Intellectual property in a crisis - lessons from the financial crash

also in this issue, 3D printing in a pandemic, EPO filing trends and Battle of the McGregors
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Intellectual property in a crisis - lessons from the financial crash

Now, twelve years later, the world faces another calamitous economic crash. This time, however, the crisis isn’t being driven by bad debt, but rather by a virus putting pressure on health systems, spurring drastic economic and social interventions, and leading to personal tragedy for many thousands of people.

As with the last crisis, COVID-19 is causing businesses to experience falling demand, as consumers stay at home and many sectors of the economy find themselves on lockdown. Faced with this uncertainty, businesses large and small are scrambling to find an adequate response. While the current situation is in many ways unprecedented, there are lessons to be learnt from the financial crash.

One of the key questions any business will ask, when under financial pressure and facing an uncertain future, is where can savings be made? When deciding on where to cut costs, the financial crash teaches us that short-term savings need to be balanced against the long-term impact that scaling back might have.

Innovation doesn’t sleep

Innovation is a key area for any business. Business success is predicated upon the ability to innovate and bring better products to market. Regardless of the short, medium and potential long-term economic impacts of coronavirus, what remains true is that the economy of the future will be defined by pioneering technologies such as artificial intelligence, 5G and biotech. What is also true is that these fields move quickly, and the difference between a market-leading company and a company struggling to get a foothold is a question of degree. As such, while scaling down in research and development during a downturn might save money in the short term, it could have a long term impact on overall competitiveness.

While the data around the impact of the 2008 financial crisis on innovation investment is complicated, there is evidence to suggest that those who are willing to continue investing in innovation through a downturn will see long-term gains. This report from the OECD, for instance, highlights the different national approaches to investing during a downturn.

Some countries saw patent filings (a good proxy for R&D spend) fall in the aftermath of 2008 – the US, Germany and the UK, for example. On the other hand, China, Japan and Korea actually saw significant increases in patent filings. While there are clearly wider structural forces at play here – such as the greater exposure of European countries and the US to sub-prime debt and the subsequent ‘credit crunch’ – the post-crash trajectory of patent filing in these countries holds a lesson for businesses.

Statistics from the European Patent Office suggest that China continued to invest in research and development throughout the financial crash, and the number of patents filed by Chinese patent applicants grew by over 200% between 2007 and 2012. The same is true of Japan (34% growth) and Korea (42% growth). The UK, which saw patent...
filing figures decline following the crash, only saw patent filing numbers recover to pre-crash levels in 2017 – representing nearly a decade of lower than expected levels of investment.

Accepting the presence of all other variables then, it would seem that continued R&D investment throughout the crash of 2008 is a good indicator of continued long term innovation growth. Dropping out of the innovation race doesn’t mean that the race stops, and it could make it more difficult to subsequently catch up.

Another consideration is staffing. Highly skilled companies are only highly skilled because of the staff they have, and another potential consequence of turning off investment during a downturn is the loss of skilled workers. Companies with an IP footprint rely upon skilled scientists and engineers whose talents are very much in demand. If one company decides to reduce its spend on its workforce to manage short-term cash flow, the long-term consequence could be the loss of highly skilled workers to rivals.

As recognised by the OECD report:

“dismissals can lead to permanent “scars” for innovation processes at the concerned firms if laid off employees hold tacit knowledge that is lost to firms as a result.”

There is no one-size-fits-all solution when it comes to weathering economic turbulence, and the economic impact of the current pandemic will only be understood in the fullness of time. In an increasingly technology-driven economy, however, innovation is central to what many companies do. While it may make short-term sense to cut back on R&D during a downturn, these short term gains need to weighed carefully against the potential long-term costs.

The well-known UFC and mixed martial arts fighter, Conor McGregor, has suffered a setback in his attempt to register his name as a European trade mark in relation to clothing and footwear in class 25. His application was challenged by the Dutch company McGregor IP B.V, owners of the McGregor Fashion Label, which has sold clothing using the clan’s official tartan since 1921 under the trade marks ‘McGREGOR’ and ‘D.D. McGREGOR’.

This is not the first time the parties have come to a head over IP rights concerning the McGregor name. In 2018, McGregor Fashion Label obtained an injunction throughout the EU banning the sale of Mr McGregor’s clothing, which had been manufactured by Reebok and bore his signature in large letters. However, Mr McGregor subsequently filed the present trade mark application in the EU for the mark CONOR McGREGOR covering a wide range of goods and services, including clothing and footwear. Unsurprisingly, McGregor IP opposed the application.

In reaching a decision in the opposition proceedings, the EU Trade Marks Office concluded that consumers were likely to perceive Mr McGregor’s mark as a different line of clothing stemming from McGregor IP or otherwise economically linked to McGregor IP. This was particularly heightened by the distinctiveness of the name ‘McGregor’ to the relevant public in the Netherlands, Finland and the Scandinavian countries, and the importance of surnames (as opposed to first names) as indicators of trade origin in the fashion industry.

As a result, Mr McGregor’s EU trade mark application was rejected in relation to clothing and footwear, although the application will be allowed to proceed in relation to the remaining goods and services covered.

This case serves as a reminder that seeking protection of a name as an EU trade mark can have various consequences depending on the perception of the name within the relevant territory, and highlights the importance of obtaining specialist legal advice before filing any trade mark application.

Despite his success in the ring, this is one battle for which the UFC champion is yet to be crowned king.
What a whopper!

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The Advertising Standards Authority (ASA) is the UK’s advertising regulator who ensures that all advertisements comply with a set of Advertising Codes. The ASA’s remit includes conventional advertising on radio, TV, cinema, posters and billboards but also any advertisements on the internet, on companies’ own websites as well as commercial emails and text messages.

The ASA recently upheld a complaint against BKUK Group Ltd trading as Burger King in relation to three advertisements on social media promoting their newly launched plant-based “Rebel Whopper” burger in January 2020. The regulator considered that the ads were misleading as the overall impression implied that the burger was suitable for vegans and vegetarians when in fact it was not.

The launch of the “Rebel Whopper” coincided with “Veganuary”, which is a campaign led by a non-profit organisation which aims to encourage people to eat a vegan diet during January. In 2019, over 200,000 people pledged to follow a month-long vegan diet and in 2020, this number jumped to 400,000 participants from across the world.

The plant-based trend looks like it is here to stay. Burger King, like many others, are diversifying their product range to meet the ever-growing demand for meat free alternatives. The fast food chain’s latest offering appears to be aimed at flexitarians rather than vegetarian or vegan consumers.

Following the ASA’s decision, three ads publicising the launch of the burger have been banned from being used again in their current form.

The first offending advertisement, offending ad (a), was on the Burger King Twitter feed, which stated, “You asked and we listened. Introducing the Rebel Whopper, our first plant-based burger!...”T&Cs apply”. A sticker, which stated “100% WHOPPER. NO BEEF” was on an image of the product shown below the tweet.

The two other ads were posted on the Facebook Burger King UK account. The first post, offending ad (b), was similar to the tweet, which introduced the launch of the Rebel Whopper, showed a visual of the product with the “100% WHOPPER. NO BEEF” sticker, reference to T&Cs and included a logo, which stated “POWERED BY THE VEGETARIAN BUTCHER”. At the bottom of the image in small text, it stated “Product is cooked alongside products”. The second post, offending ad (c), on the Burger King Facebook account showed an image of the burger and the text “TAKE OF BEING WOKE”. Beneath in small font was the text “100% WHOPPER. NO BEEF” followed by “T&C’s APPLY” in even smaller font. The Burger King and The Vegetarian Butcher logos were shown at the top of the post.

The ads attracted ten complaints as it was understood that the Rebel Whopper burger was not suitable for vegans, vegetarians or those with egg allergies as the plant-based burger was cooked next to meat products and used mayonnaise containing egg. It was claimed that the ads were misleading in respect of the terms “100% Whopper. No Beef” and “plant-based burger”.

In response to the complaint, Burger King explained that the Rebel Whopper burger was supplied by The Vegetarian Butcher, did not contain beef and was 100% plant-based. Burger King referred to the small print appearing on the ads, which stated that the burger may not be suitable for vegans or vegetarians as it was cooked next to meat products. Interestingly, Burger King admitted to omitting The Vegetarian Butcher logo from TV ads as it was considered this could be potentially misleading.

The advertising regulator considered that the inclusion of The Vegetarian Butcher logo, the green colour palette used for the burger wrapping and the timing of the launch of the product to coincide with “Veganuary” gave the impression that the burger was suitable for vegans and vegetarians. It was decided that consumers would understand the claims “100% Whopper. No Beef” and “plant-based burger” to literally mean that the burger did not contain beef or animal products. Whilst it was acknowledged that the patty itself was plant-based, it was cooked on the same grill as Burger King’s meat products.

The regulator considered the small print that appeared in ad (b) “cooked alongside meat products” but this was considered “not sufficiently prominent to override the overall impression that the burger was suitable for vegetarians and vegans”. It was noted that the small print did not refer to the presence of egg mayonnaise and further, that the small print was absent from ads (a) and (c).

The ads were found to have breached CAP Code rules 3.1, which provides that “marketing communications must not materially mislead or be likely to do so” and 3.3, which provides “marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner”. Whether the omission of information is likely to mislead will depend on the context and is decided on a case-by-case basis. Here, the regulator banned the ads from being used again.

It is not the first time that Burger King’s ads have fallen foul of the Advertising Codes. In 2019, there were twenty-four complaints about a tweet on the Burger King Twitter page, which included the text “Dear people of Scotland. We’re selling milkshakes all weekend. Have fun. Love BK. #justsaying”. The complaints claimed that the ad was irresponsible and encouraged violence and anti-social behaviour. Burger King’s response was that the tweet was intended to be a tongue in cheek reaction to recent events where milkshakes had been thrown at political figures. Given the circumstances, the complaint was upheld and found to breach CAP Code rules 1.3, which deals with social responsibility and 4.4, which covers harm and offence.

All advertisements in the UK are required to comply with the Advertising Codes. The central principle is that all marketing communications should be legal, decent, honest and truthful.
In the wake of Covid-19, XR goes viral

People are saying these times are unprecedented but that is something of an exaggeration. There have been devastating pandemics before, some of them within living memory. What has made this one so prolific has been how networked we are now; people can travel all over the world with great speed and that means they can take a deadly disease with them.

Ironically, being networked may have been our undoing in the current crisis but it has also moderated some of its worst effects. Many people are now obliged to work from home but are able to do so (subject to their broadband not giving out) thanks to remote access to servers, shared drives, video-conferencing and so forth. Thirty years ago this would have not been so easy.

Extended reality is coming into its own in the new world we live in, as its champions are eager to point out, in a variety of ways.

Firstly, audio- or video-conferencing is keeping us connected but it doesn’t quite have the immersive immediacy of meeting for real. VR meet ups come much closer and, in fact, go one step better. Even when the lockdown ends it’s unlikely I’ll be attending a client or team meeting in a James Bond villain’s lair with a stunning view of the Alps but I can in the virtual world.

Secondly, teams which can no longer congregate physically can train and design products in an immersive world which, as well as offering all the benefits of AR and VR facilities which industry and academia are already aware of, also confers the now invaluable benefit of safety. You can’t contract Covid-19 from a VR headset however close the avatars are standing to you.

Finally, a lot of people are now worried about their health, their jobs and where the world is headed in general. Enforced isolation makes this worse. Immersive technology can offer entertainment to make the lockdown more bearable and therapeutic products are already proving effective at addressing the mental health issues borne of this crisis.

Of course, the benefits of XR in the current situation come with some risks and challenges. For example, in a virtual collaboration to develop a new vaccine or ventilator the participants will still need to be mindful of the following:

- The rush to get started shouldn’t blind everyone to the need to put a contract in place, detailing who will do and pay for what, who will be liable if anything goes wrong and how intellectual property generated under the project will be owned and exploited.

- Virtual projects are potentially more prone to hacking and unauthorised access, especially if the participants are working from home. Are the requisite cyber-security measures in place? Do all participants appreciate the need to take care? Is insurance cover in place which can be called upon in the event of a data breach?

- Linked to this point, personal data will inevitably be stored and processed in the virtual world of the collaboration. The regulatory obligations to protect it are heavy, all the more so in the case of medical data, and a Covid-19-related virtual project is likely to be using or generating plenty of this. Are the collaborators aware of their responsibilities?

Industry pioneers forget these issues at their peril. If they remember them they can make the most of the current situation and, one hopes, some good can come out of the bad.

At the beginning of this article I said it was an exaggeration to call the times we are now living in “unprecedented”. In the same way, it is probably also an exaggeration to say, “Nothing will ever be the same again”. In many ways, we will go back to the way we lived before, as we have in the past. However, the benefits and potential of virtual meeting and collaboration are now clear for all to see, and once we start heading back into the office or to the airport again, those who have started realising their full potential are unlikely to kick the habit.
3D printing and IP in a pandemic

The Covid-19 outbreak has seen numerous examples of the technology being used to manufacture much-needed equipment and IP owners can make a contribution while also protecting their rights in the longer term. The coronavirus is an unprecedented challenge for businesses, governments, healthcare systems and, of course, individuals and families.

As the world rushes to find solutions, everyone is being called upon to do their bit, whether that involves manufacturers developing ventilators, governments arranging fiscal stimuli or individuals looking out for neighbours.

In situations like this, 3D printing has a valuable role to play. By allowing for the quick, deskilled and decentralised manufacture of components and devices, the technology has the potential to rapidly increase the supply of vital medical equipment. There are numerous instances of manufacturers doing this. In the UK, for example, Vauxhall and Airbus are engaged in a ‘war time’ effort to rapidly manufacture medical equipment, while amateur 3D printers join the fray to provide much needed protective equipment.

This crisis highlights the many advantages of 3D printing. The technology allows the manufacture of new products with very short lead-times, given that all that is required is a 3D printer and a printable digital representation of the product. Delays usually associated with creating new manufacturing series, such as tooling calibration, do not have to be incurred when 3D printing.

Parties interested in printing products can, of course, set out to create the required digital blueprints from scratch, but doing so takes time and may risk inadvertent design flaws that have already been overcome by the original designer. Moreover, new designs will require regulatory approval whilst a reproduction of an existing design is likely to be available to patients much more quickly.

Technically the sharing of a digital printable file is easy – all that is required is a simple file transfer – but stories in which the owners of a digital printable file were unwilling to share the file in the first place based on legal concerns have been circulating. This is regrettable, given that IP right holders have so much more to offer than merely a file.

In particular, the know-how IP right holders have in ensuring that the manufactured products meet the desired quality and safety requirements could help immensely in rapidly meeting the increasingly dire need for medical products.

The seeming tension between ownership of IP rights and the rapid spread of protected products is not new. Similar concerns were raised in the cleantech field when it came to disseminating environmentally friendly technology to developing countries. One conclusion from that was that innovators are much more likely to share innovation with third parties in jurisdictions with a robust and sophisticated IP system. As such, strong IP is helpful in overcoming reluctance in sharing, given that it provides a level of control to ensure quality and safety and to ensure the goodwill of IP right holders cannot be abused after the crisis has abated.

So, how can companies protect their intellectual property in circumstances such as this, while also doing the right thing? Practically speaking, there are many ways to find a balance between protecting IP and serving the public good.

First and foremost, temporary and/or purpose-limited licences could be granted solely for the purpose of supplying clearly defined products to fight the current crisis. Any such licence should also clearly regulate product liability as well as what should happen with non-disposable products after the crisis.

After all, it is hard to accept a situation where your own market is eroded for years to come, even if the reason for it was an initial immense spike in demand.

As far as manufacturing using 3D printers is concerned, it is conceivable that, even though IP rights cover the finished product, the rights may not cover the digital printable file. As such, it is important to regulate, in any enforceable agreement, what the recipient of the digital printable file is allowed to do with it; in particular, the degree of further file sharing that is acceptable.

Another concern for IP owners is the potential of compulsory licensing, whereby a government might acquire IP rights without the owner’s consent, if it is believed that it is necessary to protect public health or wellbeing. This is an extreme measure but there are precedents for it happening, such as the recent case of IP Com v Vodafone. In cases such as this, it would be advantageous for IP rights holders to be proactive by licensing IP on their own terms before the decision is made for them by the government.

Extraordinary times call for extraordinary responses and thinking which goes beyond business as usual. Intellectual property is often a company’s most valuable asset and should be protected. As we have seen during the current crisis, however, there are creative ways in which continuing to protect IP can be successfully balanced with serving the public good.
Federal Court of Canada provides guidance on whether adjuvanted vaccines are CSP eligible

A recent decision of the Federal Court of Canada will hopefully lead to clarity on whether vaccines containing an adjuvant are eligible for Certificates of Supplemental Protection in Canada. The decision is especially timely as researchers around the world are rushing to develop a vaccine against the COVID-19 virus.

Certificates of Supplemental Protection (CSPs) provide patent term restoration for up to two years for eligible patents relating to human and veterinary drugs. This additional protection is intended to partly compensate for time spent in research and obtaining marketing authorization for new drugs.

CSPs are relatively new in Canada, having been introduced on September 21, 2017, as part of the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union. To date, the Canadian Government has issued 39 CSPs – 36 to drugs for human use and 3 to drugs for veterinary use.

GlaxoSmithKline Biologicals S.A. (GSK) requested a CSP for its Canadian Patent No. 2,600,905 (the ‘905 Patent) and its drug SHINGRIX®. The ‘905 Patent describes a new vaccine useful in the prevention or amelioration of shingles in adults older than 50, or in immunocompromised persons. The ‘905 Patent specifically describes compositions capable of inducing an immune response against the Varicella Zoster Virus, for example, the combination of an antigen and an adjuvant. Adjuvants are substances that enhance the immune response to an antigen.

The Canadian Minister of Health (the Minister) refused GSK’s CSP application, primarily on the basis that in order to be eligible for a CSP, “a patent must include at least one claim limited to one or more medical ingredients or to their use” and that the ‘905 Patent doesn’t meet this requirement because each of the claims in the patent include a non-medical ingredient (i.e., an adjuvant). This was the case even though the adjuvant of SHINGRIX® is biologically active and essential to its clinical efficacy because the Minister made its decision in line with Health Canada’s licensing guidelines that treat both biologically active and biologically inactive adjuvants as inactive excipients. The Minister also considered that vaccine adjuvants cannot be medicinal ingredients because they do not independently cause an immunological reaction (i.e., they must work in concert with an antigen).

GSK sought judicial review of the Minister’s decision. The issue before the Federal Court was whether the Minister’s decision to refuse GSK’s CSP was reasonable in view of the Minister’s restrictive definition of “medicinal ingredient”.

The Federal Court’s decision (2020 FC 397) is the first time that a Canadian Court has been asked to judicially review the refusal of a CSP. After reviewing the parties’ evidence and the statutory purpose of the CSP, the Federal Court found that the Minister’s decision was not reasonable and expressed a number of concerns in its reasons.

For example, the Federal Court noted that the Minister needed to interpret the Canadian law implementing CETA “in a manner consistent with [CETA]”. So, while CETA does not define the term “medicinal ingredient”, CETA does define a protected product as “the active ingredient or combination of active ingredients” of an authorized pharmaceutical product. Thus, according to CETA, whether a product is eligible for CSP protection depends on whether the product has biological activity.

Regarding the Minister’s position that vaccine adjuvants cannot be medicinal ingredients because they do not independently cause an immunological reaction, the Federal Court held that this was not tenable, since neither the antigen nor the adjuvant independently could provide a “clinically useful response”. The Federal Court went on to note that the Minister’s position would excludes CSP protection for many novel vaccines, which requires adjuvants.

The Federal Court also noted that while Health Canada considers adjuvants to be excipients and treatments them in the same way stabilizers, fillers, and preservatives for licensing purposes, there is no practical purpose for “excluding adjuvanted vaccines from the CSP regime”.

Interestingly, although the Federal Court had the above concerns, it did not direct the Minister to issue a CSP to GSK, claiming that that the present case was not an appropriate case to do so. The Federal Court therefore sent the CSP application back to the Minister for reconsideration in view of the Court’s reasons. The Minister must now reconsider their decision to refuse the CSP or appeal the Federal Court’s decision to the Federal Court of Appeal. Although this story is far from over, it is promising news for innovators seeking to obtain CSPs for vaccines in Canada.

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How a trade mark dispute dethroned the Tiger King

It will perhaps come as no surprise that *Tiger King* - a new seven-part documentary on Netflix about an eccentric owner of a big cat zoo in Oklahoma known as ‘Joe Exotic’ – has quickly become a viral success.

The series, which focuses on Exotic’s collection of 200 big cats and his decades-long feud with animal rights activist Carole Baskin, has spawned countless memes, catchphrases and parodies since it first launched in late March. The show’s many unpredictable twists and turns include a murder-for-hire plot, a mysterious disappearance, embezzlement and allegations of animal abuse.

With so many outrageous sub-plots, a trade mark dispute between Exotic and Baskin may at first appear to be one of the more mundane storylines of the show. However, after years of relentless feuding between the pair, this IP battle actually becomes a turning point which in many ways leads to Joe Exotic’s eventual downfall.

Baskin and her animal sanctuary, the Big Cat Rescue (BCR) in Florida, had spent years campaigning against Exotic and his zoo, home to nearly 100 of the world’s 3,890 tigers, in an effort to shut it down. With the increasing popularity of Exotic’s travelling animal show, which visited shopping malls across America allowing huge crowds to pet tiger cubs, Baskin launched a campaign to inundate the malls with calls for the shows to be cancelled. In retaliation, Exotic renamed his travelling show ‘Big Cat Rescue Entertainment’.

In the show, Carole’s husband Howard Baskin shows flyers produced by Exotic to advertise his travelling show under the new name. Similarities were not just limited to the name itself: Howard Baskin highlights that Exotic’s logo was in a similar font and stylisation to the BCR logo, with the word ‘Entertainment’ faded so “you don’t even see it”. The poster features a close-up of the eyes of a snow leopard – which was the masthead for BCR’s website at the time. Exotic even distributed business cards with a Florida address to increase the confusion. Joe Exotic’s intentions were clear to those around him: not only to ‘get back’ at Carole and Howard Baskin, but to supersede them in Google search results.

However, these actions actually gave the Baskins an opportunity to finally take legal action against Joe Exotic: whilst they had been unable to challenge him for cub petting as they lacked the legal standing to do so, they were able to sue for trade mark infringement. They also brought subsequent claims for copyright infringement after Exotic posted photos of Carole Baskin and the BCR sanctuary. The courts decided in the Baskins’ favour for all claims, ordering Joe Exotic to pay BCR over $1 million (US dollars).

The trade mark dispute itself appears to be a clear-cut case of infringement. The Baskins had already registered the name ‘Big Cat Rescue’ as a US federal trade mark by the time Exotic rebranded his travelling show. By using a sign (i.e. ‘Big Cat Rescue Entertainment’) which was highly similar to the BCR registration in the course of trade, and in connection with similar services to those covered by the BCR mark, there was a likelihood of confusion on the part of the public. Indeed, Carole Baskin claims in the Netflix show that people were in fact confused between the marks. ‘People were calling us up saying, “Hey, I didn’t think you did this sort of thing”,’ she explains in an interview.

Hypothetically, looking at this case from a UK and EU law perspective, the Baskins could have also claimed damage to the reputation of their BCR registration. UK and EU trade mark laws allow the owners of a trade mark which has acquired a reputation to prevent a third party from using, without due cause, an identical or similar sign which would take unfair advantage of, or be detrimental to, the reputation of their mark. In particular, BCR could have claimed tarnishing of their mark’s reputation – the Baskins had developed a substantial following in connection with BCR’s big cat rescue and sanctuary operations, and any association with an exploitative cub petting experience would be sure to cause damage. In addition, from a UK perspective, the Baskins may have also had a claim to passing off, by arguing that Exotic’s actions would constitute a misrepresentation, damaging their goodwill.

According to the Netflix series and those interviewed who knew Joe Exotic at the time, this trade mark dispute was a turning point. Exotic is alleged to become even more thirsty for revenge against Baskin in light of the $1 million dollar judgement, and the result plays out in yet more shocking twists and turns throughout the documentary. But amongst the wild plot twists of the show, the legal dispute highlights the true value of trade marks to protect your brand and prevent any third parties from damaging your reputation – and also shows that if you infringe a trade mark, you might just be catching a tiger by the tail.
Earlier this year, the European Patent Office published its annual Patent Index – showing trends in European patent applications in 2019. As always, the data provides many useful insights into the sectors driving the global economy. And, while the global coronavirus pandemic might have blown the economy off course in subsequent months, the data suggests that the trend towards an increasingly digitised economy is here to stay.

Overall the picture painted by the latest data is one of a healthy research and development ecosystem. The EPO registered a 4% increase in the numbers of patent applications filed from across the world in 2019, with the total rising from 174,481 in 2018, to 181,406 during 2019.

Some sectors, however, saw greater rises than others. Industries with strong manufacturing bases recorded good increases. Transport, for example, saw filings increase by 6.6%. Medical technology saw a 0.9% increase – though it should be noted that, while this increase is small, medical technology has been the leading category for some years and remains the second largest. There were also increases for civil engineering, engines, pumps and turbines, and machine tools.

The increases across these industries however are dwarfed by those we see in digitally focused industries. The real story of this year’s EPO statistics is an impressive 19.6% increase in filings in the category of digital communications, and an also impressive 10.2% rise in the category of computer technology. In total, there were 14,175 digital communications applications filed in 2019 and 12,774 computer technology applications.

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So, what do these increases tell us?

While the vehicles on our roads and the energy infrastructure that powers the country still rely on innovative manufacturing, the latest data further confirms that an increasing amount of the innovation contained within a car, for example, is software based. Another EPO report from several years ago looking at self-driving vehicles (SDVs) takes a closer look at this trend. Of the top 25 filers at the EPO in the field of SDVs, traditional car manufacturers make up a minority. While there are some expected inclusions – BAE Systems, Audi and Volvo – much of the list is made up of global tech and mobile companies.

The march of digitalisation

In many industries that have traditionally relied on manufacturing innovation alone, data driven tech companies are developing innovative products that have the potential to disrupt established businesses. In the transport field, for example, software innovation (such as self-driving vehicles and smart cars) will be at least as important as manufacturing innovation.

For businesses with core and historical products based on manufacturing, the loss of market share to tech upstarts presents a challenge. Ongoing innovation will be key to this challenge, as will the strategic use of intellectual property (IP) rights. Securing IP on digital and data driven innovation can require a different approach to that required for securing IP on manufactured goods. Likewise, the rapid evolution of technology in this area poses questions not just for innovators, but for intellectual property law itself. Who owns the IP on innovation created by AI for example? As the tech evolves, and guidelines on technologies such as AI and 3D printing are being constantly updated.

The latest EPO data is further evidence of just how much emerging technology is reshaping the economy. For those companies wishing to define the next generation of manufacturing, embracing this technology is key. This will inevitably pose a challenge for some, as a significant change in direction will be required, but – for those who can successfully adapt – the rewards will be great.
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