

PATENT & TRADEMARK POLICY REPORT SEPTEMBER 30, 2022



I. Congressional Developments:

- On Wednesday, during a launch event for the Council for Innovation Promotion (C4IP), Senator Chris Coons (D-DE) announced that he will co-sponsor the Patent Eligibility Restoration Act of 2022. Senate Judiciary IP Subcommittee Ranking Member Thom Tillis (R-NC) had introduced a draft bill in August, but had no commitments for co-sponsors at the time. The Patent Eligibility Act would define the scope of patent eligible subject matter and all exceptions in Chapter 10 of Title 35. Specifically, the bill would restore patent eligibility to important inventions across many fields, such as diagnostics, gene-based medicine, AI, and other software-based technologies, while simultaneously resolving concerns over patenting of mere ideas, the mere discovery of what already exists in nature, and social and cultural content that is beyond the scope of the patent system as a system aimed at promoting technology-based innovation. Find more info. [here](#) and [here](#).
- On Thursday, the House of Representative passed an antitrust package by a vote of 242-184. The first bill in the package, the Merger Filing Fee Modernization Act, would increase the fees businesses pay to federal agencies when a large merger deal requires government review. The second bill in the package, the State Antitrust Enforcement Venue Act, would give state attorneys general more control over which court will hear their antitrust cases. A version of both bills had already cleared the upper chamber, and the White House voiced its support for the House package this week. Read more [here](#).

Headlines and Highlights:

- Senator Coons to cosponsor the Patent Eligibility Restoration Act of 2022.
- The Merger Fee Modernization Act and the State Antitrust Enforcement Venue Act clear the House by a 242-184 vote.
- Council for Innovation Promotion (C4IP) launches.
- Five Co-Chairs of USPTO's Council for Inclusive Innovation (CI2) named.
- USPTO to collect stakeholder feedback on SEP legislative proposals during event on October 18th.
- Group of lawmakers, led by Senator Warren, call on the FTC to reject Amazon's proposed acquisition of iRobot.

II. Administration Updates:

- Led by Senator Elizabeth Warren (D-MA), a group of lawmakers are asking the Federal Trade Commission (FTC) to reject Amazon's proposed acquisition of iRobot. "Rather than compete in a fair marketplace on its own merits, Amazon is following a familiar anticompetitive playbook: leveraging its massive market share and access to capital to buy or suppress popular products," wrote Senator Warren, along with Representatives Mondaire Jones (D-NY), Mark Pocan (D-WI), Jesus G. "Chuy" Garcia (D-IL), Pramila Jayapal (D-WA) and Katie Porter (D-CA). Read the full letter [here](#).

III. USPTO Updates:

- On Tuesday, Secretary of Commerce Gina Raimondo, Chair of the U.S. Patent and Trademark Office's Council for Inclusive Innovation (CI²), and Under Secretary of Commerce for Intellectual Property and USPTO Director Kathi Vidal, Vice Chair of CI², announced the addition of five new Co-Vice Chairs of the Council. The new Co-Chairs are: Alejandra Castillo, Assistant Secretary of Commerce for Economic Development; Don Cravins, Jr., Under Secretary of Commerce for Minority Business Development; Laurie E. Locascio, Under Secretary of Commerce for Standards and Technology and National Institute of Standards and Technology (NIST) Director; Sethuraman Panchanathan, National Science Foundation (NSF) Director; and Shira Perlmutter, Register of Copyrights and Director of the U.S. Copyright Office. More info. [here](#).
- On October 18th, from 1:00 – 5:00 p.m. ET, USPTO is hosting a hybrid virtual and in-person event to hear stakeholders' views on current legislative proposals regarding standard-essential patents (SEPs) and how to increase participation by U.S. firms in international standard-setting bodies. Those who wish to attend in person must register by Friday, October 7th. Note that space is limited for in-person participation. More info. [here](#) and [here](#).
- USPTO has extended the comment period to October 19th for stakeholders to submit feedback on the processes for Director review, Precedential Opinion Panel review, and internal circulation and review of Patent Trial and Appeal Board (PTAB) decisions. More info. [here](#).
- USPTO announced this week that it is extending the Fast-Track Appeals Pilot Program for a second time. Under this program, appellants with a docketed ex parte appeal may file a petition to expedite review of the appeal by the PTAB. The extension continues the program for another two years. The new expiration date is July 2, 2024. More info. [here](#).
- USPTO has published a notice of proposed rulemaking (NPRM) in the Federal Register to formalize its Diversion Pilot Program for patent and trademark practitioners whose physical or mental health issues or law practice management issues resulted in minor misconduct. This proposed rulemaking would also require reciprocally recognized foreign trademark attorneys and agents to regularly update their contact information in order to provide the public with current information. Comments on the NPRM are due to the USPTO by November 7th. More info. [here](#) and [here](#).
- On October 12th, from 1:00 – 4:00 p.m. ET, USPTO is hosting its "2022 Hispanic Innovation and Entrepreneurship Program." During the event, David Price, inventor of the

Safety Pouch, and Kate Yoo McCrery, Price's mentor and Founder of Rhinebeck Ventures, will discuss how mentors can help you be successful to a promising inventor's journey. Find more info. [here](#).

IV. Judicial Updates:

- News surface on Thursday that the U.S. Supreme Court has agreed to halt an appeals court mandate that Novartis Pharmaceuticals Corp said would green-light up to 20 generic versions of its multiple-sclerosis drug Gilenya. Novartis raised concern that dissolving an injunction blocking the generics on October 4th would erode Gilenya prices and shrink its market in “ways that could be impossible to calculate at an after-the-fact damages trial.” Chief Justice Roberts stayed the mandate until further notice and ordered a response to Novartis' application by October 5th. More info. [here](#).

V. Industry Updates:

- This week, the Council for Innovation Promotion (C4IP), an organization that will work to educate on the importance of innovation to the U.S. economy at a high level, launched. Former U.S. Chamber of Commerce Global Innovation Policy Center (GIPC) Vice President Frank Cullen will lead the organization, whose Board of Directors includes former USPTO Directors Andrei Iancu and David Kappos. Retired U.S. Court of Appeals for the Federal Circuit (CAFC) Judge Kathleen O'Malley and Retired CAFC Chief Judge Paul Michel will also serve on its Board. In order to educate policymakers on the importance of innovation, C4IP plans to lead congressional delegations to introduce members of Congress to the ways IP is benefiting inventors in their districts. The organization also plans on identifying and promoting inventors at a local level, funding research and studies that go to the fundamental issue of the role of IP in making the U.S. an innovation leader, and run pro-IP ads on a continuous basis. Find more info. [here](#) and [here](#).