



AMERICAN CONTINENTAL GROUP

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PATENT & TRADEMARK POLICY REPORT JANUARY 25, 2019



I. Congressional Developments:

- Speaker Pelosi announced this week that the House Democratic Steering and Policy Committee has recommended to the Caucus that the following Democrats serve on the Science, Space and Technology Committee: Reps. Beyer (VA), Casten (IL), Crist (FL), Fletcher (TX), Foster (IL), Hill (CA), Horn (OK), McAdams (UT), McNerney (CA), Perlmutter (CO), Sherman (CA), Sherrill (NJ), Stevens (MI), Tonko (NY), and Wexton (VA). Read more [here](#).
- On Wednesday, Chairman Nadler (NY) released the Democratic House Judiciary Subcommittee rosters. Rep. Cicilline (RI) will Chair the Subcommittee on Antitrust, Commercial and Administrative Law and the following members will serve on this subcommittee: Reps. Johnson (GA), Raskin (MD), Jayapal (WA), Demings (FL), Scanlon (PA), Neguse (CO), and McBath (GA). More info. [here](#).
- Rep. Johnson will Chair the House Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Internet and the following members will serve on this subcommittee: Reps. Deutch (FL), Richmond (LA), Jeffries (NY), Lieu (CA), Stanton (AZ), Lofgren (CA), Cohen (TN), Bass (CA), Swalwell (CA) and Correa (CA). More info. [here](#).
- On Wednesday, House Judiciary Committee Ranking Member Collins (GA) announced the ranking members for each of the committee's five subcommittees. Rep. Martha Roby (AL) will serve as the Ranking Member to the Subcommittee on Courts, Intellectual Property, and the Internet. Rep. Jim Sensenbrenner (WI) will serve as the Ranking Member to the Subcommittee on Antitrust, Commercial and Administrative Law. More info. [here](#).

Headlines and Highlights:

- Democrats on House Science, Space and Technology Committee announced.
- Democratic House Judiciary subcommittee rosters announced.
- Martha Roby named Ranking Member of the House Judiciary Committee's Subcommittee on Courts, Intellectual Property, and the Internet.
- USPTO AI Event scheduled for next Thursday, Jan. 31st.
- USPTO provides operating status update.
- Justice Thomas delivers opinion in *Helsinn Healthcare v. Teva Pharmaceutical*.
- EU commissioner Vestager to publish competition policy report.

- During an appearance on Government Matters on Tuesday, Rep. Gerry Connolly (D-VA) announced that the House Committee on Government Oversight and Reform’s IT subcommittee will be folded into the government and operations subpanel. Rep. Connolly also spoke about his priorities as the Chair of the Government and Operations Subcommittee, stating that his subpanel is “going to do a lot of work on modernizing and procurement oversight of how the federal government deals with information technology and a \$96 billion per year procurement portfolio.” Watch the full interview [here](#).

II. Administration Updates:

- POLITICO reported this week that Shahira Knight, the White House legislative affairs director, is planning to leave her position in the coming months. Read more [here](#).
- The Washington Post reported on Monday that Federal Trade Commission (FTC) officials met to consider whether the agency should seek to impose a record-setting fine against Facebook for allegedly violating the terms of a consent decree previously brokered between the agency and the social media platform. Consumer advocates have urged the FTC to take action to penalize Facebook after reports surfaced in March that Cambridge Analytica accessed approximately 87 million users’ personal information without their knowledge. Read more [here](#).

III. USPTO Updates:

- On Friday, the TPAC held a meeting at USPTO headquarters. The next PPAC meeting will be February 7, 2018 at USPTO headquarters.
- On Thursday, the USPTO released a statement on their operating status due to the partial government shutdown and the partial lapse in funding that began on December 22, 2018. The statement explains that, based on current estimates and expenditure rates, the USPTO expects its reserves to fund patent operations to last until at least the second week in February, and trademark operations to last until at least mid-April 2019. Read more [here](#).
- On Friday, the USPTO announced that based on the limited number of grantable requests and the administrative burden on the USPTO in processing improper requests, the USPTO has decided not to extend the Extended Missing Parts Pilot Program beyond January 2, 2019. Read more [here](#).
- The USPTO also announced Friday that in view of continued interest in the program, the USPTO has extended the Cancer Immunotherapy Pilot Program until June 30, 2020. Since the USPTO began implementing this pilot program, which permits patent applications pertaining to cancer immunotherapy to be advanced out of turn for examination and reviewed earlier, over 300 petitions request participation in the program have been filed. Read more [here](#).
- 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:

- On Tuesday, the Supreme Court issued a decision in *Helsinn Healthcare v. Teva Pharmaceuticals*, holding that a commercial sale to a third party who is required to keep the invention confidential may place the invention “on sale” for the purposes of the 2011 Leahy-Smith America Invents Act (AIA), which bars a person from receiving a patent on an invention that was “in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention.” This decision upholds pre-AIA Federal Circuit precedent establishing that a “secret sale” could invalidate a patent. Read Justice Clarence Thomas’ opinion for a unanimous court [here](#).

V. International Updates:

- On Monday, France’s data protection watchdog, the Commission nationale de l’informatique et des libertés (CNIL), announced that it has fined Google €50 million for allegedly violating Europe’s General Data Protection Regulation (GDPR). Specifically, CNIL is fining the tech giant for “lack of transparency, inadequate information and lack of valid consent regarding the ads personalization.” On Wednesday, Google confirmed that it plans to appeal the fine, telling Business Insider that the platform is concerned about the ruling’s impact on “publishers, original content creators and tech companies in Europe and beyond.” Read more [here](#) and [here](#).
- In a recent interview, European Union (EU) commissioner Margrethe Vestager told The Associated Press that she plans to publish a report to guide EU competition policies in the era of digitalization and to reflect on the need for new or tougher rules before her term ends in October 2019. Since taking her role in 2014, Vestager has spearheaded numerous high-profile enforcement measures against big tech, including slapping Google with multibillion-dollar antitrust penalties, ordering Apple and Amazon to pay back taxes, and fining Facebook over its WhatsApp acquisition. Read more [here](#).

VI. Industry Updates:

- On Monday, a group of 71 civil society groups sent a letter to Congress expressing their concerns that certain provisions in the United States-Mexico-Canada Agreement (USMCA) would “entrench and expand prescription drug monopoly protections, thwart competition and thus undermine efforts to expand access to affordable medicines.” The group is particularly concerned about the ten year market exclusivity period for new biologic medicines established in the proposal. Read more [here](#).