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PATENT & TRADEMARK POLICY REPORT
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I. Congressional Update:

- Last Thursday, March 21, the House Committee on Oversight and Accountability, Subcommittee on Cybersecurity, Information Technology, and Government Innovation held a hearing titled "White House Overreach on AI". Witnesses included Jennifer Huddleston (Technology Policy Research Fellow, Cato Institute); Adam Thierer (Resident Senior Fellow on Technology and Innovation, R Street Institute); Neil Chilson (Head of AI Policy, The Abundance Institute); Dr. Nicol Turner Lee (Senior Fellow, Governance Studies and Director, Center for Technology Innovation, Brookings Institution). The Subcommittee discussed the impact of the Executive Order 14110 on technological innovation in the United States, on the economic growth, on the national security and its implication of power granted to the executive. The EO 14110, signed on October 30, 2023, by President Biden, defines the administration's policy goals regarding artificial intelligence (AI), and orders executive agencies to take actions pursuant to these goals. View the hearing here and the transcript here.

- On Tuesday, March 26, the leaders of the New Democrat Coalition's AI working group sent a letter to the White House Office of Science and Technology Policy (OSTP) requesting information on how the recent AI executive order's priorities are being implemented. The letter was authored by Reps. Haley Stevens (D-MI) and Derek Kilmer (D-WA) and signed by an additional 38 New Dems. The group wants to ensure "the responsible development and deployment of artificial intelligence" and that the White House is coordinating interagency AI

Headlines and Highlights:

- Hearing on White House AI Overreach
- New Dems Seek AI Assurances from White House
- USPTO Holds Public Symposium on AI and IP
- USPTO Unveiled Proposed Adjustments to Trademark Fees

regulation, prioritizing diversity and focusing on reskilling and upskilling American workers. Read the full letter here.

II. USPTO Updates:

- On Wednesday, March 27, the U.S. Patent and Trademark Office (USPTO) AI and Emerging Technologies Partnership held a virtual and in-person *Public Symposium on Artificial Intelligence (AI) and Intellectual Property* (*IP*) at Loyola Marymount University's Loyola Law School in Los Angeles, CA. The event consisted of three panel discussions. The first panel explored the copyrightability and patentability issues surrounding innovation and creativity aided by AI. The second panel led a discussion of current AI-related copyright infringement lawsuits where panelists debated the merits of recently filed lawsuits by the *New York Times* and other copyright owners against generative AI companies. The third and final panel focused on the name, image, and likeness rights issues surrounding generative AI and deep fake technologies. The USPTO plans to hold another symposium sometime in April. A summary from ACG can be provided upon request.

- On Tuesday, March 26, the USPTO unveiled proposed adjustments to trademark fees, as detailed in a notice published in the Federal Register. Initiated in April 2023, the fee adjustments were subjected to discussion during a June 2023 public hearing by the Trademark Public Advisory Committee (TPAC), as mandated by the America Invents Act. Testimony from the IPO during the hearing and subsequent written comments were considered by TPAC, which released a report expressing general support for the fee increase but highlighting concerns with specific fee hikes. The notice outlines changes made to the proposed fees based on TPAC's recommendations, stressing the need for fee adjustments due to insufficient revenue from the current fee schedule. It warns of potential financial risks if fees are not increased or operating costs are not reduced. Various documents related to the proposed fee changes are available on the USPTO website. The proposed fee adjustments are expected to take effect in November 2024, with written comments due by May 28, 2024.

III. Judicial Update

- On Wednesday, March 27, the Federal Circuit, in an opinion by Judge Taranto, upheld a district court's decision to exclude TT's damages theory regarding patents related to graphical user interfaces for commodity trading and methods for placing orders. TT, represented by Brumfeld's predecessor, contended that under the Supreme Court's WesternGeco ruling, it was entitled to recover reasonable royalty damages linked to foreign users of IBD's BookTrader software. The court agreed that WesternGeco was applicable but found TT's evidence insufficient to demonstrate the necessary causal relationship to the claimed infringement. TT sought damages based on IBD's "making" of the software, referencing § 271(a), yet failed to establish the requisite connection to foreign conduct.

- On Wednesday, March 27, in the case of Inline Plastics Corp. v. Lacerta Group, LLC, 22-1954, 22-2295, Judge Taranto issued an opinion in which the Federal Circuit partially overturned a district court's ruling that invalidated Inline's patents for tamper-resistant containers on grounds of obviousness. Inline had contested that the jury instruction regarding

the objective indicia of nonobviousness was flawed and biased. The Federal Circuit concurred, highlighting the instruction's failure to include crucial factors like industry praise, copying, and licensing, despite Inline's proper requests and presentation of evidence during trial. This decision underscores the significance of comprehensive jury instructions in patent cases and is expected to have a notable impact on patent law, emphasizing the need for instructions that thoroughly consider all relevant evidence when determining nonobviousness.

- On Monday, March 25, in a decision authored by Judge Stoll, the Federal Circuit affirmed a district court's ruling of noninfringement. The case involved Edwards challenging Meril's importation of two transcatheter heart valve systems, alleging infringement. Edwards argued that Meril's actions did not qualify for the safe harbor provision under 35 U.S.C. § 271(e)(1), which permits importing patented inventions solely for uses reasonably related to the development and submission of information under federal drug regulations. However, the Federal Circuit disagreed, citing Meril's demonstration at the Transcatheter Cardiovascular Therapeutics Conference to recruit clinical trial investigators for FDA submission purposes, even though the valves were not shown or used. A dissenting opinion by Judge LOURIE contended that the district court failed to assess whether the importation was solely for regulatory purposes or partly for commercial intent.