

## PATENT & TRADEMARK POLICY REPORT SEPTEMBER 14, 2018



### I. Congressional Developments:

- On Thursday, September 13, the House Judiciary Committee advanced a bill to extend by eight years the U.S. Patent and Trademark Office’s fee setting authority, which is slated to expire this month under current law. The bill, [H.R. 6758](#), also requires the PTO Director and the Small Business Administration head to conduct a study on the participation of women and minorities in entrepreneurship activities in the patent system.
- On Wednesday, October 3<sup>rd</sup> at 2:30 p.m. the Senate Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights will hold a hearing on “Antitrust Law Enforcement” featuring Assistant Attorney General for Antitrust Makan Delrahim and FTC Chairman Joseph Simons. Read more [here](#).
- On Monday, seven Democratic members of the House Ways and Means Committee, led by Rep. DelBene (D-WA), sent a letter to United States Trade Representative Robert Lighthizer indicating that his office’s notification of a trade deal with Mexico—“and with Canada if it is willing,”—may not be compliant with Trade Promotion Authority, the law that gives the White House flexibility in trade negotiations. “[T]he negotiating objectives you published were specific to a trilateral deal and your office never released any negotiating objectives regarding a bilateral deal with either Mexico or Canada,” the Democrats wrote. “While we appreciate that it takes time to iron out the final details and text, we believe that it is not in the spirit of TPA to send Congress an official notification letter until all three parties have formally agreed to move forward together with an updated trilateral agreement.” Read more [here](#).

### Headlines and Highlights:

- House Judiciary advances bill to extend fee-setting authority of the USPTO by eight years.
- FTC begins hearings on Competition and Consumer Protection in the 21<sup>st</sup> Century.
- USPTO deadline to submit comments on 2018-2022 Strategic Plan is Sept. 20<sup>th</sup>.
- ABA president sends letter to House Judiciary Committee expressing concern over four federal court bills.
- Seven House Ways and Means Democrats send letter to USTR indicating the U.S.-Mexico deal may not be compliant with TPA.
- Canada Foreign Minister and USTR Lighthizer continue NAFTA talks.
- Next PPAC meeting is November 8<sup>th</sup>.

## II. Administration Updates:

- On Monday, U.S. Trade Representative (USTR) Robert Lighthizer and EU Trade Commissioner Cecilia Malmström met in Brussels as part of the new Executive Working Group envisioned by President Trump and President Juncker in the July 25<sup>th</sup> joint statement on reducing tensions stemming from the steel and aluminum tariffs. In a statement on the matter, the Office of the USTR offered some insight into the timing of these efforts. Notably, according to the document, the Ministers are slated to meet in November to “finalize outcomes,” after which the USTR will begin consultations with Congress. Read more [here](#).
- Canada Foreign Minister Chrystia Freeland and USTR Lighthizer wrapped up another day of talks on Tuesday without reaching a breakthrough on the renegotiated agreement. When asked about the goal of striking a deal before September 30<sup>th</sup>, Freeland insisted that Canada’s “only focus” is achieving a deal that’s good for Canadians. President Trump also weighed in on the matter on Tuesday, [telling](#) reporters, “With Canada, they want to make a deal very much. Me? If we make it, that's good. And if we don't make it, that's OK too.”
- On Thursday, September 13<sup>th</sup>, the FTC began its highly anticipated set of hearings on “Competition and Consumer Protection in the 21<sup>st</sup> Century” with three panels at Georgetown University Law Center. The panel discussions were conducted at a very high level, intended to simply begin the process of engaging with new ideas on competition law and consumer privacy, as opposed to discussing details of specific policy proposals. FTC Chairman Joseph Simons gave [opening remarks](#) to begin the day and frame the discussion for all of the hearings going forward. Chairman Simons primarily discussed competition issues, but also mentioned that privacy and data security will be an important topic for later hearings as well. Notably, he clearly stated that he has an open mind to new ideas and methods to apply in antitrust law, and specifically stated that recent economic studies have shown that less competition and more market concentration have correlated with the beginning of the broad antitrust consensus that developed with the Chicago-school style of thinking in the 1980s.

## III. USPTO Updates:

- The United States Patent and Trademark Office (USPTO) is seeking comments on the draft 2018-2022 Strategic Plan. The draft plan sets out the USPTO's mission-focused strategic goals: to optimize patent quality and timeliness; to optimize trademark quality and timeliness; and to provide domestic and global leadership to improve intellectual property (IP) policy, enforcement, and protection worldwide. The USPTO will consider all comments received during the public comment period from August 22 through September 20, and anticipates posting the final strategic plan for FY 2018-2022 on [www.uspto.gov](http://www.uspto.gov) in November 2018.
- The next Patent Public Advisory Committee (PPAC) meeting will be on November 8<sup>th</sup> at USPTO Headquarters and the next Trademark Public Advisory Committee (TPAC) will be October 26<sup>th</sup> at USPTO Headquarters.

## IV. Judicial Updates:

- This week, the House Judiciary Committee advanced four federal court bills that American

Bar Association (ABA) President Bob Carlson said would “profoundly affect litigants who seek redress.” According to the ABA, one bill would restructure the San Francisco-based 9<sup>th</sup> U.S. Circuit of Appeals; another would ban nationwide injunctions in cases that are not class actions; and a third would make a variety of judiciary reforms. “Our overriding concern, and one that we shall reiterate throughout this letter, is that each of these bills deserves thoughtful review and full consideration prior to markup because each proposes substantive changes that will profoundly affect litigants who seek civil redress through our federal and state court systems,” Carlson wrote in his [letter](#) to the House Judiciary Committee. “Instead of having an opportunity to thoroughly review these bills, your committee members are being asked to mark up these bills, even though three of them were introduced only a few days ago.” Read more [here](#).

## V. International Updates:

- This week, Andreas Kaplan of Smartereum wrote a piece on how Chinese e-commerce giant Alibaba is “leading the pack in blockchain patents” and they “are proud of it.” Read more [here](#).

## VI. Industry Updates:

- On September 26<sup>th</sup> from 1:15-6:00 p.m., Concurrences Review & The George Washington University Law School will hold a conference titled “Where is Antitrust Policy Going?” The event will feature three panelists including Barry Lynn, Executive Director of the Open Markets Institute; Maureen Ohlhausen, FTC Commissioner; and Rebecca Slaughter, FTC Commissioner. Read more [here](#).
- On Tuesday, September 11, 2018, the Digital Citizens Alliance hosted a panel discussion about the intersection of online business models and policies. The event provided context for the Federal Trade Commission’s (FTC) [Competition and Consumer Protection in the 21<sup>st</sup> Century hearings](#) on Thursday, September 13, 2018. There was lively discussion amongst the panelists about political manipulation of the public, illicit sale of goods and services, and the overall lack of privacy for consumer data gathered from digital platforms. The political manipulation is created from people getting their news from an algorithm created by the tech companies that own the digital platforms. Thus, the news provided to a user is tailored to their beliefs or viewpoints not accounting for alternative perspectives. When discussing the sale of illicit goods and services a large part of the conversation revolved around whether digital platforms like Google or Facebook know about what is on their platforms or instead these platforms are absentee owners. Furthermore, both audience members and panelists remarked that § 230 gives liability protections to digital platforms to say we did not know to escape liability for illegal activities found on their platforms. Finally, the panel agreed that digital platforms need more accountability when it comes to protecting consumer data and making the consumers aware of what data is collected.