

## PATENT & TRADEMARK POLICY REPORT NOVEMBER 9, 2018



### I. Congressional Developments:

- On Tuesday's midterm elections, Democrats took control of the House of Representatives from Republicans. While it is still too early to tell the exact number of seats the Democrats will hold, their victory means a number of changes for House leadership. Rep. Pelosi (D-CA) is running to be the next Speaker of the House, Rep. Jerry Nadler (D-NY) will likely be the next House Judiciary Chairman, Rep. Neal (D-MA) will Chair the House Ways and Means Committee. Rep. McCarthy (R-CA) and Jordan (R-OH) have both stated their desire to run for Minority Leader. Leadership positions for both House Democrats and Republicans will be cemented in the coming weeks as each party will hold internal elections. Read more [here](#).
- Republicans increased their Senate majority in the midterm election, defeating incumbent Democratic Sens. Donnelly (D-IN), McCaskill (D-MO), and Heitkamp (D-ND). The Florida Senate race between incumbent Sen. Nelson (D-FL) and Republican challenger Rick Scott is likely headed for a recount, and the Arizona Senate race between Reps. Kyrsten Sinema (D) and Martha McSally (R) has not yet been called. Democrats successfully defended seats in battleground states like Pennsylvania (Bob Casey), West Virginia (Joe Manchin), Montana (Jon Tester), and Rep. Jacky Rosen (D) unseated Sen. Dean Heller (R) in Nevada. More election info [here](#).
- Both House Republicans and Democrats have established a timetable for their internal leadership elections following the midterms. The GOP will hold a "Leadership Election Candidate Forum" on Nov. 13<sup>th</sup> from 4:30 PM – 6:30 PM; and on Wednesday Nov. 14<sup>th</sup> from 1:00 PM – 5:00 PM they will hold their internal election followed by the "Conference Rules and Steering Committee Structure Ratification" from 1:00 PM – 5:00

### Headlines and Highlights:

- Secretary of Commerce appoints Laura Peter as Deputy Director of USPTO.
- Democrats retake House; Republicans enhance Senate majority in midterm elections.
- USMCA to be symbolically signed at G20 meeting in Argentina, Mexico Economy Minister tells press.
- Sen. Grassley indicates he will make decision on Judiciary chairmanship next week.
- USPTO Director Iancu discusses IT challenges at PPAC meeting.
- Columbia Law Professor Tim Wu discusses plan dissolve Tech Giants in *Vox* interview
- Google VP of Public Policy announces she will step down.

PM on Thursday, Nov. 15<sup>th</sup>. The Democrats will hold their internal elections on Nov. 29<sup>th</sup>. November 13<sup>th</sup> through the 17<sup>th</sup> will be orientation for new members.

- Sen. Grassley (R-IA), current Chairman of the Senate Judiciary Committee, told reporters on Wednesday that he is considering taking the chairmanship of Senate Finance Committee for the next Congress, and would make a final decision next week. If Grassley decides to vacate his Judiciary chairmanship, it is likely Sen. Graham (R-SC) would be the next chair. If Grassley decides to stay as Judiciary chair, Sen. Crapo (R-ID) would likely be the next Senate Finance leader. Read more [here](#).

## **II. Administration Updates:**

- On Tuesday, Secretary of Commerce Wilbur Ross announced the appointment of Laura A. Peter as Deputy Director of the United States Patent and Trademark Office (USPTO). Ms. Peter most recently held the position of deputy general counsel of A10 Networks in Silicon Valley and provided counsel on “worldwide legal matters, including commercial transactions, intellectual property, licenses, litigation, and regulatory compliance.” Read more [here](#).

## **III. USPTO Updates:**

- Last Friday, the USPTO published a [Request for Comments \(RFC\)](#) on a proposed procedure for motions to amend filed in inter partes reviews, post-grant reviews, and covered business method patent reviews (collectively AIA trials) before the PTAB. The proposal includes providing the parties with the Board’s initial assessment of the proposed amendment early in the process; providing meaningful opportunity to revise and oppose proposed amendments; and ensuring the amendment process concludes within the 12-month statutory timeline. The proposal is based on six years of experience conducting AIA trials during which more than 350 motions to amend were filed.
- On Thursday, USPTO Director Iancu wrote a blogpost in the “Director’s Forum” regarding the recent passage of the Music Modernization Act (MMA) and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. Read the blog [here](#).
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- On Thursday, the USPTO held its quarterly Patent Public Advisory Committee (PPAC) meeting. USPTO Director Iancu gave opening remarks in which he said he was “well aware” of the IT challenges USPTO users have been facing, including the PALM outage. “Our legacy systems are old, and it is well-beyond time to take a fundamental modernization effort—and we are doing so,” Iancu said. “To this end we are conducting a wholesale review of all of our technology resources. We are taking a broad, fresh look at our IT systems top to bottom.” Iancu said that the USPTO had assembled a task force of internal leaders to address

IT issues, and they have consulted with outside groups. On the Chief Information Officer vacancy, Iancu said the application period is closed, and the USPTO has received a record number of applications, both from inside government and industry. More info can be found [here](#).

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

- On Monday, a U.S. district court ordered Australia's Cochlear Ltd to pay \$268.1 million in damages to the Alfred E. Mann Foundation for Scientific Research and Advanced Bionics LLC for infringing the foundation's pair of patents covering hearing implant technology. Cochlear Ltd said it will appeal the ruling. Read more [here](#).

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

- On Thursday, Mexico's economy minister Ildefonso Guajardo said that the United States-Mexico-Canada (USMCA) free trade agreement will be signed on November 30<sup>th</sup> on the sidelines of the G20 international forum in Argentina. It has yet to be determined whether the presidents and prime minister will participate in the signing, Guajardo said. This signing ceremony does not mean that the agreement has been approved as it must first be voted on by each country's respective legislatures. Read more [here](#).

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

- Late last week, Susan Molinari, Google's VP of Public Policy for the Americas and head of its Washington, D.C. office, announced she would step down. Prior to joining Google in February 2012, Molinari ran her own political consulting firm. Molinari announced she will remain with Google in an advisory role. Read more [here](#).
- This week, Columbia Law Professor Tim Wu was interviewed by *Vox* about his new book "The Curse of Bigness" which lays out a plan to dissolve Facebook, Google and Amazon. When asked why the government did not step in when Facebook bought WhatsApp or when Google bought YouTube or when Amazon bought Zappos, Wu said that, at the time, there was a "deferential attitude towards Silicon Valley" and people thought they were "the golden goose." "I think we blew it, honestly; there's no better phrase. We were starry-eyed and seduced by the power of the new. There's a bad habit in Washington where you make a mistake and then you pretend it was a good decision. I think we should admit the mistake and redo it." Read more [here](#).