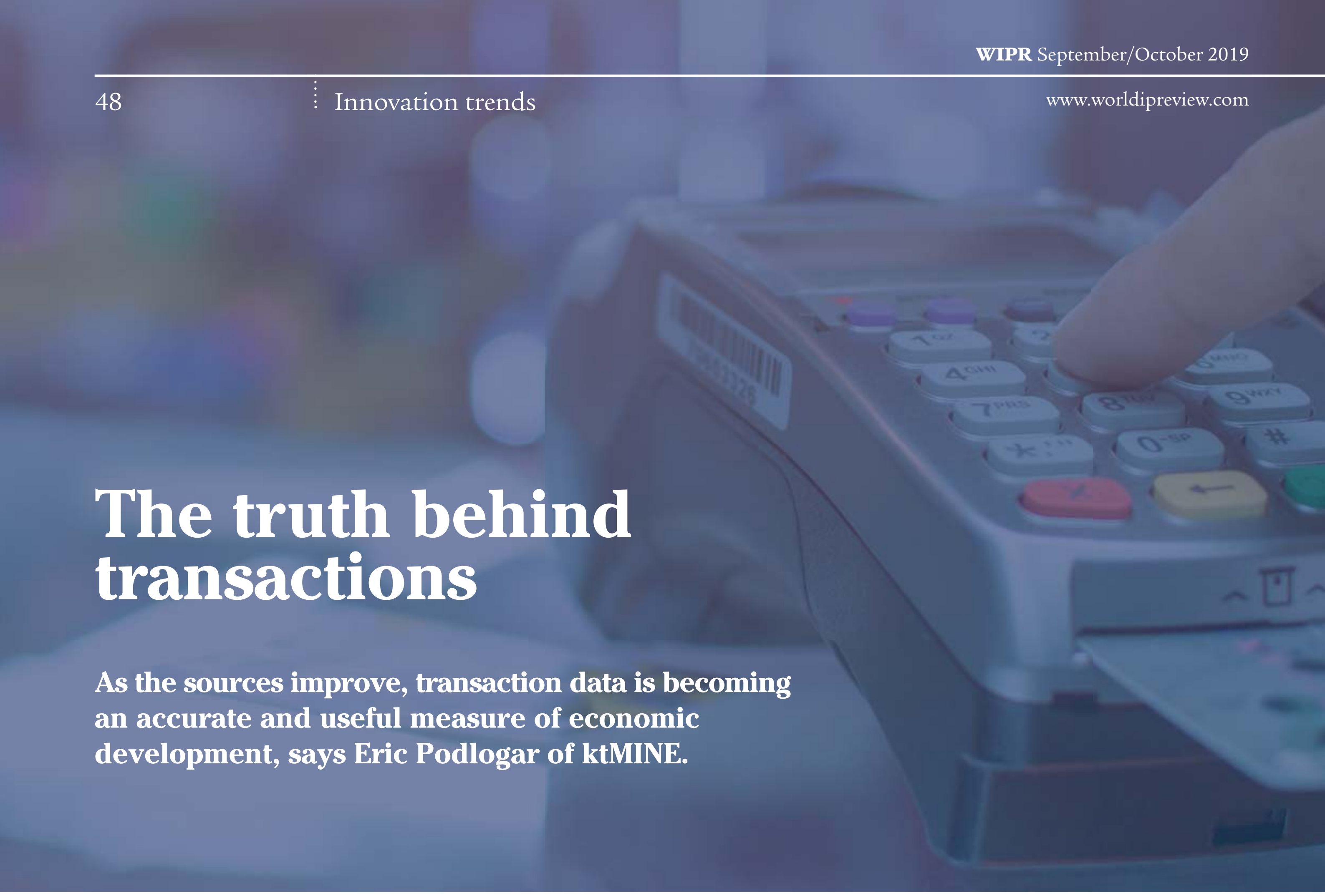


The truth behind transactions

As the sources improve, transaction data is becoming an accurate and useful measure of economic development, says Eric Podlogar of ktMINE.

As global economic and market activity continue to evolve, we pause to provide perspective on how these activities intersect with innovation. Market leaders develop reputations as innovation hotbeds predicated on volume-based patent filing strategies.

There are many ways to take advantage of emerging technologies outside of owning massive patent portfolios. Given the various economic entanglements from tariffs, trade disputes, antitrust claims and more, entities are exploring new ways to access new technologies to enrich business models.

IP and patents are transacting

Entities are continuously adjusting how they conduct business to offset global economic effects and legal disruptions. Borders no longer confine technologies to a particular location. Innovation enables activity to flow from one territory to another.

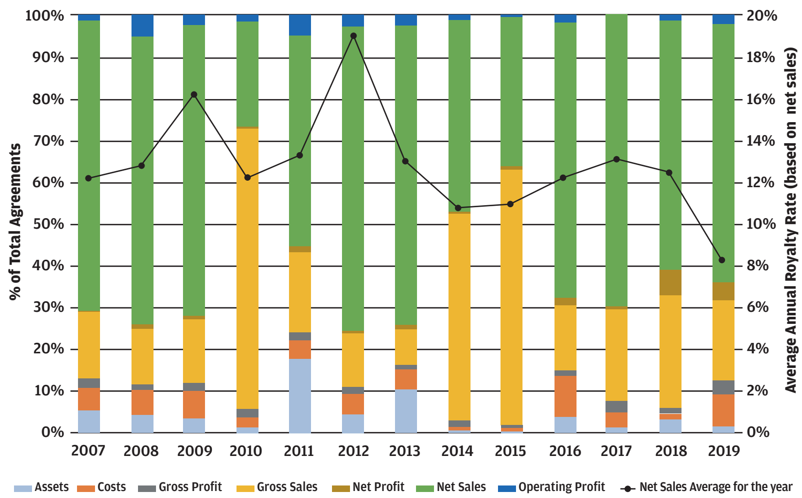
Transaction data provides insights to pinpoint active industries and territories. The different types of agreements filed show the unique interactions, and the different bases used to calculate royalty rates (Figure 1) offer alternative "scales" to derive valuations. These factors identify the degrees of freedom from which engagements can be tailored or customised.

Agreement activity for each base provides a broad perspective on year-on-year changes. Since net sales is the most commonly used basis, it is an indicator for royalty rate trends. The net sales average royalty rate declined from the 2013 to 2018 plateau. There may be impacts from localised factors, but industry and sector-specific trends rely more on global factors, such as international trade events.

Royalty rates based on sales are used perhaps because they are easy numbers to understand, obtain, and audit against. However, since 2018, there has been an uptick in agreements employing alternative bases for the calculation of royalty rates. The different profit bases (gross, net, and operating) and costs are enjoying a modest increase in usage.

As trade becomes less predictable, entities become conservative and aim to protect business interests. Such a dramatic decline in rates indicates entities are beyond "strategic stabilisation" and looking to shore up day-to-day business operations. Tolerance for risk becomes more expensive with trends indicating a tradeoff between lower royalty rates or no transaction at all.

Figure 1: Royalty rate bases; average annual combined royalty rate



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In some cases, the operational structure may have significant expenses the organisation may not be able to front or offset (think startups), so these are built into royalty rates based on costs. Costs serve as a benchmark to establish transactional value, and so far in 2019, those agreements involving costs as the basis are strong.

Information sources

Naturally, some discipline is warranted considering each agreement, industry, and party is unique (Figure 2). The selection of a base depends on the business objectives and operations. Timing is also an issue, as is the availability of information, desire to protect certain information, and the type of agreement employed.

Public sources including the US Securities and Exchange Commission; Canadian System for Electronic Document Analysis and Retrieval; US Patent and Trademark Office; World Intellectual Property Office; European Patent Office; and the Hong Kong Exchange offer comprehensiveness and transparency potentially not found in blended averages. Full-text executed agreements also provide the context behind a transaction that is not available from surveys.

According to our sources, activity in business services has risen by more than 50% since 2016. The US Tax Cuts and Jobs Act of 2017 impacted the increased necessity of accountants, legal services, IT, and telecom services reacting to changes in the code. The financial services industry seems to mirror business services, keeping these two in lock step.

In contrast, entities operating in consumer industries are witnessing a degradation in activity, with the decline in consumer services being the most pronounced. Considering that, according to the Organisation for Economic Co-operation and Development, consumer confidence has been steadily increasing since 2016, one might expect activity in the consumer sectors to follow that trend.

Perhaps the activity in these sectors are lagging the index, and a rebound can be expected. That said, one cannot ignore the alternative possibility that the declining trends may be foretelling of future market volatility.

The healthcare industries also show strength in activity since 2016. In contrast, biotechnology is experiencing weakness, however, there is interest on Capitol Hill which may result in revisiting section 101 limitations hampering this industry (ie, the STRONGER Patents Act). Additionally, the January acquisition of Celgene by Bristol-Myers Squibb highlights how the paths of pharmaceuticals and biotechnology sectors appear to be converging.

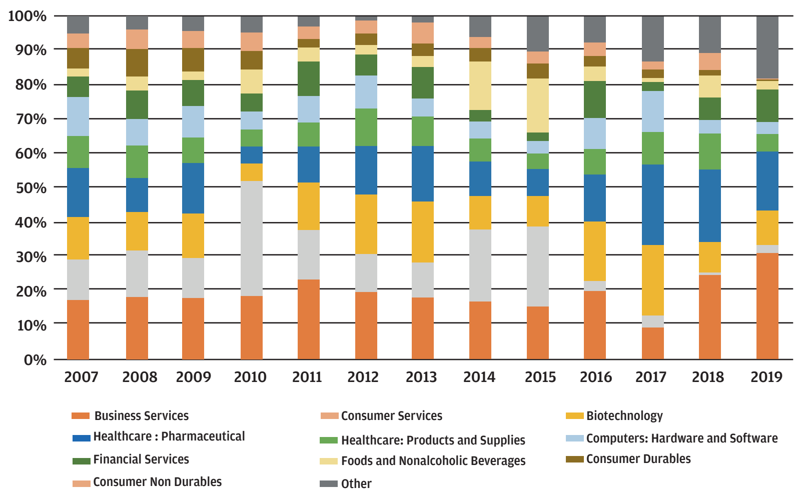
High-tech industries such as computing are becoming less active, perhaps indicating this sector is settling down to a predictable level. This may change as various government agencies across the world continue to pursue antitrust efforts (such as those against Google, Qualcomm, Broadcom, and Amazon), which will disrupt the status quo; and recent growth in the ‘other’ industries may suggest innovation is not only concentrated in select areas like high-tech or computing.

New industries

Innovations are sprouting across diverse sectors. With technologies and innovations such as artificial intelligence, internet-of-things (IoT), blockchain, and additive manufacturing being applied across multiple industries—from healthcare-to-financial—involving businesses and consumers alike, one must ask, where will transformative technologies and innovations come from? Which new industries will develop?

> “Countries such as China are giving way to alternative territories once considered challenging to operate in. Now, more than ever, IP is truly a global phenomenon.”

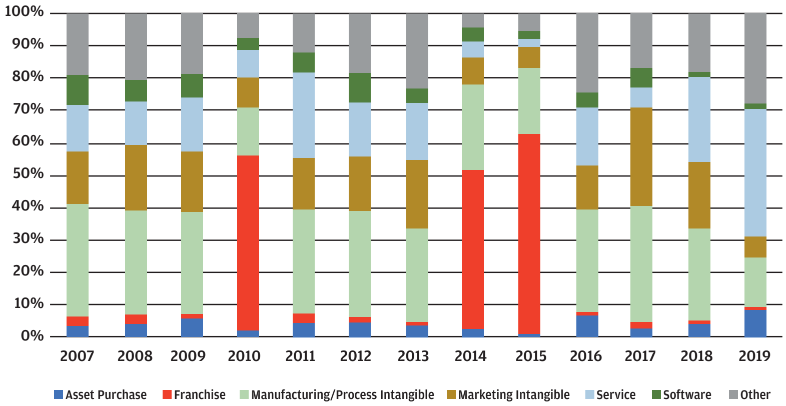
Figure 2: Top transacting industries



These types of agreements are a reflection of industry areas experiencing activity. Strong service agreement numbers (Figure 3) echo increased activity in business service industries from Figure 2. Conversely, marketing intangibles (including trademarks, trade dress, and service marks) declined after a strong 2017, and may reflect declining consumer service segments.

'Other' agreement types also grew, indicating entities are exploring new engagement types to satisfy unique business situations. Software agreement types (software products, source code, or object code) show a decrease in activity, which reflects close ties with consumer elements.

Figure 3: Agreement types from 2007 to 2009



Note: "Other" includes Cross Licenses, Distribution, Joint Development and other agreement types

Figure 4: Activity levels by region

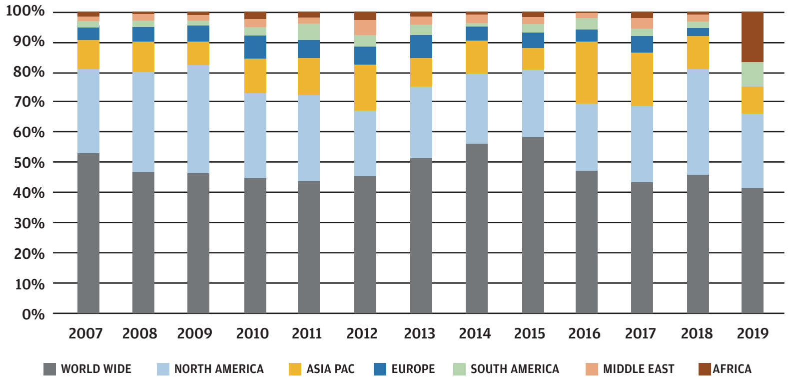
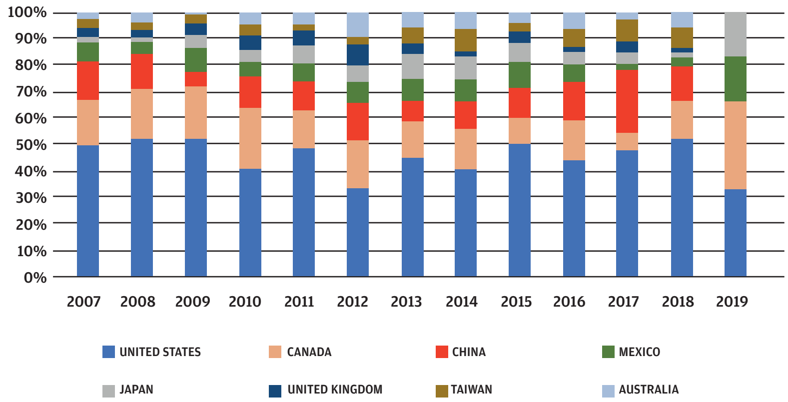


Figure 5: Transaction activity levels by top countries



Finding a way

There are multiple ways to secure a transaction. Often, entities will avoid being shut out of a particular technology, by considering alternatives. If a patent acquisition or licence agreement is unattainable, perhaps a joint venture or a partnership might work.

Activity levels for each region varies (Figure 4) with only minor year-on-year fluctuations. South America and Africa are experiencing dramatic increases in activity, whereas Europe and Asia-Pacific appear to be declining. At a broader level, worldwide activity seems to have cooled. While there are many theories explaining the dynamic economies, it is clear that IP is shifting into new territories.

China experienced an increase in 2017, but since then, activity has been declining (Figure 5). On the other side of the spectrum, Mexico and Canada remain active and trending upward despite potential setbacks associated with the publicised conflicts over tariffs and the renegotiated (but as yet unratified) US-Mexico-Canada Free Trade Agreement (USMCA). Together with the US, Mexico and Canada have offset declining activity from other territories. Like the regional data, the country-level activity appears to be a reflection of an active economic cycle.

A global currency

Territories that have traditionally seen economic and transactional activity are shifting. Considering the various factors at play, countries such as China are giving way to alternative territories once considered challenging to operate in. Now, more than ever, IP is truly a global phenomenon.

Summary

Identifying market insights is key to remaining competitive in the market.

With its unique combination of intelligence factors, including bases, transacting industries, agreement types, and territories, transaction data is evolving into a more predictable indicator of economic activity, one that allows business leadership to have more confidence in their selected strategies.

Thanks to Ariel Greenway for her help in bringing this article together.

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