



AMERICAN CONTINENTAL GROUP

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## PATENT & TRADEMARK POLICY REPORT MARCH 23, 2018



### I. Congressional Developments:

- This week, Mississippi Governor Phil Bryant officially selected Agriculture Commissioner Cindy Hyde-Smith to fulfill the remainder of Sen. Thad Cochran's term. Cochran announced earlier this month he would retire effective April 1<sup>st</sup>. Hyde-Smith served in the Mississippi Legislature from 2000 to 2012. She was first elected as a Democrat, but switched to the Republican Party in 2010. Hyde-Smith was elected agriculture commissioner in 2011, the first woman to hold that position, and was re-elected in 2015. Read more [here](#).
- On Thursday, Sens. Coons (D-DE) and Hatch (R-UT) introduced the Building Innovation Growth through Data for Intellectual Property Act of 2018, legislation that will extend the USPTO's fee setting authority. Additionally, in exchange for financial autonomy the bill would "hold the USPTO accountable for making it a priority to complete the transition to modern IT systems as well as planning for future incorporation of emerging technologies in the examination process." Read more [here](#).
- On Wednesday, March 21<sup>st</sup> from 10:00 a.m. to 2:00 p.m., the United States House Committee on Ways and Means held a hearing on U.S. Trade Policy Agenda. The sole witness at the hearing was U.S. Trade Representative Robert E. Lighthizer. Chairman Brady in his opening remarks included the importance of robust IP protections in NAFTA. During the hearing, Rep. Chu (D-CA) noted that Canada and Mexico do not place the same value on copyright protection as the United States does, and asked what assurances the Ambassador could give with regards to IP and NAFTA renegotiations. While the Ambassador refused to give any assurances, he emphasized the need for strong IP protections, noted that these provisions are often the last ones to be negotiated, and that the speed of the closing of

### Headlines and Highlights:

- Senate Finance and House Ways and Means Committees hold hearings on U.S. Trade Policy Agenda with USTR Lighthizer.
- White House IPEC releases 2017 Annual Report to Congress.
- Sens. Hatch and Coons introduce legislation that will extend USPTO's fee setting authority.
- Sens. Warner and Peters send letter to Trump urging him to appoint OSTP Director.
- USPTO Director Iancu pens first blogpost on Director's Forum.
- China overtakes Japan as number two filer of international patent applications.
- CSIS to hold event on protecting IP through Section 237.

NAFTA renegotiations should not have any effect on the IP protections. He also noted that Canada and Mexico are takers of IP, not protectors, and that he is completely in the US IP community's camp on IP protections. Later, Rep. Reed (R-NY) observed the importance of IP to the US economy and US innovation. Lighthizer said that they are completely committed to IP in trade agreements, that the prior administration had moved away from protecting IP in trade policy, and that he is working to recenter this element of trade policy. He also noted that Canada and Mexico are takers of IP, not protectors, and that he is completely in the US IP community's camp on IP protections.

- On Thursday, March 22<sup>nd</sup> from 10:00 a.m. to 12:30 p.m., the United States Senate Committee on Finance held a hearing on the President's 2018 Trade Policy Agenda. The sole witness at the hearing was U.S. Trade Representative Robert E. Lighthizer. Opening the hearing, Chairman Hatch (R-UT) noted that the trade agenda looks very different now than it did a year ago, and indicated that he was pleased with the NAFTA renegotiation progress, particularly with regards to SPS measures. He further noted that he believed the first priority should be strengthening IP protections and enforcement, with particular focus on copyright protection and enforcement and making sure that patent protections are not undermined. Senator Menendez (D-NY) asked for the Ambassador what his strategy was for closing out the IP chapter and delivering a strong IP chapter for US innovators. In response, Amb. Lighthizer noted, as he did yesterday, that IP is always the last thing to close because other countries are takers. He again was critical of Canada and said he believes he is mandated by the Committee to improve IP standards. Other Members, including Sens. Warner (D-VA) and Casey (D-PA), expressed concern about China's theft of US IP, though Senator Warner called for a more organized approach to national security and IP theft. Watch the hearing [here](#).
- On Thursday, Sens. Peters (D-MI) and Warner (D-VA) sent a letter to President Trump urging him to appoint a Director of the Office of Science and Technology Policy (OSTP), a position that has been vacant for more than a year. "As co-chairs of the Senate Science Forum, we know legislators from both parties are eager to work with an OSTP Director who has the administrative and legal authority to lead broad-based federal science and technology efforts and the credibility and stature to bring partners in industry and academia to the table. We need such a partner to maintain America's position at the forefront of science and technology innovation," said the Senators. Read the letter [here](#).

## **II. Administration Updates:**

- On Thursday, President Trump signed a presidential memorandum that could impose tariffs on up to \$60 billion of imports from China to "protect the intellectual property of Americans" and end "the illegal theft and transfer of IP to foreign nations." The announcement follows a months-long Section 301 investigation into IP malpractice in China by USTR. House Ways and Means Chairman Kevin Brady (R-TX) [responded](#) to the announcement, saying the President "is right to go after China on intellectual property" as it costs "thousands of U.S. jobs." However, Brady went on to implore the President to "narrow" the tariffs "to really hit the target and make sure there isn't spillover that affects our workers, our families, our farmers." Read more [here](#).
- This week, the White House Intellectual Property Enforcement Coordinator (IPEC) issued his Annual Report to Congress for 2017. The report highlighted copyright policy, cyber-theft,

E-commerce, and ICANN as some policy areas that could be examined and discussed further. House Judiciary Chairman Bob Goodlatte (R-VA) issued a [press release](#) applauding the IPEC's annual report, which he said "lays out a thorough strategy to continue economic growth by ensuring American innovation is protected and able to flourish." Read the report [here](#).

### **III. USPTO Updates:**

- On Thursday, USPTO Director Iancu wrote his first blogpost on the Director's Forum. "By the end of this week, I'll have held the title Under Secretary of Commerce for Intellectual Property and Director of the USPTO for more than six week," Iancu wrote. "In that short time, apart from learning to say my whole title in one breath, I've learned a great deal about the day-to-day activities of the USPTO." Read the entire post [here](#).
- The U.S. Department of Commerce's United States Patent and Trademark Office (USPTO) today announced the exhibitors chosen for the 2018 National Trademark Expo at the National Museum of American History in Washington, D.C. in partnership with the Smithsonian Institution on Friday, July 27 and Saturday, July 28, 2018. The two-day event helps support the mission of the Smithsonian Institution and the USPTO by educating the public about the history and value of trademarks in addition to their importance in the global marketplace through informational seminars, children's workshops, displays of authentic and counterfeit goods, and other exhibits featuring registered trademarks.

### **IV. Judicial Updates:**

- On March 14, the global sports giant Adidas filed a stipulation for dismissal of its patent claim against Asics America, the US subsidiary of Asics. The original suit, filed last March, argued that Asics America had violated numerous patents owned by Adidas related to fitness tracking. The US District Court for the District of Delaware dismissed the suit with prejudice following Adidas' stipulation. Read more [here](#).
- On March 19, Sweden-based electronics company Ericsson filed a complaint against LG Electronics in the US District Court for the Eastern District of Texas for a refusal to agree to a FRAND reciprocal license. In its complaint, Ericsson claims that it owns more than 45,000 patents related to cell phones and 2G, 3G, and 4G networks. According to Ericsson, LG had reached three separate reciprocal deals with Ericsson in the past but refused to engage in renewal negotiations had failed as LG had refused to accept FRAND terms. Read more [here](#).

### **V. International Updates:**

- According to the World International Property Agency, China has moved into the second position as filer of international patent applications at WIPO, and data suggests they will overtake the U.S. for the top spot in three years. "This rapid rise in Chinese use of the international patent system shows that innovators there are increasingly looking outward, seeking to spread their original ideas into new markets as the Chinese economy continues its rapid transformation," said WIPO Director General Francis Gurry. "This is part of a larger shift in the geography of innovation, with half of all international patent applications now originating in East Asia." Read more [here](#).

### **VI. Industry Updates:**

- On Wednesday, March 28<sup>th</sup> from 9:30 am – 11:30 am the Center for Strategic and International Studies (CSIS) will host an event titled “Defending Intellectual Property: Is Section 237 the Right Answer?” The event will feature panelists including Katherine Tai, Chief Trade Counsel, House Ways and Means Committee; Deanna Tanner Okun, Former ITC Commissioner; and Ben Levi, Principal at Levi & Snotherly, PLLC. Read more [here](#).
- On Wednesday, the Internet Association—a trade association representing tech companies including Amazon, Facebook, and Google—hired Jordan Haas as Director of Trade and International Policy. Haas most recently served at the International Trade Administration where “he provided strategic counsel to the Under Secretary for International Trade and the Office of the Secretary of Commerce on agency and department operations, including international trade policy initiatives.” Read more [here](#).