



AMERICAN CONTINENTAL GROUP

1800 M Street NW | 5th Floor | Washington D.C. 20036
Tel: (202) 327-8100 | Fax: (202) 327-8101

PATENT & TRADEMARK POLICY REPORT NOVEMBER 30, 2018



I. Congressional Developments:

- On Wednesday, House Democrats held their internal leadership elections. Rep. Nancy Pelosi (D-CA) earned the nomination for House speaker by a 203-32 vote, with three blank ballots and one member absent. Pelosi must earn over two dozen votes before she faces a floor vote in January. Two elections were decided with unanimous support; Rep. Steny Hoyer (D-CA) was elected to serve as majority leader and Rep. James Clyburn (D-SC) as majority whip. Finally, Rep. Hakeem Jeffries (D-NY), a member of the House Judiciary IP Subcommittee, was elected to serve as the Democratic caucus chair, beating challenger Rep. Barbara Lee (D-CA) by a 123-113 vote. Read more [here](#).
- Rep. Doug Collins (R-GA) will serve as the Ranking Member to the Judiciary Committee in the 116th Congress, as he successfully edged out challenger Rep. Steve Chabot (R-OH). Rep. Jim Jordan (R-OH) had also previously expressed interest in this post, although he took his name out of the ring on Thursday. Rep. Collins is a member of the House IP Subcommittee. Read more [here](#).
- In an interview with *Bloomberg* on Tuesday, Sen. Toomey (R-PA), a member of the Senate Finance Committee, said the USMCA deal is “not really as good” as the underlying NAFTA pact. Toomey, however, went on to say that he could support the deal if tweaks were made in the implementing legislation to make it “more pro-trade.” Toomey also urged the President and Congress to consider the legislation in the lame duck session and not in 2019 as he believes Speaker Pelosi could try to block the deal. Watch the entire interview [here](#).

Headlines and Highlights:

- House Democrats hold internal leadership elections.
- Rep. Doug Collins to serve as Judiciary Committee Ranking Member.
- Leaders of Mexico, Canada and the U.S. sign USMCA.
- Senate Commerce Committee holds FTC Oversight Hearing.
- USPTO publishes its “2018-2019 Strategic Plan.”
- Senator Toomey says he will support the USMCA if implementation language is more “pro-trade.”
- Senator-elect Josh Hawley (R-MO) speaks about his plans to reign in big tech companies.
- Facebook hires former Silicon Valley DoJ lawyer.

- On Tuesday, the Senate Commerce Subcommittee on Consumer Protection, Product Safety, Insurance, and Data Security held an oversight hearing of the Federal Trade Commission (FTC). The discussion focused on the issue of data security and consumer privacy, with members of the Committee asking the Commission to weigh in on bipartisan privacy legislation currently being discussed by members of the Committee. Watch online [here](#).

II. Administration Updates:

- Today the Leaders of Mexico, Canada and the U.S. signed the USMCA on the margins of G20 Summit in Argentina. According to TPA, USTR will have to provide to Congress a list of changes to U.S. law required to comply with USMCA within 60 days (January 29, 2019). These changes are reflected in the implementing legislation and statement of administrative action (SAA). Read the final text of the agreement [here](#).
- On Tuesday, December 6th, the FTC will hold its eighth hearing in the “Competition and Consumer Protection in the 21st Century” series. The day’s panels will examine concerns that acquisitions and holdings of non-controlling ownership interests in competing companies may have anticompetitive effects. FTC Commissioner Noah Joshua Phillips and Commissioner Robert J. Jackson Jr. of the Securities Exchange Commission will provide opening remarks. Read more [here](#).

III. USPTO Updates:

- On Thursday, the USPTO published its “2018-2019 Strategic Plan,” which outlines the Office’s mission-focused strategic goals. According to the document, the plan expands upon the framework that enables the USPTO to respond to the demands of both domestic and international economies for robust and timely IP products and services. Read more [here](#).
- This week, the USPTO published Director Andrei Iancu’s full remarks delivered at Georgetown University Law School’s 10th Annual Patent Law Policy Conference. In his speech, Director Iancu indicated that the USPTO will soon issue guidance to provide clarity on patent eligibility under Section 101. In particular, Director Iancu asserted that much more work needs to be done “with respect to step 1 of *Alice/Mayo*.” Read more [here](#).
- On Wednesday, December 5th, the USPTO will convene an all-day program titled “Artificial Intelligence: Intellectual Property Policy Considerations.” This public program will feature six panels composed of leading thinkers, policy makers, academics, and practitioners who will examine the growing capabilities of AI, its potential economic impacts, and implications for IP policy and law. The program will be webcast. More info [here](#).

IV. Judicial Updates:

- Late last week, a group of record labels and music publishers filed a [complaint](#) against iBus Media, the parent company of PokerNews, accusing PokerNews of distributing podcasts through its site and app, using significant portions of their tracks. The complaint lists hundreds of podcasts where the infringing tracks allegedly appear, and claims that this has resulted in “substantial” and “irreparable harm.” The music companies are demanding \$150,000 in damages per infringed work. Read more [here](#).

V. International Updates:

- Germany’s antitrust authority has launched an investigation into whether Amazon is exploiting its market dominance in its relations with third-party retailers who use its website as a marketplace. Germany’s Federal Cartel Office President Andres Mundt issued a statement on Thursday expressing concerns about Amazon’s “double role” as the biggest trader and the biggest marketplace might mean that “there is a potential to impede other traders on the platform.” Read more [here](#).

VI. Industry Updates:

- Kate Patchen, who most recently served as chief of the Department of Justice’s antitrust division in San Francisco, has joined Facebook as associate counsel of litigation. Read more [here](#).
- On Tuesday, a coalition of 55 Conservative groups and activists penned a letter urging the Secretary of the Department of Health and Human Services Alex Azar to withdraw the proposal to lower drug prices unveiled in October. The letter asserts that the administration’s Advanced Notice of Proposed Rulemaking (ANPRM) creates an “International Pricing Index” (IPI) payment model for drugs administered under Medicare Part B imports price controls. Read more [here](#).