



AMERICAN CONTINENTAL GROUP

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PATENT & TRADEMARK POLICY REPORT MAY 2, 2024



I. Congressional Update:

- On April 30, the Senate Committee on the Judiciary Subcommittee on Intellectual Property held a hearing titled “*The NO FAKES Act: Protecting Americans from Unauthorized Digital Replicas*”. The hearing focused on the increasing use of AI-generated replicas, such as deepfake videos and voice-cloning tools, and the legal and ethical issues they present. Chairman Chris Coons (D-DE) discussed the *NO FAKES Act*, a discussion draft he introduced to protect individuals from unauthorized use of their images, voices, or likenesses. Ranking Member Thom Tillis (R-NC) emphasized the need for legislation to address the issue of deepfakes and digital replicas. Six witnesses testified, discussing the importance of protecting artists' identities and intellectual property, the need for regulation, and the potential misuse of AI technology. The hearing concluded with Chairman Coons, noting the need to balance individual privacy rights and First Amendment rights when regulating the use of AI, so as not to stifle creativity and innovation. He highlighted the necessity of a clear policy to protect individuals from unauthorized AI replicas, and expressed his eagerness to work with his colleagues, co-sponsors, witnesses, and others to refine the policy in the coming weeks and hopefully officially introduce the *NO FAKES Act* within the next month. A full summary from ACG can be provided upon request.
- On Tuesday, April 30, the House Energy and Commerce Subcommittee on Innovation, Data, and Commerce held a hearing titled, “Preserving Americans’ Access to AM Radio.” Witnesses included Mr. John Bozzella (President and CEO, Alliance for Automotive Innovation), Mr.

Headlines and Highlights:

- Senate Judiciary Holds NO FAKES Hearing
- House E+C Holds AM Radio Hearing
- Congress Sends Letter for a US Formula 1 Team
- World IP Day Celebration on Capitol Hill
- USPTO Announces National Strategy for Inclusive Innovation
- Trademark Public Advisory Committee Quarterly Meeting Scheduled
- IPEC Releases Annual Report
- Department of Commerce Announces New Actions to Implement President Biden’s Executive Order on AI
- Drugmakers Exposed to Antitrust Probes if Patent Cache Adopted
- China Leads the Pack in AI Patents Granted

Gary Shapiro (CEO, Consumer Technology Association), Ms. Melody Spann-Cooper (Chair and CEO, Midway Broadcasting Corporation), and Mr. Justin Ahasteen (Executive Director, Navajo Nation). Of note, Mr. Gary Shapiro, CEO of the Consumer Technology Association (CTA), in his testimony stated that AM and FM radio are the only forms of radio that do not pay performers for their work. He added that digital and streaming platforms pay performance royalties, while AM and FM radio broadcasters make billions in revenue from advertisers while paying nothing to performers. He went on to say that the United States is the only democratic nation where artists are not compensated for the use of their song on FM and AM radio. A full summary from ACG can be provided upon request.

- This week, *Punchbowl News* reported that Rep. John James (R-MI) is leading a bipartisan group of members who are looking for answers from Liberty Media, the owners of Formula One, on why the Mario Andretti-backed General Motors team was denied admission to the racing series. The members wrote a letter saying that the denial represents “anti-competitive actions.” The letter also accuses Formula One Management of potentially violating antitrust laws and bowing to the influence of European race teams. The team, a combination of Andretti Global and General Motors, would have competed with the first American-built and designed engine in Formula One history. Reps. Jim Jordan (R-OH), Jared Moskowitz (D-FL) and Dan Kildee (D-MI) also signed on to the letter. Read more [here](#).
- On Wednesday May 1, Sen. Thom Tillis (R-NC) sent a letter to President Joe Biden urging him to reject attacks on the U.S. patent system, specifically the misuse of section 1498 to address drug pricing issues. He explains that section 1498 was enacted in 1910 to ensure compensation for government takings of patented inventions, but it does not confer the power to disregard patents on drug products or induce generic pharmaceutical companies to manufacture patented medicines. Sen. Tillis argues that using section 1498 in this way would harm the innovation ecosystem and have little impact on drug prices. He emphasizes that weakening patent rights through section 1498 would negatively affect American innovation and economic competitiveness. He concludes by urging the administration to reject such a policy, stating, "Our IP system has consistently rewarded inventors for their valuable contributions to our collective well-being. It has made America the most innovative nation in history based on a legal regime that sustains and encourages that innovation. Use of section 1498 would undermine that regime. Thus, I strongly urge your Administration to reject such a policy." The full letter can be provided upon request.

II. USPTO Updates:

- On Monday, April 29, the USPTO announced that a new Memorandum of Understanding (MOU) recently signed by USPTO Director Vidal and Vivienne Katjuongua, Chief Executive Officer of the Namibia Business and Intellectual Property Authority, provides a framework for cooperation between the two intellectual property (IP) offices regarding the protection and enforcement of IP rights. According to the press release, future joint activities called for under the MOU include exchanges of information and best practices; training and capacity-building programs; and the development of patent, trademark, and industrial design examination manuals for Namibian examiners. “We welcome the addition of the IP Office of Namibia to the growing network of IP offices around the world that the USPTO works with

to strengthen the protection and enforcement of intellectual property rights,” said Director Vidal. “This new agreement marks the continuation of the USPTO’s engagement in Africa, building on existing work with Uganda and the African Regional Intellectual Property Office.” The agreement went into effect on April 25, 2024, and will continue for five years. For more information about the international protection of IP, please visit the USPTO’s [Pursuing international IP protection webpage](#).

- On Tuesday, April 30, the Customer Service Window located in the Randolph building at 401 Dulany St., Alexandria, Virginia, stopped receiving patent-related correspondence. Effective April 30, the Customer Service Window for patent-related correspondence is located in Room 1D80 of the adjacent Knox building at 501 Dulany St., Alexandria, Virginia. You can hand carry or deliver documents to the new Customer Service Window at the above Knox building address on or after April 30. The hours of operation will be 8:30 a.m. to 11:59 p.m. ET, Monday through Friday, except holidays and if the USPTO is closed for inclement weather or an emergency. No application numbers will be assigned by window staff at the time of delivery. For more information, please see the [Major events affecting customers webpage](#).
- On Tuesday, April 30, the USPTO announced that Director Vidal and Dr. Salvador Ramos, the Director General of the National Office of Industrial Property of the Dominican Republic (ONAPI), recently signed a joint statement of intent for the implementation of a new work-sharing initiative, the Accelerated Patent Grant (APG). The new arrangement gives eligible patent applicants the option of using an expedited process for obtaining a patent grant in the Dominican Republic based on a U.S. patent grant. According to the press release, “Under the APG process, an eligible patent applicant who has been granted a U.S. patent by the USPTO may request that ONAPI grant a patent on a corresponding Dominican patent application at any time during its processing, following the publication of the application by ONAPI and subject to the relevant patent laws of the Dominican Republic. This new APG work-sharing arrangement goes into effect 30 calendar days after the signing ceremony and will continue for five years.” For more information about USPTO work-sharing programs, visit the [USPTO website](#).
- On Wednesday, May 1, USPTO Director Kathi Vidal, USCO Register Shira Perlmutter, Chair of the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet Rep. Darrell Issa (R-CA), and representatives from USPTO partner organizations, including the American Intellectual Property Law Association and others to observed World IP Day 2024 with an in-person gathering at the U.S. Capitol that highlighted this year’s theme of “IP and the SDGs.” The 17 SDGs, which include goals such as affordable and clean energy, climate action, and gender equality, are a blueprint for people, peace, prosperity, and our planet. Participants will discuss progress on achieving these goals and the critical role IP protection plays in this achievement. Other Congressional speakers include Senator Chris Coons, Chair, Senate Judiciary Subcommittee on Intellectual Property, Senator Thom Tillis, Ranking Member, Senate Judiciary Subcommittee on Intellectual Property, and Representative Hank Johnson, Ranking Member, House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet. Read more [here](#).
- On Wednesday, May 1, the USPTO, in conjunction with the agency’s work with the Council for Inclusive Innovation (CI2), announced a new National Strategy for Inclusive Innovation.

The Strategy aims to grow the economy, create quality jobs, and address global challenges by increasing participation in STEM, inventorship, and innovation among youth and those from historically underrepresented and under resourced communities. The USPTO's most recent Progress and Potential report found that only 12.8% of all inventors named on U.S. patents are women. At the same time, a Harvard University study revealed that white Americans are three times more likely to invent than Black Americans, and that children born to parents in the top 1% of income earners are 10 times more likely to become inventors than those from families with below-median income. According to the press release, the Strategy is built upon four Cornerstones. (1) Addressing K-12 educational disparities and the need to inspire youth of all backgrounds to become innovators. (2) Focusing on post-secondary educational disparities for students and faculty. (3) Promoting inclusiveness in organizations. (4) Increasing, for all Americans, commercialization opportunities for innovations. Read the full press release [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.
- On Thursday May 9, the USPTO in collaboration with the Small Business Administration (SBA) is hosting a virtual overview of the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs including what resources are available to help navigate the processes. Register for the event [here](#). For more information, please email InnovationOutreach@uspto.gov.
- On Friday May 10, the USPTO's Trademark Public Advisory Committee (TPAC) will hold its first quarterly meeting of 2024. The TPAC reviews the policies, goals, performance, budget, and user fees of trademark operations and advises the director on these matters. Watch the public session virtually on Webex [here](#) and learn more about the event [here](#).

III. Administration Updates:

- On April 23, the Office of the Intellectual Property Enforcement Coordinator (IPEC) issued its *Annual Intellectual Property Report to Congress*, which provides an overview of the intellectual property enforcement efforts of various US federal and governmental agencies, including the US Patent and Trademark Office (USPTO), the US Copyright Office (USCO), the State Department, the Office of the US Trade Representative (USTR), and the Commerce Department's Commercial Law Development Program. The report highlights various capacity-building and foreign assistance accomplishments in copyright education and enforcement, including work by the ICHIP and IP Attaché programs on digital sports piracy issues in

Romania, Latin America, and the Caribbean. In recounting USCO activities and accomplishments, the report noted that in all of the Office’s public engagements on AI and copyright issues in 2023 (including the webinars and listening sessions), it reached more than 8,000 people, breaking engagement records. Read the full report [here](#).

- On April 25, the Federal Communications Commission (FCC) voted 3-2 along party lines to approve a declaratory ruling and order that restores most of the FCC’s original net neutrality rules from 2015 to prevent internet service providers from blocking, downgrading, or up-charging for certain kinds of internet transmissions. The document specifies that the rules do not protect or promote copyright infringing activities and do not prohibit the reasonable efforts of internet service providers to address copyright infringement. However, the FCC notes that, similar to the 2015 rule, it “retain[s] discretion to evaluate the reasonableness of broadband providers’ practices under this rule on a case-by-case basis.” More information is available [here](#).
- Monday, April 29, marked the 6-month anniversary of the Biden Administration’s AI Executive Order. According to the White House, federal agencies reported that they completed all of the 180-day actions in the EO on schedule, following their recent successes completing each 90-day, 120-day, and 150-day action on time. Actions that the agencies reported as complete include (1) Released for public comment draft documents on managing generative AI risks, securely developing generative AI systems and dual-use foundation models, expanding international standards development in AI, and reducing the risks posed by AI-generated content. (2) Launched the AI Safety and Security Board. (3) Developed bedrock principles and practices for employers and developers to build and deploy AI safely and in ways that empower workers. (4) Published guidance on patentability of AI-assisted inventions, and more. A table summarizing many of the activities that the federal agencies have completed in response to the Executive Order can be found [here](#). The next deadline to look for is May 27, when agencies must designate a chief AI officer. Read more [here](#).
- On Monday, April 29, the Department of Commerce announced several new actions related to the Biden Administration’s AI Executive Order. The Department’s National Institute of Standards and Technology (NIST) released four draft publications intended to help improve the safety, security, and trustworthiness of AI systems as well as a challenge series that will support development of methods to distinguish between content produced by humans and content produced by AI. In addition to NIST’s publications, the USPTO published a request for public comment (RFC) seeking feedback on how AI could affect evaluations of how the level of ordinary skills in the arts are made to determine if an invention is patentable under US law. According to the Department of Commerce’s press release, the NIST publications cover varied aspects of AI technology: The first two are guidance documents designed to help manage the risks of generative AI — the technology that enables chatbots and text-based image and video creation tools — and serve as companion resources to NIST’s AI Risk Management Framework (AI RMF) and Secure Software Development Framework (SSDF), respectively. The third NIST publication offers approaches for promoting transparency in digital content, which AI can alter; the fourth proposes a plan for developing global AI standards. These publications are initial drafts, which NIST is publishing now to solicit public feedback before submitting final versions later this year. Comments for the NIST drafts are due by June 2. As for the USPTO’s RFC they are seeking public feedback on how the use of AI could pose questions as to what qualifies as prior art and the assessment of the level of skill of a person

having ordinary skill in the art. Comments for the USPTO are due July 29. The full Register Notice can be found [here](#) and the press release [here](#).

IV. Judicial Updates:

- On Tuesday, April 30, *The Hill* reported that Eight newspapers owned by Alden Global Capital sued OpenAI and Microsoft on Tuesday, accusing the tech firms of illegally using copyrighted articles to train their AI models. The New York Daily News, Chicago Tribune, Orlando Sentinel, Sun-Sentinel, Mercury News, Denver Post, Orange County Register and St. Paul Pioneer Press argue the companies have used “millions” of articles without permission to “fuel the commercialization” of their generative AI products, like OpenAI’s ChatGPT and Microsoft’s Copilot. “Microsoft and OpenAI simply take the work product of reporters, journalists, editorial writers, editors and others who contribute to the work of local newspapers—all without any regard for the efforts, much less the legal rights, of those who create and publish the news on which local communities rely,” the lawsuit alleges. Read more [here](#).
- On Tuesday, April 30, *IPWatchdog* reported that the U.S. Court of Appeals for the Federal Circuit (CAFC) upheld a trademark decision, supporting the Trademark Trial and Appeal Board's (TTAB) ruling against Jalmar Araujo's mark #TODECACHO. Framboise Holdings, Inc., opposing Araujo's trademark application for hair combs, claimed prior use of a similar mark for hair products, dating back to March 24, 2017. Despite Araujo's arguments of procedural errors and lack of substantial evidence, the CAFC affirmed the Board's decision. Framboise's expert declaration on prior use stood uncontradicted, providing specific dates and evidence of the mark's usage on products in stores, while Araujo failed to present any evidence disputing Framboise's claims. Therefore, the CAFC concluded that the refusal of Araujo's mark registration was justified. Read more [here](#).
- On Wednesday, May 1, *Bloomberg Law* reported that the USPTO’s recently proposed new rule would establish a repository for settlement agreements tied to patent challenges, potentially exposing pharmaceutical giants to antitrust scrutiny. The repository aims to assist the Federal Trade Commission (FTC) and the Department of Justice (DOJ) in identifying potential anticompetitive practices, particularly pay-for-delay deals in which patent holders incentivize competitors to drop challenges, maintaining exclusivity. The proposal requires detailed reports on settlement agreements, expanding access to non-agency third parties. Despite anxieties about confidentiality and potential duplication with existing FTC and DOJ depositories, the proposal aims to enhance transparency and consistency in patent litigation. Moreover, it could have wider implications beyond pharmaceuticals, potentially shedding light on settlement practices in other industries like Big Tech. Read the proposed rulemaking [here](#) and read the *Bloomberg Law* article [here](#).

V. Industry Updates:

- On April 23, the Copyright Alliance and 18 Community Partner organizations hosted a World IP Day (WIPD) panel via Zoom, titled *Sustaining and Empowering the Creative Community Through Copyright*. The event, which drew more than 130 attendees, covered

how creators can meet their goals today while helping to ensure that tomorrow's creative community is sustained through job growth, a strong creative economy, and continued growth of the arts, all of which are perpetuated through copyright protections. A video of the event is available on their YouTube channel. Also, be sure to check out the [WIPD video message](#) shared by Copyright Alliance CEO Keith Kupferschmid, and numerous video messages from elected officials posted on their [World IP Day webpage](#).

- On Wednesday, April 24, *Visual Capitalist* released a visualization of AI patents filed by country using Stanford University's 2024 AI Index Report. Over the 12 years of data collection from 2010 to 2022, global AI patents granted have rapidly grown from 1,999 to 62,264. China is quite a distance ahead of the rest of the pack with 35,315 AI patents granted with the United States in second at just over 12,000. See the chart [here](#) and the full report [here](#).
- On Thursday, April 30, *Reuters* reported that Google has agreed to pay News Corp, owner of the Wall Street Journal, between \$5 million and \$6 million annually to develop new AI-related content and products. Read more [here](#).
- On May 7, the Special Competitive Studies Project (SCSP) and the Council for Innovation Promotion (C4IP) will host a fireside chat during the AI Expo on the implications of AI on patents and copyrights with Register of Copyrights, Shira Perlmutter, and Andrei Iancu, Partner at Sullivan & Cromwell and former Director of the U.S. Patent and Trademark Office. The discussion will be moderated by Rama Elluru, Senior Director for Society & Intellectual Property at SCSP. The AI Expo is a *free event, open to the public*, and will be held at the Walter E. Washington Convention Center. We encourage members to attend if possible. More information is available on the [registration page](#).