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PATENT & TRADEMARK POLICY REPORT DECEMBER 21, 2018



I. Congressional Developments:

- On Tuesday, Arizona Governor Doug Ducey (R) appointed Rep. Martha McSally to the Senate seat being vacated by GOP Sen. Jon Kyl. McSally will serve out the remainder of former Sen. John McCain's term, which runs until 2020. Jon Kyl had only been filling in on an interim basis. Read more [here](#).
- Sen.-elect Josh Hawley (R-MO) announced on Wednesday that he has been selected to serve on the Senate Judiciary Committee. Hawley has been a staunch [critic](#) of tech companies—particularly Google—and made policing them a central tenet of his election campaign. Read more [here](#).
- On Wednesday, Sen. Blumenthal (D-CT), a member of the Senate Judiciary Antitrust Subcommittee, wrote two letters to Federal Trade Commission Chairman [Joseph Simons](#) and Assistant Attorney General [Makan Delrahim](#) expressing concern about Amazon's price parity provisions in contracts with third-party sellers. Blumenthal writes that these contracts could “stifle market competition and artificially inflate prices on consumer goods that millions of Americans are planning to buy this holiday season.” Blumenthal urged both the FTC and DOJ to investigate these provisions to gauge the impact they have on the marketplace.

II. Administration Updates:

- POLITICO reported this week that the Office of the United States Trade Representative (USTR) has not indicated when it will publish its negotiating objectives for trade talks with the European Union and Japan. The objectives must be published at least 30 calendar days before beginning trade talks, and with the

Headlines and Highlights:

- USPTO reschedules AI conference for Jan. 31st.
- Rep. McSally appointed to fulfill remainder of former Sen. McCain's term.
- Sen. Blumenthal sends letters to FTC and DOJ asking them to probe Amazon's price parity contracts.
- Sen.-elect Hawley, critic of Big Tech, lands Senate Judiciary seat.
- US-EU and US-Japan negotiating objectives may not be released until January, pushing first round talks to February.
- Next PPAC set for Feb 7th at USPTO headquarters.
- German court rules Apple infringed Qualcomm chip patent and banned all iPhones containing the chip.

holiday approaching, it could be January until the objectives are released. This decision would push the first round of talks into February. Read more [here](#).

- On Tuesday, the Office of the United States Trade Representative (USTR) published a notice of modification of action pursuant to the Section 301 investigation into China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. Specifically, the USTR has postponed the date on which the rate of additional duties will increase to 25 percent for the products of China covered by the September 2018 action in this investigation. The rate on these import tariffs are now slated to increase on March 2, 2019. Read more [here](#).

III. USPTO Updates:

- The next PPAC meeting will be Feb. 7th at USPTO headquarters.
- The USPTO has rescheduled its event, "Artificial Intelligence: Intellectual Property Policy Considerations" for 9:30am-5:30pm EST on Thursday, January 31, 2019. This event was previously postponed due to the funeral of former President George H.W. Bush. This public program will be webcast and will feature six panels featuring IP specials from around the world, including experts from the United States, Canada, China and Europe. More info. [here](#).

IV. Judicial Updates:

- On Thursday, a German court ruled that Apple had infringed a hardware patent from Qualcomm Inc. and banned sales of iPhones in Germany with chips from Apple supplier Qorvo Inc. In a statement on the matter, Apple explained that it plans to pull certain models from retail stores in Germany while it pursues an appeal. To begin proceedings to enforce the order, Qualcomm must post a bond of 668.4 million euros. Read more [here](#).

V. International Updates:

- The European Parliamentary Research Service, the European Parliament's in-house research service and think tank, published a paper late last week on the potential impact of the United States-Mexico-Canada Agreement (USMCA) on companies in the European Union (EU). The document claims that the provisions in the agreement on rules of origin, geographic indications and voluntary export restraints "may affect" EU car manufacturers, food and drink exporters, and dairy producers. The paper also flags several provisions in the final text that "risk being at odds" with World Trade Agreement (WTO) rules, including the voluntary export restraints prohibited under the Safeguard Agreement. Read more [here](#).
- Apple rolled out a new software update in China after reports surfaced last week that the Fuzhou Intermediate People's Court granted Qualcomm's request for two preliminary injunctions against four Chinese subsidiaries of Apple, Inc., ordering them to immediately cease infringing upon the patents through unlicensed importation, sale and offers for sale in China of various iPhone models. As reported by the *Wall Street Journal*, the update includes changes to how an app disappears from an iPhone display when a user swipes the screen upward, which was one of the contested features. Legal experts have predicted that the court's review of Apple's request for reconsideration of the preliminary injunction could take about three to six months. Read more [here](#).

VI. Industry Updates:

- On Thursday, Adam Candeub, a law professor at Michigan State University and director of its IP, Information, and Communications Law Program, wrote an op-ed urging the FTC to examine Big Tech's strategic use of patent litigation to crush smaller rivals. Read more [here](#).