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## Slowly and quietly, Shopify's patent strategy is evolving

Shopify, known as Canada's tech darling, is riding a wave of success. The company's latest [quarterly earnings](#) revealed sales growth of 47% to \$505.2 million. Its stock has risen over 70% since November and is up by [more than 190%](#) since the beginning of 2019. This means that, with a market cap of \$53 billion, it is [now more valuable](#) than Twitter, Square, Spotify and eBay. It is similarly experiencing impressive gains within the domestic market, inching closer to surpassing Canadian mainstays Scotiabank and CN Rail (see graph below).

### Getting Close

Shopify's market cap inches closer to Scotiabank and CN Rail



Source: [Bloomberg](#)

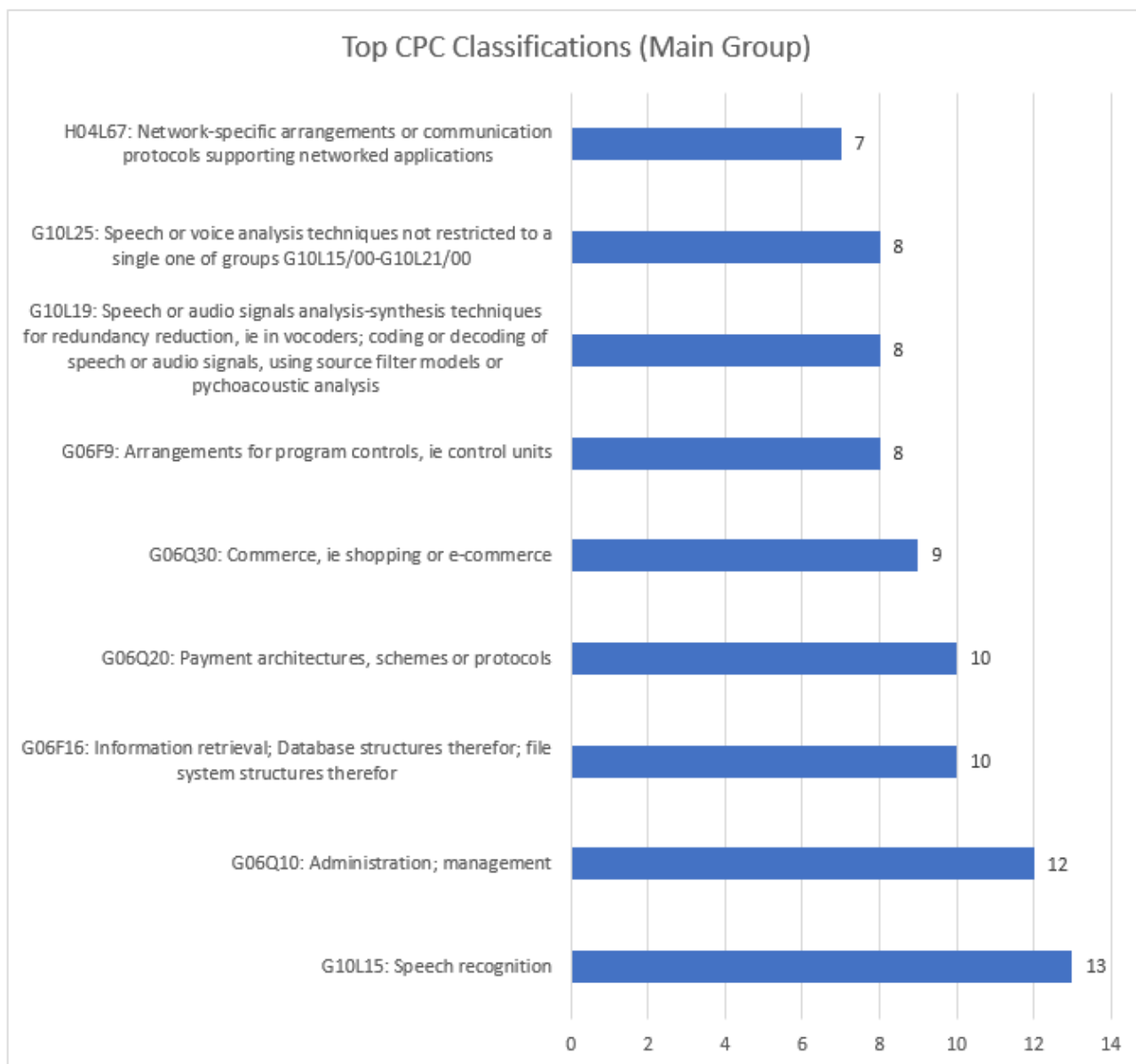
Shopify has acknowledged the high risk of patent litigation it faces since the publication of its first [annual report](#) in 2015. Further, it has consistently stated that the likelihood of becoming a target would increase as the business grows and gains greater visibility in the market. Still, from 2016 to 2018 the company reported no patent holdings. Only in its [2019 Annual Report](#) did it mention having "a small number of issued patents".

According to an [article by The Logic](#): "Shopify traditionally hasn't bothered patenting its intellectual property – but it seems to be changing its strategy". Putting aside the fact that there is no intellectual property until it is created, the patents the company has generated internally relate to cloud, package processing and retail sensor technology. Analysis conducted on [Anaqua's AcclaimIP Analytics Software](#) shows that four patents, with Shopify Inc listed as the original assignee, have been filed for in the US.

However, these are not the only patents in the portfolio. A search for active patents shows that Shopify owns 52 assets and that 48 of these were assigned to the company from various AT&T divisions. The

average age (by publication date) of the portfolio derived from the American telecom giant is 5.15 years and each patent is a USPTO grant.

The patents read on a number of technologies, but generally fall under CPC codes G06 (computing; calculating; counting) and G10 (musical instruments; acoustics) (see graph below).



Source: Anaqua's AcclaimIP

Shopify also purchased [6 River Systems](#), a warehouse robotics start-up, for \$450 million in September 2019. This acquisition, as well as a [\\$1 billion five-year investment in facilities](#), is [meant to boost](#) the company's logistics and fulfilment network, an area where Amazon is a clear leader.

There are 10 patents in the 6 River Systems portfolio, with an average age by publication date of 1.9 years. Unsurprisingly these assets relate to CPC codes B65G1 (storing articles, individually or in orderly arrangement, in warehouses or magazines) and G06Q10 (administration; management).

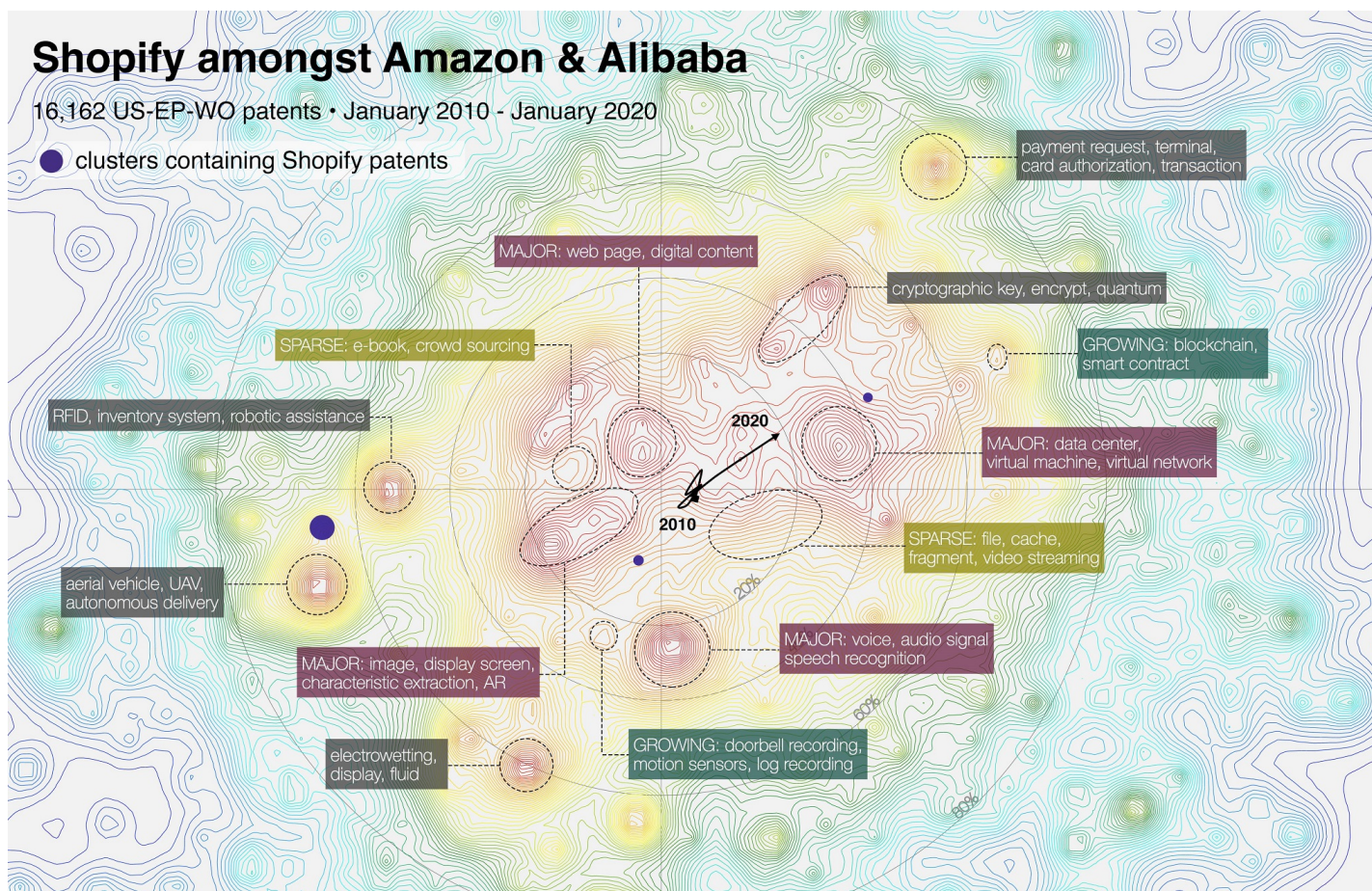
### Shopify v Amazon and Alibaba

CEO of Shopify Tobias Lütke [says](#) that he does not consider Amazon to be a rival, but others suggest that the Canadian tech darling is becoming a potential challenger to the global e-commerce giant. Indeed, [Shopify now boasts over](#) one million retail partners and is the second largest e-commerce platform in the US. But, when it comes to patents, the company is way behind the pack. Amazon possesses 16,724 active patents. Approximately 82% of its assets are protected in the US and 4.5% in China, while another 4.5% have been filed via the EPO.

Amazon was founded in 1994, 10 years before Shopify and its patent activity has been on a steady upward trajectory since 2012. As [we discussed in our deep-dive of the e-commerce giant's portfolio](#), its focus in recent years has been on cloud computing and AI, with areas like financial payment architectures less prominent. Cloud computing is a critical part of e-commerce and in the coming years [automation/AI](#) will play an increasingly important role. Further, Amazon and Alibaba [are both investing in](#) building tech-enabled bricks and mortar stores, which will incorporate technologies such as AR/VR, as well as AI.

Alibaba, like Amazon, has spent a considerable amount of time and money on building its patent portfolio. Its holdings now include 24,498 active patents, according to Anaqua's AcclaimIP. It has a relatively diverse portfolio considering it is a Chinese company, with 64% of its assets protected in China and 9% in Taiwan. It has also filed applications via WIPO and the EPO.

The two e-commerce giants have significant overlap in their portfolios. The pair are moving away from contents and hardware toward software, such as VM, networks and blockchain, say analysts from [Valuenex](#) (see graph below). Shopify's holdings are dwarfed by its rivals, but notably the Canadian company's patents cover strategically important points on the radar.



*Source: Valuenex; Applications and granted patents of Amazon, Alibaba and Shopify were analysed. The data was pulled from the Derwent World Patent Index, and only covers US, EP & WO patents. The search was limited to 1 January 2010 to 31 January 2020. See full size image [here](#).*

It is not just Amazon and Alibaba that Shopify is competing with. Because it provides point-of-sale services in physical stores it also [comes up against](#) San Francisco's Square. The financial services company, which went public in the same year as Shopify (2015), possesses 786 active patents. Its assets relate mostly to payment architectures and schemes or protocols, and 80% of its portfolio is protected in the US.

Having a robust patent portfolio is, of course, not the best or most suitable strategy for every company. Shopify undoubtedly uses copyright and trade secrets to protect its innovations, but the more money and exposure it gains the more likely it is to become a litigation target.

Since 2016 it has appeared as a defendant [seven times in US district court litigation](#), according to [Unified Patents](#). Each case was brought forward by a patent assertion entity or NPE (individual). Shopify

has even become more active at the PTAB, filing [14 petitions against NPEs](#) since May 2018. In each of these instances it acted alongside other companies such as Stripe and PayPal.

Of course, patent creation and acquisition will not protect Shopify from NPE suits, but where they lead operating companies may later follow – especially as the Canadian business grows and becomes a greater commercial threat.

***IAM says:***

*Shopify's seemingly reserved approach to IP is not uncommon within the Canadian market. An [article published by the Financial Post](#) in December 2018 highlighted the fact that out of 152 countries, Canada came in last for filing patents via WIPO.*

*Of course, patents are not always necessary for businesses - they are a strategic choice. But it is worth [noting that several studies](#), such as a 2018 report from the Council of Canadian Academies, have shown that Canada is on par with other countries in its capacity to invent, but lags behind when it comes to innovation output.*

*The e-commerce industry is already high-tech in nature. This will intensify as blockchain, AI and the Internet of Things become integrated into its products and processes. Should Shopify move into these spaces, it will not only be exposed to current competitors, but also patent giants like Microsoft, IBM and Alphabet.*

*This week's data indicates that the Canadian e-commerce company is beginning to focus more intently on its portfolio and we may see its holdings significantly increase in the coming years. On the other hand, a continuing reliance on copyright and trade secret protection may leave it vulnerable. All investors can ask is that Shopify makes its IP choices with its eyes open as to the consequences.*