



AMERICAN CONTINENTAL GROUP

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## PATENT & TRADEMARK POLICY REPORT DECEMBER 8, 2017



### I. Congressional Developments:

- On Wednesday, December 13<sup>th</sup> at 2:30 pm the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights will hold a hearing titled “The Consumer Welfare Standard in Antitrust: Outdated or a Harbor in Sea of Doubt?” Read more [here](#).
- On Tuesday, December 12<sup>th</sup> at 2:00 pm the House Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade will hold a hearing titled “The Future of the North American Free Trade Agreement.” The witnesses will be John Negroponte, Former Deputy Secretary of State and former Director of National Intelligence; Daniel Allford, president of ARC Specialties; Eric Farnsworth, vice president of the Council of the Americas; and Celeste Drake from the American Federation of Labor and Congress of Industrial Organizations. Read more [here](#).
- Rep. John Conyers (D-MI) announced on Tuesday that he is retiring from Congress, effective immediately. Rep. Jerrold Nadler (D-NY) has been serving as Acting Ranking Member of the House Judiciary Committee since Conyers stepped down from the Ranking Democratic position last week. Rep. Zoe Lofgren (D-CA) has already [announced](#) her intention to run for the Ranking Member position, and we anticipate that there will be a House Democratic Steering vote followed by a full House Democratic Caucus vote for the “permanent” position later this month. Read more [here](#).
- On Thursday morning, Phil Bredesen, Democrat of Tennessee, announced his intention to challenge Rep. Marsha Blackburn (R-TN-7) for the open Senate seat in the state. Bredesen is the former Governor of Tennessee, serving from 2003 to 2011, and

### Headlines and Highlights:

- ACTION for Trade and Creative Rights Caucus to hold hill briefing on promoting creativity and innovation in NAFTA.
- Rep. Conyers resigns from Congress, Reps. Lofgren and Nadler announce intention to run for “permanent” House Judiciary ranking member slot.
- Global Innovation Policy Center to hold roundtable with USPTO IP Attachés.
- Canada’s chief NAFTA negotiator “struggling” to understand what U.S. needs to dub renegotiation a “win.”
- Senate Judiciary subcommittee to hold hearing on consumer welfare standard in antitrust.
- Former governor to challenge Marsha Blackburn for Tennessee Senate seat.

is the last Democrat to win a statewide election in Tennessee. Read more [here](#).

- Senator Al Franken (D-MN) announced on Thursday that he will resign in the “coming weeks” following allegations of sexual harassment. Franken serves as ranking member on the Senate Judiciary Committee’s Subcommittee on Privacy, Technology and the Law. Initials [reports](#) indicate that Minnesota Governor Mark Dayton (D) will appoint Minnesota Lieutenant Governor Tina Smith to fulfill the remainder of Franken’s term. Read more [here](#).
- On Thursday, December 14<sup>th</sup> at 10 a.m. the House Financial Services Subcommittee on Monetary Policy and Trade will hold an oversight hearing titled “Examining the Operations of the Committee on Foreign Investment in the United States (CFIUS).” Read more [here](#).

### III. USPTO Updates:

- The USPTO has increased the Rospatent international search fee from \$482 to \$698. Read more [here](#).
- Former USPTO Chief Information Officer John Owens has joined CGI Federal’s emerging technology practice. Read more [here](#).

### IV. Judicial Updates:

- This week, Sprint Corp. filed a patent lawsuit earlier this week against Mediacom Communications Corp., a New York-based cable provider. The lawsuit, filed in federal court in Delaware, alleges Mediacom’s digital phone and business services violated 13 Sprint patents related to voice-over-packet technology. Sprint is seeking damages in “an amount not yet determined” for each infringement. Read more [here](#).
- The Department of Justice has filed a brief asking the Supreme Court to hear the case *WesternGeco LLC v. ION Geophysical Corp*, a case regarding whether U.S. courts can award patent owners lost profits due to overseas patent infringement. The Department of Justice argues that concerns about the presumption against extraterritorial application of U.S. law are not relevant when a court is “taking account of foreign evidence and events in imposing liability for domestic conduct. Read more [here](#).
- A number of scholars from the Center for the Protection of Intellectual Property (CPIP) have filed an amicus brief urging the Supreme Court to take up the case *RecogniCorp v. Nintendo*, a case about whether a technology for encoding and decoding composite facial images on a computer is eligible subject matter. The brief argues that the lower courts have failed to consider the claimed invention as a whole, and that the Supreme Court should hear the case “in order to correct the continued misapplication of the *Mayo-Alice* test.” Read more [here](#).

### V. International Updates:

- On Canada’s chief NAFTA negotiator Steve Verheul said on Monday that Canada is “struggling” to develop outcomes that the United States will be able to characterize as a “win.” He said that Canada has been doing its “due diligence in thinking about” a potential U.S. withdrawal from NAFTA, including working on sector-specific “contingency” plans. Verheul also said that were the U.S. to give notice that it intends to withdraw from NAFTA,

Canada would work with U.S. industry in an attempt to prevent that outcome. Read more [here](#).

- The European Commission recommended to the European Council on Friday that “sufficient progress” has been made in Brexit talks to allow negotiations to proceed to Phase 2, covering trade and the UK’s future relationship with the EU. Read more [here](#).
- The World Intellectual Property Organization (WIPO) has [released](#) its annual intellectual property report, which finds that China received more patent applications last year than the U.S., Japan, South Korea, and Europe combined. Read more [here](#).

## VI. Industry Updates:

- On Tuesday, December 19<sup>th</sup> at 12:00 pm ACTION for Trade, in partnership with the Creative Rights Caucus, will host a lunch briefing titled “How a Modernized NAFTA Can Promote Creativity and Innovation.” RSVP to the event [here](#).
- A *New York Times* op-ed by David Leonhardt profiles research, led by Stanford’s Raj Chetty, linking tax and other records to patent records in an attempt to study the backgrounds of patent holders. The research uncovers a number of inequalities leading to disparities in the likelihood that a child will become a patent owner, including inequalities of economic status, race, and gender. Read more [here](#).
- *Bloomberg* reports that as automakers are increasingly incorporating technology into their vehicles, they are trying to avoid becoming embroiled in patent wars of the sort that have plagued the smartphone sector. Automakers are employing strategies such as filing for more patents, engaging in joint-licensing arrangements, using non-proprietary software, and “buying or challenging patents that might be used in lawsuits against them.” Read more [here](#).
- On Wednesday, December 13<sup>th</sup> at 3:00 pm the Global Innovation Policy Center at the U.S. Chamber of Commerce will host its 11<sup>th</sup> annual roundtable with the U.S. Patent and Trademark Office’s IP Attachés to discuss “recent trends and challenges in IP protection and enforcement in regions around the world.” Register for the event [here](#).
- TiVo executive Arvin Patel has written an op-ed in *Investors Business Daily* arguing that America Invents Act proceedings are “skewed against patent owners,” and that the courts have “reduced the value of American inventions by narrowing the range of technologies that can be protected by IP.” Patel warns that “innovative U.S. companies are finding it increasingly difficult to defend themselves against” infringement. Read more [here](#).