I. Congressional Developments:

- Congress has unveiled the text of the omnibus Fiscal Year (FY) 2023 appropriations package, which it is expected to send to President Biden’s desk before the current continuing resolution (CR) expires on December 23rd. The final bill allocates $4,253,404,000 to USPTO and $1,902,000 for the Office of the Intellectual Property Enforcement Coordinator (IPEC). It also included the INFORM Consumers Act (S.936/H.R.5502), which seeks to crack down on the dissemination of counterfeits online by requiring ecommerce sites to take steps to verify the identity of high-volume sellers, and the Unleashing American Innovators Act (S.2773/H.R.8697), which modifies the statutory purpose of USPTO satellite offices to include outreach and retention activities targeting underrepresented groups and individuals from economically, geographically, and demographically diverse backgrounds. Of note, despite the efforts from certain stakeholders, the Pride in Patent Ownership Act (S. 2774) and the Interagency Patent Coordination and Improvement Act of 2022 (S.4430) were NOT included in the final package. You may find the text of the FY2023 omnibus appropriations package here.

- On Tuesday evening, the Senate passed the Protecting American Intellectual Property Act of 2021 (S.1294) by a voice vote. Introduced by Senators Van Hollen (D-MD) and Ben Sasse (R-NE) earlier this year, the bill requires sanctions on individuals and firms found to engage in, benefit from, or enable the significant and serial theft of trade secrets belonging to a U.S. entity. It

Headlines and Highlights:

- Congress unveils deal on FY2023 appropriations package, which includes the INFORM Consumers Act and the Unleashing American Innovators Act.

- Senate passes Protecting American Intellectual Property Act by voice vote.

- Congress to appropriate $4,253,404,000 to USPTO and $1,902,000 to IPEC in FY2023 appropriations package.

- USTR Tai asks ITC for data on the supply-and-demand conditions for COVID-19 therapeutics and diagnostics by October 2023.

- USPTO extends the modified COVID-19 Prioritized Examination Pilot Program for the fifth time, until February 15th, 2023.

- ACG’s Marla Grossman details “The Good, the Bad, and the Ugly” of IP policy during the pandemic.
II. Administration Updates:

- On Monday, United States Trade Representative (USTR) Tai asked the ITC to report back by Oct. 17, 2023, on supply-and-demand conditions for Covid-19 therapeutics and diagnostics, as well as pricing and trade flows after delaying the decision for a proposed waiver expansion to diagnostics and therapeutics. “I am not asking the Commission to draw any policy conclusions, but rather I am seeking a robust record with respect to these issues,” Ambassador Tai said in her letter.

- USTR announced the addition of three new senior staff members on Tuesday. Roberto Soberanis joins as Assistant United States Trade Representative for Intergovernmental Affairs and Public Engagement, Angelica Annino joins as Director of Scheduling and Advance, and Victor Ban joins as Special Counsel. Read more here.

III. USPTO Updates:

- In a Federal Register notice published this week, USPTO announced that it is extending the modified COVID-19 Prioritized Examination Pilot Program for the fifth time. The program provides prioritized examination of certain patent applications. Requests that are compliant with the pilot program’s requirements and are filed by February 15th, 2023, will be accepted. The USPTO will evaluate whether to further extend the program during the current extension period. More info. here.

- On January 19th, 2023, from 10:00am – 5:00pm ET, USPTO and the Food and Drug Administration (FDA) are hosting a joint public listening session on ways the two agencies can collaborate to ensure that the innovation system strikes the appropriate balance of encouraging meaningful innovation in drug development while supporting a competitive marketplace that can promote greater access to medicines for American families. Persons wishing to speak at the public listening session must submit their request no later than 5 p.m. ET on January 5th, 2023. Find more info. here and here.

- USPTO has extended the comment period for stakeholders to submit comments on the Office’s initiatives to ensure the robustness and reliability of patent rights. Comments on the matter are now due February 1st (instead of January 3rd). Find more info. here and here.

IV. Judicial Updates:

- On Monday, CNN published an article announcing that Epic Games, the maker of “Fortnite,” agreed to pay a $520 million settlement after allegations that it misled millions of players, including children and teens, into making unintended purchases and violating a federal children’s privacy law. “Protecting the public, and especially children, from online privacy invasions and dark patterns is a top priority for the Commission, and these enforcement actions make clear to businesses that the FTC is cracking down on these unlawful practices,” FTC Chair Lina Khan said in a statement. Read more here.

V. International Updates:
• Last Friday, USTR announced a nine-month extension of 352 product exclusions in the China Section 301 Investigation. According to the USTR press release, the exclusions were initially reinstated on March 28, 2022, and the extension will help align further consideration of these exclusions with the ongoing comprehensive four-year review. Comments can be submitted through the USTR portal until January 17th, 2023. Additional information is set out in the following Federal Register Notice.

V. Industry Updates:

• In an end-of-the-year summary published in IP Watchdog, ACG Partner Marla Grossman provided an overview of “The Good, the Bad, and the Ugly” of IP policy during the pandemic. On a positive note, Ms. Grossman underscored that the IP system worked as designed in the past few years as scientists and pharmaceutical companies, with remarkable speed, developed and brought to market vaccines that significantly reduced the harmful effects of the COVID epidemic and, in the process, saved hundreds of thousands, if not millions of lives. However, she also raised concern that the World Trade Organization (WTO) agreed to waive patent obligations for COVID vaccines for five years. She further cautioned against extending the waiver to COVID diagnostics and therapeutics. Read more here.