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PATENT & TRADEMARK POLICY REPORT SEPTEMBER 7, 2018



I. Congressional Developments:

- On Wednesday, October 3rd 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 Tuesday, a coalition of creators committed to showcasing the creativity of diverse voices and fostering opportunities for creators of color penned a letter to Representatives Chu (D-CA), Diaz-Balart (R-FL), Lujan Grisham (D-NM), and Richmond (D-LA) highlighting their perspective on how a lack of accountability for dominant internet platforms harms creators of color and undermines trust online. Specifically, the document expresses concerns that online platforms have “turned a blind eye to massive exploitation of creative works on the internet.” Read more [here](#).
- On August 30th, Senator Orrin Hatch (R-UT) sent a letter urging Chairman of the Federal Trade Commission (FTC) Joseph Simons to consider the competitive effects of Google’s conduct in search and digital advertising.
- On Tuesday, Arizona Republican Gov. Doug Ducey chose former U.S. Sen. Jon Kyl to replace the late John McCain in the Senate. In accordance with Arizona law, Ducey is responsible for appointing a replacement for McCain until a November 2020 special election, but it is unclear if Kyl will remain in the Senate through 2020. Read more [here](#).
- On Thursday, Rep. Doug Collins (R-GA) introduced H.R. 6714, the Electronic Court Records Reform Act, legislation that

Headlines and Highlights:

- CEO of Twitter and COO of Facebook testify before Congress, discuss Section 230 and misinformation on their platforms.
- U.S. and Canada resume NAFTA talks this week.
- PPAC holds public hearing on USPTO’s proposed fee increases.
- Sen. Hatch asks FTC to reopen investigation into competitive effects of Google’s search.
- Senate Antitrust Subcommittee to hold “Antitrust Law Enforcement” hearing on October.
- DOJ issues statement expressing “growing concern” that social media giants may be hurting competition.
- Facebook files patent infringement lawsuit against BlackBerry.

“would guarantee free public access to federal court records through the Public Access to Court Electronic Records (PACER) system, which currently charges the public a fee to access documents.” Read more [here](#).

- On Tuesday, the Senate Select Committee on Intelligence held a hearing on “Foreign Influence Operations’ Use of Social Media Platforms.” The hearing featured two witnesses, Sheryl Sandberg, Chief Operating Officer at Facebook; and Jack Dorsey, co-founder and CEO of Twitter. Committee Chairman Richard Burr (R-NC) emphasized his belief that social media platforms and Congress could do more by working together to disrupt foreign influencers as other countries seek to misuse these platforms. The Chairman then asked what Congress could do to help create a holistic solution through legislation facilitating information sharing, government cooperation, and national security policy. Sen. Manchin (D-WV) pressed both Dorsey and Sandberg about drug traffickers’ use of social media to promote illicit drug trade. Manchin said that he wants to see a bill similar to SESTA/FOSTA for drug trafficking. Watch the hearing [here](#).
- On Wednesday, Dorsey testified before the House Energy and Commerce Committee regarding transparency and accountability at Twitter. Both Democrats and Republicans were interested in the metrics used to determine a tweet’s importance and its value in public discourse. Mr. Dorsey stated that Twitter uses indicators to determine a tweet’s conversational health. Twitter’s 4 indicators are percentage of shared attention, percentage of shared facts, receptiveness of the conversation, and variance in the conversation. Rep. Kinzinger (R-IL) asked Dorsey if he believed that Twitter or its users are responsible for the content on its platform, to which Dorsey stated that people are responsible for their content, but Twitter does monitor content to make sure people feel safe to participate. Watch the hearing [here](#).

II. Administration Updates:

- On Wednesday, the Department of Justice (DOJ) issued a statement expressing the “growing concern” of Attorney General Jeff Sessions that social media giants may be “hurting competition” and “intentionally stifling” free speech and expression. “The Attorney General has convened a meeting with a number of state attorneys general this month to discuss a growing concern that these companies may be hurting competition and intentionally stifling the free exchange of ideas on their platforms,” said Justice Department spokesman Devin O’Malley in an email. Read more [here](#).

III. USPTO Updates:

- On Thursday, the Patent Public Advisory Committee (PPAC) held a public hearing on the USPTO’s proposed fee increase. The proposed fee increases were detailed and are as follows:
 - Non-DOCX Filing Surcharge: \$720 fee for large entities if patent application is submitted not in DOCX format compared to \$320 fee for DOCX submission, either electronic or non-electronic.
 - Maintenance Fee Surcharge: late payment fee (within six months after maintenance fee due date) increases from \$160 to \$1,000.

- Request for Expedited Examination of a Design Application Fee: cost of priority consideration increases from \$900 to \$2,000 for large entities.
 - Utility and Reissue Issue and Maintenance Fees: restructuring of back end fees (after patent application) in order to recover initial costs incurred by USPTO earlier in the life of the patent. This would mean an increase of between 4 and 25% depending on the case.
 - Office of Enrollment and Discipline Fees: created to recover the cost of OED services provided to patent practitioners directly from those practitioners. This would impose a new fee of between \$240 and \$410.
 - Pro Hac Vice Admission: would grant admission to council who are not registered patent practitioners in specific circumstances for the duration of the proceedings. They would be required to pay a \$250 fee to appear before the Patent Trial and Appeals Board.
 - PTAB AIA Trial Fees: increased fees to reflect the true cost of the services provided and allow PTAB to keep up with the anticipated work increase in a timely and efficient manner. AIA trial fees would increase between 25 and 27%.
 - Patent Service Fees: the current \$50 fee would be eliminated, and the service would be provided for free.
 - Other Fees: all other Patent and PTAB fees not explicitly listed here would increase by 5%.
- The next PPAC meeting will be on November 8th at USPTO Headquarters and the next Trademark Public Advisory Committee (TPAC) will be October 26th at USPTO Headquarters.

IV. Judicial Updates:

- On Tuesday, Facebook filed a patent infringement lawsuit against BlackBerry, accusing the company of stealing its voice-messaging technology in its instant messaging app. The suit, filed in San Francisco, alleges that BlackBerry infringed on five other patents, including the tracking and analysis of GPS data, voice-messaging technology and the ways in which the app displays graphics, video and audio. Read more [here](#).

V. International Updates:

- On U.S. and Canadian officials resumed negotiations this week to modernize the North American Free Trade Agreement (NAFTA). This comes on the heels of the U.S. and Mexico reaching an accord to revise key portions of the trade pact. The U.S.-Canada talks are largely focused on Canada's dairy supply system, Ottawa's desire to keep NAFTA's Chapter 19 dispute resolution mechanism and Canadian media laws that favor domestically produced content. Read more [here](#).

VI. Industry Updates:

- This week, the Economist Intelligence Unit published a "Global Illicit Trade Environment Index," a report which evaluates 84 countries on their structural capability to guard against illicit trade, highlighting specific strengths and weaknesses. Read the report [here](#).