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PATENT & TRADEMARK POLICY REPORT DECEMBER 1, 2017



I. Congressional Developments:

- Senator Health & Human Services (HHS) Secretary nominee Alex Azar fielded a number of questions about drug pricing during his confirmation hearing before the Senate Committee on Health, Education, Labor, and Pensions (HELP) on Wednesday. Azar told the committee that he would work to lower drug prices largely through efforts to increase competition. Committee Chairman Lamar Alexander (R-TN) also said that he plans to hold a hearing about drug prices on December 12. Read more [here](#).
- This week, Rep. John Conyers (D-MI) [announced](#) he is stepping down from his position as Ranking Member of the House Judiciary Committee amid a congressional investigation into sexual harassment and workplace abuse allegations by his former staffers. Rep. Conyers denies the allegations. On Wednesday, it was [announced](#) that Rep. Jerry Nadler (D-NY) would replace Conyers as the top ranking Democrat on the committee.
- On Wednesday, the Senate Judiciary Committee held a hearing to consider various presidential nominations, including Andrei Iancu for Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. During the question and answer portion of the hearing, senators asked Mr. Iancu about numerous intellectual property concerns, including the recent Supreme Court case on eligible patent subject matter, the potential abusive litigation of “patent trolls,” and the role of the USPTO Director on the Patent Trial and Appeal Board (PTAB). Watch the hearing [here](#).
- *The Intercept* has published a profile of Rep. Zoe Lofgren (D-CA) following her [stated](#) interest in succeeding Rep. John

Headlines and Highlights:

- ACTION for Trade sends letter to USTR Lighthizer urging him to include strong IP protections in renegotiated NAFTA.
- Rep. Conyers steps down as House Judiciary ranking member, Rep. Nadler assumes the vacant slot.
- Senate Judiciary Committee holds nomination hearing for USPTO Director nominee Andrei Iancu.
- David Malpass, Undersecretary for International Affairs at Dept. of Treasury, says “multilateralism has gone too far.”
- House Subcommittee on Europe to hold hearing titled “Brexit Negotiation Update” on Wednesday.
- Supreme Court heard oral arguments in *Oil States* and *SAS* cases on Monday.

Conyers' (D-MI) as Judiciary Committee ranking member. The article notes Lofgren's affinity with large technology companies like Google, and contends that "Lofgren's brand of Silicon Valley politics is now past its expiration date, her once virtuous alliance with the forces of progress and innovation curdling into a protection racket for increasingly unpopular monopolies." Read more [here](#).

- On Wednesday, December 6th at 2 p.m. the House Foreign Affairs Subcommittee on Europe, Eurasia and Emerging Threats will hold a hearing titled "Brexit Negotiation Update."

II. Administration Updates:

- On Thursday, Canada's Ambassador to the U.S. David MacNaughton called the Trump Administration's approach to NAFTA negotiations—which the U.S. initially said would be a "win, win, win"—as more akin to a "take, take, take." "If what is happening here is the negotiation is all about how do we increase production in the United States—whether it be in autos or anywhere else—at the expense of Canada and Mexico, this is not going to end well," MacNaughton told *POLITICO*. U.S. Trade Representative Robert Lighthizer responded by calling MacNaughton's comments "so obviously to be inaccurate" and "counterproductive." Read more [here](#).
- On Thursday, David Malpass, the U.S. Undersecretary for International Affairs at the U.S. Department of the Treasury [delivered a speech](#) at the Council on Foreign Relations where he discussed global economic growth and the Trump administration's economic agenda. Malpass was critical of multilateral trade deals, saying "multilateralism has gone substantially too far, to the point where it is hurting U.S. and global growth." Malpass expressed optimism when asked about the prospects for a success renegotiation of NAFTA. "As you maintain and update an agreement, it can get better for all parties," Malpass said.

III. USPTO Updates:

- The USPTO has increased the EPO international search fee from \$2,099 to \$2,338. Read more [here](#).
- The USPTO has issued a final rule incorporating classification changes adopted by the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. Read the Federal Register notice [here](#).

IV. Judicial Updates:

- The Supreme Court heard oral arguments in the *Oil States* and *SAS* cases on Monday. With regard to *Oil States*, the *Washington Post*'s Robert Barnes [notes](#) that the outcome is "difficult to predict," given that "both perspectives were vigorously represented" by the justices. As for *SAS*, *SCOTUSblog*'s Ronald Mann [writes](#) that the justices seemed "even less settled on how to move forward."
- Qualcomm has filed three patent infringement lawsuits against Apple regarding Qualcomm's patents on technology to increase bandwidth, save power, and enhance photos in phones, among other technology. Earlier this week, Apple filed a suit against Qualcomm alleging infringement of eight smartphone patents. Read more [here](#).

V. International Updates:

- The European Commission [issued](#) on Wednesday guidance and recommendations “for a balanced and efficient [Standard Essential Patent (SEP)] system where two objectives are reconciled: product manufacturers can access technologies under transparent and predictable licensing rules; and at the same time patent-holders are rewarded for their investment in R&D and standardization activities.” Read more [here](#) and [here](#).
- Patent licensing consortium Avanci has signed a licensing agreement with BMW Group, “providing them access to the essential wireless technology of many different telecommunication and patent holding companies.” Read more [here](#).

VI. Industry Updates:

- Former Senator Jon Kyl (R-AZ) has written an op-ed in *The Hill* warning that the U.S. patent system is “in decline,” having fallen to tenth place on the U.S. Chamber of Commerce’s International IP index. Kyl expresses support for the *STONGER Patents Act*, which “would begin to reverse the anti-patent movement in the United States.” Read more [here](#).
- The National Academy of Sciences has released a report calling for a number of measures to lower drug prices. The *New York Times* notes that the report “does not endorse price controls, saying they could erode incentives for the development of valuable new drugs.” Instead, the Academy recommends that the government act to promote competition and prevent industry practices that delay the entry of generic drugs to the market. The report also states that Congress should allow Medicare to negotiate prices with drug companies, among a number of other recommendations. Read more [here](#).
- On Thursday, the ACTION for Trade coalition sent a letter to U.S. Trade Representative (USTR) Robert Lighthizer urging him to work to include strong intellectual property protections in a renegotiated North American Free Trade Agreement (NAFTA). The coalition is asking Lighthizer to avoid “overly broad” safe harbor provisions “that enable some Internet companies to profit from pirated content.” ACTION for Trade members include BIO, the International Anti-Counterfeiting Coalition and RELX Group, among others. Read more [here](#).