



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 JANUARY 26, 2024



### I. Congressional Developments:

- On Thursday, Senate Judiciary IP Subcommittee Chair Chris Coons (D-DE) and Ranking Member Thom Tillis (R-NC), along with 12 other Senators, penned a letter to President Biden urging him to oppose the World Trade Organization's (WTO) proposal seeking to waive IP protections under the WTO Agreement on Trade-Related Aspects of IP Rights (TRIPS) for COVID-19 diagnostics and therapeutics. The senators argued that further TRIPS modifications may have unintended consequences on the development of new treatments for dangerous diseases and may not significantly improve access to medicine. The letter highlights that the 2022 WTO agreement to waive certain IP protections for COVID-19 vaccines has had minimal impact, with no countries utilizing the waiver. Additionally, U.S. companies have provided free access to COVID-19 vaccines, therapeutics, and diagnostics through donations and over 400 voluntary licensing partnerships, resulting in a global surplus of supply. The senators contend that IP protection is not hindering access to COVID-19 diagnostics and therapeutics for people in lower-income countries, and expanding the TRIPS waiver is unlikely to address broader health system challenges. Read more [here](#).
- On Wednesday, January 24, 2024, the Senate Rules & Administration Committee held a hearing titled, "The Use of Artificial Intelligence at the Library of Congress, Government Publishing Office, and Smithsonian Institution." Witnesses included The Honorable Dr. Carla Hayden, Librarian of Congress at the Library of Congress; [The Honorable Hugh Nathaniel Halpern](#),

### Headlines and Highlights:

- Senators Coons, Crapo, Carper, Tillis urge Biden administration to reject TRIPS waiver.
- Senate Judiciary Subcommittee on IP Hearing on Patent Eligibility Restoration Act (PERA)
- Senate Rules Hearing on AI Usage at Government Agencies
- HJC IP Field Hearing Announced
- Bipartisan Effort on Drug Pricing Legislation
- EU Lawmakers Approve Draft Rules on Patent-Related Disputes

### In the Blogs:

**IP Watchdog:** [Patent Filings Roundup: End to the New Year Lull; Torchlight Patent IPRs Instituted](#)

Director at the U.S. Government Publishing Office; and [Ms. Meroë Park](#), Deputy Secretary and Chief Operating Officer at the Smithsonian Institution. Senators used the hearing as an opportunity to learn more about AI usage and priorities at the three agencies. Overall, the general sentiment among the witnesses was that AI has the potential to be beneficial but comes with risks, and managing those risks is key during the early stages of development and implementation. A link to the hearing page and full recording can be found [here](#).

- On Tuesday, the Senate Committee on the Judiciary Subcommittee on IP held a hearing titled “The Patent Eligibility Restoration Act – Restoring Clarity, Certainty, and Predictability to the U.S. Patent System.” The hearing focused on the Patent Eligibility and Restoration Act (PERA), which seeks to provide better clarity over patent subject matter eligibility under Section 101 of the Patent Act. Chairman Christopher Coons (D-DE) and Ranking Member Thom Tillis (R-NC) expressed concerns about the current patent system's lack of clarity and inclusivity, particularly in fields like medical diagnostics, software, and artificial intelligence. They argued that this could drive innovators to seek patent protection abroad, putting the U.S. at a competitive disadvantage. Witnesses across two panels presented diverse perspectives on the imperative need for reform, the potential implications of PERA, and the indispensable role of patent eligibility in driving innovation and economic growth. The majority of the witnesses, including Philip S. Johnson, Courtenay C. Brinckerhoff, The Honorable Andrei Iancu, The Honorable David J. Kappos, Mark Deem, and Adam Mossoff, were proponents of PERA. The supporters emphasized the need for reform to address the lack of clarity and inclusivity in the current patent system. On the other end of the table, David Jones and Richard Blaylock opposed the legislation. They expressed concerns about potential negative impacts on innovation and patient care, particularly in fields like diagnostic genetic testing and precision medicine. The collective discourse underscored the urgency of restoring clarity, certainty, and predictability to the U.S. patent system. A link to the hearing page and full recording can be found [here](#).
- A bipartisan coalition of lawmakers, including liberal Democrats and influential Republicans, is collaborating on drug pricing legislation focused on preventing drugmakers from exploiting the patent system. The proposed legislation targets "patent thickets," a practice where companies secure overlapping patents around a drug to discourage competition. Notably, Rep. Jodey Arrington (R-Texas), chair of the House Budget Committee, is supporting the effort, signaling increased scrutiny from influential Republicans on the pharmaceutical industry. The bipartisan push reflects a growing bipartisan interest in addressing drug pricing issues, despite ongoing disagreements on other healthcare matters. The legislation aims to combat strategies such as "pay-for-delay" deals and improper patent listings that delay the entry of cheaper generics. While the pharmaceutical industry remains opposed to certain measures, supporters emphasize the need to prevent patent system abuses without stifling innovation. Overcoming industry opposition remains a challenge, and the inclusion of these measures in must-pass legislation is uncertain. Read more [here](#).
- Next week on February 2, the House Judiciary Committee IP Subcommittee is holding a field hearing in Los Angeles titled, “Artificial Intelligence and Intellectual Property: Part II – Identity in the Age of AI.” Witnesses listed include Lainey Wilson – 2024 GRAMMY Nominee; 2023 CMA Entertainer of the Year; 2023 ACM Female Artist of the Year, Harvey Mason Jr. – President and CEO, The Recording Academy, Christopher Mohr – President, Software and Information Industry Association (SIIA), and Jennifer Rothman – Nicholas F. Gallicchio Professor of Law, University of Pennsylvania Law School. Next week on

February 2, the House Judiciary Committee IP Subcommittee is holding a field hearing in Los Angeles titled, “Artificial Intelligence and Intellectual Property: Part II – Identity in the Age of AI.” Witnesses listed include Lainey Wilson – 2024 GRAMMY Nominee; 2023 CMA Entertainer of the Year; 2023 ACM Female Artist of the Year, Harvey Mason Jr. – President and CEO, The Recording Academy, Christopher Mohr – President, Software and Information Industry Association (SIIA), and Jennifer Rothman – Nicholas F. Gallicchio Professor of Law, University of Pennsylvania Law School.

## II. USPTO Updates:

- Beginning on January 30, 2024, the USPTO certificates of correction (eCofCs) will be accessible and printable via Patent Center immediately upon issuance, streamlining the process for both patent owners and the public. This marks a shift from the current practice of issuing paper certificates, providing a more efficient and accessible method. The change applies to all certificates of correction for patents issued on or after January 30, 2024, without altering the procedural aspects or standards for requesting and granting certificates of correction. Read more [here](#).
- Starting February 5, 2024, the USPTO will implement a new transition date for the Assignment Center, replacing the Electronic Patent Assignment System (EPAS) and the Electronic Trademark Assignment System (ETAS). Originally set for January 22, the transition date has been postponed to incorporate valuable stakeholder feedback, improve informational resources, how-to guides, and training materials. The delay aims to ensure that customer service and call center staff are well-prepared to address questions, facilitating a smooth transition for stakeholders. Despite the postponement, the location to search for patent and trademark assignments will remain unchanged.

## III. International Update

- On Wednesday, a key EU lawmakers' group approved draft rules proposed by the European Commission to address patent-related disputes concerning technologies for telecoms equipment and connected cars. The rules aim to reduce costly and prolonged litigation over patents in various technologies, including those for telecoms equipment, mobile phones, computers, connected cars, and smart devices. Despite criticism from major patent holders such as Nokia, Ericsson, and Siemens, the committee at the European Parliament supported the proposals. The draft rules will now undergo further discussions with EU countries and lawmakers before potentially becoming law. Concerns raised by patent holders include additional obligations and costs on standard essential patent (SEP) owners. Nokia, Ericsson, and Siemens, in a joint letter, urged the committee to scrutinize the concerns raised by bodies like the European Patent Office and ETSI. Meanwhile, opponents, including lawmaker Bart Groothuis, question the necessity of the proposed rules, suggesting that existing court cases are functioning adequately. Lobbying group IP Europe, with members like Nokia, Ericsson, and Qualcomm, warned that the rules might compromise European leadership in critical technologies and favor foreign device manufacturers. Read more [here](#).

## IV. Judicial Update

- On Friday, Secure Wi-Fi LLC filed a lawsuit against Samsung Electronics Co., alleging infringement of three patents by its Galaxy S23 smartphones. The lawsuit, filed in the US District Court for the Eastern District of Texas, claims that Samsung's Galaxy S23 smartphones incorporate a randomized identification method for connecting to a wireless network, a technology protected by Secure Wi-Fi's patents. The patents (US Patent Nos. 10,694,384, 9,961,552, and 9,717,005) cover "schemes for connecting to a wireless network." The complaint asserts that Samsung's use of randomized MAC addresses in the Android operating system, instead of factory-assigned static addresses, is similar to the patented technology. Secure Wi-Fi is seeking damages, future royalties, and attorneys' fees. The lawsuit also alleges that Samsung encouraged customers to infringe the patent by promoting the smartphone and providing support information on its websites, videos, and demonstrations. Samsung has not yet responded to the allegations. Bunsow De Mory LLP is representing Secure Wi-Fi in the case. Read more [here](#).
- On Wednesday, Google settled a patent infringement lawsuit over chips powering its artificial intelligence (AI) technology, as disclosed in a filing in a Massachusetts federal court. The settlement was reached on the same day that closing arguments were scheduled to begin in the trial filed by Singular Computing. Singular Computing's lawsuit sought \$1.67 billion in damages, alleging Google's misuse of its computer-processing innovations. The details of the settlement were not immediately available, and representatives from both Google and Singular confirmed the settlement without providing further information. Google spokesperson Jose Castaneda stated that the company did not violate Singular's patent rights and expressed satisfaction in resolving the matter. Singular, founded by computer scientist Joseph Bates, claimed that Google incorporated its technology into processing units supporting AI features in various Google services. The 2019 lawsuit argued that Google's Tensor Processing Units copied Bates' technology and infringed two patents. Google countered, asserting that its chip designers independently created the technology, and its products were fundamentally different from what was described in Singular's patents. Read more [here](#).