

Traversing the evolving trademark landscape: discover trends, challenges and opportunities through the lens of IP intelligence – an interview with Robert Reading

Robert Reading, Head of Content Strategy for IP at Clarivate, answers questions about the recent report, expressing the trends in filing, the impact of technological development, and the most shocking finding.

Robert Reading is Head of Content Strategy for IP at Clarivate and has a special interest in using trademark data and analytics to provide insight into global commercial activity and trends. Robert writes extensively on trends in the trademark and brand space and features regularly in the IP press as an expert on trademark data. Originally from Australia, he studied mathematics and

physics at the University of Sydney before moving to the UK in 1999, and worked for a leading UK IP firm for 15 years before joining Clarivate.

Can you explain why you think it is important to track trends and why you think the findings of the report are valuable to the IP community?

Using trademark application data to identify and track trends is valuable in a number of ways. At

a high level, trademark filing activity is an indicator of commercial confidence for an entire economy. In times of economic growth businesses invest in new products and brands; during economic downturns investment is put on hold and trademark activity falls. Trademark data is available in real time, unlike other economic indicators such as GDP which take time to compile, and can be used to analyse specific industry sectors (using Nice Class data) and geographies (using register and applicant data). Changes in trademark filing activity also help the IP community to plan. Intellectual Property offices around the world have been recruiting examiners as demand (and examination delays) reach record levels. IP attorneys can use trademark filing trends to identify opportunities, such as sectors and markets that are expanding. Often it isn't enough to identify a trend, it's just as important to track it. By tracking trends, it is also possible to understand timing – 2021 was a record year for new applications, but all of the growth took place in the first half of the year and the second half of the year showed clear signs of decline, which suggests that 2022 is unlikely to be a record year. The same applies to trademarks covering non-fungible tokens (NFTs) – early adopters might wish to identify a trend as soon as possible but the majority of brand owners prefer to understand a trend before making a commitment. Sometimes something that looks like a permanent change may simply be a short-term upswing or downswing that quickly returns to normal levels.

What advice would you give the IP community for handling the rapid evolution of technology?

Obtaining brand protection for new technologies can be a challenge for trademark attorneys – it



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can be daunting when faced with the task of protecting a product or service of a technical nature that is new or not easy to categorise. Non fungible tokens are a good example – even if we feel that we have some understanding of what an NFT is, it can be difficult to decide which classes to cover and what precise language to use when drafting a trademark application. Trademark offices often issue guidance on classification and language for innovative products/services, and trademark data can be a useful source of information – what has been used successfully in the past should work in the future.

What element of the report showed the most growth? Was this growth in line with your expectations?

The growth we saw at the UKIPO in 2021 was spectacular. The number of applications being filed at the UK trademark registry had already doubled between the “Brexit” referendum in June 2016 and the end of the transition period in December 2020, but the growth in 2021 – nearly 40% – is almost unprecedented for a major trademark register. Mainland China saw an annual growth in filing volume of nearly 60% in 2017, but that was driven by a 50% reduction in official fees. 2021 was a “perfect storm” for the UKIPO: for the first time since 1996 an EUTM no longer provided protection in the UK, so a separate UK trademark application needed to be filed; there was a nine-month window that closed in September for owners of around 70,000 pending EUTM applications to file a linked UK application; and the UK economy was rebounding after COVID-19 related dislocation in 2020. The first two factors were known in

advance, so we expected 2021 to be a record year for trademark filing activity at the UKIPO, but the third factor – the economic “bounce” – was not predicted. The filing rate we saw in 2021 – particularly in the first quarter – was significantly higher than expected.

Why do you think the filing rate at the USPTO fell throughout the year?

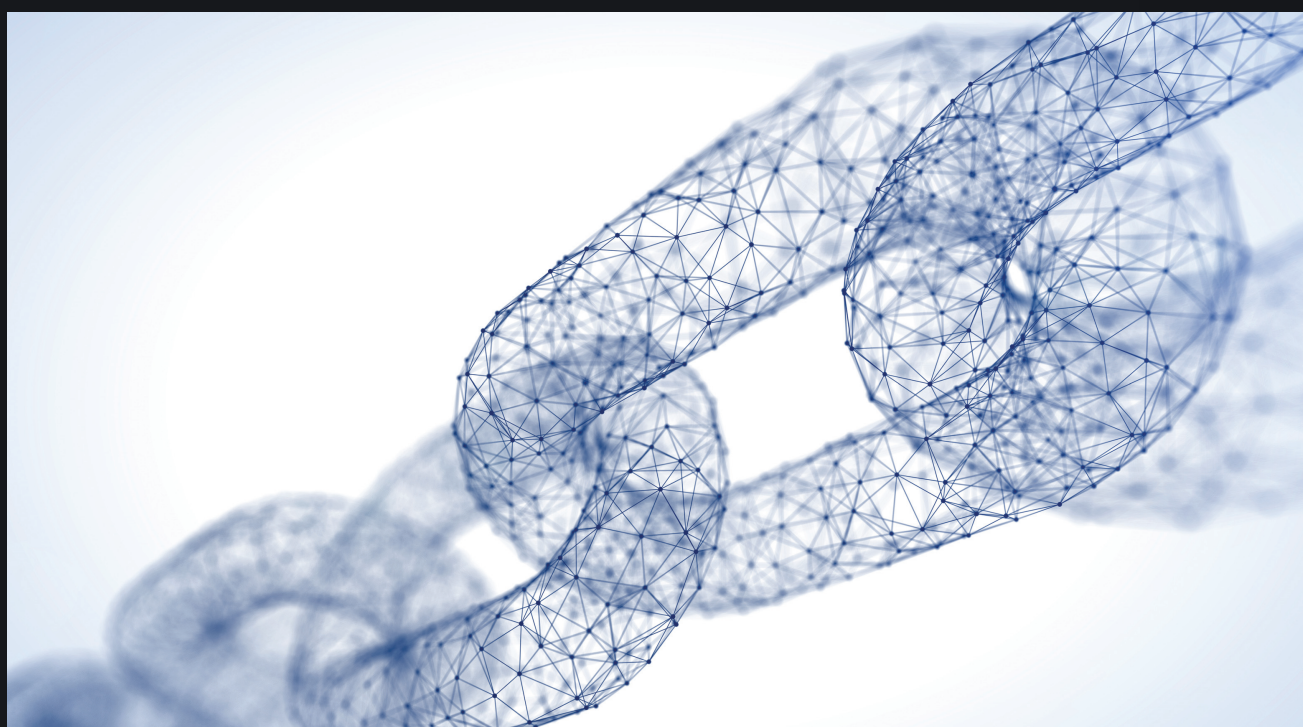
2021 was a year with two very different halves for trademark application volume at the USPTO. The first half of 2021 saw high levels of filing followed by a slow and steady fall in filing volume in the second half of the year. To understand this rise and fall, it's necessary to look at what took place in 2020. Brand creation in 2020 was stifled in the first half of the year due to the economic impact of COVID-19 which hit investment confidence and caused dislocation as businesses were temporarily closed by lockdowns. The second half of 2020 saw businesses respond to new opportunities – entire new sectors sprang into life overnight (sanitizers, face masks) that needed new brands, and the huge shift from bricks and mortar stores to online retail led to an explosion of new brands for items that were in high demand on online platforms (home goods, clothing, entertainment, sports equipment, toys). This explosion carried over into 2021, but by April it appears that with the “new normal” becoming settled and no new government support measures there were fewer opportunities for investment in new brands. The trademark filing rate started falling as a result.

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Although the trademark filing rate fell in the second half of 2021, it was still above historic levels from previous years.

Based on the report's findings, do you think NFTs are threatening IP as we know it? How and why?

NFTs have the potential to use IP to solve some of their current weaknesses. Because the blockchain that forms the foundation of an NFT is a history of transactions and information that is added to rather than overwritten, it contains a history of each NFT. To overcome counterfeiting issues, IP ownership details and verification could be embedded into the blockchain of an NFT so that it carries its own “certificate of authentication”. Blockchain itself has the potential to be disruptive in the IP space. The current wave of trademark applications covering NFTs and metaverse-related products and services could cause capacity issues at trademark registers – if every physical brand filed an application for a virtual counterpart, IP offices would be overwhelmed. (Filing data from May 2022 suggests that NFT/Metaverse applications may already have peaked at the USPTO.) Blockchain also has potential uses for recording IP itself – a trademark record contains various fields of information (owner, etc.), time history (e.g., status changes), and other information (e.g., licenses, security interests). This information could be stored using blockchain and may involve moving away from central or country-specific registers.



Why is trademarking uniqueness more critical than ever?

Trademark registers are becoming more crowded every single month. The USPTO receives around 50,000 new applications each month, and around the world approximately one million new applications are filed every four weeks. Although some applications will fail and older brands are regularly removed from registers due to inactivity, over 600,000 new brands were added to the US trademark register in 2021, and the register now contains nearly four million active brands. Globally this figure exceeds 80 million, with over 10 million additions in 2021. It's never been harder to stand out from the crowd, and it's never been more important to have a brand that is recognizable against a background of increasing competition.

What aspect of the report shocked you the most and why?

The biggest surprise for me when we analysed the data from 2021 was the position in Mainland China. Trademark filing volume in Mainland China is on a scale unlike any other register – around 70% of the trademarks filed globally in recent years have been filed in Mainland China. The USPTO is the second most active trademark register in the world and currently receives over 600,000 applications a year – Mainland China receives over 9.4 million applications a year. That's more in one month than the USPTO receives in a year, and more in one week than the UKIPO or EUIPO (Top 10 registers) receive annually. Filing volume has been growing at an average of 30% per year in Mainland China since 2015, however in 2021 there was virtually no growth at all. There may be a number of reasons behind this – a maturing/saturated brand space, changes in government policy that influence trademark filing activity, or more ominously a downturn in economic confidence and opportunities in Mainland China. Trademarks could be the "canary in the mine" signaling that after a decade of unprecedented economic growth, Mainland China may be experiencing headwinds that could impact the global economy.

What future technology are you most looking forward to becoming mainstream?

Much of the attention given to the idea of "metaverses" (the internet in 3-D) has been on virtual worlds, but I'm excited by the thought that it may make the real world far more accessible. As computer power and virtual reality algorithms improve (a vital step if we are truly going to immerse ourselves online), I would love to be able to travel the world and visit real places whenever I choose, without the expense and hassle of physical travel (though I will always have a passion for actual travel).

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NFT

Being able to visit landmarks and famous places, even entire cities would be remarkable, especially where there are access or crowding issues in the real world. This recent video on Youtube showing a train station in Japan shows the possibilities (<https://www.youtube.com/watch?v=2paNFw1wRs>) – the images are entirely computer generated but appear lifelike. Imagine being able to explore the Sistine Chapel or the Taj Mahal without crowds, or visit a landscape or a place lost to history (e.g. the original Penn Station in Manhattan, or London's Crystal Palace) and feel that you are actually there!

For more insights on the latest trademark trends, read the full Clarivate report:

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Contact

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