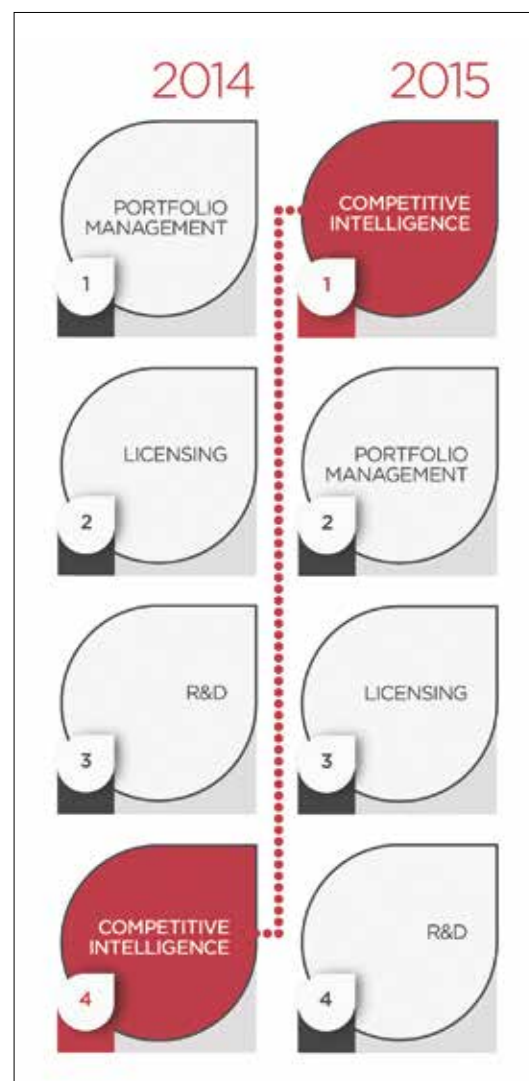
expressed their aspirations for the future of IP and we’ve heard them loud and clear. We’ve relaunched our global business on the strength of the insights we’ve gathered and we’ve re-engineered our portfolio to deliver an altogether better connected, integrated and collaborative experience.

“For us this is a transformation that has been some time in the making. With a 45-year heritage and unmatched scale and scope across a trusted global network, no one is better equipped to deliver end-to-end support and unlock the true value of IP. Analysing more than four million patent updates each week, we have our fingers firmly on the pulse of information in a fast-changing marketplace, which means we’re well equipped to lead our industry to the next level.”

A closer look at CPA Global reveals that the business is certainly positioned to deliver on this promise. The organisation has been building capability significantly in recent years. In 2014 they acquired leading search experts Landon IP and brought IP information innovators Innography on board in 2015.

Now, under a single, global brand, the business offers a product suite of software, services and information to support the entire IP life cycle, presented as much-needed help and support for IP professionals looking to play their part in an IP revolution.

For the full report *The Future of IP*, visit cpaglobal.com/future



From Star Wars to Shopkins

Buying and selling intellectual property rights in lucrative merchandising deals can be a win-win proposition

MERCHANDISING

TOM PHILLIPS

From iPhone cases to Christmas decorations and meat grills, merchandising is a blockbuster business that can turn intellectual property into gold.

Global retail sales of licensed merchandise and services reached \$241.5 billion in 2014, generating royalty revenue for IP owners of \$13.4 billion, according to the International Licensing Industry Merchandisers' Association. Famous brands such as Disney, with its slick licensing operation, made up a large proportion of that figure, earning hundreds of millions of dollars from the sales of consumer goods.

But it's not just *Star Wars* and the like that can benefit from leveraging IP; anyone with IP assets should be considering what sharing their brand could do for the bottom line.

There are two sides to the licensing industry: those who own IP rights and sell them for use on goods and services; and those who buy rights to use on goods and services. The purpose is largely the same for both – to raise revenue – but there are other benefits too.

Generally speaking, an IP owner licenses its brand into new areas in

exchange for royalty payments (licensing out), while the licensee exploits the popularity of that brand in order to shift units (licensing in).

For some cash-cow brands there is almost no such thing as a bad licensing deal (*Downton Abbey* curtains, anyone?), but most need carefully to manage who they sign deals with and where their precious IP ends up. Paired with the wrong product or service and a brand's reputation can take a serious hit. A carefully crafted deal, however, is well worth the effort and mutually beneficial for both sides.

Product manufacturers know that an affiliation with an established brand can give them the edge and will leap at the chance of partnering with a movie, TV chef or even a famous landmark.

"Revenue is a very important part of why a licensor would license out their IP, but not the only reason," explains Kelynn Gardner, managing director of the International Licensing Industry Merchandisers' Association in the UK. "Licensing into areas outside the core product also helps to protect the brand."

Joel Smith, head of trademarks and brands at law firm HSF, regularly structures such deals.

"It's very common," he says. "There are lots of advantages and it's



relatively lucrative if a product does well. There are very few companies that want to open local subsidiaries with local employees and manufacturing facilities themselves."

The IP division of a business used to be seen as purely enforcement, protecting the company trademarks, patents or copyright, but now it can be a hub of opportunities for a business to grow, diversify and pick up lucrative royalty fees.

The trend in favour of creatively licensing out IP has driven a shift in boardroom attitudes towards in-house lawyers. A more proactive approach is the now the norm, including establishing licensing arms within the business and employing licensing officers tasked with approaching potential partners.

"A lot of businesses have moved from knowing about their core IP assets to realising everything they own that has IP protection could be a source of revenue, so IP is seen as a profit centre," says Mr

Smith. "Companies that received unsolicited requests would have, historically, been ignored, but now people think, 'there's an opportunity there'."

The best approach is to create a licensing strategy from the very start. If a brand takes off, it can pay dividends later on, leaving the company to concentrate on the day job.

As Matthew Sammon, UK head of trademarks at Marks & Clerk, explains: "Securing trademark protection at the beginning of a brand's life cycle is important for the growth of any business, but it has to develop as your business grows."

"If you have trademark protection in place for potentially merchandisable products, you can license out the trademark rights for a royalty fee, and let others take on the expense and work of manufacturing, advertising and selling the actual merchandise."

Reacting quickly to ensure your trademark protection matches your

expansion plans is essential, advises Mr Sammon, both in terms of the countries where your mark is registered, and the types of goods and services it is registered against.

Registering a brand in all 45 trademark classes costs a lot of money and many of them will go unused. However, leave out a class and the business may discover people piggy-backing on its IP, forcing costly litigation further down the road.

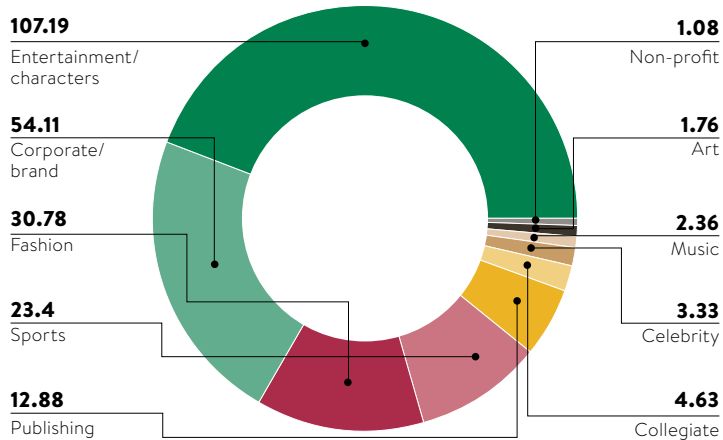
Rolls-Royce is unlikely to make a vacuum cleaner any time soon, but that could leave the door open for another company to launch "Roller Royce" and get away with it. IP chicanery of this sort could be stopped by trademarking the brand for use in vacuum cleaners, then licensing out the mark to a specialist manufacturer.

The cash generated by licensing can also be essential to growing a business's core products. A company can continue doing what it does best, while in the meantime earning significant passive revenue.

There are some IP owners who license out for more subtle reasons. You wouldn't expect tyre maker Michelin to run Michelin Lifestyle, side project licensing footwear and bicycle accessories. Or, indeed, the world's most famous restaurant guide.

"What the licensing programme does for Michelin is allow its brand to be exposed to the customer far more regularly than would be the case if it only came up in that two-to-three-year period when they have to buy new tyres," says Mr

GLOBAL RETAIL SALES OF LICENSED MERCHANDISE BY TYPE (\$BN)



Source: LIMA 2015

01/02
Disney generated \$4.5 billion in annual consumer product sales last year, helped by merchandise licensing from movie franchises such as *Frozen* and *Star Wars*



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and Frozen

CASE STUDY: ANGRY BIRDS



Rovio

wider scope of protection was needed, and in 2011 it expanded to 17 classes, encompassing a vast range of goods, from bags to rugs and jewellery.

Few entertainment companies like Rovio have in-house clothes or stationery manufacturing facilities, so licensing out the brand to other manufacturers and charging them royalties for products bearing the *Angry Birds* brand was a sensible move.

For the licensee, "licensing in" can give your goods an edge over competitors. "Licensing in a famous brand like *Angry Birds* can provide merchandise manufacturers with a great commercial opportunity," says Matthew Sammon, Marks & Clerk UK head of trademarks.

"If they can approach a retailer with the prospect of supplying branded merchandise, it opens the door for more supply contracts further down the line. They may even be able to secure deals to supply their own branded goods to the retailer off the back of a deal to supply licensed merchandise."

It is a huge success story. A mixture of our feathery friends, evil pigs and seriously satisfying game mechanics that, for a while at least, was the world's most popular game.

But the company behind the smartphone legend and now blockbuster movie *Angry Birds* was just as adept at creating a licensing business worth hundreds of millions of dollars. Finland's Rovio Entertainment initially applied for an international trademark covering a small range of products in 2010, a year after releasing its first game.

For cost reasons it made sense to apply for relatively narrow protection to begin with, but when the brand went viral and myriad merchandising opportunities appeared, a

Gardner. The aim is to cement the Michelin name in the mind of the consumer ready for that time when tyres are needed.

Mr Gardner believes every brand in the world can find some consumer goods or services to license to and equally consumer goods or services can always find an established brand that would add value.

The rules work for anyone who owns IP; however, a brand needs to achieve some degree of public awareness before a manufacturer is likely to pay attention.

"A smaller brand won't have the same degree of brand power," Mr Gardner concedes.

"However, it's not impossible by any means, if you can get in front of enough consumers then the market can almost create itself and retailers will buy into the product in reverse – they may hear a groundswell of popular opinion is looking for something then approach the manufacturers."

Shopkins is a good example. If you know any girls under 13 then you have probably already heard of the grocery-inspired collectable toys (think a chocolate bar with a cute face). If not, then all you need to know is that some of the rarer

figurines are trading on eBay for £200 a pop.

The brand came from nowhere to become the number-one selling toy in the United States last year, helped by a large range of licensed goods. It's currently one of the most licensed girl products in the UK, slogging it out with Disney's *Frozen*.

"Things can take off really quickly if someone tweets [your brand] or

a celebrity endorses it," HSF's Mr Smith concludes. "You've got to be prepared to take advantage of that and get it out other markets, which may not be your nearest one."



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NEW PATENT JUDICIAL SYSTEM IS A REVOLUTION

It has been a long road to a more unified EU patent protection system. Now the current momentum could lead to better enforcement and more innovation across the Continent, says Wouter Pors of lawyers Bird & Bird

Bird & Bird

Intellectual property is an area of the law that is international by nature. Since IP rights are intangible, they cannot be restricted by borders. Many trademarks have earned international renown.

Patents are territorial rights protecting inventions in selected countries and they are often chosen strategically in order to achieve almost global coverage.

Recent shifts towards a more unified patent protection system are creating fresh momentum. In order to understand their magnitude it's important first to reflect upon the effect of changes up to this point.

The initial efforts aimed at harmonisation of national IP laws really did not create substantive law at a supranational level. But an important step was made with the European Patent Convention of 1973, which created a law on the validity of patents, but not on the scope of protection.

The substantive change was the creation of uniform European Union rights, such as the EU Trade Mark, the Community Design Right and the Community Plant Variety Right. For these rights, both validity and scope of protection were taken to the supranational level.

But this left a major downside. All these rights still have to be enforced through national courts. Due to the case law of the Court of Justice of

the European Union, Europe-wide decisions on patents are only available in exceptional cases.

Worse still, though EU-wide judgments are available for uniform rights and most cases are handled by the more experienced courts, they may also be granted by inexperienced national courts that hardly ever handle IP issues. Uniform application is also far from guaranteed.

Numerous efforts have been made to solve this, and to create a supranational patent court that would handle infringement and validity in first instance and on appeal.

This only became a feasible reality with the decision to start with a number of EU member states that were prepared to do this through enhanced co-operation within the EU framework, meaning the new court would not be an EU institution. Their numbers rapidly grew, which resulted in the signing of the Unified Patent Court Agreement in February 2013.



The Unified Patent Court will have its own supranational substantive and procedural law, and will finally create uniformity in patent protection for Europe

The Unified Patent Court (UPC) is being set up as a co-operation of 25 out of 28 EU member states, with divisions in at least 14 cities across Europe. It will predominantly consist of experienced patent judges who will sit on multinational panels. It will have its own procedural law, developed by an expert group of patent judges and litigators.

This is the revolution. The UPC, scheduled to open for business in spring 2017, will have its own supranational substantive and procedural law, and will finally create uniformity in patent protection for Europe.



Wouter Pors
Partner, head of Netherlands IP group

At the same time, a unitary patent is being created, which will be a uniform right for the 25 countries, based on the normal prosecution of a European patent application by the European Patent Office. This combined system may well create an additional boost for innovation in Europe.

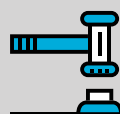
This, of course, raises the question of what the next step will be. It would seem logical to create a similar system for the enforcement of the EU uniform IP rights and indeed the first discussions are now being started.

A good way to achieve this would be to expand the jurisdiction of the UPC to these EU rights, benefiting from the extensive experience and wide support that has been accumulated.

The best solution would be to bring this to a truly EU level, which would require that the three last member states – Croatia, Poland and Spain – also join. The UPC experience shows that setting up such a system can happen within five years once the commitment is there.

This is an exciting prospect, which will further increase the value of IP rights. Obviously, IP rights owners should stay informed and get involved in the changes.

**For more information please visit
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Source: Preparatory Committee for the Unified Patent Court, 2016

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