

PATENT & TRADEMARK POLICY REPORT

FEBRUARY 8, 2019



I. Congressional Developments:

- On Thursday, the Senate Judiciary Committee announced its subcommittees for the 116th Congress, including the formation of a Subcommittee on Intellectual Property. Sen. Tillis (R-NC) will Chair the Subcommittee and Sen. Coons (D-DE) will serve as its Ranking Member. In addition, the following senators will serve on the Subcommittee: Graham (R-SC), Leahy (D-VT), Grassley (R-IA), Blumenthal (D-CT), Cornyn (R-TX), Harris (D-CA), Lee (R-UT), Whitehouse (D-RI), Sasse (R-NE), Hirono (D-HI), and Blackburn (R-TN). More info. [here](#).
- A group of Democrats announced on Wednesday that they would not support the U.S.-Mexico-Canada Agreement (USMCA) in its current form, citing concerns that the deal does not address issues pertaining to prescription drug costs, labor and environmental standards, and outsourcing incentives. The following Democrats issued statements on the matter: Reps. DeLauro (CT-03), Ryan (OH-13), Schakowsky (IL-09), Pascrell (NJ-09), Golden (ME-02), and Kaptur (OH-09). Read more [here](#).

II. Administration Updates:

- On Tuesday, during his second State of the Union address, President Trump mentioned IP twice in the context of trade. In a moment addressing the ongoing trade war with China, Trump asserted that “we are now making it clear to China that after years of targeting our industries, and stealing our intellectual property, the theft of American jobs and wealth has come to an end,” and touted the tariffs his administration recently imposed on \$250 billion dollars of Chinese goods. Second, Trump urged Congress to pass implementation legislation for the USMCA,

Headlines and Highlights:

- Senate Judiciary IP Subcommittee announced.
- Group of Democrats announce that they will not support the USMCA in its current form.
- Trump touts IP trade enforcement in second State of the Union address.
- Next USPTO Business Methods Partnership Meeting on April 2nd.
- U.S. appeals court rules that a medical diagnostic can't be patented because it covered a law of nature.
- MGM files trademark suit accusing Nevada man of infringing on the United Artists brand.
- GIPC releases the 7th addition of its International IP Index.
- Amazon identifies counterfeit problem in SEC filing.

briefly mentioning that the agreement will protect IP. Read more [here](#).

- POLITICO reported that USTR Robert Lighthizer told senators in a closed door meeting on Wednesday that the administration could use Section 301 of the Trade Act to enforce aspects of the USMCA. This could be part of the administration's effort to appease Democrats who have argued that strong enforcement of the labor and environment provisions in the USCMA is crucial to their support. A congressional aide told POLITICO that the USTR did not discuss this idea in great detail with senators during the meeting. Read more [here](#).

III. USPTO Updates:

- The next Business Methods Partnership Meeting will be jointly held at the USPTO headquarters and the Dallas Texas Regional Office on Tuesday, April 2, 2019, from 10:00am to 4:00pm EDT. WebEx will also be available to allow individuals to participate remotely. Register online [here](#).
- The 2019 Technology Center 2800 Customer Partnership Meeting will be held on March 12th from 12:00PM-4:00PM EDT at USPTO headquarters. While a formal agenda for the meeting is forthcoming, a major topic will be the new Subject Matter Eligibility Training. The deadline to register for this event is March 8th. Read more [here](#).

IV. Judicial Updates:

- On Wednesday, a U.S. appeals court ruled that a way to diagnose a severe neurological disorder can't be patented as it covers a law of nature. The patent in the case was licensed to Quest Diagnostics Inc.'s Athena unit, which sued the Mayo Clinic in 2015 seeking royalties on tests conducted by the medical facility. Mayo got the case dismissed by successfully arguing that the patent simply covered a law of nature. This week the appeals court sided with Mayo in a 2-1 decision and Circuit Judge Alan Lourie delivered the majority opinion. "The claims at issue here involve both the discovery of a natural law and certain concrete steps to observe its operation," he writes. Read more [here](#).
- MGM filed a trademark suit on Tuesday accusing a James Schramm of infringing on the United Artists brand by launching United Artist Studios and the United Artist Film festival. Schramm responded that he believes MGM is "completely out of line," noting that his brands are spelled differently— without the "s." MGM attorneys sent Schramm a cease and desist letter in September threatening to sue him if he did not stop using the United Artist name and Schramm responded with two letters refusing to comply. Read more [here](#).

V. International Updates:

- On Thursday, the U.S. Chamber of Commerce Global Innovation Policy Center (GIPC) released the 7th addition of its International IP Index, which ranks the IP climate in 50 world economies. The index ranks the United States in second place in the Patent, Related Rights, and Limitations category, which is significantly higher than the U.S.' 12th ranking last year. The U.S. is tied for the second place post with France, Germany, Ireland, Japan, the Netherlands, South Korea, Spain, Sweden, Switzerland, and the United Kingdom. The report attributes this improvement in rank to the USPTO reforms to the *inter partes* review process. The United States is also ranked 2nd in the category measuring the strength of an economy's environment for Trademarks, Related Rights, and Limitations, just behind the United

Kingdom. Read more [here](#).

- The GIPC report asserts that the USMCA “raised the bar for IP in free trade agreements,” claiming that the provisions that provide a 10-year term of regulatory data protection for biologics, more effective trade secrets protection, and stronger enforcement mechanisms against counterfeit goods “lay the foundation for 21st century IP protection.” Read more [here](#).

VI. Industry Updates:

- Amazon identified the problem of counterfeits in its online marketplace as a risk factor to the company’s financial performance in its annual 10-K filing to the Securities and Exchange Commission (SEC). The regulatory filing cautions that Amazon “could be liable for fraudulent or unlawful activities of sellers” because the law relating to the liability of providers of online payment services is “unsettled.” CNBC reports that this is the first time the company has mentioned the problem of counterfeits in its marketplace in this annual filing to the SEC. Read more [here](#) and [here](#).