



AMERICAN CONTINENTAL GROUP

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## PATENT & TRADEMARK POLICY REPORT MARCH 8, 2019



### I. Congressional Developments:

- On Wednesday, March 13th, at 2:30PM ET, the Senate Judiciary Committee's Subcommittee on Intellectual Property will hold a hearing titled, "Oversight of the United States Patent and Trademark Office." Under Secretary of Commerce for Intellectual Property and USPTO Director Andrei Iancu is the sole witness scheduled to testify. More info. [here](#).
- On Tuesday, Sens. Susan Collins (R-ME) and Tim Kaine (D-VA) introduced the *Biologic Patent Transparency Act* ([S. 659](#)), which seeks to lower drug prices for consumers by increasing patent transparency, promoting biosimilar competition, and bringing biosimilar treatments to patients faster. For instance, the bill attempts to stymie "patent thickets" by restricting the enforcement of patents that are issued after a biosimilar application has been submitted to the Food and Drug Administration (FDA). It would also require manufactures of approved products to disclose and list patents covering their products in the FDA's "purple book." Sens. Rob Portman (R-OH), Jeanne Shaheen (D-NH), Mike Braun (R-IN) and Debbie Stabenow (D-MI) also signed onto the bill as cosponsors. Read more [here](#).
- In an interview with POLITICO, House Ways & Means Committee Chairman Richard Neal (D-MA) declined to say whether he will support calls from Democrats for the Trump Administration to re-negotiate the United States–Mexico–Canada Agreement (USMCA). Neal asserted that he is keeping all options on the table since lawmakers "haven't had anything yet to wrap our arms around." The Administration submitted to Congress a list of statutory changes needed to implement the agreement late last month, but legislative text has yet to materialize. Lawmakers are also waiting for an International

### Headlines and Highlights:

- USPTO Director to testify before Senate Judiciary IP Subcommittee March 13<sup>th</sup>.
- USTR Lighthizer to testify at Senate Finance hearing on WTO March 12<sup>th</sup>.
- Sens. Collins and Kaine introduce the *Biologic Patent Transparency Act*.
- Chairman Neal asserts that he is keeping all options on the table for USMCA's future in Congress.
- PTAB designates the decision in *Lectrosomics, Inc. v Zaxcom, Inc* as precedential.
- 2019 Technology Center 2800 Customer Partnership Meeting to convene March 12<sup>th</sup> at USPTO headquarters.
- USTR publishes report on President Trump's 2019 Trade Policy Agenda.
- USPTO dedicates its main public gathering space in honor of Clara Barton.

Trade Commission report analyzing the economic impact of the deal, which was delayed due to the partial government shutdown and probably will not be published until April. Neal told POLITICO that the key issue he is looking at is “enforcement, enforcement, enforcement.” Read more [here](#).

- On Tuesday, March 12<sup>th</sup>, at 10:15AM ET, the Senate Finance Committee will hold a hearing titled, “Approaching 25: The Road Ahead for the World Trade Organization.” United States Trade Representative (USTR) Robert Lighthizer is the only witness scheduled to testify at the hearing. More info. [here](#).
- On Wednesday, March 13<sup>th</sup>, at 10:15AM ET, the Senate Committee on Foreign Relations will hold a hearing to consider “A New Approach for an Era of U.S.-China Competition.” Witnesses scheduled to testify before the Committee include The Honorable James M. Talent (Commissioner, U.S.-China Economic and Security and Review Commission) and Dr. Oriana Mastro, (Assistant Professor of Security Studies, Edmund A. Walsh School of Foreign Service, Georgetown University). More info. [here](#).

## II. Administration Updates:

- Late last week the Office of the USTR published its “2019 Trade Policy Agenda and 2018 Annual Report of the President of the United States on the Trade Agreements Program.” The report confirms that passing legislation to implement the USMCA and ending the U.S.-China trade dispute are priorities in President Trump’s trade agenda this year. Read more [here](#).
- On Thursday, the Federal Trade Commission (FTC) announced its agenda for the 11<sup>th</sup> Session of Its Hearings on Competition and Consumer protection in the 21<sup>st</sup> Century. The hearing, which is co-sponsored with the George Washington University Competition Law Center, will take place in Washington DC on March 25-26 and will focus on the agency’s international work. FTC Chairman Joe Simons will deliver opening remarks on the first day and a series of presentations and panels will highlight international developments in competition, consumer protection, and privacy laws, enforcement, and policies. Commissioner Noah Phillips is slated to provide opening remarks on the second day. Read more [here](#).

## III. USPTO Updates:

- This week the Patent Trial and Appeal Board (PTAB) announced that it has designated the decision in *Lectrosomics, Inc. v Zaxcom, Inc.* as precedential as to the agency’s interpretation of 35 U.S.C § 316(d), amendment requirements and burden. Read more [here](#).
- The 2019 Technology Center 2800 Customer Partnership Meeting will be held on March 12<sup>th</sup> from 12:00PM-4:00PM ET 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 8<sup>th</sup>. Read more [here](#).
- On March 28<sup>th</sup> from 9:00AM ET-5:00PM ET, 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 United States Patent and Trademark Office’s (USPTO)

headquarters in Alexandria, Virginia. More info. [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 ET. 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:**

- Apple counsel Juanita Brooks announced on Thursday that former Apple engineer Arjuna Siva no longer intends to testify in a patent trial against Qualcomm. Siva was considered an integral witness for Apple in its ongoing fight with Qualcomm over three patents the chipmaker says Apple infringed in the development of certain iPhone models. Apple contends that Siva co-invented the technology and should be named on the patent as well. Books has accused Qualcomm’s defense of witness tampering, although Qualcomm’s counsel David Nelson has vigorously denied this accusation. Read more [here](#).

#### **V. International Updates:**

- On Thursday, IP Watchdog published an article highlighting how the China Trademark Office (CTMO) has recently acted to provide a vetting system to spot and reject fraudulent trademark applications by nefarious actors and their trademark agents. Specifically, last month CTMO published a regulation for public comment titled “Several Provisions on Regulating the Application for Registration and Trademarks.” These regulations seek to combat the fraudulent activity of bad actors that take advantage of China’s first-to-file trademark system by allowing trademark examiners to conduct some vetting of new applications to identify whether they belong to an illegal filing pattern. Read more [here](#).

#### **VI. Industry Updates:**

- On Tuesday, USPTO Director Andrei Iancu and Deputy Director Laura Peter announced in an article published in The Hill that the USPTO has dedicated its main public gathering space in honor of Clara Barton, who is one of the founders of the American Red Cross and one of the first female clerks at the USPTO. The article celebrates Barton as a “trailblazer for the millions of women in future generations who followed her lead, building their careers in Federal Government.” Read more [here](#).