



AMERICAN CONTINENTAL GROUP

1800 M Street NW | 5th Floor | Washington D.C. 20036
Tel: (202) 327-8100 | Fax: (202) 327-8101

PATENT & TRADEMARK POLICY REPORT

APRIL 26, 2024



I. Congressional Update:

- On Wednesday April 24, President Joe Biden signed a \$95 billion package into law that will provide aid to Ukraine and included a measure that aims to force a sale of TikTok. The bill passed the House on Saturday in a 360-58 vote and passed the Senate on Tuesday in a 79-18 vote. The Senate previously sat on the earlier, House-passed TikTok bill in mid-March, letting it stall in the Senate Commerce Committee. This new version was updated based on negotiations with key senators, including Senate Commerce Chair Maria Cantwell (D-WA). According to *POLITICO*, one edit was to extend the amount of time TikTok's parent company, ByteDance, has to find a buyer to one year instead of six months, which appeased some constitutional concerns in the Senate. Read more from *POLITICO* [here](#) and NBC News [here](#).
- With only eight months remaining in the 118th Congress, *SEMAFOR* reported what is still on the to-do list for Capitol Hill. (1) FY25 Budget and Appropriations, (2) The Farm Bill, (3) Federal Aviation Administration's (FAA) Reauthorization, (4) National Defense Authorization Act (NDAA), and (5) Baltimore Bridge Funding. These don't include other priorities such as AI legislation or a bipartisan tax bill. With a lot to do, and not a lot of time, an already chaotic Congress will have a sprint to the finish line. Read more [here](#).
- Next Tuesday, April 30, the Senate Judiciary Committee Subcommittee on Intellectual Property, will hold a hearing titled *The NO FAKES Act: Protecting Americans from Unauthorized Digital Replicas*. Witnesses listed are

Headlines and Highlights:

- House Approves Bill to Divest TikTok
- What's Left for Congress?
- USPTO Releases Updated Patent Assignment Dataset
- Nominations for National Medal of Technology and Innovation due May 3
- FTC Votes to Ban Noncompete Agreements
- USTR Releases 2024 Special 301 Report on Intellectual Property Protection and Enforcement
- FCC Votes to Restore Net Neutrality Rules
- Chamber Appeals Decision to Deny Expedited FOIA Request on March-In Proposal
- U.S., China to Hold First AI Talks Within 'Weeks'

(1) Lisa P. Ramsey - Professor of Law University of San Diego School of Law, (2) Graham Davies - President and Chief Executive Officer Digital Media Association (DiMA), (3) Ben Sheffner - Senior Vice President and Associate General Counsel Motion Picture Association, Inc., (4) Duncan Crabtree-Ireland - National Executive Director and Chief Negotiator Screen Actors Guild-American Federal of Television and Radio Arts (SAG-AFTRA), (5) Robert Kyncl - Chief Executive Officer Warner Music Group, and (6) Tahliah Debrett Barnett (“FKA twigs”) - Singer, Songwriter, Producer, Dancer, and Actor. The hearing page can be found [here](#).

- Next Tuesday, April 30, the Senate Appropriations Labor, Health and Human Services, Education, and Related Agencies Subcommittee will hold a hearing titled, *A Review of the President’s Fiscal Year 2025 Budget Request for the Department of Education*. The sole witness will be The Honorable Miguel Cardona – Secretary of the Department of Education. The hearing page can be found [here](#).
- Next Tuesday, April 30, the House Energy and Commerce Committee Subcommittee on Innovation, Data, and Commerce will hold a legislative hearing titled, *Draft Legislation to Preserve Americans’ Access to AM Radio*. They will be considering the *AM Radio for Every Vehicle Act of 2024*. The hearing page can be found [here](#), and the official announcement can be found [here](#).
- Next Wednesday, May 1, the Senate Committee on Commerce, Science and Transportation, will convene a full committee Executive Session to consider multiple bills and nominations. Some highlights include (1) *S. 1291 - Protecting Kids on Social Media Act*, (2) *S. 2714 - CREATE AI Act of 2023*, and (3) *S. 4178 - Future of AI Innovation Act*. The hearing page can be found [here](#) and will stream live on the Committee website [here](#).

II. USPTO Updates:

- On Thursday, April 25, the USPTO Office of the Chief Economist released the 2023 update to the Patent Assignment Dataset. According to the release, the latest update contains detailed information on 10.5 million patent assignments and other transactions recorded at the USPTO since 1970 and involving roughly 18.8 million patents and patent applications. It is derived from the recording of patent transfers by parties with the USPTO. The updated data files can be found on the [Patent Assignment Dataset page](#) of the USPTO website. More information on the recording of patent assignments and related information is available in [Chapter 300 of the Manual of Patent Examination and Procedure \(MPEP\)](#).
- Next Friday, May 3, join the Patent Trial and Appeal Board's (PTAB) Legal Experience and Advancement Program (LEAP) for a webinar on how to prepare for oral hearings in America Invents Act trial proceedings before the PTAB. Administrative Patent Judge Cynthia Murphy and practitioners Monica Grewal and David Higer will lead the discussion. You can find more information, including the webinar access information, on the LEAP page of the United States Patent and Trademark Office website [here](#).

- The United States Patent and Trademark Office (USPTO) is seeking nominations for the 2024 National Medal of Technology and Innovation (NMTI). The NMTI is the [nation's highest honor for technological achievement](#), bestowed by the President of the United States. The medal is awarded to individuals, teams, and companies for their outstanding contributions to the nation's economic, environmental, and social well-being through the development and commercialization of technological products, processes and concepts, technological innovation, and strengthening of the nation's technological workforce. You can nominate a candidate for the NMTI by submitting the [online nomination form](#) and letters of support. Submit your nomination before midnight ET on May 3. For more information visit the [NMTI webpage](#) on the USPTO website.

III. Administration Updates:

- On Monday, April 22, the Office of the United States Trade Representative (USTR) announced that Katherine White will serve as USTR's Chief Textiles and Apparel Negotiator. Ms. White previously served as International Trade Policy Advisor on the House Committee on Ways and Means. "Strengthening America's textile industry is a key priority for USTR," said United States Trade Representative Katherine Tai. "The Biden-Harris Administration is committed to crafting trade policy that supports industry revitalization and resilience. Ms. White is a skilled and strategic trade negotiator, and I look forward to continuing this work with her as we fight for a better deal for America's textile manufacturers." Read more [here](#).
- On Tuesday April 23, *The Hill* reported that the Federal Trade Commission (FTC) voted to ban noncompete agreements 3-2. The dissenting commissioners said they did not support noncompete agreements carte blanche, but that they did not believe the agency had the authority to issue the rule without an express directive from Congress. According to the article, the final rule would ban new noncompete agreements for all workers and require companies to let current and past employees know they won't enforce them. Companies will also have to throw out existing noncompete agreements for most employees, although in a change from the original proposal, the agreements may remain in effect for senior executives. "It is so profoundly unfree and unfair for people to be stuck in jobs they want to leave, not because they lacked better alternatives, but because noncompetes preclude another firm from fairly competing for their labor, requiring workers instead to leave their industries or their homes to make ends," said FTC Commissioner Rebecca Slaughter in prepared remarks. The new rule is slated to go into effect in 120 days after it's published in the Federal Register. But its future is uncertain, as pro-business groups opposing the rule are expected to take legal action to block its implementation. Read more [here](#).
- On Thursday, April 25, USTR released its 2024 Special 301 Report on the adequacy and effectiveness of U.S. trading partners' protection and enforcement of intellectual property (IP) rights. "Many of the issues highlighted in the Special 301 Report demand collaborative efforts from our allies and partners," said Ambassador Katherine Tai. "Many of my counterparts share the goal of making sure that trade supports the interests of our people, and one of the most dangerous types of IP violations involves counterfeit goods that pose health and safety risks. In addition, the Biden-Harris Administration has continued its policy of declining to call out countries for exercising TRIPS flexibilities, including with respect to

compulsory licenses, in a manner consistent with TRIPS obligations.” Read the full report [here](#).

- On Thursday, April 25, *The Hill* reported that the Federal Communications Commission (FCC) voted to restore net neutrality rules that were repealed in 2017. The 3-2 party-line vote will reinstate rules that bar broadband providers from blocking or throttling internet traffic to some websites and speeding up access to others that pay extra fees. “Broadband access to the Internet is a critical conduit that is essential for modern life,” said Commissioner Gomez. “Protecting this critical infrastructure that is essential to the safety, economy, health, education, and well-being of this country is good public policy. The value is so great that we cannot wait for the flood to arrive before we start to build the levee.” Read more from *The Hill* [here](#) and the official FCC press release [here](#).

IV. Judicial Updates:

- On Monday, April 22, *Bloomberg Law* reported that the Patent Trial and Appeal Board (PTAB) ended BlueBird Bio Inc.’s efforts to cancel two patents that its multi-million-dollar drugs are accused of infringing. The PTAB ruled in two decisions that Sloan Kettering Institute for Cancer Research’s US Patent Nos. 7,541,179 and 8,058,061 covering blood disorder treatments aren’t obvious or anticipated by prior inventions. The two drugs are LentiGlobin and Zynteglo. According to the article, Zynteglo costs \$2.8 million per patient and treats beta thalassemia, an inherited blood disorder that robs the body of oxygen while LentiGlobin treats sickle cell disease and costs patients less than \$2.1 million. Read more [here](#).
- On Tuesday, April 22, *IPWatchdog* reported that the US Supreme Court (SCOTUS) denied a petition for certiorari from Vanda Pharmaceuticals seeking clarification on the proper standard for a showing of obviousness. Vanda's petition was prompted by the invalidation of its patent related to a method for treating Non-24-Hour Sleep-Wake Disorder by the U.S. Court of Appeals for the Federal Circuit (CAFC) in May 2023. The CAFC based its decision partly on evidence from clinical trials, suggesting a "reasonable expectation of success" standard. The CAFC's decision relied on a district court finding that Vanda's ongoing clinical trial, mentioned in prior art, contributed to an expectation of success. Read more [here](#).
- On Wednesday, April 24, *Bloomberg Law* reported that Patent Quality Assurance LLC and VLSI Technology LLC are accusing each other of obfuscating ties to hidden interests in a lawsuit related to the successful challenge of a semiconductor patent tied to a \$2.2 billion infringement verdict. The dispute stems from PQA's challenge of a VLSI patent following a significant infringement verdict against Intel Corp. VLSI accuses PQA of failing to disclose its members as required by a local rule, while PQA contends that VLSI's financial disclosure is similarly deficient. The case is *VLSI Tech. LLC v. Patent Quality Assurance, LLC*, E.D. Va., 3:24-cv-213, PQA opposition brief 4/23/24. Read more [here](#).
- On Thursday, April 25, *Reuters* reported that GlaxoSmithKline (GSK) sued Pfizer and BioNTech in Delaware federal court, accusing them of infringing GSK patents related to messenger RNA (mRNA) technology in the companies' COVID-19 vaccines. GSK states in the lawsuit that Pfizer and BioNTech’s Comirnaty vaccines violate GSK’s patent rights in

mRNA-vaccine innovations that were developed over a decade before the outbreak of COVID-19. A Pfizer spokesperson said in a statement that the company is "confident in our IP position around Comirnaty" and intends to "vigorously defend" against GSK's claims. A BioNTech spokesperson declined to comment on the complaint. A GSK spokesperson said the company believes its patents "provided the foundational technology used in Pfizer and BioNTech's COVID-19 mRNA vaccines," and that it is "willing to license these patents on commercially reasonable terms and to ensure continued patient access" to the shots. Read more [here](#).

V. Industry Updates:

- On Monday, April 22, *IPWatchdog* reported that the US Chamber of Commerce's Global Innovation Policy Center (GIPC) filed an appeal with the US Department of Commerce, which denied the GIPC's January 2024 Freedom of Information Act (FOIA) request seeking more detail about the working group behind the Biden Administration's draft framework for considering the exercise of march-in rights. According to the article, the Chamber's January request focused on obtaining information about the Interagency Working Group for Bayh-Dole referenced in the December Federal Register Notice (FRN) and, in particular, all communications between the Working Group and the Office of Senator Elizabeth Warren or the Office of Senator Bernie Sanders, as well as "any staff member, employee, or representative of Knowledge Economy International (KEI), the Initiative for Medicines, Access, and Knowledge (I-MAK), the Center for American Progress, Patients for Affordable Drugs, or Public Citizen." GIPC Vice President of Innovation Policy, Brad Watts, said at the time that Warren, Sanders and the named organizations are on record as having pushed price controls or administrative actions against pharmaceutical companies and that there is a concern about the Working Group's potential interactions with such entities. Read more [here](#).
- Next Wednesday, May 1, celebrate World IP Day with Intellectual Property Owners Association (IPO) and their partner organizations. This year's theme is focused on "Sustainable Development Goals: IP as a Solution." The annual international event is an opportunity to learn about the role that intellectual property (IP) rights play in encouraging innovation and creativity. This year's congressional event sponsor is Representative Darrell Issa (R-CA), Chair of the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet. The event is free and meets the requirements of a widely attended event under Congressional Ethics Rules. This event is open to members of the press. There is no fee to attend, but please register at the link below. Live Streaming is also available. Please add a live-stream ticket if you plan to attend remotely. The link will be provided in your registration confirmation. [Click here to register](#).
- For World IP Day, ACG Advocacy Partner Marla Grossman weighs in on the day's theme of Sustainable Development Goals (SDGs) and how aligning innovations with SDGs through patent mapping can be a powerful strategy for driving sustainable technological development. Her statement is copied below, while the full article can be found [here](#). ACG also reposted the article on their website [here](#).
 - "Given this year's World IP Day's theme of Sustainable Development Goals (SDGs), it behooves us to consider the many ways in which aligning innovations with SDGs through patent mapping can be a powerful strategy for driving sustainable

technological development: Informed Decision Making: Patent analytics provide valuable insights into the technological landscape related to sustainability. By mapping patents to specific SDGs, decision-makers can identify gaps, trends, and opportunities for innovation in areas crucial for sustainable development. Strategic Resource Allocation: With data-driven insights from patent mapping, policymakers and businesses can allocate resources more effectively. This ensures that investment and effort are directed towards areas where they can have the most significant impact on achieving sustainability goals. Facilitating Collaboration: Patent mapping fosters collaboration among stakeholders by highlighting areas where inventive contributions are most needed. It enables partnerships between businesses, research institutions, and governments to develop sustainable solutions collaboratively. IP Department Benefits: IP departments can leverage patent mapping to gain a comprehensive understanding of sustainable technology developments. This knowledge allows them to advise businesses strategically on sustainability matters, enhancing the company's overall sustainability strategy. Business Advantages: Aligning innovations with SDGs can enhance a company's financial profile by appealing to socially conscious consumers, purchasers, and licensees. It positions the business as a leader in sustainability, which can contribute to brand loyalty and competitiveness in the market. By actively linking innovations to SDGs through patent analytics, organizations can play a pivotal role in advancing sustainable development and contributing to a better world for future generations.”

- On Friday, April 26, *CNBC* reported that the U.S. and China will hold their first high-level talks on artificial intelligence within the coming weeks according to statements made by Secretary of State Antony Blinken. During wide-ranging talks with Chinese officials in Beijing, Blinken said the two sides had agreed to the first U.S.-China intergovernmental dialogue on AI to discuss the risks and safety concerns surrounding the emerging technology. “Earlier today we agreed to hold the first US PRC talks on artificial intelligence to be held in the coming weeks, to share our respective views on risks and safety concerns around advanced AI and how best to manage them,” Blinken said during a press conference. Read more from *CNBC* [here](#).