



AMERICAN CONTINENTAL GROUP

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## PATENT & TRADEMARK POLICY REPORT NOVEMBER 10, 2017



### I. Congressional Developments:

- On Wednesday, November 8<sup>th</sup> from 12:30 p.m. to 3:00 p.m. the Open Markets Institute—now independent from New America—held an event titled “[Are Tech Giants Too Big for America’s Democracy?](#)” The event featured keynote remarks from Senator Al Franken (D-MN)—Ranking Member of the Senate Judiciary Privacy, Technology and the Law Subcommittee as well as a member of the Antitrust, Competition Policy, and Consumer Rights Subcommittee. In his wide-ranging speech, Franken was highly critical of U.S. tech giants, specifically Amazon, Google, and Facebook, saying that they are too powerful and have the ability to “decide for us what we should read, watch, buy or even how we should engage in civil society, and they’re doing it all under the shadow of complicated algorithms.”
- On Wednesday, Senators John Cornyn (R-TX), Richard Burr (R-NC), and Dianne Feinstein (D-CA) [introduced](#) legislation to “strengthen” the merger review capacity of the Committee on Foreign Investment in the United States (CFIUS). *Bloomberg* reports that the bill “expand[s] investigations by CFIUS to include minority investments in critical technology or critical infrastructure and joint ventures where technology companies contribute intellectual property.” Rep. Robert Pittenger (R-NC) has [introduced](#) a companion bill in the House. Read more [here](#).
- Senators Sherrod Brown (D-OH), Maggie Hassan (D-NH), Amy Klobuchar (D-MN); Al Franken (D-MN) and Patty Murray (D-WA) have [sent a letter](#) to Allergan requesting documents and information about the company’s deal with the Saint Regis Mohawk Tribe. The letter states that “it is difficult to conceive of Allergan’s transaction as anything other than a sham to

### Headlines and Highlights:

- Sen. Franken criticizes tech giants in Open Markets keynote speech.
- Sens. Cornyn, Feinstein and Burr introduce legislation to strengthen merger review capacity of CFIUS.
- Senate Republicans introduce their tax reform package, includes tax on overseas IP holdings.
- Broadcom proposes purchasing Qualcomm for over \$103 billion.
- NAFTA negotiators to begin next round early, may discuss IP.
- House Judiciary Chairman Bob Goodlatte announces he will not seek reelection
- EU Competition Chief criticizes Google and Apple for anticompetitive behavior during Lisbon speech.

subvert the existing intellectual property system.” Read more [here](#).

- The House Judiciary Committee’s Intellectual Property Subcommittee held a [hearing](#) on Tuesday to examine the role of sovereign immunity in the U.S. intellectual property system, and Allergan’s arrangement with the Saint Regis Mohawk Tribe in particular. In his opening [statement](#), House Judiciary Committee Chairman Bob Goodlatte said “it has become apparent that in some circumstances, sovereign immunity is being used...in a way that harms the intellectual property system.” He further stated that “tribal sovereign immunity was never intended to serve the interests of private companies unrelated to the tribes.” Read more [here](#).
- On Thursday, Senate Republicans released their tax reform bill, which includes a 12.5 percent tax on American companies’ overseas intellectual property earnings. The provision is intended to incentivize corporations to keep their intellectual property assets in the United States. Read more [here](#) and [here](#).
- On Wednesday, November 15<sup>th</sup> at 2:30 p.m. the Senate Judiciary Subcommittee on Antitrust, Competition and Consumer Rights will hold a hearing titled “The Consumer Welfare Standard in Antitrust: Outdated or a Harbor in a Sea of Doubt?” Read more [here](#).
- On Thursday, Rep. Bob Goodlatte (R-VA), Chairman of the House Judiciary Committee, announced that he will not seek reelection in 2018. Rep. Goodlatte, who is term-limited as Judiciary chairman, said that he will use his final year to “bolster enforcement of our immigration laws” and simplify the tax code “in order to stimulate job growth,” among other initiatives. Read more [here](#).
- The Federal Trade Commission (FTC) held a workshop on Wednesday titled ‘Understanding Competition in Prescription Drug Markets: Entry and Supply Chain Dynamics.’ The event addressed “concern[s] about rising drug prices” and “whether there are obstacles to generic entry that prevent competition from keeping prices in check.” The event featured remarks from Acting FTC Chair [Maureen Ohlhausen](#) and Food & Drug Administration (FDA) Commissioner [Scott Gottlieb](#). The FTC is seeking public comment on issues including generic competition, the role of intermediaries such as pharmacy benefit managers (PBMs), and the role of the FTC in addressing drug prices. Read more [here](#).

### **III. USPTO Updates:**

- Acting USPTO Director Joe Matal has written a blog post titled ‘The Importance of Independent Inventors to America – and America’s Economy.’ Matal describes a meeting he attended with the Tampa Bay Inventors Council, whose members “expressed concern about the fairness of the IP system, and some criticized the USPTO’s post-issuance review proceedings, arguing that they are stacked against patent owners.” Matal writes, “there’s always room for improvement at the USPTO. Every aspect of our agency is continually being refined to better serve the patent and trademark owner community. Hearing from them helps us identify ways we can make that happen.” Read more [here](#).
- On Monday, the USPTO announced plans to expand the Collaborative Search Pilot (CSP) program, which is being conducted in collaboration with the Korean Intellectual Property Office (KIPO) and the Japan Patent Office (JPO). CSP aims to provide examiners with the best prior art by combining the search expertise of these international bodies. Participants

completed the first phase of this program this summer, and phase two looks to build upon the program's initial success, with several reforms. Interested applicants can participate in CSP and enjoy accelerated application examination beginning on November 1, 2017. Read more [here](#).

- On November 7, 2017, the Patent Trial and Appeal Board issued a final rule on attorney-client privilege. The rule explicitly recognizes that communications between non-attorney or foreign patent practitioners and their clients that pertain to authorized practices before the USPTO or foreign patent offices are privileged. Read more [here](#).

#### **IV. Judicial Updates:**

- The Supreme Court has declined to hear Samsung's appeal of a Federal Circuit ruling upholding almost \$120 million in infringement damages that Samsung owes to Apple for infringing patents covering certain iPhone features. Read more [here](#).

#### **V. International Updates:**

- On Monday, *Reuters* reported that U.S., Canadian and Mexican officials will begin the next round of North American Free Trade (NAFTA) renegotiation talks ahead of schedule on Nov. 15<sup>th</sup>, two days earlier than the official Nov. 17<sup>th</sup> start date. "Some topics that will likely be discussed during those days include textiles, services, labor, and intellectual property. It's very possible other topics will be added," one of the officials said. Read more [here](#).
- On Tuesday, EU Competition Chief Margrethe Vestager gave a speech in Lisbon, Portugal at the 2017 Web Summit, one of the biggest tech conferences in the world. In her speech Vestager criticized Apple, Google, and other large tech companies for creating an uneven playing field. "[I]t's a problem when successful companies, which dominate the market, decide to use their power to shut down competition. Because that can end up closing the door to innovation," Vestager said. "That's why dominant companies like Google have a special responsibility not to undermine competition. And we had to fine Google because it didn't live up to that responsibility." Read the entire speech [here](#).
- Speaking at an Asia-Pacific Economic Cooperation (APEC) summit on Friday, President Trump, emphasizing that the United States is seeking "robust trade relationships rooted in the principles of fairness and reciprocity," said the United States "will no longer tolerate the audacious theft of intellectual property. We will confront the destructive practices of forcing businesses to surrender their technology to the state, and forcing them into joint ventures in exchange for market access." Read the speech [here](#).

#### **VI. Industry Updates:**

- Broadcom has proposed acquiring Qualcomm for over \$103 billion. The proposal came shortly after Broadcom's CEO announced at an event with President Trump that the company would relocate its legal headquarters to the United States, citing benefits from the proposed Republican tax reform proposals. Read more [here](#).