



AMERICAN CONTINENTAL GROUP

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## PATENT & TRADEMARK POLICY REPORT FEBRUARY 9, 2018



### I. Congressional Developments:

- On Monday, the Senate voted 94-0 in favor of Andrei Iancu's nomination to serve as the next Director of the United States Patent and Trademark Office (USPTO). Senate Finance Chairman Orrin Hatch (R-UT) released a [statement](#) applauding the confirmation of Iancu, [as did](#) House Judiciary Chairman Bob Goodlatte (R-VA). Read more [here](#).
- On Wednesday, February 14<sup>th</sup> at 10:00 a.m. the Senate Commerce Committee will hold a nominations hearing for the President's nominees to serve as Federal Trade Commissioners. The nominees include Joseph Simons, to be FTC Chairman and Rohit Chopra, Noah Phillips, and Christine Wilson to serve as FTC Commissioners. Read more [here](#).
- On Tuesday, February 13<sup>th</sup> at 10 a.m., Mick Mulvaney, Director of the Office of Management and Budget (OMB), will appear before the Senate Budget Committee to discuss "The President's FY2019 Budget Request." Read more [here](#).
- This week, Sen. Mark Warner (D-VA), the top-ranking Democrat on the Senate Intelligence Committee, warned that YouTube's recommendation algorithm may be "optimizing for outrageous, salacious and often fraudulent content" after an investigation by *The Guardian* found that the Google-owned platform promoted divisive and conspiratorial videos damaging to the 2016 Clinton campaign. "Companies like YouTube have immense power and influence in shaping the media and content that users see," Warner said. "I've been increasingly concerned that the recommendation engine algorithms behind platforms like [YouTube](#) are, at best, intrinsically flawed in optimizing for outrageous, salacious and often fraudulent content." Read more [here](#).

### Headlines and Highlights:

- Senate confirms Andrei Iancu as next USPTO Director.
- Senate Finance Republicans meet with President Trump and urge him to not withdraw from NAFTA.
- EU Competition Chief Vestager to participate in ABA panel in April.
- U.S. Chamber "Innovation Index" drops U.S. to 12<sup>th</sup> place.
- OMB Director Mulvaney to appear before House and Senate Budget Committees to discuss "President's FY19 Budget Request."
- Senate Commerce to hold nomination hearing for four FTC nominees.
- Rep. Rick Nolan, Co-Chair of Anti-Monopoly Caucus, to retire at end of term.
- USPTO to hold TC 1700 Partnership Meeting.

- On Friday, Rep. Rick Nolan (D-MN), co-chair of the Anti-Monopoly Caucus, announced that he will retire at the end of his current term, citing a need to “pass the baton to the next generation.” Read more [here](#).

## II. Administration Updates:

- On Thursday, POLITICO Morning Tech reported new staff updates in the White House Office of Science and Technology Policy (OSTP). They reported that “[m]ore than 20 new people have joined the office since the start of President Trump’s term.” They went on to say that the total size of OSTP is around 50 people, down significantly from the Obama era, when it totaled around 115. Read more [here](#).
- On Wednesday, POLITICO reported that Senate Finance Committee Republicans met with President Trump to discuss trade and the ongoing NAFTA renegotiations and urge the President not to withdraw from the pact. “This is not something to be treated lightly,” said Sen. Cornyn (R-TX) after the meeting, adding that the GOP did not want “all the good economic news that’s been coming out as a result of the regulatory rollback and the tax bill to be negated by economic shock caused by some misstep on NAFTA.” Sen. Scott (R-SC), who had placed a hold on two USTR nominees in response to a lack of communication from USTR, lifted his hold after the meeting, saying he felt his concerns were addressed.

## III. USPTO Updates:

- The USPTO is hosting its first TC 1700 Customer Partnership Meeting on Tuesday, March 20, from noon to 2 p.m. ET in Alexandria, Virginia. Meet and share ideas with TC management. Visit the [event page](#) on the USPTO website to register.
- The USPTO is inviting stakeholders invite to one its DOCX Info Sessions. Several members of the eCommerce Modernization (eMod) team will share information about the new structured text features, including the ability to file structured text via EFS-Web and access structured text submissions, structured text office actions, and XML downloads via Private PAIR. The team will also conduct a demonstration and answer questions. Each virtual session will be approximately one hour long and limited to 20 attendees. To see available dates and times, please visit the [registration page](#).

## IV. Judicial Updates:

- Yesterday in an opinion by Judge Stoll, the Federal Circuit vacated the USPTO’s decision that Nordt’s claims for an elastic knee brace were anticipated by “Gildersleeve.” Nordt argued that the USPTO’s decision was based on flawed claim construction and that the term “injection molded” conveyed a structural rather than a process limitation. The Federal Circuit found that the term was a structural limitation that “should have been afforded weight when assessing patentability.” The specification connoted “an integral structure and ““words of limitation that can connote with equal force a structural characterization of the product or a process of manufacture are . . . interpreted in their structural sense, unless the patentee has demonstrated otherwise.”” Nordt’s failure to explain the required structure was inconsequential because it could be discerned from the claims and the specification. (*IPO Daily News*)

## V. International Updates:

- On Wednesday, Canadian Prime Minister Justin Trudeau said in a speech at the University of Chicago that Canada “might very well be better off” not signing up to an updated version of NAFTA rather than accepting a bad deal. “I’ve been very, very clear. We are going to expect a good deal, a fair deal,” said Trudeau. “We will not be pushed into accepting any old deal and no deal might very well be better for Canada than a bad deal.” Read more [here](#).
- It was announced this week that EU Competition Chief Margrethe Vestager will visit Washington D.C. on April 13<sup>th</sup> to participate in an American Bar Association panel alongside Department of Justice Antitrust Chief Makan Delrahim and Acting FTC Chairman Maureen Ohlhausen. The “Enforcers Roundtable” will see the leading competition authorities “discuss their enforcement priorities and the transactions, investigations, and cases that are making headlines this year.” Read more [here](#).

## VI. Industry Updates:

- On Saturday, February 3<sup>rd</sup>, Kevin Carty, a researcher and reporter for the Open Markets Institute, published an op-ed in the *New York Post* titled “Tech giants are the robber barons of our time” in which he discusses how tech companies can “dominate sectors without actually producing anything in those markets.” Carty uses Apple and Facebook as examples, writing that Apple does not produce music but it nonetheless controls a huge portion of the music industry, while Facebook does not produce news but news organizations are highly dependent on the platform. “And these corporations continue to expand,” Carty writes. “Amazon, for instance, has entered the grocery business—via its buyout of Whole Foods—and just last week announced a new healthcare project.” Read more [here](#).
- On Friday, February 23<sup>rd</sup> from 10:30 a.m. to 11:30 a.m. the Washington International Trade Association will hold an event titled “The Governor and the Premier on NAFTA: A View from the States and Provinces”, featuring Colorado Governor John Hickenlooper (D) and Premier Kathleen Wynne of Ontario, Canada. According to the press release, the Governor and Premier will “discuss critical aspects” of the NAFTA renegotiation “to their state and province, and the impact on workers, firms, investors and consumers at the local level.” Read more [here](#).
- On Thursday, the U.S. Chamber of Commerce released its annual “IP Innovation Index,” ranking the world’s top 50 economies based on a number of innovation factors, including intellectual property protection. The U.S. fell to 12<sup>th</sup> place this year, down two spots from the previous year with the U.S. Chamber of Commerce citing “U.S. patentability standards and patent opposition procedures” creating uncertainty for rights holders as its reasoning. Read the report [here](#).