



PATENT & TRADEMARK POLICY REPORT MARCH 1, 2019

I. Congressional Developments:

- In an interview with Bloomberg News reporter Malathi Nayak [published](#) late last week, Rep. Hank Johnson (D-GA), who chairs the House Judiciary Committee’s Subcommittee on Courts, Intellectual Property and the Internet, stated that he plans to hold a series of hearings on the issue of patent eligibility under Section 101 of the Patent Act. After collecting stakeholder feedback through the planned series, Chairman Johnson will craft legislation to mitigate problems arising from the current law. He underscored that any legislative solution must be “best suited” for the new environment we are in that is “really tech-loaded with new products.” Watch the interview [here](#).
- On Tuesday, the Senate Judiciary IP Subcommittee held a hearing to examine the 2019 [Annual Intellectual Property Report to Congress](#). The hearing featured only one witness: Intellectual Property Enforcement Coordinator (IPEC) Vishal Amin. Chairman Tillis (R-NC) used his opening statement to outline his vision for the subcommittee, which, he said, includes holding hearings on the need to reform patent eligibility standards; Copyright Office modernization; and potential changes the Patent Trial and Appeal Board (PTAB). IPEC Amin’s testimony was brief and he used it to reaffirm the Trump Administration’s firm support for strong IP protections as well as enforcing those protections abroad. Amin touted his roundtable initiative as a positive step in soliciting U.S. industry feedback to ensure IP enforcement is focused and coordinated. More info. [here](#).
- On Tuesday, March 5th, the Senate Committee on the Judiciary’s Subcommittee on Antitrust, Competition Policy, and Consumer Rights will convene a hearing titled, “Does America Have a Monopoly Problem?: Examining Concentration and Competition in the U.S. Economy. Witnesses slated to testify

Headlines and Highlights:

- SJC IP Subcommittee Chairman Johnson plans to hold a series of hearings and craft legislation to address patent eligibility concerns.
- IPEC testifies before SJC IP Subcommittee, reaffirms the Trump Administration’s support for strong IP protections.
- FTC announces the creation of a task force dedicated to monitoring competition in U.S. technology markets.
- Comments on the USPTO’s revised guidance for subject matter eligibility under Section 101 due next Friday, March 8th.
- USTR announces objectives for U.S.-UK trade negotiations.
- Federal judge rules that that the Mongols motorcycle club can keep its trademarked logo.

before the Committee include: Robert B. Reich (Chancellor's Professor of Public Policy, Goldman School of Public Policy); Joshua D. Wright (Professor of Law, Executive Director of the Global Antitrust, Antonin Scalia Law School at George Mason University); Professor John Kwoka (Neal F. Finnegan Distinguished Professor of Economics, Northeastern University); and A. Douglas Melamed (Professor of the Practice of Law, Stanford Law School). More Info [here](#).

II. Administration Updates:

- On Thursday, the Office of the United States Trade Representative (USTR) published its objectives for the United Kingdom-United States trade negotiations currently underway. In the IP section, USTR commits to seeking provisions governing IP rights that “reflect a standard of protection similar to that found in U.S. law.” This includes protections relating to trademarks, copyright and related rights (including, as appropriate, exceptions and limitations), undisclosed test of other data and trade secrets. Read more [here](#).
- On Tuesday, the Federal Trade Commission (FTC) announced the creation of a task force dedicated to monitoring competition in U.S. technology markets, investigating any potential anticompetitive conduct in those markets, and taking enforcement actions where warranted. According to a press release announcing the creation of the task force, Patricia Galvan, Deputy Assistant Director of the Mergers III Division, will lead a team of approximately 17 staff attorneys from divisions within the Bureau. Read more [here](#).

III. USPTO Updates:

- The deadline to submit comments for to the USPTO's revised guidance for subject matter eligibility under Section 101 of the Patent Act is next Friday, March 8th. The guidance revises the procedures for determining whether a patent claim or patent application claim is directed to a judicial exemption (laws of nature, natural phenomena, and abstract ideas) under Step 2A of the USPTO's Subject Matter Eligibility Guidance in two ways. More info. [here](#).
- On March 28th from 9:00AM ET-5:00PM EDT, the Department of Commerce's Internet Policy Task Force will host the Third Public Meeting on *Developing the Digital Marketplace for Copyrighted Works* at the USPTO's headquarters in Alexandria, Virginia. More info. [here](#).
- The 2019 Technology Center 2800 Customer Partnership Meeting will be held on March 12th from 12:00PM-4:00PM EDT at USPTO headquarters. While a formal agenda for the meeting is forthcoming, a major topic will be the new Subject Matter Eligibility Training. The deadline to register for this event is March 8th. Read more [here](#).
- The next Business Methods Partnership Meeting will be jointly held at the USPTO headquarters and the Dallas Texas Regional Office on Tuesday, April 2, 2019, from 10:00am to 4:00pm EDT. WebEx will also be available to allow individuals to participate remotely. Register online [here](#).
- On April 2 and April 3, USPTO is hosting a Virtual Instructor Led Training (vILT) course titled, “Examining Computer-Implemented Functional Claim Limitations for Compliance

with 35 U.S.C. § 112.” The course is led by USPTO trainers and based on recent training delivered to patent examiners. Sign up [here](#).

IV. Judicial Updates:

- On Thursday, U.S. District Court Judge David O. Carter delivered a blow to a decade-long effort by prosecutors to strip the Mongols motorcycle gang of its trademarked logo, ruling that such an action would be unconstitutional. According to the Mongols’ attorney, Carter said that the seizure would violate the First Amendment rights of association and right of expression of association and the Eighth Amendment’s protections against excessive penalties. Prosecutors had successfully argued before a jury in January that the logo was core to the identity of the gang responsible for drug dealing, beatings and murder. Read more [here](#).
- On Tuesday, China’s Huawei Technologies and South Korea’s Samsung Electronics filed a joint motion to a U.S. appeals court to pause court proceedings over their patent dispute because the two firms have entered into a settlement agreement. This appears to end a two-year legal battle between the two firms. Huawei alleged that Samsung had used its cellular communications technology without authorization and has unreasonably delayed entering into a licensing agreement and Samsung alleged that Huawei had “grossly” inflated licensing fees and countersued Huawei in the United States. The case was originally set to go to trial in September. Read more [here](#).
- On Wednesday, Blackberry Ltd filed a patent infringement lawsuit in the U.S. District Court in Los Angeles accusing Twitter Inc of illegally using technology in its mobile messaging applications that had previously been developed by the smartphone maker. The lawsuit resembles the patent infringement cases BlackBerry filed last March and April against Facebook and Snap Inc. U.S. District Judge George Wu allowed BlackBerry to pursue most of its infringement claims in those lawsuits, which court records show are still pending. Read more [here](#).

V. International Updates:

- House Ways & Means Committee Chairman Richard Neal indicated this week that he does not support calls from his Democratic colleagues to renegotiate the United States–Mexico–Canada Agreement (USMCA). "There's going to be ample opportunity here, once the agreement is sent to us, for conversation and I think that's the better way to handle it," he said when asked whether reopening the text is an option. Read more [here](#).

VI. Industry Updates:

- In an op-ed published in Morning Consult on Friday, Charlie Giancarlo, chairman and CEO of Pure Storage, thanks USPTO Director Andrei Iancu for his leadership in providing relief to American inventors who have faced significant judicial and legislative hurdles in recent years. Giancarlo writes that although much more work needs to be done by our courts and Congress, “for American inventors, Iancu’s words and deeds are like that first ray of sunshine to break through as the storm clouds begin to lift.” Read more [here](#).

- The New York Times published an article this week outlining seven black inventors whose patents helped shape American life. The article also underscores the history of institutional barriers in the U.S. patent system that made it more difficult for black inventors to secure patents. For instance, the USPTO excluded slaves from owning patents prior to the abolition of slavery and, even after the Civil War, black inventors faced widespread racism from white institutions that “doubted their ingenuity and stood in their way of success.” Despite these barriers, black inventors contributed significantly to the innovation economy with a wide array of inventions that improved American life, from revolutionizing cataract surgery to bringing us the super soaker. Read more [here](#).
- In a blog post published Tuesday, Amazon announced a new program called Project Zero that seeks to empower brands to “help drive counterfeits to zero.” Amazon will attempt to achieve this ambitious goal by combining its advanced technology, machine learning, and innovation with brands’ knowledge of their own IP and how to best detect counterfeits of their products. Read more [here](#).