



AMERICAN CONTINENTAL GROUP

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PATENT & TRADEMARK POLICY REPORT OCTOBER 15, 2021



I. Congressional Developments:

- Next Tuesday, October 19th, the Senate Judiciary IP Subcommittee is scheduled to hold a hearing titled “Pride in Patent Ownership: The Value of Knowing Who Owns a Patent.” The following witnesses are slated to testify before the subpanel: Mr. Allon Stabinsky, Senior Vice President, Chief Deputy General Counsel, Legal Department, Intel Corporation; Ms. Abby Rives, IP Counsel, Engine; Professor Robin Feldman, Arthur J. Goldberg Distinguished Professor of Law, Director, Center for Innovation, University of California Hastings Law; and the Honorable David Kappos, Former USPTO Director and Partner, Cravath, Swaine & Moore LLP. The Pride in Patent Ownership Act, which was introduced by Subcommittee Chairman Tillis (R-NC) and Leahy (D-VT) last month, is expected to be the focus of the hearing. That bill would require patent owners to disclose their identity with the Patent Office when a patent is issued and whenever it changes hands so that the public can easily look up a patent’s owner and the owner’s ultimate parent entity. More info. [here](#) and [here](#).
- On Thursday, the *Washington Post* reported that Senators Amy Klobuchar (D-MN) and Chuck Grassley (R-IA) will introduce a bill early next week that would make it “illegal for Amazon, Apple, Facebook, and Google to engage in ‘self-preferencing,’ the tech giants’ practice of giving their own products and services a boost over those of rivals on their platforms.” The bill is an attempt to update the Sherman Act of 1890 to make it applicable in the digital era. Klobuchar reported that they already have secured six cosponsors, Senators Dick

Headlines and Highlights:

- Senate Judiciary Committee to hold hearing on the Pride in Patent Ownership Act next week.
- Senators Klobuchar and Grassley poised to introduce bill to combat self-preferencing by Big Tech next week.
- Democratic lawmakers urge FTC to keep tech companies accountable for recently-announced policy changes aimed at protecting young people online.
- House Judiciary Antitrust leaders publish op-ed on the Facebook whistleblower and their antitrust concerns.
- ANSI IPRPAG slated to hear remarks from FTC and DOJ as part of its World Standards Week events.
- *IP Watchdog* to host its third annual SEP program next month.

Durbin (D-IL), Lindsey Graham (R-SC), Richard Blumenthal (D-CT), John Kennedy (R-LA), Cory Booker (D-NJ), and Cynthia Lummis (R-WY). Read the full article [here](#).

- In a letter sent last Friday, Democratic lawmakers urged Federal Trade Commission (FTC) Chair Lina Khan to keep tech companies accountable for recently announced policy changes aimed at protecting young people online. “These policy changes are no substitute for congressional action on children’s privacy, but they are important steps towards making the internet safer for young users. ... We therefore encourage you to use every tool at your disposal to vigilantly scrutinize companies’ data practices and ensure that they abide by their public commitments,” Sen. Ed Markey (D-MA), Rep. Kathy Castor (D-FL) and Rep. Lori Trahan (D-MA) wrote. Read the full letter [here](#).
- On Tuesday, Reps. David Cicilline (D-RI) and Ken Buck (R-CO), the chair and ranking member of the House Judiciary subcommittee on antitrust, published an op-ed through *CNBC* discussing the Facebook whistleblower and antitrust concerns. “This latest evidence of Facebook’s moral failures is credible and damning, but these concerns are not new. Instead, this evidence confirms what we have known about Facebook for years — that it will always prioritize growth and profit over everything else,” the op-ed cautions. It also mentions the package of bills the House Judiciary Committee passed on a bipartisan basis aimed at corralling Big Tech, calling for action to be taken both against Facebook as well as future anti-competitive corporations. Read the full op-ed [here](#).
- The House Financial Services Committee’s task force on artificial intelligence (AI) met on Wednesday to examine the “benefits, harms and ethical risks of AI technology.” The Office of Science and Technology Policy (OSTP) in the White House announced last Friday that it would develop a “bill of rights” to protect against harmful consequences of AI, such as facial recognition tools that lead to disproportionately high arrests of minorities or hiring tools that disadvantage minority applicants. OSTP Director Eric Lander and Alondra Nelson, deputy director for science and society, wrote in a *Wired* op-ed, “Americans have a right to expect better. Powerful technologies should be required to respect our democratic values and abide by the central tenet that everyone should be treated fairly. Codifying these ideas can help ensure that.” OSTP also stated that it was putting out a public request for information related to biometric technologies, such as facial recognition, voice analysis and heart rate tracking tools. Find the *Wired* op-ed [here](#) and the OSTP Federal Register notice [here](#).

II. Administration Updates:

- Guest speakers from the FTC and the Department of Justice (DOJ) are slated to provide remarks before the American National Standards Institute’s (ANSI) Intellectual Property Rights Policy Advisory Group (IPRPAG) on Friday, October 29th. The panel discussion is part of ANSI’s World Standards Week (WSW) event. Find a full agenda and register [here](#).

III. USPTO Updates:

- Today is USPTO’s deadline for submitting comments on the state of patent eligibility jurisprudence and its effect on investment and innovation in the United States. More info. [here](#).

IV. Judicial Updates:

- On Wednesday, in a 2-1 decision, a panel of the U.S. Court of Appeals for the Federal Circuit ruled against Mobility Workx LLC on its claims that the PTAB unconstitutionally favors reviewing patents because it receives more money if it grants more review requests. U.S. Circuit Judge Timothy Dyk wrote that that control “renders any agency interest in fee generation too tenuous to constitute a due process violation.” Judge Dyk also pointed out that while PTAB judges have to earn a certain number of “decision units” each year for a performance bonus, that is based off the number of decisions judges write and not on their outcomes. Read more [here](#).

V. International Updates:

- News surfaced this week that China’s trade surplus with the U.S. rose to a monthly record last month, hitting \$42 billion. China’s exports surged to \$305.74 billion, which is 28.1% higher than last September. Meanwhile, imports in terms of U.S. dollars rose 17.6% last month from a year ago to \$240 billion. One key contributor to the import slump is China’s imports of soybeans, which fell 30% in September from a year ago. Read more [here](#).
- *Reuters* reports that Nippon Steel Corp has filed patent infringement lawsuits against Toyota Motor Corp and China’s Baoshan Iron & Steel Co Ltd with a Tokyo district court. Nippon Steel is seeking \$176 million in damages from each company, as well as a preliminary injunction prohibiting Toyota from manufacturing and selling motor-driven vehicles that use the electrical steel sheets allegedly violating its patents. Toyota told *Reuters* that the suit was “very regrettable.” Read more [here](#).

VI. Industry Updates:

- On Monday, November 8th, at 11:00 a.m. ET, *IP Watchdog* is hosting its third annual Standard Essential Patents (SEP) program. The *Patent Masters*TM Virtual Symposium will explore SEPs by looking at the policies of Standard Setting Organizations, government activity, litigation, industry licensing practices, FRAND, the global landscape, and more. Register [here](#).
- The Council on Government Relations (COGR) has published an updated version of its guide to the Bayh-Dole Act and its implementing regulations. COGR is an association of research universities and affiliated medical centers and independent research institutes. Find the updated paper [here](#).