



AMERICAN CONTINENTAL GROUP

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PATENT & TRADEMARK POLICY REPORT MAY 4, 2018



I. Congressional Developments:

- Last week, Sens. Gardner (R-CO), Markey (D-CA), Rubio (R-FL), and Cardin (D-MD) introduced the Asia Reassurance Initiative Act (ARIA), legislation that would “serve as a policy framework to enhance U.S. leadership in the Indo-Pacific region” and demonstrate a commitment to a “rules-based international order.” “This initiative is a generational approach that will put American interests first by reassuring our allies, deterring our adversaries, and securing U.S. leadership in the region for future generations,” said Gardner. “We believe that with this bipartisan vision for our Asia policy, the Administration and Congress can be united on implementing a long-term strategy that will benefit American national security interests, promote American businesses and create jobs through trade opportunities, and project American values of respect for the human rights and freedom that have made America the shining city upon a hill.” Read more [here](#).
- On Wednesday, May 9th at 2:30 p.m. the Senate Foreign Relations Subcommittee on Multilateral International, Multilateral Institutions, and International Economic, Energy, and Environmental Policy will hold a hearing titled “A Multilateral and Strategic Response to International Predatory Economic Practices.” The hearing will feature witnesses including Matthew Goodman, chair in political economy at the Center for Strategic and International Studies; and Robert Atkinson, president of the Information Technology and Innovation Foundation, amongst others. Read more [here](#).

II. Administration Updates:

Headlines and Highlights:

- USPTO holds quarterly PPAC meeting.
- Bipartisan group of Senators introduce legislation to rework U.S. policy towards Indo-Pacific.
- WSJ Editorial Board criticizes USTR Lighthizer’s approach to passing a renegotiated NAFTA through Congress.
- USTR says he will not seek to change China’s economic system during his upcoming visit, but rather open it up more to foreign competition.
- Supreme Court declines to hear appeal that would narrow scope of patents challengeable before PTAB.
- UPenn Law School to hold Hill briefing regarding ad tech and algorithms.
- *Wired* profiles Silicon Valley lawmaker Ro Khanna.

- On During a lunchtime discussion at the U.S. Chamber of Commerce on Tuesday, United States Trade Representative (USTR) Robert Lighthizer said that is the U.S., Mexico and Canada are unable to reach an agreement on a renegotiated NAFTA by the end of May, the issue will likely extend into 2019. He also [said](#) that does not intend to use his trip to China this week to change China’s state-driven economic system, but rather to open it up to more foreign competition. “It is not my objective to change the Chinese system,” Lighthizer said. “It seems to work for them. ... But I have to be in a position where the United States can deal with it, where the United States isn’t the victim of it and that’s where our role is.” Read more [here](#).
- POLITICO [reported](#) on Friday that Tara Isa Koslov has been named acting chief of staff to new FTC Chairman Joe Simons.

III. USPTO Updates:

- On Thursday, the USPTO held its quarterly Patent Public Advisory Committee (PPAC) meeting. USPTO Director Iancu gave opening remarks at event and stressed his desire to continue to improve the IT systems as well better advertise the work the USPTO does to ensure U.S. creators can thrive. Tony Scardino, Chief Financial Officer, also presented and warned that, absent Congressional action, the USPTO’s fee setting authority under the AIA would expire on September 16, 2018. Scardino said that while Sens. Coons and Hatch introduced legislation in March to extend the authority for 10 years, neither chamber has made effort to move the legislation.
- The Office of Enrollment and Discipline (OED) of the United States Patent and Trademark Office (USPTO) has announced that the patent bar exam will be updated. The latest update to the patent registration examination will be effective as of August 16, 2018. In order to facilitate the switch over to a new patent bar examination, no examination will be administered from August 9, 2018 through August 15, 2018. Read more [here](#).
- On Thursday, former USPTO Director Michelle Lee appeared on the “Hsu Untied” podcast to discuss her time at the USPTO and her interest in patent law. Listen [here](#).

IV. Judicial Updates:

- On Wednesday *TechSpot* reported that [Corephotonics brought a second patent infringement suit against Apple](#) that added additional versions of the iPhone and an additional patent to the dispute between the companies on smartphone camera technology. (*IPO Daily News*)
- On Monday, the U.S. Supreme Court declined to hear an appeal by Google of a 2016 federal appeals court ruling that narrowed the scope of patents that can be challenged before the USPTO’s Patent Trial and Appeal Board. Read more [here](#).

V. International Updates:

- Late last week, Bruno van Pottelsberghe, Full Professor at the Solvay Brussels School of Economics and Management, wrote a piece titled “The European Patent System at a Crossroads” in which he claims the European patent system can be successful but must first make significant changes. Van Pottelsberghe points out that European Patent Office

applicants pay 5 to 10 times more than any other country for ten years of protection. Read more [here](#).

VI. Industry Updates:

- On Sunday, *Wired* did a profile of Rep. Ro Khanna (D-CA), a lawmaker who represents much of Silicon Valley but wants to regulate tech companies. Khanna, at the direction of Minority Leader Pelosi, is in the process of drafting an “Internet Bill of Rights” that he hopes can be a basis for future legislation. In the profile, Khanna points out that an impetus to regulating tech is the lack of knowledge of technology on Capitol Hill. “One of the things that perplexed me most about the hearings was how many of the congresspeople or senators turned to Zuckerberg and said, ‘Tell us what we should do,’” Khanna says about the recent hearings on the Facebook data breach. “If you had the pharmaceutical industry up there or banks up there, you wouldn’t have members of Congress saying, ‘Please tell us how we should regulate you.’” Read more [here](#).
- On Tuesday, May 8th at 10 a.m. the Atlantic Council will hold an event titled “Making America First in the Digital Economy: The Case for Engaging Europe.” The event will have a panel featuring EU Ambassador to the U.S. David O’Sullivan; Abigail Slater, Special Assistant to the President for Technology, Telecommunications, and Cybersecurity Policy at the National Economic Council; and Dean Garfield, President and CEO of the Information Technology Industry Council. Read more [here](#).
- On Thursday, *The Wall Street Journal* editorial board wrote a piece titled “The Nafta Ultimatum Strategy” in which they criticize USTR Lighthizer’s belief that he can afford to lose Republican votes in Congress for a renegotiated NAFTA by picking up Democratic votes. “Republicans are threatening to reject the revised pact if it includes Mr. Lighthizer’s demand to strip arbitration panels for investor-state disputes,” the Editorial Board writes. “Mr. Lighthizer doesn’t seem to care. He wants to present Congress with an ultimatum to approve the renegotiated agreement or watch Mr. Trump let Nafta expire.” The Board goes on to write that the “AFL-CIO-backed” Democrats would likely call Lighthizer’s bluff, let NAFTA expire, and blame President Trump and Republicans for the economic damage. Read more [here](#).
- On Monday, May 7th from 11 a.m. to 12 p.m. the University of Pennsylvania Law School’s Center for Technology, Innovation and Competition will hold a briefing for House of Representative staff regarding ad tech, online consumer data collection and consumer privacy in the age of algorithms. The briefing will be in Rayburn 2123. The briefing for Senate staff will be from 1:00-2:30 p.m in Russell 253.