



AMERICAN CONTINENTAL GROUP

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## PATENT & TRADEMARK POLICY REPORT JANUARY 11, 2019



### I. Congressional Developments:

- On Tuesday, January 15<sup>th</sup> and Wednesday, January 16<sup>th</sup> the Senate Judiciary Committee will hold public hearings on the nomination of William P. Barr to serve as the next Attorney General of the United States. More info [here](#).
- On Tuesday, House Speaker Nancy Pelosi (D-CA) announced the new Democrats that had been appointed to the House Energy and Commerce; Appropriations; and Ways and Means Committees. The following Democrats will be joining the Energy and Commerce Committee as new members: Reps. Nanette Barragán (D-CA), Lisa Blunt Rochester (D-DE), Robin Kelly (D-IL), Ann Kuster (D-NH), A. Donald McEachin (D-VA), Tom O'Halleran (D-AZ), Darren Soto (D-FL), and Marc Veasey (D-TX). More info [here](#).
- The Appropriations Committee will have the following new Democratic members: Reps. Cheri Bustos (D-IL), Ed Case (D-HI), Charlie Crist (D-FL), Lois Frankel (D-FL), Ann Kirkpatrick (D-AZ), Brenda Lawrence (D-MI), Norma Torres (D-CA), and Bonnie Watson Coleman (D-NJ).
- The Ways and Means Committee will have the following new Democratic members: Reps. Don Beyer (D-VA), Brendan Boyle (D-PA), Dwight Evans (D-PA), Steven Horsford (D-NV), Dan Kildee (D-MI), Gwen Moore (D-WI), Stephanie Murphy (D-FL), Jimmy Panetta (D-CA), Brad Schneider (D-IL), and Tom Suozzi (D-NY).
- On Thursday, new Senate Finance Chairman Chuck Grassley (R-IA) told reporters that he would advise President Trump to begin a formal withdrawal from NAFTA if Democrats insist on

### Headlines and Highlights:

- Speaker Pelosi announces new Democratic additions to Energy and Commerce; Ways and Means; and Appropriations Committees.
- USPTO appoints Thomas Krause as new Deputy General Counsel and Solicitor for USPTO.
- India's Supreme Court rules Monsanto can claim patents on its genetically modified cotton seeds.
- Google's policy chief considering shake-up of Washington lobbying apparatus.
- U.S. Supreme Court agrees to review trademark case involving USPTO and fashion designer seeking to register "FUCTION" trademark.
- Reports indicate USTR will have funding lapse and furlough most employees if shutdown not resolved by Monday.

renegotiating its replacement—the U.S.-Mexico-Canada Agreement (USMCA). Democrats have expressed concern about the new agreement’s labor and environmental provisions. Sen. Grassley suggested that side letters to clarify positions or provide more details regarding the provisions could be useful in remedying concerns. Read more [here](#).

## II. Administration Updates:

- Reports this week indicate that President Trump is expected to urge Congress in his State of the Union address this month to grant him broad authority to increase U.S. tariffs if he considers other countries’ tariff and non-tariff measures to be too restrictive. The White House has been working on the initiative, known as the U.S. Reciprocal Trade Act, with a few House Republicans, reports indicate. Read more [here](#).
- *Inside U.S. Trade* is reporting that the Office of the United States Trade Representative (USTR) will run out of funds and furlough most of its staff on Monday, January 14<sup>th</sup> if the shutdown is not resolved by then. More info [here](#).

## III. USPTO Updates:

- On Thursday, the USPTO announced the appointment of Thomas Krause as the new Deputy General Counsel for Intellectual Property Law and Solicitor of the USPTO. Krause, who has served as the agency’s Deputy Solicitor since 2014, begins his new role Monday, January 14, 2019. Krause will replace Joe Matal who has been serving in the role in an acting capacity. Read more [here](#).
- The next PPAC meeting will be Feb. 7<sup>th</sup> at USPTO headquarters.
- The USPTO has rescheduled its event, “Artificial Intelligence: Intellectual Property Policy Considerations” for 9:30am-5:30pm EST on Thursday, January 31, 2019. This event was previously postponed due to the funeral of former President George H.W. Bush. This public program will be webcast and will feature six panels featuring IP specials from around the world, including experts from the United States, Canada, China and Europe. More info. [here](#).

## IV. Judicial Updates:

- U.S. District Judge David O. Carters had jurors who convicted the Mongols motorcycle club of racketeering and conspiracy charges last month return to the court this week to decide whether the club’s insignia is linked closely enough to the crimes to warrant forcing the club to forfeit its trademarks to the U.S. government. Joe Yanny, an attorney for the motorcycle club, argued that the prosecutors failed to demonstrate that the insignia is connected to the club’s crimes and reasoned that stripping their trademarks would unfairly punish innocent members. Mr. Yanny also called a trademark attorney to testify about “collective membership marks,” the type of trademark the club received, insisting that the insignia belongs to the Mongols members and not just its leadership. U.S. Attorney Steve Welk countered that the patches worn by the members were inseparable from the club’s identity and, by extension, the club’s crimes. Read more [here](#).
- On Monday, the Supreme Court invited U.S. Solicitor General Noel Francisco to file a brief expressing the views of the government on HP Inc.’s appeal of the Federal Circuit’s decision

that a lower court acted too soon by throwing out a suit against the company by inventor Steven E. Berkheimer. In its petition for certiorari, HP claimed that the ruling was a “significant and detrimental change in the law” that conflicts with the *Alice* decision. HP’s petition attracted several amicus briefs urging the justices to hear the case, including from the Computer & Communications Industry Association, T-Mobile USA Inc. and Spring Spectrum LP. Read more [here](#).

- The Supreme Court has agreed to review a trademark case involving the USPTO and a fashion designer seeking to register the trademark “FUCT.” The U.S. Court of Appeals for the Federal Circuit overturned the USPTO’s refusal to register the trademark “FUCT” as an unconstitutional restriction of free speech. The USPTO refused to register the trademark because “FUCT is the past tense” of a vulgar word and is “therefore scandalous.” Federal law permits the government to deny registration of trademarks containing “immoral, deceptive, or scandalous matter.” However, in 2017, the Supreme Court ruled unanimously that trademarks considered to be derogatory deserve First Amendment protection. Read more [here](#)

## **V. International Updates:**

- On Tuesday, India’s Supreme Court ruled that Monsanto can claim patents on its genetically modified (GM) cotton seeds, overturning an earlier ruling from the High Court of Delhi that said certain items, such as seeds, plants and animals, cannot be patented. New Delhi’s 2003 approval of Monsanto’s GM cotton seed trait, along with its approval of an upgraded variety in 2006, helped transform India into the world’s top cotton producer and second largest exporter of the fiber. Stakeholders claim that the Delhi High Court’s ruling will further boost biotech investment in the country. Read more [here](#).

## **VI. Industry Updates:**

- On Monday, IFI Claims published its “2018 Patent Rankings and Trends” report, which identifies trends in patents issued by the USPTO. Researchers found that the number of Utility Grant patents issued by the USPTO in 2018 had declined by 3.5% from 2017. The report also breaks down these patents by the receiving companies’ countries of origin: U.S. companies received 46% of these patents; Asian companies received 31%; and European companies received 15%. Additionally, the report finds that Chinese companies represent only 4% of 2018 U.S. Grants, although the total number granted has increased marginally since 2017. Read more [here](#).
- *Bloomberg* reported this week that Google’s new policy chief Karan Bhatia is considering a shake-up of the company’s Washington lobbying apparatus. Bhatia reportedly prompted some staffers to fear for their jobs by circulating an empty organizational chart with his name at the top and blank boxes underneath indicating open positions. Additionally, former Representative Susan Molinari recently departed from her role as Google’s Washington director and is slated to transition to an advisory role this month. Read more [here](#).