



Reform rapporteur and copyright connoisseur

**Axel Voss reveals his intentions behind
the EU's copyright reforms**



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Blockchain Patents

Is blockchain an unidentifiable enigma, or future saviour? Our very own Ben Wodecki explores the truth behind the tech



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Axel Voss

The architect of the EU copyright reform, German MEP Axel Voss, has been fairly silent on the changes, until now



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European creative orgs call for suspension of article 13 copyright reform debate

Creative organisations across Europe have called for the suspension of negotiations on article 13 of the EU's Copyright Directive. The creative groups, which included the Motion Picture Association of Europe, the Middle East and Africa, the Premier League and the Association of Commercial Television in Europe, penned a letter to the president of the European Council, Donald Tusk, and several senior European leaders.

In the letter, the organisations said they were “extremely and increasingly concerned about the direction of the ongoing trilogue discussions on article 13 ... as the solutions that are under discussion are worse than the current legal framework”.

It said that one of the main justifications for article 13 articulated in the Commission's original impact assessment in 2016 was the absence of a Court of Justice of the EU (CJEU) referral that could bring clarity to the question of whether an uploaded content service is responsible for acts of communication to the public and/or can benefit from the hosting provider status under the Ecommerce Directive.

The groups contend that since that assessment, the situation has “fundamentally changed”, with the German Federal Court of Justice referring a case to the CJEU involving YouTube and certain rights holders for clarification on this issue.

It said: “We understand the eagerness to bring the negotiations to a close within the current mandate.”

“However, rather than rushing the highly controversial article 13 and seeking conclusion of this provision, no matter the jeopardy to the European copyright framework and no matter the prejudice and damage to the creative sectors before the end of the legislative period, we urge EU co-legislators to suspend negotiations with respect to this article.”

“The commission should continue to monitor the developments on CJEU level and decide, following this judgement, whether legislative intervention might be necessary in the future.”

Julia Reda, member of European Parliament and prominent critic of article 13, commented: “It is clear that article 13 is ill-suited to solve any of the problems it purports to solve while causing massive collateral damage.”

“Even its most fervent supporters are losing their enthusiasm in the project. For once, I agree with the representatives of the film industry: article 13 in its current form does more harm than good and should be removed from the proposal.”

USPTO appoints new deputy general counsel and solicitor

The US Patent and Trademark Office (USPTO) has appointed Thomas Krause as its new deputy general counsel for intellectual property law and solicitor. Krause, who has worked in the Solicitor's Office since 2002, has argued countless cases in the Federal Circuit and aided the agency's positions in numerous Supreme Court cases.

Before joining the USPTO, he practiced with law firm Covington & Burling where he focused his work in patent prosecution and litigation.

Krause has taught IP courses at the Georgetown University Law Center since 2001 and is a recipient of the Department of Commerce Gold Medal and Distinguished Attorney awards for his work on section 101 patent eligibility cases at both the Federal Circuit and the Supreme Court.

Commenting on his new role, Krause said: “In the Solicitor's Office, I've had the privilege of working with some of the most talented and inspiring lawyers I've ever known. I look forward to leading this extraordinary group of professionals and continuing the traditions of excellence set by my predecessors.”

Undersecretary of commerce for intellectual property and director of the USPTO, Andrei Iancu, said he was confident that Krause's experience and expertise would “serve our IP system well as he leads the Solicitor's Office into the future”.

He added: “By representing the USPTO in courts and providing advice on a host of issues and policies of relevance to IP, the Solicitor's Office plays a vital role in the US IP ecosystem. Thomas Krause is extremely well-qualified and understands the importance of reliable, predictable, and high-quality IP rights.”

Iancu thanked Joseph Matal, who had been acting solicitor since July 2018. He said: “I want to thank Joseph Matal for his dedicated service and commitment to the USPTO as acting solicitor. We very much appreciate Matal's invaluable leadership during this period of transition.”



United States Supreme Court Building, Washington DC, USA

The term 'full' means nothing, says SCOTUS judge in Oracle v Rimini Street

The term 'full' "means nothing" with regards to Rimini Street's appeal at the US Supreme Court, according to justice Samuel Alito, who was speaking during oral arguments in the case.

Rimini Street took the case to the Supreme Court following several hearings in the Eighth, Ninth and Eleventh Circuit courts and a stint at the Federal Circuit.

It asked whether the Copyright Act's allowance of "full costs" to a prevailing party is limited to taxable costs under the US code on judicial procedure.

Oracle had secured a permanent injunction against Rimini Street, banning it from support practices that are a violation of copyright laws.

During oral arguments, the Supreme Court judges focused on working out the statutory interpretation of the term 'full', with Alito arguing that the term meant nothing.

Elsewhere during the arguments, justice Sonia Sotomayor grilled Rimini, which failed to provide details on its claim that "no single case has ever read the statute the way the Ninth Circuit read it in the Twentieth Century Fox case".

Sotomayor's questioning of this led to laughter in the court.

Rimini's team argued that despite precedent pertaining to the term 'costs', the addition of the term 'full', making it two terms at issue, was the issue at hand. Rimini noted that in the cases of Crawford Fitting, Casey, and Murphy, the term 'costs' is a term of art in federal law.

Rimini noted that in the Supreme Court's most recent decision around the term, the Taniguchi case, the court emphasised that "costs" in federal law does not have its ordinary meaning but, rather, has this specialised meaning.

The software company argued that Congress could override the default definition of the term costs, and if they were to do so then it "must do it explicitly".

Rimini also questioned the effectiveness of Section 505 of the Copyright Act, saying that it is a statute that "does not refer explicitly to witness fees and, under a plain application of Murphy, cannot authorise witness fees".

At one point, chief justice John Roberts admitted he had difficulty following Oracle's arguments, questioning its interpretation of the term full, and whether 'full costs' really means 'full costs'.

Oracle's lawyers responded that judges should start with the "universe of full costs", then use their discretion to "sort of carve that back if they think that that's appropriate".

Oracle went on to question the ordinary meaning of the term costs. One lawyer said: "I think it would be perfectly appropriate for a court to say: 'look, if you can't even document this thing, I'm not going to treat that as a cost for purposes of this.'"

"Whether they do it under a definition of costs under its ordinary meaning or as an exercise of discretion, I don't think it makes a great deal of difference."

UKIPO to continue PIPCU funding

The City of London Police's Intellectual Property Crime Unit (PIPCU) has announced that its funding will be continued post-June 2019.

PIPCU revealed the news via Twitter in an attempt to quash rumours of its funding being slashed in 2019. It revealed that the UK Intellectual Property Office (UKIPO) will continue to fund the unit beyond June 2019.

PIPCU, which received an international IP champions award for excellence in enforcement in September of last year, also revealed that it took down 90 percent of infringing sites targeted by Europol.

At the end of its tweet, PIPCU says that the continued funding from the UKIPO "means we can continue fighting #IP #crime".

Commenting on the announcement, PIPCU Detective Chief Inspector Teresa Russell said: "PIPCU has always received two-year rolling funding from the UKIPO."

"While PIPCU's funding does expire in June, the funding will be extended by the UKIPO. There have been no recent plans for PIPCU to be funded directly by industry."

"Furthermore, the figures are taken from Europol's Operation In Our Sites. They demonstrate the positive impact of PIPCU's work. They also clearly show the way in which the UK is able to deal with this crime more effectively than many other countries, thanks to the partnership between the UKIPO, PIPCU and Nominet."



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An advertisement for Dreyfus, an intellectual property firm. The background is a photograph of the Eiffel Tower in Paris. Overlaid on the image are several geometric shapes (squares and diamonds) in shades of blue and purple, each containing text about IP services. The Dreyfus logo is in the top left corner, and contact information is in the bottom left corner. The website address is in the bottom right corner.

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McDonald's EU Big Mac and Mc trademarks revoked in major defeat

Fast food leviathan McDonald's has had its European trademark for the term Big Mac revoked following a ruling at the EU Intellectual Property Office.

The trademark was revoked after Irish fast food chain, Supermacs, successfully defended McDonald's' objections that Supermacs would cause confusion amongst consumers.

Supermacs, which has operated since 1978, attempted to register a trademark for its name and certain product names, but McDonald's objected to the filing.

Supermacs had attempted to register the term Big Mac in classes 29, 30, and 42.

Supermac's argued that McDonald's is engaged in "trademark bullying; registering brand names which are simply stored away in a war chest to use against future competitors".

The EUIPO's cancellation division ruled that McDonald's had failed to "[prove] genuine use of the contested EU trademark for any of the goods and services for which it is registered".

"As a result, the application for revocation is wholly successful and the contested EU trademark must be revoked in its entirety."

According to a statement from Supermacs, McDonald's had previously succeeded in putting a stop to Supermac's plans to expand into the UK and Europe on the basis of the similarity between the name Supermac's and McDonald's' Big Mac.

McDonald's does have the right to appeal the ruling and a spokesperson for the brand said it would.

"We are disappointed in the EUIPO's decision and believe this decision did not take into account the substantial evidence submitted by McDonald's proving use of our Big Mac mark throughout Europe," the spokesperson said.

"We intend to appeal the decision and are confident it will be overturned by the EUIPO Board of Appeals.

"Notwithstanding today's decision, McDonald's owns full and enforceable trademark rights for the mark 'Big Mac' throughout Europe."

Commenting on the landmark ruling, Supermac's managing director, Pat McDonagh said that the judgement represents a victory for small businesses all over the world.

"We knew when we took on this battle that it was a David versus Goliath scenario but just because McDonald's has deep pockets and we are relatively small in context doesn't mean we weren't going to fight our corner."

He added: "The original objective of our application to cancel was to shine a light on the use of trademark bullying by this multinational to stifle competition".

"We have been saying for years that they have been using trademark bullying."

McDonagh said: "They trademarked the SnackBox, which is one of Supermac's most popular products, even though the product is not actually offered by them."

McDonagh concluded by calling the victory "the end of the McBully".



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Facebook forced to make advertising rule changes following Dutch court ruling

The Court of Amsterdam has ordered Facebook to prevent its platforms from featuring adverts for counterfeit products following a dispute with Tommy Hilfiger Europe.

Tommy Hilfiger, along with its parent PVH, jointly requested in August 2018 that Facebook provided the addresses and payment details of advertisers who had placed adverts leading to sites selling counterfeit Tommy Hilfiger products.

Facebook did not meet the companies' requests. At a hearing in December 2018, both Hilfiger and PVH filed a writ of summons to force Facebook to change its advertising stipulations.

The Court of Amsterdam has now issued an injunction to Facebook ordering the social media giant to introduce measures on its Facebook and Instagram platforms to increase due diligence for advertisements on the sites.

Methods ordered by the court include rejecting adverts that feature descriptions with poor English, low prices and large discounts, and the mention of free delivery.

Facebook is required to provide PVH counsel with any information about the origin and distribution channels of the infringing advertisements and related data.

This includes the name, address, place of residence, email address and telephone number for the relevant accounts.

The Court of Amsterdam also ordered Facebook to pay a penalty of €10,000 for each day that it fails to comply with the new provisions, which could rise to a maximum of €2 million, as well as provide PVH with all relevant data related to the infringing advertisements and deny access to these sellers from advertising on its platforms in the future.

Facebook was ordered to pay costs of more than €25,000.



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- Automatically calculate deadlines
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- Domain names
- Social media



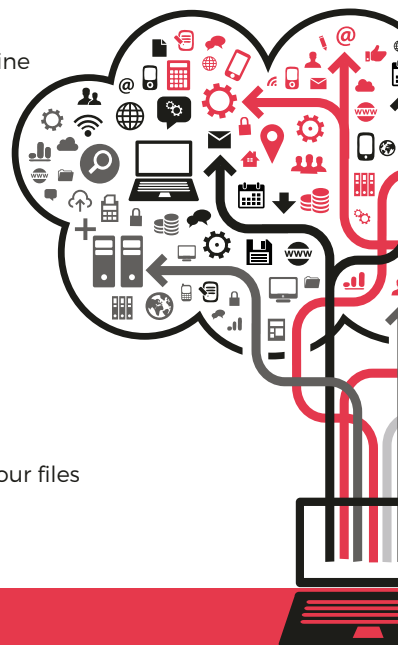
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- Generate invoices directly from your files
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CITMA president reacts to Brexit deal defeat for UK Government

The result of the EU Withdrawal Agreement vote puts UK rights holders “back at square one” says Chartered Institute of Trade Mark Attorneys (CITMA) president Tania Clark.

Theresa May’s Conservative government lost a vote on the deal on 15 January by a margin of 230 votes, the biggest government defeat in history.

The deal contained numerous provisions for UK and EU rights holders, including the promise to transpose existing EU trademarks into a comparable UK right. It also included provisions that would allow UK attorneys to continue to enjoy rights of representation at the EU Intellectual Property Office.

Clark says this rejection “puts rights owners in the UK in a difficult position” and casts major doubt on what happens next as the 29 March exit date draws closer.

The government had promised that EU trademarks, registered designs and unregistered designs would still be cloned onto the UK register after the transition period, regardless of whether the UK achieves a deal with the EU or not.

But there seems to be little appetite in the UK Parliament for a no-deal Brexit and alongside the Labour Party’s no confidence motion against Theresa May, it is unclear whether any future deal will include these provisions.

Clark explains that UK businesses that own EU trademarks, registered community designs and unregistered designs can “no longer rely on having a transition period in which to make the necessary adjustments to their IP portfolios.”

Clark said: “Those with pending trademark and design registrations are particularly affected. To block any attempts to erode their market position in the immediate aftermath of Brexit, they may now need to consider filing in the EU and UK separately. The cost of this ‘double filing’ is obviously one that companies would have hoped to avoid, but there is now a significant risk that filing in the EU only could leave them without protection in the UK marketplace in the event of a hard Brexit. With the prospect of another people’s vote now a possibility, UK businesses with trading interests in the EU may also be hoping that the outcome could be different second time around.”

McGuireWoods pinches three life sciences attorneys from Baker Hostetler

McGuireWoods has expanded its life sciences offering by hiring three former Baker Hostetler patent attorneys as partners. Benjamin Hsing, Wanda French-Brown and Irene Hudson, are all “highly respected for devising strategies to help domestic and international companies navigate complex patent litigation challenges” according to David Finkelson, chair of the firm’s intellectual property and patent litigation department.

Before his time at Baker Hostetler, Hsing was a partner at Kaye Scholer and is also a former patent examiner at the US Patent and Trademark Office. He has tried several high-profile cases on behalf of major pharmaceutical and technology companies and has conducted intellectual property due diligence investigations for acquisitions and licensing deals.

An adjunct professor on IP at the Seton Hall University of Law, French-Brown spent a decade as a registered pharmacist. She advises clients on Food and Drug Administration guidelines governing the entry of generic and biosimilar pharmaceutical products

and also counsels pharma clients on the scope and coverage of new patents, new drug product exclusivity and litigation strategy.

An attorney who has previously spent 15 years at Fish and Richardson, Hudson joins McGuireWoods as someone who advises large pharma companies on multijurisdictional litigation. She has represented various clients in multipatent and multidefendant cases and manages worldwide trademark portfolios.

Commenting on the move, managing partner of the firm’s New York office, Noreen Kelly, where the new partners will be based, said: “We’re delighted to welcome Benjamin Hsing, Wanda French-Brown and Irene Hudson. They enhance our client service capabilities nationally and continue our growth in New York. Their skill in Abbreviated New Drug Application-based litigation, in particular, will be an important asset for our healthcare and life sciences clients,” added Holly Buckley, co-leader of the firm’s healthcare and life sciences industry team.

Supreme Court to hear Iancu v Brunetti

The US Supreme Court has agreed to hear Iancu v Brunetti, a case debating whether section 2(a) of the Lanham Act is invalid under the free speech clause of the First Amendment.

Section 2(a) of the Lanham Act refuses the registration of trademark applications if they contain immoral, deceptive, or scandalous matters.

In 2017, a unanimous Supreme Court ruling found that the banning of “disparaging” trademarks violated the First Amendment after an Asian-American rock band called The Slants attempted to register its name but was refused due to its referencing an Asian stereotype.

The latest dispute on this topic revolves around the trademark ‘FUCT’, which belongs to a clothing brand run by Erik Brunetti. Brunetti attempted to register the brand’s name for clothing services but was rejected, with the examiner referencing the Lanham Act.

Brunetti appealed the decision to the US Court of Appeals for the Federal Circuit, which held that the scandalous aspect of section 2(a) was unconstitutional under Matal v Tam. The US Patent and Trademark Office (USPTO) then petitioned for the Supreme Court to hear the case.

According to one USPTO filing, the term ‘scandalous’ is defined as “shocking to the sense of truth, decency, or propriety, disgraceful, offensive, disreputable ... giving offence to the conscience of moral feelings ... or calling out for condemnation”.

The USPTO said it observed Brunetti’s use of the mark in connection with clothing and promotional materials

as displaying “strong, and often explicit, sexual imagery that objectifies women and offers degrading examples of extreme misogyny”.

The USPTO found Brunetti’s brand name to be “perceived by his targeted market segment as the obscene word for which it is a homonym”.

At the Federal Circuit, Brunetti argued that the term FUCT is not vulgar due to its ambiguity. He claimed that if it had any meaning, it would be “Friends yoU Can’t Trust”.

The Federal Circuit ruled that although the trademark at issue is vulgar, “there are countless songs with vulgar lyrics, blasphemous images, scandalous books and paintings, all of which are protected under federal law”.

Despite “not wish[ing] to be confronted with” such content as either art, not in the marketplace, the Court of Appeals argued that the First Amendment protects private expression, even private expression that is offensive to a substantial composite of the general public.

Michael Keyes, a partner at law firm from Dorsey & Whitney, believes that this hearing could signal that the Supreme Court wants to either clarify or modify its previous constitutional analysis from Matal v Tam.

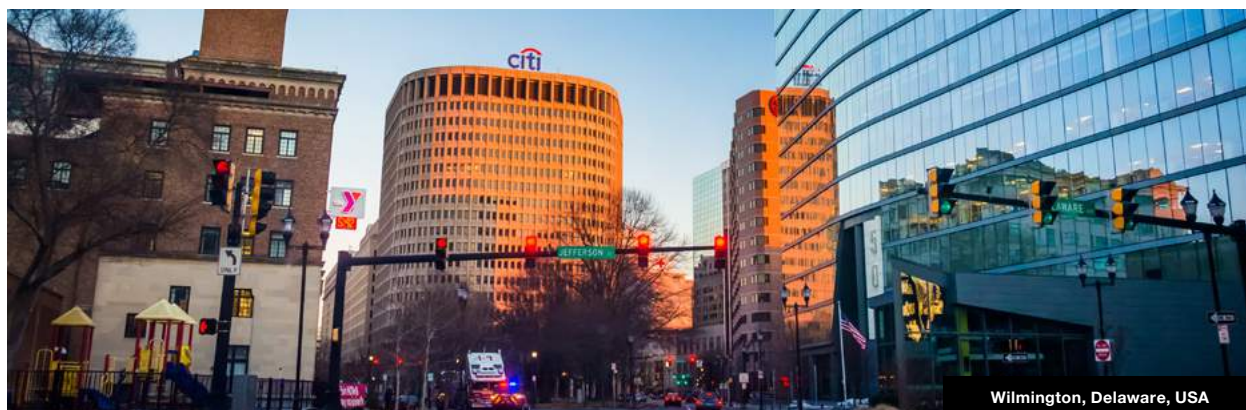
He also suggested that the Supreme Court might see a “principled difference between the ‘disparaging’ and ‘scandalous’ provisions within the same statutory section”, although “neither possibility seems likely”.

USPTO appoints new deputy general counsel and solicitor

Law firm Adams and Reese has promoted Kristina Montanaro Schrader to partner. Schrader, a former Venable associate, serves as the firm’s Anti-Counterfeiting Team leader and is part of the firm’s global intellectual property team. She practices in the firm’s Nashville office and creates brand and content protection strategies for various multinational companies in the cybersecurity, entertainment and new media industries.

Schrader spent almost four years with the International AntiCounterfeiting Coalition, where she served as vice president of legal affairs and strategic planning, and associate counsel and director of special programs.

Via a post on LinkedIn, the firm congratulated Schrader on her promotion, and said she “[embodies] our commitments to client service and community involvement”.



Actavis infringed Orexo's Zubsolv patent, Delaware court rules

Actavis infringed Orexo's Zubsolv patent with its generic version of the opioid dependence treatment, a US court has ruled.

The US District Court for the District of Delaware issued its final ruling, which will prevent Actavis from commercialising its generic Zubsolv products in the US until after 18 September 2032, yesterday (10 January).

In September 2018, Orexo beat Actavis in an invalidity challenge on the patent at the US Court of Appeals for the Federal Circuit.

Orexo's lawsuits against Actavis involving two other Zubsolv patents in the US have been withdrawn as a result of the ruling.

However, the ruling does not relate to other disputes between the two where Orexo alleges that Actavis's generic versions of Suboxone and Subutex tablets infringe Orexo's US patent no 8,454,996.

Nikolaj Sørensen, president and CEO of Orexo, commented: "Although expected, I am very pleased that we now have a final judgement preventing Actavis from commercialising its generic Zubsolv products in the US until September 2032. It has been an extraordinarily long process and I want to thank my team, the board of directors and the shareholders who never doubted we would succeed."

He added: "We are now looking forward to focus on expanding our commercial platform to leverage scale and increase revenues."

US utility patent grants fall 3.5 percent in 2018

The number of US patent grants fell by 3.5 percent year-over-year in 2018, according to IFI Claims Patent Services. IFI's 2018 rankings, trends and insights showed that the US Patent and Trademark Office (USPTO) issued 308,853 utility grant patents in 2018, compared to 320,003 grants in 2017.

US companies accounted for 46 percent of these patents, while Asian and European companies received 31 percent and 15 percent, respectively.

Chinese companies represented just 4 percent of 2018 US patent grants, but saw a total filing increase of 12 percent over 2017.

On the whole, grants declined in all regions in the world with the exception of China. US pre-grant publications also showed a slight increase from 372,084 in 2017 to 374,763 in 2018, following a decline from 2016 to 2017.

In 2018, IBM remained king of patent filings with a 1 percent increase to 9,100 patent grants.

Samsung came second with 5,850 grants, a slight increase on its 5,837 grants in 2017.

Canon, which sat in third place in 2018, saw a patent grant decrease of 7 percent.



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Blockchain patents: Unidentifiable enigma, or future saviour?

The idea of blockchain is confusing to some, but its potential to augment our intelligence could be hitherto undreamt of. So, what's the truth behind the tech?

Ben Wodecki reports

Changes in technology are abundant. With steps towards 5G connectivity and increases in the abilities of artificial intelligence and big data, there are so many changes going on in the world of innovation that it can be difficult to keep up with them all.

One technology dominating conference discussions is blockchain. Industries globally could be (and in some cases are already) benefitting from it, but who is dominating

it currently? Could it cause the next patent war? Are intellectual property offices prepared for increased influxes of patents related to this tech?

Research published by Thomson Reuters in March 2018 argues that China was the most active filer of blockchain patents in 2017. In that year, it filed more than 200 blockchain patent applications, representing 56 percent of the total number of blockchain patent applications worldwide according to its figures. Compare that with 2016's figures, which only saw 59 Chinese blockchain patent applications.

The US was in second place to China. With 91 blockchain patent applications filed in 2017, and 21 in the previous year.

Alex Batteson, editor in the IP and IT practice area at Thomson Reuters' Practical Law, said that blockchain technology is "being promoted as having huge potential to disrupt many industries and as its usage becomes more widespread, so too will the push for patent applications".

Professor Mei-Hsin Wang, the founder and CEO of BioMedical and Technology Application Association, provided IPPro with figures retrieved through Patentcloud at the tail end of 2018. They show that China owned 55 percent of blockchain related patents, owning 6603 applications, with the US owning the second most, 2345 (19.8 percent).

Her statistics show that China's filing activities related to this technology are ever-growing.

However, both Billtrader CEO and executive director Justin Simpson, and Oblon partner Michael Casey, argue that it is, in fact, the US that is dominating the numbers of filings related to blockchain technologies.

Casey explains that when looking at the definition of a blockchain patent as something that actually claims blockchain or distributed ledger, then "I think the dominating country is actually the US".

Simpson argues that many confuse patents, and patent applications, adding that many tend to quote 'Chinese patents' without distinguishing between Chinese invention patents (which undergo substantive examination) and Chinese utility models (which are granted without substantive examination).

Simpson adds that "it's rather hard to accurately identify blockchain patents or patent applications".

From the clear differences between Wang's figures and Thomson Reuters, it is evident that a blurring effect is apparent in relation to blockchain related patent figures.

Despite the disagreement as to whom is the top filer, blockchain patents worldwide are continuing to rise. Figures provided by Simpson show that in the five years from 2014 to the end of 2018 blockchain related patent cooperation treaty (PCT) applications rose from one to 419, showing what he called "a very strong growth".

Blockchain itself is an entirely helpful technology. That has a plethora of uses. Casey remarks on how it could have been used by companies to locate E-Coli infected romaine

lettuces in the US, or brands like Gucci could use it to prove if a product is genuine. Simpson adds that the nature of it along with its usefulness across a global network suggests to him that "the key players in the arena will file PCT applications".

He remarks that Chinese applicants, as a whole, "typically file many more domestic applications (in China) than they do PCT applications. In addition, the number of applications that nationalise, after the PCT stage, is very few."

So if more patents related to blockchain are being filed, are IP offices prepared for the increasing influx? Wang reminds us that the Chinese National IP Administration (CNIPA)'s strong restrictions under article 2.1 of the Chinese Patent Act would likely not effect blockchain related patents as the technology has the potential to cover the aggregation of technical means and solving technical problems. She adds that as long as the technical means could resolve a technical problem and isn't vague, then CNIPA would likely grant a blockchain patent. Wang, like Casey, uses food traceability as an example of a patent using blockchain that would be both effective and would be granted in China.

At a PCT level, Simpson believes that there isn't a need for patent offices to panic "just yet".



emerging technology companies could cause the next patent war due to a lack of understanding of how the industry works. He warned that some new actors working in blockchain could cause litigation issues by selling their IP assets to companies with “more aggressive business models”.

Wang believes that a patent war won't occur over blockchain patents as the enormous numbers of applications and markets for using blockchain technology and there are various models to monetise blockchain patents before the true applications on products or services on the market, such as securitisation and security tokenisation.


Simpson agrees with Wang's thoughts, stating that the technology does hold a lot of promise, but the idea of blockchain patents forming the next patent war is “looking much less likely in late 2018 compared to the situation only one year ago”.

Casey however, believes that blockchain could “very likely” be an active factor in the next patent war. He highlights the lack of standards being developed for blockchain as a potential stumbling block that could kick things off.

“I think there is too much money in blockchain, especially with all the hype around cryptocurrency, for people not to realise that waiting a little bit and keeping their powder dry is going to serve them well in the long run when people can finally say I have a patent that reads on the standard,” Casey says.

Much has been made of the upcoming 5G connectivity and the number of groups attempting to create standards, with Nokia's head of IP and standards, Adrian Howes said at a recent conference that he hoped self-regulation had been achieved following draft agreements for the licensing of standard-essential patents (SEPs) in relation to 5G and the internet of things. Working groups such as CEN and CENELEC are attempting to draft regulations for the technology. Casey points out that the Free Software Foundation is trying to make this technology “remain an open standard so that people can utilise this in all computer systems”. Despite this, there is, so far as we know, no set group attempting to come up with standards to the extent that 5G is, which is absurd given blockchain's potential. In order to secure the future of blockchain, such a group would need to be created.

But despite uncertainties over its regulation, who is top of filings and whether a patent war could occur, one thing is for certain—blockchain will remain a huge player in the future.



“That said, if the upward trajectory continues, IP Offices will clearly need to be training and resourcing their examination

departments to ensure they possess necessary expertise and capacity,” he explains, “with any new field of technology, the early years are a challenge for the patent offices as there is an absence of prior art to use in their office action objections.”

He says that Bitcoin creator Satoshi Nakotomo's (alias) white paper would be “a great starting point for an obviousness objection” and that Simpson believes IP offices will be “making quite a lot of use of that document”.

Casey referred to blockchain technology as “a market that is expanding exponentially” and adds that “we're probably going to see 1200-1500 patents in 2019. Everyone is looking for a niche market to utilise blockchain in a non-obvious way and it's going to be a push to see who can get to the patent office first to cover their niche market”.

The keynote speaker of 2018's London IP Summit, 4iP council managing director Axel Ferrazzini warned that

> Bank Fees
> Data Entry
> Currency Risk

IP firms waste thousands
in bank fees and currency costs

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Reform rapporteur and copyright connoisseur

The architect of the EU copyright reform, German MEP Axel Voss, has been fairly silent on the changes, until now

Ben Wodecki reports

The EU Copyright Directive has both petrified and pleased people around the continent. Worries of filters and promises of better remunerations for rights holders are in debate and both sides have had more than their fair say on the matter.

YouTube's CEO Susan Wojcicki, German MEP Julia Reda and UK Music's deputy CEO, Tom Kiehl, are just some of those who have had their voices shared regarding the directive.

But one of the reform's most important individuals, the rapporteur Axel Voss, has seldom spoken on it. In a lengthy phone call to IPPro, Voss spoke on filters, the potential for big companies to dominate, and his responses to critics.

The value of reform

In defense of the much criticised reform, Voss says articles 11 and 13 would add value to the copyright law that we already have because of the current imbalance for rights holders in the digital world.

September 2018 saw the controversial vote implemented following a 438 to 226 vote in the European Parliament

He explains that the reforms were about trying to balance the situation between authors, performers and platforms.

“So far, platforms have been allowed to develop without any other regulations since 2000”, Voss remarks, “those platforms are developing in a way where there is an increasing amount of copyright infringement.”

“If implemented, platforms will be more likely to consider what might be a kind of copyright infringement and also what is fair remuneration for the authors and performers. This is what I’m hoping we are going to achieve in the end: better remuneration and a better balanced legal situation for both parties.”

September 2018 saw the controversial vote implemented following a 438 to 226 vote in the European Parliament. That day, Voss thanked the house following the vote, calling it “a good sign for the creative industries of Europe”.

In terms of cross-party discussions, Voss said all opted to take time, but “politically it was always obvious that we have a kind of split situation”.

“Some in the committee would like to go to the right, and some would like to go to the left, and so we only have a very small majority.”

“After the summer, I had to propose another wording for the plenary and this is what we agreed on in the so-called ‘shadow round’ with the shadow rapporteur. Then we achieved the vote in the plenary with a bigger majority on the new wording of article 11 and 13.”

He referred to the legal affairs committee consensus on articles 11 and 13 as “a very close result”. Voss said that they added something similar to the EU Commission’s proposal, with the addition of a paragraph stating that the remuneration has to be shared with the journalists.

Voss described the committee’s opinions on article 13 as “a wonderfully balanced approach”.

He explains: “We asked for some measures that would ensure that copyright protected works are not infringed, which then led to a discussion about upload filters. However, I would say with regards to article 13 there is a difference in the degree of upload filters to what is already in place on YouTube with its Content ID.”

“Everyone was mixing up identification software with filtering—we have not been able to communicate or explain it to the public better.”

Much has been made of article 13’s supposed filters, with a petition against the reform reaching four million signatures. Voss says that, after the failure in the first plenary vote, everything that looks like a filter has been taken away.

He explains: “What has been left off is the liability of the platforms and this is something the plenary agreed on. We took out all the so-called measures that might look like a filter, and then I would say we totally went in the direction of these petitions.”

He went on to warn that by only regulating the liability, then it “might lead to a kind of overblocking-situation by the platform itself”.

The aforementioned YouTube and its Content ID system annually make enormous profits, and many critics of the reforms have claimed these companies would have a competitive advantage due to article 13. Responding to those claims, Voss says he didn’t see larger companies having any much of an advantage, saying that “everyone is meeting the same level of regulation”.

He says that bigger companies will have the same advantages they have always had in capital, but it is companies that are intentionally setting up with the intention of infringing copyrighted material that Voss takes issue with.

On these types of businesses, he remarks: “Rethink your business model. Because we can’t accept a business model that infringes copyright protected works”.

Critics of the reforms have described them as “fragmented by design”, with “no positives both legally or practically”, and that they have “utterly failed”.

But Voss contends that “nothing is set in stone for the next century. The digital area is changing so rapidly that you should always have an eye on the developments here and if this again becomes an imbalanced situation, we should correct it as soon as possible.”

Voss believes that the team behind the copyright reforms are “[conducting] a very balanced approach on all of this, and will evaluate in a couple of years if these intentions are what we would like to see fulfilled, then we should correct this once again”.

He acknowledges that this “may not lead to 100 percent satisfaction, and also in this area we have to give up the idea that we are achieving 100 percent for the platforms, 100 percent for the authors or performers, or 100 percent for the users. This is not possible. That is why we are doing our best in getting the best balance. If you’re asking me

personally, I would say we could do better on some of the issues, but this is not covered by a kind of majority in the house or in the council. We have to come forward here with something we all agree on and I think how we are wording this now is a more cooperative way. If both sides are cooperating then they will find out how practically this might work in the end.”

Voss concluded saying that he was “very confident” that a well-balanced approach would be achieved and that the European Parliament would accept the compromises created by council, commission and parliament. [IPPro](#)

Reda's view

German MEP and proponent of a free and open internet, Julia Reda, gives her views on the current state of the reforms.

How close are articles 11 and 13 to fruition?

There are more open questions regarding article 13 than article 11. On article 11, the main question is the scope of the proposed new right, whether it should also apply to short, non-original extracts of press publications.

On article 13, there are many open questions: Should the article apply to small and micro-enterprises?

What do platforms have to do to escape full liability for copyright infringements committed by their users?

Should there be a provision legalising memes and parodies throughout Europe, and if so, should such content be protected from

simply being blocked by the filters platforms employ anyway?

Is there an imbalance to current copyright law as some critics assess?

Current copyright law is woefully imbalanced towards the interests of large companies with expert legal departments. No individual human being can be expected to understand copyright law, and as a consequence of that we all come into conflict with on a daily basis.

Individual creators are often not the beneficiaries of the exploitation of their works by large media companies. A progressive copyright reform would simplify copyright law for the benefit of both users and creators. Unfortunately, the copyright directive risks to do the exact opposite.

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Reviewing the RPMs

MarkMonitor's Statton Hammock discusses ICANN's review of domain rights protection mechanisms

What have you heard about changes to the rights protection mechanisms since the last time we spoke?

The ICANN working group reviews on the rights protection mechanisms (RPMs) have progressed somewhat since last summer but that work is far from done.

To remind everyone, ICANN is currently evaluating all of the new RPMs that were implemented for the new generic top-level domain name (gTLD) program such as the Post-Delegation Dispute Resolution Procedures (PDDRP) and the URS, but also historic RPMs, such as the most often used UDRP. For those unfamiliar with the new RPMs, the URS is similar to a UDRP proceeding except it is cheaper and faster and you do not get the domain name. The PDDRP is a dispute mechanism for registries who have violated rights by encouraging the registration of infringing domain names.

All in all, the review is just to see if there is anything that needs to be changed in any of the current RPMs, to see if there is more protection that can be afforded registrants, or if there is some other problem. Generally speaking, most people on that working group subscribe to the belief that "if it's not broken, don't fix it".

I'm personally a proponent of that approach and I don't advocate changes for the sake of making changes. I'm more concerned, and I think everybody on the working group is, about focusing on things that have clearly not worked. I think the working group is going to come up with a few recommendations—not very many, I don't see the UDRP or URS fundamentally changing in terms of the RPMs because rights holders are finding them reasonably effective and helpful.

What sort of changes might we see to those mechanisms (UDRP, URS), however small?

There are a couple of things that could change: First, the expansion of the number of UDRP/URS providers. There are some that argue that there is not enough providers for these kinds of claims. Country code TLDs (ccTLDs) are not required to follow UDRP processes like the gTLD providers are and therefore registrants in these ccTLDs have no dispute mechanism. Many of ccTLD registry operators do allow UDRPs but unfortunately there is no, say, UDRP

provider in Russia, in south-east Asia or India. One of the recommendations that may come out of this is that ccTLD operators facilitate administrative UDRP providers to allow for more global coverage.

Secondly, there are always discussions about cost to brand holders that have to file UDRP proceedings to protect their trademark. I don't know if there will be a change in the costs, but it has to be something substantial so as not to encourage people to file baseless UDRP claims.

The filing fees have to be high enough such that you do not have spurious claims, but at the same time, won't be too financially impactful to brands who have multiple marks who are independently filing UDRP claims. The URS was designed to try to help with that to provide a cheaper alternative, but as you know URS cases do not return the domain name to the rightful owner, they suspend them. For many registered trademark owners, that's not good enough; they want the domain name itself.

The rampant cybersquatting of domain names in new gTLDs that was a stoked fear prior to launch simply hasn't happened

What is so beneficial about the current RPMs to brand owners and why don't they need to be changed?

The rampant cybersquatting of domain names in new gTLDs that was a stoked fear prior to launch simply hasn't happened, I think largely in part because of the RPMs. We live in an environment where cybersquatting isn't as profitable as it used to be. What you do see, of course, is trademark

violations filed by criminal enterprises for phishing and fraud, that's still happening.

People ignorantly filing trademark domain names thinking that they can buy, sell and swap them, is not really happening anymore. The education of consumers around registering domain names similar to trademarks has certainly had its effect, and that is one of the reasons why UDRPs have been successful as you're making people aware of the abuse of cybersquatting. A lot more jurisdictions have come out with more stringent trademark laws, which is helpful as well.

The other thing is that people are familiar with the process: when you have a process that is institutionalised, it is easy to trigger and implement. People file UDRP claims en masse, which can be viewed as either inefficient, or a predictable process with a predictable outcome, depending

upon your view. People who criticise UDRP decisions often do so in cases of where there is obvious reverse domain name hijacking.

Some participants in the ICANN RPM review working groups want to ensure that UDRP rules do not allow much of reverse domain name hijacking.

If there is one criticism to make of UDRP providers, it's that the decisions are not all consistent in terms of their reasoning from a judicial perspective. If you look at both the World IP Organization or the Alternative Dispute Resolution Forum, there are inconsistent decisions made by the different panellists. This is a fair criticism of these processes, but unfortunately, you see that inconsistencies any administrative or judicial process so there is not much that can be done about it. [IPPro](#)

Timeline and Next Steps

23 Jan - 13 Feb: Discuss TMCH Recommendations

20 Feb - 27 Feb: Discuss Phase 1 Recommendations

27 Mar - 14 Mar: Discuss Draft Initial Report

29 Mar: Publish Initial Report for public comment



"If there is one criticism to make of UDRP providers, it's that the decisions are not all consistent in terms of their reasoning from a judicial perspective"

Statton Hammock
Vice president, global policy & industry development
MarkMonitor

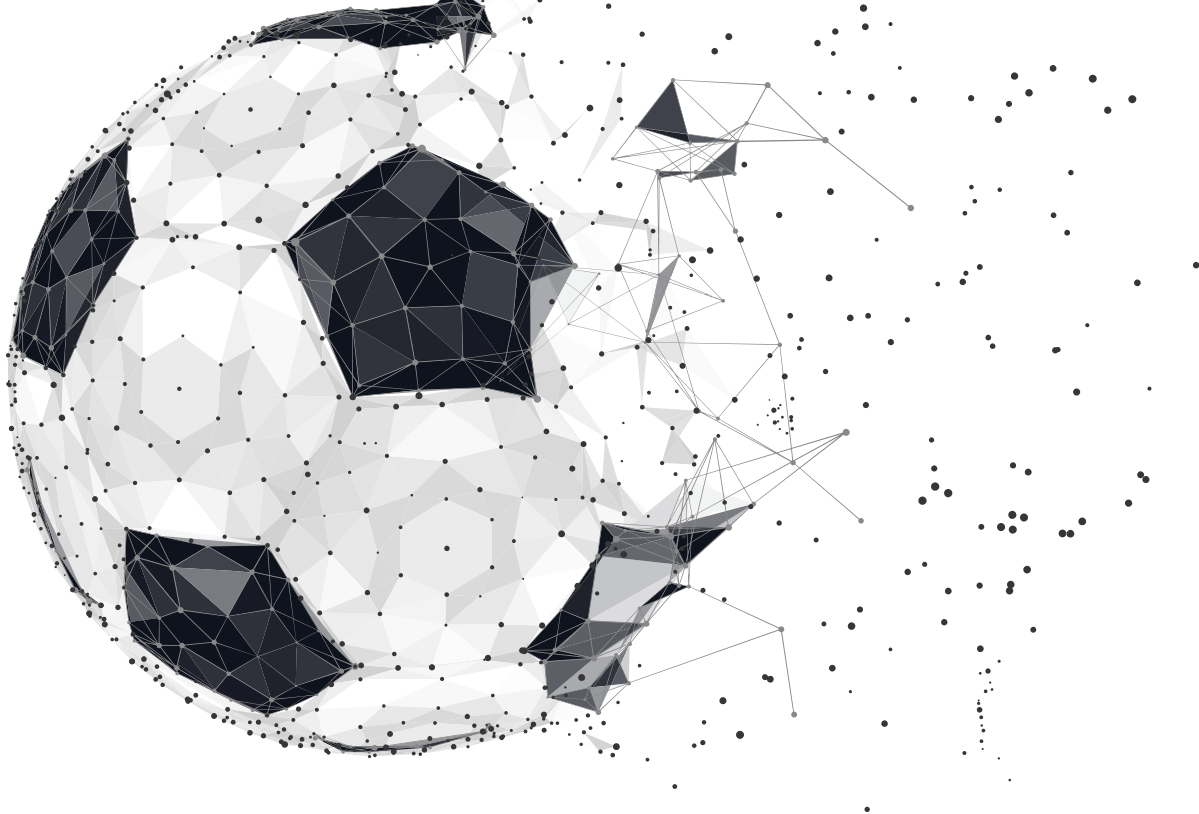
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Solid back four

Based in the home of football, Back Four protects the rights of some of the biggest brands in the game

Ben Wodecki reports

This year will see the Asia Cup, the African Cup of Nations and the final of the inaugural UEFA Nations League all taking place. For brand owners, it'll be another tough year protecting their rights from counterfeiters at such events.

The 2018 World Cup saw fake merchandise seized across the world, with notable seizures taking place in the UK and China. Protecting brands and football fans from the dangers of counterfeits is Back Four, a brand protection firm that keeps the fakers offside. The company, which was formed in 2011, has seized almost 2 million items from almost 9000 cases.

Speaking to IPPro, Ben Houston, director of Back Four Brand Protection, says the firm works closely with football clubs, kit manufacturers, as well as Trading Standards, the Police and Customs. He believes that by coordinating efforts, enforcement can have far more impact.

Despite having an office in the Northwest of England, Houston reveals that the firm works throughout both the UK and the EU, and has partners throughout the world.

"We're not in the office that often", he jokes.

For those unaware, Manchester hosts two of the biggest football clubs in the world—Manchester United and Manchester City. Houston remarks that "it's nice that they're nearer and makes my journeys a bit shorter".

He went on to add that Back Four supports clubs throughout the UK "wherever we're required to support them".

So, what's the most counterfeited product? The replica kit says Houston. The shirts are extremely popular items, and he says that there is a large margin for counterfeiters to exploit.

The UK's number one sports retailer, sportsdirect.com is, at the time of writing selling kits of the aforementioned teams for £46 and £54 (\$58 and \$68) respectively.

Despite such efforts being focused on the kits by counterfeiters, Houston reminds that any type of product can be copied: "You name it, and they'll put a football badge on it."

The quality of some of the counterfeits seen by Houston in the UK "is pretty good", and both increases in technology and globalisation have made it easier for the counterfeiters to replicate "a high-quality standard and distribute and sell fake products", he adds.

As mentioned earlier, 2019 is no exception from the rule of big tournaments taking place.

Regardless of the year though, there will always be big games. Local derbies. Cup finals. Ties against big teams for tiny teams. Houston reminds that although these games can be opportunities for clubs to enhance their commercial revenues, it can also be an opportunity for counterfeiters and brand abuse.

“We do put more effort into protecting a club’s rights, but also the rights of commercial partners associated with those clubs,” says Houston.

“If you take the FA Cup final or even an end-of-season game where a team is going to be crowned as champions, what we’ll normally do is some intense online monitoring and removals of a product associated with that fixture, we’ll try and highlight high profile cases around those fixtures and try and work with trading standards and the police to conduct action so we can remove as many counterfeit products from the marketplace but also send a message out to others considering trading in counterfeit products.”

He adds: “Around match time, we’ll work with the police and trading standards around the ground and town and conduct pre-match seizures of any counterfeit products.”

“We also try to engage and educate fans and encourage them to support their club and invest in an official product.”

For smaller teams in cup finals, like Bradford City or Wigan in 2013, exposure to counterfeit products isn’t something that they would have dealt with before.

Houston reminds that some of these teams may have never been to Wembley, and that “we want to protect that experience for the club and the fans”.

Houston adds that 2018 not only saw a rise in counterfeit products related to the England team but for clubs as well.

He says that Back Four have had a record-breaking season in terms of seizures and activity.

Despite records being smashed, Houston says that the challenge remains the same, adding: “You just have to spend a bit more time during those key events making sure you’re engaging enforcement agencies and customs and training them”.

At the 2018 INTA Annual General Meeting, Anna Guix, in house counsel at FC Barcelona, said that counterfeiters are even

copying the labelling of club shirts so that brands are having to “develop specific labels for security reasons”.

Houston observes that kit manufacturers like Nike, Adidas, or Puma will spend heavily on security devices in products to try to stay ahead of the counterfeiters.

However, in his experience, Houston says that security devices are not necessarily a necessity when it comes to identifying counterfeit products from genuine.

He says that most of the fake products are “easily determined to be counterfeit—counterfeiters make mistakes and cut corners, so it’s normally relatively simple to identify the fake product”.

He added: “Also, I’m not sure fans are using security to identify whether a product is counterfeit. I’m not sure if fans consider whether a product is counterfeit, or are bothered. I think many are looking at a discounted price or a quick purchase to show their support/allegiance for their team, rather than considering if this product is official and has it really originated from the Club. You can buy a fake football club shirt for around £15, compare that to real ones—it’s a massive difference.”

Despite strong efforts, Houston warns that clubs need to look to invest in intellectual property a lot more. He said that some clubs don’t have the IP in place to defend their brand.

“Football is growing in China and counterfeiting is prevalent in this market, so Clubs need to consider protection here. We strongly encourage those clubs to look at those markets where they’re looking to expand commercially and where they have fanbases in counterfeit markets like China, etc.”

He highlights that the customs recordal is “probably the most cost-effective way of dealing with large quantities of counterfeit products”.

“You can register your rights, be it in China, Turkey or the EU which means customs will look to identify and seize counterfeit products and remove very large quantities of fake merchandise before it even hits the marketplace.”

Houston’s final piece of advice is to look to engage and educate enforcement agencies, “be it Trading Standards, customs or police”.

He said: “They tend to be very proactive in terms of protecting rights holders but they do rely on brands reaching out to them and supporting them. If you’re not willing to do that, I don’t think you can expect them to support your efforts with all the other brands in the world and cuts to budgets/resources.” [IPPro](https://www.ippromagazine.com)



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