

PATENT & TRADEMARK POLICY REPORT OCTOBER 12, 2018



I. Congressional Developments:

- On Wednesday, United States Trade Representative (USTR) Lighthizer told a Senate advisory committee that the Trump Administration has an interest in negotiating trade deals with a number of partners, including the European Union, Japan, and the U.K. Sen. Rob Portman (R-OH) told reporters he didn't believe it was an official notice of talks, but noted "we can begin to touch gloves. It's already started," with respect to Japan and the EU. USTR is required to provide 90 days' written notice before it formally launches trade negotiations. More info [here](#).
- On Thursday, Sen. Mark Warner (D-VA), Ranking Member of the Senate Intelligence Committee and a member of the Senate Finance Committee, was interviewed by *The Atlantic* and he raised concerns with Big Tech's "pathetic" response to security concerns, and questioned if the Section 230 framework was appropriate for the modern Internet. "The social-media companies fight any changes to Section 230 as if it will provoke the complete destruction of the public square," Warner says. "Obviously, that is not the case." Warner goes on to question whether the industry can administer a "decency doctrine" or if Congress will need to step in. Read more [here](#).
- On Wednesday, October 10th, the Senate Commerce Committee held a second hearing to examine consumer data privacy. In contrast to the Commerce Committee's first privacy hearing, this hearing invited witnesses that had experience with implementing and assessing recent privacy laws, including the European Union's (EU) General Data Protection Regulation (GDPR) and California's Consumer Privacy Act (CCPA). Witnesses on the panel included the Chairman of the EU's data protection board, the Chairman of Californians for Consumer Privacy, the Executive Director of Georgetown's Law Center on Privacy &

Headlines and Highlights:

- Microsoft joins Open Invention Network, allows access to 60,000 patents.
- USPTO publishes rule changing claim construction standard applied during IPR, PGR and CBM proceedings.
- Senate passes bill to extend USPTO fee-setting authority for another eight years.
- USTR Lighthizer meets with Senate advisory committee to discuss future trade deals.
- Trump and Xi Jinping agree to meet at G-20 next month to discuss trade disagreements.
- Sen. Warner criticizes Big Tech for "pathetic" response to security concerns.
- European Patent Office appoints three new vice-presidents.

Technology, and the President and CEO of the Center for Democracy & Technology (CDT). Many Senators on the Committee used the question and answer portion of the hearing to inquire about different provisions in the GDPR. Watch the full hearing online [here](#).

II. Administration Updates:

- President Trump and Chinese leader Xi Jinping agreed this week to meet next month at the G-20 summit in Buenos Aires in an attempt to resolve their growing trade conflict. Trump has stated he aims to force Beijing to end the stealing of intellectual property from U.S. companies. Read more [here](#).

III. USPTO Updates:

- Thursday night, the Senate passed H.R. 6758, the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). Included in the legislation is an extension of the USPTO's fee-setting authority for eight years, as well as a requirement that the USPTO study and make recommendations concerning increasing the participation of women and minorities in innovation. The bill is now on its way to the White House for the President's signature. Find the bill [here](#).
- The next Patent Public Advisory Committee (PPAC) meeting will be on November 8th at USPTO Headquarters and the next Trademark Public Advisory Committee (TPAC) will be October 25th at USPTO Headquarters.
- The USPTO has published a final rule changing the claim construction standard applied during inter partes review (IPR), post-grant review (PGR), and the transitional program for covered business method patents (CBM) proceedings before the Patent Trial and Appeal Board (PTAB). The final rule replaces the "broadest reasonable interpretation" standard with the federal court claim construction standard that is used to construe a claim in a civil action under 35 U.S.C. § 282(b). This is the same claim construction standard articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc), and its progeny. Additionally, under the final rule, when construing a claim term in an IPR, PGR, or CBM, the PTAB will take into consideration any prior claim construction determination that has been made in a civil action, or a proceeding before the International Trade Commission (ITC), if that prior claim construction is timely made of record in that IPR, PGR, or CBM. Read more [here](#).

IV. Judicial Updates:

- On October 5th, the U.S. International Trade Commission (USITC) announced it would investigate California-based Resmed Inc for a patent infringement complaint related to sleep apnea masks. The complaint was filed by New Zealand medical device maker Fisher & Paykel Healthcare. Read more [here](#).

V. International Updates:

- Business leaders from the United States and Mexico concluded the tenth meeting of the U.S.-Mexico Dialogue this week. This semiannual, private-sector forum seeks to foster conversation on key economic and trade issues that impact the relationship between the two countries. According to a U.S. Chamber of Commerce statement, discussions focused heavily

on analyzing the U.S.-Mexico Canada Agreement (USMCA) and setting shared policy priorities in advance of the seating of the new government in Mexico. Read more [here](#).

- This week, the European Patent Office (EPO) announced the appointment of three new vice-presidents: Stephen Rowan (UK), Christoph Ernst (Germany) and Nellie Simon (Austria). They will take office on January 1 and serve for five years. More info [here](#).

VI. Industry Updates:

- On Friday, October 18th the Washington International Trade Administration (WITA) will hold an event titled “The U.S.-Mexico-Canada Agreement: What’s New in NAFTA 2.0?” The event will feature a panel consisting of Gov. Matt Blunt, President of the American Automotive Policy Council; Victoria A. Espinel, President and CEO of BSA: The Software Alliance; and Joe Glauber, Senior Research Fellow at the International Food Policy Research Institute. Read more [here](#).
- This week, Microsoft announced that it will join the Open Invention Network (OIN), an open-source patent consortium. In doing so, Microsoft will allow royalty-free access to 60,000 of their patents for Linux-related open source projects to all OIN members. Read more [here](#).