

PATENT & TRADEMARK POLICY REPORT DECEMBER 7, 2018



I. Congressional Developments:

- On Tuesday, incoming House Majority Leader Steny Hoyer (D-MD) said House Democrats are reserving support for the modernized trade agreement between the U.S., Mexico and Canada (USMCA) until they can further analyze the implications. “It’s too early to tell whether we are going to be able to pass that or whether we make a determination that we should pass it,” the Maryland Democrat said at the annual meeting of the WSJ CEO Council. Hoyer also criticized President Trump’s stated intent to terminate the original NAFTA in an effort to pave the way for congressional approval of the reworked version, calling it “a big mistake” and “very disruptive of the international economy.” Read more [here](#).
- Reports surfaced this week that Sens. Thom Tillis (R-NC) and Chris Coons (D-DE) are arranging a roundtable for stakeholders to discuss potential legislation to address concerns surrounding patent subject matter eligibility under Section 101 of the Patent Act. According to *Bloomberg Law*, invited participants include Google, Amazon, PhRMA, the Biotechnology Innovation Organization, Apple, Qualcomm, and Ericsson. Coons is a member of the Senate Judiciary Committee and has been outspoken on patent issues. For example, he was an original cosponsor of the *STRONGER Patents Act of 2017* (S.1390), which seeks to strengthen the U.S. patent system through a myriad of reforms. Read more [here](#).
- On Wednesday, December 19th at 2:30 p.m. the Senate Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights will hold a hearing titled “Comparative Look at Competition Law Approaches to Monopoly and Abuse of Dominance in the US and EU.” Read more [here](#).

Headlines and Highlights:

- Incoming House Majority Leader Steny Hoyer says House Democrats are reserving support for USMCA until they can further analyze it.
- China announces tougher punishments for IP infringers.
- Sens. Tillis and Coons to hold stakeholder roundtable on patent subject matter eligibility under Section 101.
- Sen. Kennedy announces he will not run for Governor of Louisiana.
- Senate Judiciary Antitrust Subcommittee to hold hearing on competition law in US and EU.
- USTR Lighthizer will lead negotiations with China over tariffs and changes to IP practices, White House announces.

- The House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law announced this week that it would postpone its oversight hearing for the antitrust enforcement agencies due to the funeral of former President George H.W. Bush. The rescheduled date is Wednesday, December 12th at 2 p.m. Read more [here](#).
- The House Judiciary Committee postponed its hearing “Examining Google and its Data Collection, Use and Filtering Practices” until Tuesday, December 11th at 10 a.m. The sole witness at the hearing will be Google CEO Sundar Pichai. Read more [here](#).
- On Thursday, House Democratic Leader Nancy Pelosi met with U.S. Trade Representative Robert Lighthizer to discuss the USMCA. While noting that there are “positive things” in the proposed trade agreement, Pelosi cautioned that “it is just a list without real enforcement of the labor and environmental protections” in a statement issued after the meeting. She also added that Democrats are “waiting for Mexico to pass its promised law on the wages and working conditions of Mexican workers.” As the expected speaker of the House in the 116th Congress, Pelosi’s support will be critical to passing implementation legislation. Read more [here](#).
- On Monday, Senator John Kennedy (R-LA) announced that he will not run in the 2019 Louisiana gubernatorial election. Senator Kennedy had previously said that he was “really torn” as he agonized over the decision. Senator Kennedy is a member of the Senate Judiciary Committee and was an original cosponsor of the Music Modernization Act. Read more [here](#).

II. Administration Updates:

- The White House confirmed this week that United States Trade Representative (USTR) Robert Lighthizer will lead negotiations with China over tariffs, market access and structural changes to intellectual property practices over the next 90 days. This comes on the heels of a trade truce agreed to by President Trump and Chinese President Xi Jinping, agreeing to hold off on new tariffs and to begin a 90 day negotiation. The White House said on Saturday that the talks would cover structural changes in China on forced technology transfer, intellectual property protection, non-tariff barriers, cyber intrusions and cyber theft, services and agriculture. Read more [here](#).

III. USPTO Updates:

- The next PPAC meeting will be Feb. 7th at USPTO headquarters.
- On December 11th, from 12:00pm-1:00pm ET, the USPTO’s Patent Quality Chat webinar will close out its 2018 series with “Customer Perception of Patent Quality and New Customer Experience (CX) Initiative.” More info. [here](#).
- The USPTO postponed its event on the IP considerations of artificial intelligence, which had been scheduled to take place on Wednesday. A new date has not yet been selected. More info [here](#).

IV. Judicial Updates:

- On Tuesday, the U.S. Supreme Court heard oral arguments in *Helsinn Healthcare S.A. v.*

Teva Pharmaceuticals USA Inc. This case involves a provision in the *Leahy-Smith America Invents Act (AIA)* that bars issuance of a patent if “the claimed invention was...in public use, on sale, or otherwise available to the public before” the patent filing. The court will consider whether the phrase “available to the public” states a separate limitation on issuance or modifies the two limitations that appear before it. Helsinn appealed a lower court’s decision to invalidate its patent on Aloxi, which is a drug used to prevent nausea and vomiting in patients receiving chemotherapy. Teva claims that Helsinn’s patent is invalid because the company struck an agreement with another firm in 2001 to market and distribute the drug in the United States nearly two years before Helsinn applied for patent. Petitioner Helsinn, on the other hand, argues that the “otherwise available to the public” phrase shows that all of the listed bars apply only if the activity makes the invention available to the public. Read more [here](#).

V. International Updates:

- On Tuesday, China announced tougher punishments for serious infringers of intellectual property, including barring them from purchasing real estate or going on vacations. The crackdown comes days after US President Donald Trump and Chinese leader Xi Jinping agreed at a summit in Argentina to hold off on new tariffs while negotiators seek a deal. More info [here](#).

VI. Industry Updates:

- According to emails obtained by *POLITICO*, Google, Amazon, and Snap. Inc. reached out to FTC commissioners appointed by President Donald Trump soon after they were sworn into office last May. Google appears to have been particularly eager to engage with officials that would play a critical role in any federal crackdown of big tech, inviting commission staff to coffees, and setting up a meeting with Republican chairman Joe Simmons, *POLITICO* reports. Amazon also requested meetings with commission staff, although inter-agency correspondence reveals that they were hesitant to meet with the e-commerce giant. Read more [here](#).