

PATENT & TRADEMARK POLICY REPORT

JUNE 29, 2018



I. Congressional Developments:

- On Tuesday, Rep. Joe Crowley (D-NY-14), the fourth-ranking Democrat in the House of Representatives, lost his primary race to Alexandria Ocasio-Cortez. Read more [here](#).
- On Wednesday, the Joint Economic Committee held a hearing on “The Need for U.S. Leadership in Digital Trade” featuring witnesses from the U.S. Chamber of Commerce, Congressional Research Service, and former Deputy U.S. Trade Representative Robert Holleyman. Much of the discussion centered around recent US trade tariffs and the European Union’s implementation of their General Data Privacy Regulation (GDPR), with both sides of the aisle expressing concerns over possible negative implications of GDPR.
- On Thursday, *Quartz* interviewed Sen. Wyden (D-OR), Ranking Member of the Senate Finance Committee, on U.S. trade policy under President Trump. When asked if he thinks NAFTA will be renegotiated, Wyden says that the “sand is definitely running out of the hourglass this year.” Wyden went on to say that NAFTA needs a “vigorous overhaul” and negotiators should start with addressing digital trade issues. Read more [here](#).

II. Administration Updates:

- This week, POLITICO reported that Everett Eissenstat, a key trade advisor on the White House’s National Economic Council (NEC), will leave his post at the end of next month. Eissenstat, who previously served as chief trade counsel to Sen. Hatch (R-UT), headed up the NEC’s international economics file and was brought on by former NEC Director Gary Cohn. Read more [here](#).

Headlines and Highlights:

- Associate Justice Anthony Kennedy announces he will step down at end of July.
- *Quartz* interviews Sen. Wyden on U.S. trade policy under Trump.
- Everett Eissenstat, key trade advisor to President Trump, will leave his post next month.
- China’s State Council Information Office releases white paper claiming they protect foreign IP.
- *Washington* magazine asks “Has the New America Foundation Lost its Way?”
- Google hires Karan Bhatia as new Global Head of Policy.
- Rep. Joe Crowley, fourth-ranking Democrat in House, loses primary race.
- Joint Economic Committee holds hearing on digital trade.

III. USPTO Updates:

- Registration is now open for Invention-Con 2018, a free two-day conference that will be held at the USPTO headquarters in Alexandria, Virginia, on August 17-18 from 8 a.m. – 5 p.m. ET each day. This year's theme is "From Concept to Commercialization."
- The United States Patent and Trademark Office (USPTO) is seeking nominations to fill upcoming vacancies for the Patent Public Advisory Committee (PPAC) and the Trademark Public Advisory Committee (TPAC). Nominations must be postmarked or electronically transmitted on or before July 6, 2018. Submission details can be found in the [Federal Registration Notice](#).
- The United States Patent and Trademark Office (USPTO), the European Patent Office (EPO), the Japan Patent Office (JPO), the Korean Intellectual Property Office (KIPO) and the State Intellectual Property Office of the People's Republic of China (SIPO), referred to collectively as the IP5 Offices, will launch a pilot project on Collaborative Search and Examination (CS&E) under the Patent Cooperation Treaty (PCT). This will be the third such pilot. The USPTO, the EPO, and the KIPO conducted two previous pilots in 2010 and in 2011-2012. The third pilot is needed to further develop and test the concept amongst all the IP5 Offices. In particular, this IP5 pilot project aims at assessing user interest for a CS&E product and the expected efficiency gains for the IP5 Offices.

IV. Judicial Updates:

- On Thursday, in *Impax Labs, Inc. v. Lannett Holdings, Inc.*, the Federal Circuit upheld a district court decision that AstraZeneca's claims were not obvious. Impax was the exclusive licensee of the patents, which claimed formulations of and devices for intranasally administering zolmitriptan to treat migraines, sold as Zomig® (zolmitriptan) Nasal Spray. Lannett argued that the district court erred in “failing to consider the prior art ‘as a whole,’” pointing to a reference that mentioned using zolmitriptan in a nasal spray. The Federal Circuit disagreed, saying that the reference cited by Lannett “barely mentioned” zolmitriptan. The district court had weighed the “totality of the record evidence” and found that zolmitriptan’s more potent active metabolite would have led a skilled artisan to expect a nasally-administered version of the compound itself would be less effective. The Federal Circuit agreed that the case was “a close one,” but found that substantial evidence supported the conclusion of nonobviousness. (*IPO Daily News*)
- On Wednesday, U.S. Supreme Court Associate Justice Anthony Kennedy announced that he will step down at the end of July. Senate Majority Leader Mitch McConnell has indicated that he intends to confirm a new Justice before the midterms. Read more [here](#).
- On Thursday, the U.S. Supreme Court granted a petition to review the question of whether plaintiffs who have submitted a copyright registration application but have not received a registration certificate can sue. The Office of the U.S. Solicitor General, in a brief urging the court to take up the case, said Section 411(a) of the Copyright Act clearly states a plaintiff can file a copyright lawsuit only after the Copyright Office has approved or rejected an application. Read more [here](#).

V. International Updates:

- On Thursday, China's State Council Information Office issued a white paper entitled "China and the World Trade Organization" which claims that China has fulfilled its commitments to the WTO and protects the intellectual property of foreign firms. Read more [here](#).

VI. Industry Updates:

- On Sunday, the *Washingtonian* published a story titled "Has the New America Foundation Lost its Way?" which questioned whether the think tank was truly independent from Google, one of its largest funders. At the center of the debate was New America's decision in summer 2017 to fire staffer Barry Lynn, head of the Open Markets program, after he praised the European Union's \$2.7 billion fine for antitrust violations. Read more [here](#).
- On Thursday, Kent Walker, Google's General Counsel, announced that the company has hired Karan Bhatia as its new Global Head of Policy. Bhatia, who most recently served as GE's Government Affairs and Policy President, will lead the company's policy discussions around AI, job creation and infrastructure. Bhatia has also held senior positions in the Departments of Commerce and Transportation and was a Deputy USTR under the Bush Administration. Read more [here](#).
- This week, Apple and Samsung agreed to a settlement ending their 7 year patent infringement dispute. In 2011, Apple sued Samsung, accusing them of copying the iPhone's design and software features. A jury awarded Apple \$539 million in May, leaving Samsung with an outstanding balance of \$140 million. It is unclear how much more Apple will receive. Read more [here](#).