

PATENT & TRADEMARK POLICY REPORT FEBRUARY 2, 2018



I. Congressional Developments:

- On Tuesday night, a group of 36 Republican Senators, led by Sen. Cory Gardner (R-CO), sent a letter to President Trump “outlining a way forward on NAFTA.” While the Senators urged Trump to preserve NAFTA, they did highlight a few areas where there are “opportunities to improve the agreement.” Specifically, they suggested “modernizing NAFTA to increase market access, expand energy exports to maximize domestic energy production and including provisions on intellectual property and e-commerce...” Read the letter [here](#).
- According to a report by *Reuters*, this week, Senate Minority Leader Chuck Schumer (D-NY) has recommended that the White House nominate one of his top aides, Rebecca Slaughter, to a Democratic seat on the Federal Trade Commission (FTC). Read more [here](#).
- On Tuesday, the Senate reached an agreement to hold a confirmation vote on Andrei Iancu—the nominee to serve as next Director of the United States Patent and Trademark Office (USPTO)—on Monday, February 5th. Read more [here](#).

II. Administration Updates:

- A White House fact sheet released on Tuesday night estimated that Chinese intellectual property policies and practices cost the U.S. “billions of dollars each year.” Although the fact sheet hinted at the ongoing United States Trade Representative (USTR) investigation into the matter, which began in August 2017, it could serve as a barometer for the type of damages the U.S. could claim in its Section 301 investigation. Read more [here](#).

Headlines and Highlights:

- Senate expected to confirm Andrei Iancu to serve as next USPTO Director on Monday.
- 36 Republican Senators send letter to Trump urging him to modernize, not terminate, NAFTA.
- White House releases fact sheet alleging China IP theft costs U.S. “billions of dollars” each year.
- Google’s parent company announces John Hennessy as next Executive Chairman.
- USPTO holds quarterly PPAC meeting.
- Senate Minority Leader Schumer recommends a top aide, Rebecca Slaughter, for seat on FTC.
- IACC releases “Year in Review” report for 2017.
- President Trump promises to protect IP in State of Union address.

- During a press conference earlier this week, U.S. Trade Representative Lighthizer asserted that “some progress was made” during the sixth round of North American Free Trade Agreement (NAFTA) talks. However, he also clarified that renegotiations “are progressing very slowly.” Specifically, Mr. Lighthizer offered that one point of contention for the United States was the proposed rules of origin language for automobiles, which he claimed were enormously vague. Read more [here](#).
- During his first State of the Union address on Tuesday, President Trump vowed to protect intellectual property in trade agreements. Specifically, he stated, “We will work to fix bad trade deals and negotiating new ones,” adding that “we will protect American workers and American intellectual property, though strong enforcement of our trade rules.” Read more [here](#).

III. USPTO Updates:

- The USPTO issued a revision to the ninth edition of the Manual of Patent Examining Procedure (MPEP), which is a reference work on the practices and procedures relative to the prosecution of patent applications before the USPTO. MPEP outlines the required procedure for the normal examination of a patent application for examiners, applicants, attorneys, agents, and other members of the public. The revisions include updates to the Table of Contents, Foreword, Introduction, Subject Matter Index, and all Appendices except Appendix I and Appendix P. Read more [here](#).
- On Thursday, February 1st, 2018 the United States Patent and Trademark Office (USPTO) held its quarterly Patent Public Advisory Committee (PPAC) meeting from 9:00 am to 2:45 pm. Acting Chief Information Officer David Chiles appeared before the committee. Much of Chiles’ presentation, and the presentations of those within the IT department, were detailed discussions of the progress of various IT projects. There was no discussion of the Open Data initiative. Chiles did talk at length about the work he is doing, in conjunction with the USPTO finance department, to strategize ways to retain quality IT employees.

IV. Judicial Updates:

- Yesterday in an opinion by Judge O’Malley, the Federal Circuit vacated a USPTO inter partes review decision that Paice’s claims were obvious. The claims related to voltage and current output requirements in a hybrid vehicle motor. Paice argued that the Board erred in concluding that a PCT publication was prior art to its claims, which claimed priority to an earlier-filed U.S. patent application. The Federal Circuit said that the USPTO erred in ruling that the earlier-filed application did not incorporate Severinsky by reference. A “broad and unambiguous” incorporation clause identified “with detailed particularity the specific material subject to incorporation.” A sentence referring to differences from Severinsky related only to certain aspects of the inventions and was irrelevant to “the extent of incorporation.” The Court remanded for the USPTO to determine whether the earlier-filed application provided adequate written description support for the challenged claims. (*IPO Daily News*)

V. International Updates:

- The International AntiCounterfeiting Coalition (IACC) this week released its “Year in Review” report for 2017. In the reports opening remarks, IACC president Bob Barchiesi said that “this past year marked a period of accelerated work in brand protection.” “And while we are proud of what we accomplished in 2017, we know our work is not done.” Barchiesi added that in the coming months, IACC will announce “new partnerships and programs” to fight counterfeiting. Read more [here](#).

VI. Industry Updates:

- Alphabet Inc., the parent company of Google, announced in a regulatory filing this week that John Hennessy, a former Stanford University president and one of Google’s first users, would replace Eric Schmidt as Executive Chairman. Read more [here](#).
- This week, U.S. Immigrations and Customs Enforcement (ICE) representatives announced that enforcement actions led by Homeland Security and ICE had led to seizures of over 171,926 counterfeit sports and entertainment-related items worth an estimated \$15.69 million. “Intellectual property theft is a serious crime, and black-market organizations descend on the Super Bowl and other major sporting events to sell counterfeit goods and substandard merchandise to unsuspecting consumers,” said ICE Deputy Director Thomas D. Homan. “ICE agents are committed to investigating the trafficking of counterfeit goods that wreak havoc on local economies, threaten the health and safety of the American public and fund criminal organizations engaged in other illegal activities.” Read more [here](#).