



AMERICAN CONTINENTAL GROUP

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PATENT & TRADEMARK POLICY REPORT MAY 20, 2024



I. Congressional Update:

- On Wednesday, May 15, Senator Schumer, along with Senators Rounds, Heinrich, and Young, released the long-awaited AI roadmap proposing \$32 billion in annual funding by 2026 for AI research and development. Titled “Driving U.S. Innovation in Artificial Intelligence,” the plan focuses on boosting American leadership in AI technology but offers minimal regulatory details. According to Sen. Todd Young, “This roadmap represents the most comprehensive and impactful bipartisan recommendations on artificial intelligence ever issued by the legislative branch.” While not legislation, the initiative is intended to provide direction to Senate committees currently crafting bills. The report includes sections on “*Supporting US Innovation In AI;*” “*AI and the Workforce;*” “*High Impact Uses of AI;*” “*Elections and Democracy;*” “*Privacy and Liability;*” “*Transparency, Explainability, Intellectual Property, and Copyright;*” “*Safeguarding Against AI Risks;*” and “*National Security.*” Specifically addressing the Transparency, Intellectual Property, and Copyright section, the report urges relevant committees to develop legislation addressing public-facing transparency requirements for AI systems and consider the need for best practices regarding automation levels in tasks. It also recommends reviewing federal agency transparency, data set usage, content provenance, and legislation protecting individuals' rights and intellectual property in the context of AI. Additionally, the report suggests establishing public awareness campaigns on AI and considering international partnerships for AI research while mitigating risks to research security and intellectual

Headlines and Highlights:

- Senate AI Leads Unveil AI Roadmap with IP Section
- Tillis, Kiley, and Issa Urge USPTO Investigation into Alleged Patent Examiner Bias
- Biden Administration Raises Tariffs on Chinese Imports After Four-Year Review
- USPTO Alerts Filers of Address Data Leak
- USPTO's TPAC Held Quarterly Meeting
- Microsoft hit with \$242 million US Verdict in Cortana Patent Lawsuit
- Federal Circuit Dismisses PREP Act Appeal Due to Lack of Jurisdiction

In the Blogs:

- **IPWatchdog:** [A Creeper: Absorbing Generative AI into the Inventive Process](#)
- **Patently-O:** [PREP Act](#)

property. A one-pager detailing the roadmap can be found [here](#). The AI policy roadmap for the 118th Congress can be found [here](#).

- On Wednesday, Senator Thom Tillis (R-NC), Representative Kevin Kiley (R-CA), and Representative Darrell Issa (R-CA) sent a letter to USPTO Director Kathi Vidal expressing concerns about the integrity of the patent examination process in light of *IPWatchdog's* article last week on the “Patent Examiner Reddit” thread. The letter highlighted a specific post where a purported examiner discussed political disagreement with patent applications, prompting the lawmakers to call for a review of this incident and “a broader investigation into whether there is a pattern of patent examiners substituting their own preferences and beliefs for the law and USPTO guidance.” When the story first broke, the USPTO stated that it does not comment on “unverified statements by anonymous commenters on Reddit or any other social media platform.” However, a leaked internal email from USPTO Director Kathi Vidal that was obtained by *IPWatchdog* reveals that the Office is investigating possible bias issues mentioned in the thread. Read the letter [here](#) and more from *IPWatchdog* [here](#) and [here](#).

II. USPTO Updates:

- On Wednesday, May 8, the U.S. Patent and Trademark Office (USPTO) issued a warning to filers who had their address exposed in a data leak, according to an email obtained by *TechCrunch*. The USPTO told about 14,000 affected trademark applicants that their private domicile addresses, which appeared in public records between August 23, 2023, and April 19, 2024, were published online as part of economic research performed by the USPTO. “Importantly, this incident was not the result of malicious activity,” the USPTO said in the email. Read more from *TechCrunch* [here](#).
- On Friday, May 10, 2024, the US Patent and Trademark Office (USPTO) Trademark Public Advisory Committee (TPAC) held a public meeting. Chair of TPAC, Andraea Brown, gave a brief introduction for the first meeting of 2024. More information, including a run-of-show for the meeting, can be found [here](#). Director Vidal delivered concise opening remarks, noting the surge in trademark applications and the intention to hire 56 new examiners to address the issue of pendency. She emphasized the transformational time at the USPTO, recognizing the growing significance of intellectual property in global commerce and the integration of artificial intelligence. She highlighted specific initiatives, including the establishment of the Office of Public Engagement and the forthcoming fully operational regional office in Atlanta by the end of 2025. She made a noticeable effort to report that first action pendency decreased to 8.2 months by the end of FY24 Q1, showcasing remarkable progress. She concluded by mentioning a few of the modernization efforts including retiring TRAM and implementing new IT systems to streamline operations. There was a lot of emphasis placed on pendency throughout the entire meeting. While pendency is usually always discussed at these meetings (albeit briefly), it was a main focus on Friday. Commissioner Gooder stated that the number one goal for FY24 is to accelerate pendency reduction while Deputy Commissioner Vavonese spent over 10 minutes presenting how the office is planning to achieve that goal. A full summary from ACG can be provided upon request.

III. Administration Updates:

- On Tuesday, May 14, President Biden announced an increase in tariffs on \$18 billion worth of Chinese imports. President Biden has both maintained Trump-era tariffs on over \$300 billion worth of Chinese goods, including finished textiles and apparel, and raised tariffs on strategic Chinese imports such as electric vehicles, semiconductors, steel and aluminum, batteries, solar cells, ship-to-shore cranes, and medical products. This decision follows a statutory four-year review of Section 301 China tariffs, which concluded that China engages in unfair trade practices, including subsidies, intellectual property theft, and forced technology transfer. In response to this decision, U.S. Trade Representative (USTR) Katherine Tai stated “After thorough review of the statutory report on Section 301 tariffs, and having considered my advice, President Biden is directing me to take further action to encourage the elimination of the People’s Republic of China’s unfair technology transfer-related policies and practices that continue to burden U.S. commerce and harm American workers and businesses,” said Ambassador Katherine Tai. “In light of President Biden’s direction, I will be proposing modifications to the China tariffs under Section 301 to confront the PRC’s unfair policies and practices.” Next week, USTR will issue a Federal Register notice announcing procedures for interested persons to comment on the proposed modifications and information concerning an exclusion process for machinery used in domestic manufacturing. The White House fact sheet can be found [here](#) and, the USTR’s fact sheet can be found [here](#).

IV. Judicial Updates:

- On Monday, May 13, trademark law firm Chestek PLLC filed a petition for writ of certiorari with the U.S. Supreme Court, challenging the USPTO requirement for trademark applicants to disclose their domicile address. This move follows a February decision by the U.S. Court of Appeals for the Federal Circuit (CAFC) affirming the USPTO’s refusal to register Chestek’s trademark due to its failure to provide a domicile address. The CAFC ruled that the USPTO’s address rule is procedural and not subject to notice-and-comment requirements under the Administrative Procedures Act (APA). Chestek argues that this ruling conflicts with statutory provisions and neglects privacy concerns, especially for vulnerable groups like victims of abuse or stalking. They contend that the Federal Circuit’s interpretation nullifies relevant statutory language and violates the anti-superfluity canon of statutory construction. Chestek emphasizes the importance of notice-and-comment procedures to address privacy issues and seeks Supreme Court intervention to resolve the matter, despite the Federal Circuit’s jurisdiction over USPTO appeals potentially discouraging further challenges. Read more from *IPWatchdog* [here](#).
- On Tuesday, May 14, the Federal Circuit dismissed an appeal in *Copan Italia Spa v. Puritan Med. Prods. Co. LLC* for lack of jurisdiction. The appeal stemmed from a district court decision that found Puritan failed to demonstrate immunity to patent infringement claims under the Pandemic Readiness and Emergency Preparedness (PREP) Act. Judge Stark delivered the opinion, stating that the district court’s denial of Puritan’s motion to dismiss was not subject to appeal under the collateral order doctrine. The Federal Circuit concurred with this assessment, noting that the district court had not definitively determined Puritan’s

liability under the PREP Act. Instead, the district court indicated that it was "not in a position to make these determinations at this time." Additionally, the district court permitted Puritan to amend its answer to include immunity under the PREP Act as an affirmative defense. This decision signaled that further litigation would be necessary before a conclusive determination could be made regarding Puritan's immunity. Therefore, the Federal Circuit concluded that there was no jurisdiction to hear Puritan's appeal at this stage.

V. Industry Updates:

- On Friday, May 10th, *Reuters* reported that a federal jury in Delaware determined Microsoft must pay a \$242 million fine to IPA Technologies after determining that Microsoft's Cortana virtual-assistant software infringed an IPA patent. The suit was originally filed in 2018. Read more [here](#).