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PATENT & TRADEMARK POLICY REPORT
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I. Congressional Developments:

- On Tuesday, July 23rd at 2:30 p.m. ET, the Senate Judiciary Antitrust, Competition Policy, and Consumer Rights Subcommittee will hold a hearing on "Oversight of the Enforcement of the Antitrust Laws." Chairman Mike Lee (R-UT) said this week that he plans to bring in Makan Delrahim, the Department of Justice's (DOJ) Assistant Attorney General for the Antitrust Division, and commissioners from the Federal Trade Commission (FTC) to testify. Lee did not specify whether he plans to bring in all five FTC commissioners or just Chairman Joe Simons, who testified at a hearing on a similar topic last October. More info. here.

- Next Thursday, June 27th at 10:00 a.m. ET, the Senate Judiciary Committee is slated to hold an executive business meeting. The markup agenda contains several bills seeking to stem increasing prescription drug prices, including the Prescription Pricing for the People Act of 2019 (S. 1227) from Sens. Grassley (R-IA), Cantwell (D-WA), Tillis (R-NC), Blumenthal (D-CT), Ernst (R-IA), and Blackburn (R-TN); the PACED Act (S. 440) from Sens. Cotton (R-AK) and Ernst; the Stop STALLING Act (S. 1224) from Sens. Klobuchar (D-MN) and Grassley; and the Affordable Prescriptions for Patients Act of 2019 (S. 1416) from Sens. Cornyn (R-TX), Blumenthal, Hawley (R-MO), and Kennedy (R-LA). More info. here.

- On Tuesday, June 25th at 2:00 p.m. ET, the House Ways & Means Trade Subcommittee will hold a hearing on "Mexico's Labor Reform: Opportunities and Challenges for an Improved NAFTA." No witnesses are listed yet. More info. here.

- United States Trade Representative (USTR) Robert Lighthizer testified in both chambers of Congress this week in hearings to

Headlines and Highlights:

- Senate Judiciary Committee to hold markup of several bills seeking to stem increasing prescription drug prices next Thursday at 10:00 a.m. ET.

- House Ways & Means Trade Subcommittee to hold hearing on Mexico's labor reform next Tuesday.

- Mexico ratifies USMCA.

- House Democrats plan to ask USTR Lighthizer to get rid of the data exclusivity provision for biologic drugs in USMCA.

- Court in EU rules that Adidas cannot trademark its three-stripe design.

- Chairman Tillis and Ranking Member Coons write to DOJ, CBP, and U.S. Copyright Office seeking additional information on their ongoing efforts to combat IP infringement by July 18th.

review the Trump Administration's 2019 trade agenda. Among other issues, Lighthizer spoke about the Administration's efforts to iron out House Democrats' outstanding concerns with the USMCA, telling the Senate Finance Committee on Tuesday that hopes to "make substantial progress" on this front "over the next couple of weeks." Lighthizer also told senators that he hopes to submit the implementation legislation, which will be put to a yes-or-no vote with no amendments under the trade promotion authority's so-called "fast track" rules, to Congress for approval "very soon." Lighthizer seemed particularly willing to resolve Democrats' concerns about the lack of strong enforcement mechanisms in the final pact, telling senators that there is room to work with lawmakers on enforcement "to the extent they want to plus it up." At the same time, however, Lighthizer defended the pact's enforceability, claiming that provisions in NAFTA 2.0 have more teeth than past agreements because they are "far more specific." Senator Cassidy (R-LA) was the lone Senator to address concerns with counterfeit goods and asked how the USMCA would tackle this issue. Ambassador Lighthizer stated that using Section 301 is an appropriate action, but he is open to novel ideas to combat the spread of counterfeit goods. More info. here.

- Testifying before the House Ways & Means Committee on Wednesday, Lighthizer remained optimistic that he would be able to work with the trade working group recently established by Speaker Nancy Pelosi (D-CA) to iron out House Democrats' outstanding concerns with renegotiated deal. In fact, he said several times that he would be able reach a solution with Democrats after sitting down with the working groups "within half a day." Democrats, including Chairman Richard Neal (D-MA), maintained their commitment to working with Lighthizer to get to a "yes," but they urged the Trump Administration not to rush the Congressional approval process. In a notable exchange with Rep. Drew Ferguson (R-GA), Lighthizer confirmed that USTR is not changing U.S. law with the provision in the pact that provides ten years of data exclusivity for biologic drugs. Lighthizer clarified that instead of changing U.S. law, USTR is seeking to get other countries to elevate their IP standards so they are closer to being on par with the U.S.' standards. More info. here.

- However, on Thursday, Reps. Jan Schakowsky (D-IL) and Rosa DeLauro (D-CT) told *POLITICO* that they plan on asking USTR to drop the biologics provision from the USMCA. "It doesn't need to be in there," Rep. Schakowsky asserted. Both lawmakers are on the trade working groups recently established by Speaker Pelosi tasked with working with USTR to iron out Democrats' pending concerns, including concerns about the USMCA's potential impact on prescription drug prices. Additionally, Reps. Schakowsky and DeLauro introduced a bill on Thursday that would reduce the biologic exclusivity period in the U.S. from 12 years to five years. Read more here.

II. Administration Updates:

- Following up on concerns expressed by witnesses at a recent Senate Judiciary IP Subcommittee hearing on the role of IP in sports and public safety, Chairman Thom Tillis (R-NC) and Ranking Member Chris Coons (D-DE) sent letters this week to the DOJ, Customs and Border Protection (CBP), and the U.S. Copyright Office seeking additional information on their ongoing efforts to combat IP infringement. The Senators are particularly concerned about witness testimony suggesting that there are significant economic losses caused by rampant copyright infringement through illicit streaming and significant public safety risks posed by counterfeit goods flowing into the United States from China. The letters ask each executive office a series of questions due to the Senators by July 18th. More info. here.

III. USPTO Updates:

- The USPTO is seeking nominations to fill upcoming vacancies for the Patent Public Advisory Committee (PPAC) and the Trademark Public Advisory Committee (TPAC). Nominations must be postmarked or electronically transmitted by July 12th. More info. here.

- On Wednesday, the Hudson Institute held a seminar on fostering American innovation featuring USPTO Director Andrei Iancu. During his opening remarks, Director Iancu recognized that the challenge to remain competitive internationally has heightened in the internet age. Concerned that the U.S. will not retain its status as the world's predominant innovator into the Third Industrial Revolution, Iancu described troubling international statistics on innovation growth and patents filed. Citing credible, legal threats and violations of IP from China and other nations, Iancu called on untapped or underserved sections of the U.S. population to spark innovation. Iancu concluded by asserting two areas of focus for the USPTO that will help combat anti-competitive trends. First, Iancu argued that the U.S. must broaden the innovation ecosphere and reach under-engaged demographics and regions. Second, Iancu stated that the U.S. can remain the lead competitor internationally by protecting the domestic patent system from unnecessary, broad-strokes revisions. Iancu described ongoing efforts to reform the U.S. patent system, like the Section 101 revision, and stated that whatever changes are adopted should be balanced and work to increase the predictability and reliability of our patent system. More info. here.

- On September 9th, 10th, and 11th, USPTO is holding course on Stakeholder Training on Examination Practice and Procedure (STEPP) at its headquarters in Alexandria, Virginia. Register here.

IV. Judicial Updates:

- On Wednesday, the general court of the European Union (EU) ruled that Adidas could not trademark its three-stripe design because the company did not "prove that the mark has acquired, throughout the territory of the EU, distinctive character following the use which had been made of it." This decision marks the latest turn of events in a dispute between the sportswear manufacturer and the Belgian company Shoe Branding Europe, which applied to the EU IP office in 2016 to annul Adidas' trademark on "three parallel equidistant stripes of identical width, applied on the product in any direction" on clothing, hats, and shoes. Adidas said it was "disappointed" with the ruling but is still evaluating its implications. Read more here.

V. International Updates:

- On Wednesday, Mexico became the first country to ratify the USMCA. Its Senate backed the deal by a vote of 114 in favor to four against the renegotiated agreement. Read more here.

- On Tuesday, President Trump announced firmed-up plans to meet with China's president Xi Jinping on the margins of the G-20 summit next week, and confirmed that negotiators from the two countries would "begin talks" prior to the president-level meeting in Japan. "Had a very good telephone conversation with President Xi of China," Trump tweeted, adding that the two leaders "will be having an extended meeting next week at the G-20 in Japan." Read more here.

VI. Industry Updates:

- In an editorial published in *The Hill* on Wednesday, Michael Busler, Ph.D, public policy analyst and Professor of Finance at Stockton University, asserts that, despite recent criticism from federal and state lawmakers, patent settlements are not a key contributor to rising drug costs in the United States. Instead, he argues that these settlements help promote balance in the medical innovation ecosystem by ensuring brand name companies "are deservedly compensated for their innovative medical advancements" while making sure that "permanent monopolies over treatments do not arise." He cites a recent study from the FTC suggesting that, in 2016, only one of 232 agreements between generic and brand drug companies involved "pay-to-delay" arrangements, which refers to when a manufacturer of a patented drug pays the manufacturer of a generic drug to delay launching its product to extend its exclusivity period. Furthermore, Dr. Busler cites that recent data indicates that 92 percent of patent settlements accelerate access to affordable medicine and reduce the administrative costs associated with drug production. Read more here.

- On Monday, Senator Mike Lee (R-UT), Chairman of the Senate Judiciary Antitrust Subcommittee, penned an opinion article in the *Washington Examiner* calling for a reorganization of civil antitrust enforcement so that it is done under one roof. Senator Lee writes that the splitting of tech antitrust review across the FTC and the DOJ Antitrust Division illustrates the "absurdity" of having two federal agencies handling civil antitrust enforcement. Lee reasons that this contributes to less effective and coherent investigations. Furthermore, Lee claims that dividing the review of the tech industry invites conflicts between how the agencies analyze competition issues. He asserts that this type of "dysfunction" is apparent in how the agencies handle matters relating to IP licensing. Finally, Lee cautions that having two agencies responsible for civil antitrust enforcement creates a duplication of resources that could be better used on "actual antitrust enforcement." Read more here.