

## PATENT & TRADEMARK POLICY REPORT APRIL 29, 2022



### I. Congressional Developments:

- On Wednesday, the House passed the Patents for Humanity Act of 2021 ([H.R. 5796](#)) by a voice vote. Sponsored by Rep. Jeffries (D-NY), a member of the House Judiciary Committee, the bill codifies the USPTO's Patents for Humanity competitive program to accelerate patent reviews for inventions that address global humanitarian needs.
- On Wednesday, Senate Judiciary IP Subcommittee member Mazie Hirono (D-HI) and Ranking Member Thom Tillis (R-NC) wrote to USPTO Director Kathi Vidal to express their concern for the PTAB's recent decisions to institute IPRs in *OpenSky Industries, LLC v. VLSI Technology LLC* and *Patent Quality Assurance, LLC v. VLSI Technology LLC*. "The PTAB's decisions to endorse this scheme are troubling and undermine the USPTO's recent efforts to ensure post-issuance proceedings are not used to harass patent owners," the letter warns. The letter poses a series of questions for the USPTO to answer by May 27<sup>th</sup>, including whether the USPTO considers filing an IPR petition for the purpose of extorting money from the patent system a proper use of the IPR system. The lawmakers also inquire about what sanctions the USPTO can impose on parties that file an IPR petitions in bad faith. Read the full letter [here](#).
- This week, Senate Judiciary IP Subcommittee Ranking Member Thom Tillis co-sponsored the *Protect America's Innovation and Economic Security from CCP Act*. The bill, introduced by Senators Blackburn (R-TN) and other Republicans in the upper chamber earlier this

### Headlines and Highlights:

- Senators Tillis and Hirono voice concern over the PTAB's decisions to institute IPRs in *OpenSky Industries, LLC v. VLSI Technology LLC* and *Patent Quality Assurance, LLC v. VLSI Technology LLC*.
- House passes the Patents for Humanity Act of 2021 by a voice vote.
- USTR releases 2022 Special 301 Report.
- Consumer Brands Association proposes revision to SHOP SAFE to help protect children from THC-laced edible products use famous brand logos, characters, trademarks, and trade dress.
- Fraternal Order of Police backs INFORM Consumers Act in letter to House leadership.
- Google voices support for Restoring the America Invents Act in blog post.

month, would reestablish the “China Initiative” at the Department of Justice (DOJ), which the Biden administration ended earlier this year. “Reestablishing the CCP initiative at the DOJ is a move in the right direction to combat the Chinese Communist Party’s surveillance on our IP and protect our nation’s innovation and critical infrastructure,” Tillis said in a statement. More info. [here](#).

## II. Administration Updates:

- On Wednesday, the Office of the United States Trade Representative (USTR) released its 2022 Special 301 Report on the adequacy and effectiveness of U.S. trading partners’ protection and enforcement of IP rights. “Intellectual property-intensive industries support more than 60 million jobs – from the independent inventor just starting out to the documentary filmmaker studying critical social issues. We need robust protection and enforcement in foreign countries to protect these individuals, their livelihoods, and ensure they can fairly compete in the global marketplaces,” Ambassador Katherine Tai said. The 2022 Special 301 Report can be viewed [here](#).
- According to the *Huffington Post*, the Biden Administration is nudging the World Trade Organization (WTO) and its member nations to release the draft text of a TRIPS waiver for patents covering COVID-19 vaccines. According to two Administration officials, once the draft waiver is released, the Administration plans to seek input on it from members of Congress and take other steps needed before it can be adopted. “While no agreement on text has been reached, the U.S. will continue to engage with WTO Members as part of the Biden-Harris Administration’s comprehensive effort to get as many safe and effective vaccines to as many people as fast as possible,” a spokesperson for USTR Katherine Tai added. The statements come right before the next WTO gathering scheduled to take place during the week of June 13<sup>th</sup>, suggesting a potential deadline for an officially sanctioned text. Read more [here](#).

## III. USPTO Updates:

- As part of its efforts to move full electronic processing of trademark applications and registrations, USPTO announced that it will begin issuing electronic trademark registration certificates on June 7<sup>th</sup>. The transition to electronic registration certificates will give trademark owners easier access to their registrations and allow them to receive their certificates quickly after their trademark is registered. With this change, trademark owners will have the option to order paper “presentation” copies and certified paper copies of their trademark registrations for a fee. More info. [here](#).
- USPTO is seeking nominations for the 2022 the National Medal of Technology and Innovation (NMTI), the nation’s highest honor for technological achievement. The medal is awarded to individuals, teams (up to four members), and companies or company divisions for their outstanding contributions to the nation’s economic, environmental, and social well-being. Nominations are due to the USPTO by May 20<sup>th</sup>. More info. [here](#).

## IV. Judicial Updates:

- On Tuesday, a federal judge postponed the latest Texas trial in the multi-billion dollar patent fight between Intel Corp and VLSI Technology LLC after multiple participants tested

positive for COVID-19. *Reuters* reports that a make-up date for the trial has yet to be scheduled. More info. [here](#).

## V. International Updates:

- According to *TorrentFreak*, the EU reached an agreement on the final text of the Digital Services Act (DSA) over the weekend. “The DSA will upgrade the ground-rules for all online services in the EU. It will ensure that the online environment remains a safe space, safeguarding freedom of expression and opportunities for digital businesses,” European Commission President Ursula Von Der Leyen said. Some of the legislation will impact platforms as soon as this year, while others will take a few years before changes are implemented. Read more [here](#).
- On Monday and Tuesday, USTR Katherine Tai and United Kingdom Secretary of State for International Trade Anne-Marie Trevelyan hosted the second U.S. – UK Dialogue on the Future of Atlantic Trade in Aberdeen, Scotland. The two agreed to “collaborate further on: delivering practical support for SMEs, digitizing U.S.-UK trade in the modern economy, building resilience in critical supply chains, addressing the global trade impacts of Russia’s invasion of Ukraine, promoting environmental protection and the transition to net zero, supporting high labor and environmental standards, and promoting innovation and inclusive economic growth for workers and businesses on both sides of the Atlantic.” Read more [here](#).

## VI. Industry Updates:

- On Wednesday, the Consumer Brands Association, the National Confectioners Association, the American Bakers Association, General Mills, Kellogg Company, Post Consumer Brands, PepsiCo., and other stakeholders sent a letter to Congress urging members to support the SHOP SAFE Act with a certain amendment. The signatories raise concern that THC-laced edible products use famous brand logos, characters, trademarks, and trade dress, posing a risk to children. The proposed fix would make an electronic commerce platform contributorily liable in a civil action by the registrant for the remedies for cases in which a third party seller uses in commerce a famous or counterfeit mark in connection with the sale without the consent of the registrant. The current version of the SHOP SAFE Act does not include the term “famous.” Read the full letter [here](#).
- On Monday, the Fraternal Order of Police (FOP) wrote to House leadership voicing their support for the INFORM Consumers Act (S. 936/H.R. 5502) and urging them to include it in the China competition bill. The INFORM Consumers Act, introduced by Senators Durbin (D-IL) and Cassidy (R-LA) in March 2021, would require marketplaces to collect and publish identification and contact information from high-volume third-party sellers. On behalf of more than 364,000 members of the FOP, the letter insists that the bill includes “simple and common sense steps” to “help deter and curtail criminal third parties from abusing online marketplaces for illicit purposes.” Read the full letter [here](#).
- On Thursday, in a company blog post, Google General Counsel Halimah DeLaine Prado called for revamping the American patent system. In particular, she points to the *Restoring the America Invents Act*, which was introduced by Senator Judiciary IP Subcommittee Chairman Patrick Leahy (D-VT) and Senator John Cornyn (R-TX), as a way to help “restore

access to the Inter Partes Review program and increase transparency and accountability.”  
Read the full blog post [here](#).