

PATENT & TRADEMARK POLICY REPORT JANUARY 12, 2018



I. Congressional Developments:

- Representative Darrell Issa (R-CA-49), Chairman of the House Judiciary Committee's Subcommittee on Courts, Intellectual Property and the Internet, announced that he will not be seeking reelection in his district. In a statement, Chairman Issa was pleased to report that he had worked to clear the course for better intellectual property protections and to "stop the piracy of American ingenuity" during his time in Congress. On Thursday, however, *The Hill* [reported](#) that Issa, who narrowly won reelection in 2016, has discussed the possibility of running in the neighboring 50th district if Republican Rep. Duncan Hunter resigns. Read more [here](#).
- Senators Cory Booker (D-NJ) and Kamala Harris (D-CA) were appointed to the Senate Judiciary Committee on Tuesday. Read more [here](#). Also this week it was announced that Rep. Hank Johnson (D-GA) will be the next Ranking Member of the House Judiciary IP Subcommittee, replacing Rep. Jerry Nadler (D-NY) who is now the Ranking Member of the full committee.
- On Wednesday, January 17th, at 10 a.m. the Senate Finance Committee will hold a hearing to consider the nominations of Dennis Shea to be Deputy U.S. Trade Representative for the Geneva Office, and C.J. Mahoney to be Deputy U.S. Trade Representative for investment, services, labor, environment, Africa, China and the Western Hemisphere.
- On Wednesday, January 17th at 10 a.m. the Senate Commerce Committee will hold a hearing titled "Terrorism and Social Media: #IsBigTechDoingEnough?" The witnesses include Monika Bickert, Head of Global Policy Management at Facebook; Juniper Downs, Global Head of Public Policy and Government Relations at YouTube; Carlos Monje, Director of

Headlines and Highlights:

- Senate Commerce Committee to hold hearing on "Terrorism and Social Media" featuring Google, Twitter, and YouTube representatives.
- USTR releases 2017 Notorious Markets list.
- Sens. Booker and Harris appointed to Senate Judiciary Committee; Rep. Hank Johnson named House IP Subcommittee Ranking Member.
- Trump could use NAFTA termination letter as negotiating tactic, *Reuters* reports.
- TiVo files patent infringement lawsuit against Comcast.
- Rep. Issa, Chair of House IP Subcommittee, announces he will not seek reelection in 49th district. Reports indicate he may seek election in 50th district.

Public Policy and Philanthropy at Twitter; and Clinton Watts, the Robert A. Fox Fellow at the Foreign Policy Research Institute. Read more [here](#).

II. Administration Updates:

- The U.S. Department of Commerce issued a report on U.S. digital trade with Canada and Mexico last Friday, January 5th. The document estimates that that intellectual property accounted for \$3.7 billion, or 43 percent of the total U.S. “potentially” information and communications technology-enabled services (PCTE) exports to Mexico in 2016. Additionally, it estimates that intellectual property accounts for \$8.3 billion, or 30 percent, of the 2016 U.S. PCTE services exports to Canada. These figures are particularly significant, given that U.S. PCTE exports to both countries have increased over the past decade. We will continue to monitor whether this report impacts the renegotiation of the North American Free Trade Agreement (NAFTA), as participants convene for a seventh round of negotiations this month. Read more [here](#).
- On Wednesday, Reuters reported that President Trump could issue a NAFTA termination letter as a negotiating tactic to gain leverage over Canada and Mexico in talks to modernize the trade agreement. Read more [here](#).
- On Friday, United States Trade Representative (USTR) Robert Lighthizer announced the findings of the 2017 Special 301 Out-of-Cycle Review of Notorious Markets. The List highlights 25 online markets and 18 physical markets around the world that are reported to be engaging in and facilitating substantial copyright piracy and trademark counterfeiting. Read the report [here](#).

III. USPTO Updates:

- The USPTO has revised fees for certain petition types, updated the petitions-related data on the Patents Dashboard, and made changes to PDF-based ePetitions. **Revised Petition Fees:** Effective Jan. 16, fees for petitions based on an unintentional delay (e.g., petition for revival of an abandoned application, petition for delayed payment of the issue fee, petition for delayed submission of priority or benefit claim, petition for the restoration of priority, and petition for delayed payment of the maintenance fee) will include a separate fee for micro-entities. The fees for these petitions will be: \$2,000 (large entity), \$1,000 (small entity), and \$500 (micro entity). See 37 CFR 1.17(m). For more information on the fee changes, please see [Fee Schedule Effective January 16](#).
- Updates to the Patents Dashboard: The “Stat of the Quarter” on the Patents Dashboard has been updated to reflect the continued progress in reducing the backlog of undecided PPH requests. Since February 2016, the Office of Petitions has reduced the Patent Prosecution Highway (PPH) backlog by over 80 percent. See [Patents Dashboard](#) for more information.
- Changes to ePetitions: Effective Feb. 1, the USPTO is retiring the PDF-based ePetitions for the Petition to Make Special based on Age (37 CFR 1.102) and the “Petition to Accept Unintentional Delayed Payment of the Maintenance Fee (37 CFR 1.378(b)). The web-based version of these ePetitions, which provide enhanced functionality, will continue to be available for both types of petitions. For more information on ePetitions, see the [ePetitions Resource page](#).

- The United States Patent and Trademark Office published in the Federal Register on June 11, 2015 a final rule, which became effective on July 11, 2015, revising the Trademark Rules of Practice. This document reinstates three paragraphs, which were inadvertently deleted as a result of an error in the amendatory instructions. Read more [here](#).

IV. Judicial Updates:

- This week, TiVo filed two patent infringement lawsuits in the U.S. District Court for the Central District of California and the U.S. District Court for the District of Massachusetts alleging that Comcast's X1 platform infringed eight TiVo-owned patents. A Comcast spokeswoman said the company will "aggressively defend" itself and denied the charges of infringement. Read more [here](#).

V. International Updates:

- On Monday, Dr. Falk Schoning and Christian Ritz, lawyers at Hogan Lovells in Munich, Germany wrote an article titled "Digital Antitrust – Outlook for the European Antitrust Year 2018." "So far, the focus of antitrust enforcement in the digital world has been on questions regarding 'big data' and large, consumer-facing platforms," Schoning and Ritz write. "For 2018, we expect the debate to expand into other tech areas including Artificial Intelligence (AI), algorithms and blockchain." Read more [here](#).
- On Tuesday, five EU Commissioners met with representatives from Google, Facebook and Twitter to discuss progress in tackling the spread of illegal content online. The Commissioners, alongside European Commission Vice-President Andrus Ansip, recently issued a press release describing illegal content as a threat to security and fundamental rights while demanding a "collective response—from all actors, including the internet industry." "The Commission seeks to deprive commercial-scale IP infringers of the revenue flows that make their criminal activity lucrative – this is the so-called 'follow the money' approach which focuses on the 'big fish' rather than individuals," the Commission explained. Read more [here](#).

VI. Industry Updates:

- On Thursday, Brian Pomper, Executive Director of ACTION for Trade—a pro-IP coalition of companies and associations including MPAA, Authors Guild, RELX, and RIAA—penned an op-ed in *The Hill* urging the government to support strong intellectual property protections in a renegotiated North American Free Trade Agreement (NAFTA). "IP-intensive industries not only generate breakthrough products and new processes and ways to do things, they drive our economy through job creation, high wages and increased exports," writes Pomper, adding that "all of the IP-intensive industries that are a part of ACTION for Trade stand at the ready to work with the administration and Congress to preserve and protect our creative and innovative industries and the nearly 60 million American jobs they collectively support." Read more [here](#).