



AMERICAN CONTINENTAL GROUP

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PATENT & TRADEMARK POLICY REPORT JANUARY 21, 2022



I. Congressional Developments:

- On Thursday, the Senate Judiciary Committee [reported](#) the American Innovation and Choice Online Act ([S. 2992](#)) favorably out by a 16-6 vote. The manager’s amendment offered by Sens. Klobuchar (D-MN) and Grassley (R-GA) was adopted by a voice vote. The only other amendment that was approved by the Committee was one offered by Senator Cornyn (R-TX), after it was revised by a second degree amendment offered by Sens. Klobuchar and Grassley, that seeks to prevent a covered platform from transferring consumer data to China or other foreign adversaries. Watch the full markup [here](#).
- On Wednesday, Senate Judiciary IP Subcommittee Ranking Member Thom Tillis (R-NC) sent a letter to Attorney General Merrick Garland and Assistant Attorney General Jonathan Kanter regarding the DOJ’s request for comment on their SEP/FRAND Policy statement. Senator Tillis stated, “I am very concerned by what appears to be the DOJ’s attempt to diminish patent holders’ statutory rights and undermine the judicial process by substituting the courts’ judgement for its own... Antitrust and intellectual property policies need to work together to create a balanced, strong, innovation ecosystem. Unfortunately, this Draft Policy seeks to undermine the patent system... I support efforts to encourage good faith negotiation in standards licensing and I fully believe in the F/RAND process.”

II. Administration Updates:

- On Tuesday, the FTC and DOJ held a joint virtual press conference to outline how both agencies will review and

Headlines and Highlights:

- Senate Judiciary Committee reports American Innovation and Choice Online Act favorably out by a 16-6 vote.
- IP Subcommittee Ranking Member Tillis raises concern that the draft SEP/FRAND policy statement would undermine the U.S. patent system in letter.
- FTC and DOJ outline out how both agencies will review and update guidelines on mergers in press conference.
- Austria deposits its instrument of accession to the Protocol on Provision Application of the Unified Patent Court Agreement.
- Public Knowledge hosts panel to reflect on SOPA-PIPA advocacy.

update guidelines on mergers. FTC Chair Lina Khan began by stating that global deal-making soared to \$5.8 trillion in 2021, and the DOJ received more than double the merger filings over the past five years. She emphasized that consolidation and weakened competition from illegal mergers deny Americans the benefits of open economies, leading to massive fees for investment banks, and a lack of competition, leaving segments of the economy brittle. The FTC wants merger guidelines to fit the modern economy. Jonathan Kanter, the Assistant Attorney General of the Antitrust Division, presented the DOJ and FTC's goals for learning from market participants about what is working, and what is not. He said that both agencies want to learn from the general public and that the American people should share their views with the agencies, and that after an initial comment period, the agencies would be releasing a draft of the guidelines to seek even further comment before finalizing.

- The National Institute of Standards and Technology (NIST) is doing a [study](#) on emerging technology and is seeking input about the public and private sector marketplace trends, supply chain risks, and legislative, policy and future investment needs of eight emerging technology areas, including artificial intelligence. The deadline to submit comments is January 31st.
- On Wednesday, 28 property rights advocacy groups sent a letter addressed to U.S. General Attorney Merrick Garland and U.S. Assistant Attorney General for Antitrust Jonathan Kanter voicing their concerns that the draft policy statement on licensing negotiations for standard essential patents (SEPs) subject to fair, reasonable and non-discriminatory (FRAND) licensing obligations weakens IP rights in favour of big tech implementers and Chinese manufacturers infringing on IP rights. Read the full letter [here](#).

III. USPTO Updates:

- On January 26th, from 2:00 – 3:15 p.m. ET, USPTO is hosting a virtual event titled “Together in Innovation: Inner space and outer space.” The program will feature remarks from the award-winning Nanodropper team and the Inspiration4 crew. More info. [here](#).

IV. Judicial Updates:

- A State Attorneys General suit that was unsealed last Friday alleges that Google deceived both advertisers and website publishers by manipulating online ad auctions to ensure that Google would profit. This will add fuel to the fire for antitrust advocates on the Hill. Read more [here](#).
- On Wednesday, news surfaced that Ericsson had filed another set of patent infringement lawsuits against Apple, the latest suits in a longstanding battle over the renewal of a seven-year licensing contract for telecoms patents first struck in 2015. “Ericsson has refused to negotiate fair terms for renewing our patent licensing agreement, and instead has been suing Apple around the world to extort excessive royalties ... we are asking the court to help determine a fair price,” an Apple spokesman said on Tuesday. Read more [here](#).

V. International Updates:

- In the final legal step towards launching the EU Unitary Patent system, on Wednesday, Austria deposited its instrument of accession to the Protocol on Provision Application of the Unified Patent Court (UPC) Agreement. This final step means that UPC judges and other staff can be recruited, IT systems can be set up, and the budget confirmed. However, the exact date that the new system will take effect will be determined by when the 13th state, Germany, deposits its instrument of accession to the UPC Agreement. Read more [here](#).

VI. Industry Updates:

- On Tuesday, Public Knowledge held a virtual panel discussion titled “How Public Interest Values Shape a Better Internet.” The panel was moderated by Chris Lewis, President and CEO of Public Knowledge. The panel had four participants, they were Catherine Stihler, CEO of Creative Commons; Spencer Overton, President of the Joint Center for Political and Economic Studies; April Glaser, Fellow of the Technology & Social Change Project; and Akriti Gaur, Resident Fellow for Yale Information Society Project. The panel opened their discussion with their observance of the 2012 protests of SOPA-PIPA and their importance to the internet community. Panelists showed their admiration for the movements back in 2012 and noted how those protestors were just scratching the surface of the intersection of policy and the internet. Mr. Lewis asked the panelists their thoughts on if new changes in technology are activating new values beyond those showed in 2012 in today’s internet communities. The panel focused their answers on four key topics: access to knowledge and culture, intersection of government and the internet, external costs of internet infrastructure, and role of global communities in internet spaces. More info. [here](#).