

PATENT & TRADEMARK POLICY REPORT MAY 11, 2018



I. Congressional Developments:

- POLITICO reported this week that members of the New Democrat Coalition, a group of pro-trade lawmakers that provided most of the 28 Democratic votes in the House for Trade Promotion Authority in 2015, are increasingly upset by the lack of engagement by USTR Lighthizer on NAFTA. “The lack of engagement from USTR is troubling, but not surprising,” said an aide to a senior New Democrat member. “We have made it clear for months our willingness to engage in these discussions and USTR has not followed through. As our members’ said at the recent press conference, it is important that we are involved in the takeoff not just the landing. We are past takeoff, but perhaps Captain Lighthizer could check in with the control tower before he starts his descent.” Read more [here](#).
- On Wednesday, May 16th at 11:00 a.m. the House Small Business Committee will hold a hearing titled “Intellectual Property 101: How Small Business Owners Can Utilize Intellectual Property Protection in Their Businesses.” The hearing will feature witnesses including Rick Carnes, President of the Songwriters Guild of America (SGA); David Graham, CEO of Code Ninjas LLC; and Michael Rosenn, General Counsel for Expa. Read more [here](#).
- On Thursday, Reps. Ro Khanna (D-CA) and John Ratcliffe (R-TX) introduced the 21st Century Integrated Digital Experience Act, legislation that would give agencies a two-year window to develop a comparable digital offering for any in-person service they provide. Read a summary of the bill [here](#).
- On Friday, Sen. Toomey (R-PA), a member of the Senate Finance Committee, wrote an op-ed in *The Wall Street Journal* in which he warned the Trump Administration not to try and

Headlines and Highlights:

- New Democrat Coalition upset by lack of USTR engagement on NAFTA.
- House Small Business Committee to hold IP 101 hearing.
- Sen. Toomey warns Trump Admin to not “blackball” Congress into voting for a “diminished” NAFTA.
- Heritage Foundation to hold trade event with Sec. of Commerce Ross and Sens. Sasse and Manchin.
- Anti-sex trafficking groups warn USTR against including Section 230 liability protection in new NAFTA.
- Next PPAC meeting set for August 2nd.
- Mexico’s Trade Undersecretary says they will not rush to meet U.S.’s May 17th NAFTA deadline.

“blackball” Congress into voting for a “diminished NAFTA.” “If presented with this ultimatum, I will vote ‘no,’ urge my colleagues to do likewise, and oppose any effort by the administration to withdraw unilaterally,” Toomey writes, adding that “pulling out of Nafta by executive fiat would be economically harmful and unconstitutional.” Toomey went on to point out a number of ways the Administration could improve NAFTA, including strengthening “pre-internet intellectual property rules.” Read more [here](#).

II. Administration Updates:

- On Wednesday, a group of anti-sex trafficking groups, led by End Child Prostitution and Trafficking (ECPAT), sent a letter to USTR Lighthizer urging him to not include Section 230 liability protections in the new NAFTA agreement, something the tech industry has pushed hard to include. “It is ironic for the tech industry to foist this failed domestic policy into a trade agreement, while the United States Congress is acting aggressively to curb the abuses that Section 230 promoted in the first place,” the group writes. “We believe it would be a grave mistake to entertain any attempt by the tech industry to undermine the Congress’ will with an end-run through trade negotiations.”

III. USPTO Updates:

- The United States Patent and Trademark Office (USPTO) this week announced that NBA All-Star Kareem Abdul-Jabbar will deliver the keynote address at the opening ceremony for the 2018 National Trademark Expo at the Smithsonian’s National Museum of American History in Washington, D.C. on Friday, July 27 at 12:15 p.m. The two-day event helps support the mission of the USPTO and that of its collaborator, the museum’s Lemelson Center for the Study of Invention and Innovation, by educating the public about the history and value of trademarks in addition to their importance in the global marketplace through engaging seminars, children’s activities, displays of authentic and counterfeit goods, as well as numerous exhibits featuring registered trademarks.
- The United States Patent and Trademark Office proposes changes to the claim construction standard for interpreting claims in *inter partes* review (“IPR”), post-grant review (“PGR”), and the transitional program for covered business method patents (“CBM”) proceedings before the Patent Trial and Appeal Board (“PTAB” or “Board”). In particular, the Office proposes to replace the broadest reasonable interpretation (“BRI”) standard for construing unexpired patent claims and proposed claims in these trial proceedings with a standard that is the same as the standard applied in federal district courts and International Trade Commission (“ITC”) proceedings. The Office also proposes to amend the rules to add that the Office will consider any prior claim construction determination concerning a term of the involved claim in a civil action, or an ITC proceeding, that is timely made of record in an IPR, PGR, or CBM proceeding. Read more [here](#).
- The next Patent Public Advisory Committee (PPAC) will be August 2nd at the USPTO Headquarters in Alexandria.

IV. Judicial Updates:

- Yesterday, the [9th Circuit Court of Appeals upheld a preliminary injunction preventing Skechers USA from selling its Onix show](#), which Adidas claims infringes the “three-stripe”

design on its Stan Smith shoe, and vacated an injunction that barred Skechers from selling another shoe after finding Adidas was not likely to suffer irreparable harm. Adidas's trademark infringement suit against Skechers will go to trial in June. (*IPO Daily News*)

V. International Updates:

- On Wednesday, Canadian Foreign Minister Chrystia Freeland said that NAFTA negotiators have not yet had time to discuss intellectual property issues such as the 12 years of biologics protection and stronger copyright laws that the U.S. wants included. Read more [here](#).
- Mexican Trade Undersecretary Juan Carlos Baker [told reporters](#) on Thursday that Mexico would not rush a NAFTA renegotiation agreement to meet the U.S.' May 17 deadline. "For Mexico, what's important is to have a good agreement, and it'll take the time that it has to take to arrive at that good agreement," Baker said.

VI. Industry Updates:

- On Sunday, David Leonhardt, opinion columnist for *The New York Times*, penned an op-ed titled "Save Barnes and Noble!" in which he disputes the notion that bookstores such as Barnes and Noble and Borders have failed—and subsequently been overtaken by behemoths like Amazon—due to poor leadership. In reality, Leonhardt argues, "Washington's leniency, under both parties, toward technology giants" has allowed them to "vanquish their competitors and create problems for society." Amazon is happy to artificially lower prices on books and lose money to build a loyal customer base, to which it can sell everything else, Leonhardt writes. While this may work for Amazon, it poses a host of issues for others, such as fewer commercially viable books and publishers focusing on big-name writers, Leonhardt writes. Read more [here](#).
- On Monday, the Content Creators Coalition (C3), which fights for compensating musical artists for their digital play, launched a video campaign calling on Congress to question high-ranking Google officials on how its "platform dominance has decimated the creative economy." Read more [here](#).
- On Wednesday, May 23rd from 7:30 a.m. – 10:00 a.m. the Heritage Foundation will hold an event titled "Examining Trade" featuring Secretary of Commerce Wilbur Ross and Sens. Sasse (R-NE) and Manchin (D-WV). The event will touch on NAFTA and other trade deals, as well as President Trump's tariffs on steel and aluminum. Read more [here](#).