



AMERICAN CONTINENTAL GROUP

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## PATENT & TRADEMARK POLICY REPORT MAY 3, 2019



### I. Congressional Developments:

- Next Thursday, May 9<sup>th</sup>, at 2:00PM ET, the House Judiciary IP Subcommittee is slated to hold a hearing on, “Oversight of the U.S. Patent and Trademark Office.” More info. [here](#).
- Next Tuesday, May 7<sup>th</sup>, at 10:00AM ET, the Senate Judiciary Committee is slated to hold a hearing on “Intellectual Property and the Price of Prescription Drugs: Balancing Innovation and Competition.” More info. [here](#).
- On Tuesday, the Senate Judiciary Subcommittee on Intellectual Property held a hearing on “World Intellectual Property Day 2019: The Role of Intellectual Property in Sports and Public Safety.” The purpose of the hearing was to educate members on IP’s integral role in the U.S. sports industry, as well as to highlight the unique IP challenges the sports industry is facing in the digital economy. The Subcommittee heard from a panel of witnesses from industry, including [Matt Priest](#) (President And CEO, Footwear Distributors and Retailers of America), [Andrew Love](#) (Brand Security / Investigations, Specialized Bicycles), [Riché McKnight](#) (Senior Vice President, Deputy General Counsel And Global Head of Litigation, Endeavor), and [Michael Potenza](#) (Vice President and Assistant General Counsel, Intellectual Property, NBA Properties, Inc.). Overall, much of the discussion focused on the increase in counterfeit products being sold on online marketplaces, such as Amazon, and being shipped into the U.S. through small parcels; and internet piracy, particularly surrounding live sporting events. Subcommittee Chairman Thom Tillis (R-NC) and Ranking Member Chris Coons (D-DE), the only two senators to participate in the hearing, both seemed committed to crafting legislative solutions to address the aforementioned problems, although they were hesitant to endorse a particular proposal at this time. More info.

### Headlines and Highlights:

- House Judiciary IP Subcommittee to hold USPTO oversight hearing next Thursday, May 9<sup>th</sup>.
- Senate Judiciary Committee to hold hearing on IP and prescription drugs next Tuesday, May 7<sup>th</sup>.
- House Judiciary Committee reports four drug pricing bills favorably out of the Committee with voice votes.
- Senate Judiciary IP Subcommittee considers internet piracy and counterfeits in hearing on IP and sports.
- White House holds industry roundtable on combatting counterfeits.
- Copyright Alliance and GIPC send House Appropriations FSGG leadership a letter supporting a separate line item for IPEC and a modest increase in its funding to at least \$2 million.

[here](#).

- On Tuesday, the House Judiciary Committee held a markup of [H.R. 965](#), the “CREATES Act”; [H.R. 2375](#), the “Preserve Access to Affordable Generics and Biosimilars Act”; [H.R. 2374](#), the “Stop Significant and Time-wasting Abuse Limiting Legitimate Innovation of New Generics Act”; and [H.R. 2376](#), the “Prescription Pricing for People Act of 2019.” Members on the Committee approved all the bills under consideration by a voice vote. During his opening statement, Chairman Jerrold Nadler (D-NY) asserted that several of the bills before the Committee address, in different ways, “efforts by branded drug companies to preserve their monopolies by preventing or delaying competition from lower-priced generic and biosimilar drugs.” He claimed that these efforts are one of the leading drivers of high prescription drug costs for consumers. Ranking Member Doug Collins (R-GA) raised concerns about pay-for-delay settlements during his opening remarks, claiming that they are often anticompetitive and are a key contributor to rising prescription drug prices. Ranking Member Collins touted H.R. 2375 as an effective legislative solution for this issue and urged his colleagues to support it. More info. [here](#).
- In an Op Ed published in the Wall Street Journal on Sunday, Senate Finance Committee Chairman Chuck Grassley (R-IA) asserts that the U.S. steel and aluminum tariffs currently imposed on Canada and Mexican imports, coupled with the retaliatory tariffs from these two countries, remain a “significant roadblock” to Congressional approval of legislation to implement the United States–Mexico–Canada Agreement (USMCA). Chairman Grassley writes that although he supports the trade proposal, “There is no appetite in Congress to debate USMCA with these tariffs in place.” Read more [here](#).

## **II. Administration Updates:**

- On Monday, the White House Office of the Intellectual Property Enforcement Coordinator (IPEC) and the Office of Trade and Manufacturing Policy (OTMP) held a roundtable on combatting counterfeits. The roundtable was designed to address the issues facing rights holders on online marketplaces; learn from those operating these marketplaces on the steps that they are taking to address illicit activity on their platforms; and develop practical solutions. OTMP Director Peter Navarro and IPEC Vishal Amin led the roundtable, and other attendees from the Administration included Secretary of Commerce Wilbur Ross; Special Assistant to the President Kellyanne Conway; Director of the Office of National Drug Control Policy James Carroll; and officials from the Department of Homeland Security and the Food and Drug Administration. A diverse group of industry representatives participated in the roundtable, including platforms, small businesses, auto companies, shippers, and apparel companies, among others. Navarro made it clear that he is seeking a solution where industry is stepping up—not calls on the federal government to spend more money. A smaller working group will be formed with the aim of developing recommendations that are responsive to the Presidential [Memorandum](#) on Combatting Trafficking in Counterfeit and Pirated Goods.

## **III. USPTO Updates:**

- On Thursday, May 9<sup>th</sup>, from 12:00 PM through 1:00PM ET, USPTO is hosting a Boardside Chat about the new guidance on patent eligible subject matter under Section 101. Deputy Commissioner for Patent Examination Policy Robert Bahr and Lead Judge Mike Kim are

slated to present. More info. [here](#).

- On Thursday, USPTO published a new guide, “Examination of Marks for Cannabis and Cannabis-Related Goods and Services after Enactment of the 2018 Farm Bill.” The document seeks to clarify the procedure for examining marks for cannabis and cannabis-derived goods and for services involving cannabis and cannabis production following the 2018 Farm Bill. Read more [here](#).
- USPTO has posted the transcript and video recording of the March 28<sup>th</sup> public meeting on Developing the Digital Marketplace for Copyrighted Works, which was organized by the Department of Commerce’s Internet Policy Task Force online [here](#).
- USPTO is holding a Women’s Entrepreneurship Symposium on May 14<sup>th</sup> in Alexandria, Virginia from 9:00AM through 12:30 PM ET. According to the event page, the free event seeks to bring together leaders of industry, government, and education to discuss and call attention to under-representation of women in scientific research and patenting, how STEM education can impact change, and the economic impact of women inventors and entrepreneurs. Speakers include USPTO Associate Commissioner for Innovation Development Mindy Bickel and USPTO Deputy Director Laura Peter. More info. [here](#).
- USPTO announced this week that the National Medal of Technology and Innovation (NMTI) Nomination Evaluation Committee will meet in closed session on June 5<sup>th</sup>. According to the notice, the primary purpose of the meeting is to discuss the relative merits of persons, teams, and companies nominated for the NMTI. More info. [here](#).

#### **IV. Judicial Updates:**

- On Thursday, the U.S. Department of Justice’s (DOJ) antitrust division asked Judge Lucy Koh of the U.S. District Court of the Northern District of California to hold a hearing on any possible remedies if she finds Qualcomm liable for antitrust violations, stating that “a remedy should work as little injury as possible to other public policies.” Specifically, the DOJ cautions that any penalties imposed on the chipmaker should not hamper the market for 5G; Qualcomm makes chips that allow smart phones to connect to these networks. Read more [here](#).

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

- On Monday, Mexico’s Senate passed a legislative proposal to overhaul the country’s labor code by a 120-0 vote, with two abstentions. Some House Democrats have said they are waiting for the Mexican government to pass and implement these reforms before they will consider advancing legislation to implement the USMCA. In a statement, United States Trade Representative (USTR) Lighthizer explained that the Trump Administration plans to work “closely” with members of Congress and the Mexican government “to ensure these reforms are implemented and enforced.” The proposal, which cleared Mexico’s lower legislative chamber in April, revises the country’s labor code to give workers the right to vote on unions and their labor contracts through secret ballots, among other changes. Read more [here](#) and [here](#).

## VI. Industry Updates:

- On Monday, the Computer & Communications Industry Association (CCIA) sent a letter to USPTO Director Andrei Iancu offering their perspectives on the problem of “serial” IPR petitions expressed by Senate Judiciary Committee IP Subcommittee Chairman Thom Tillis (R-NC) and Ranking Member Chris Coons (D-DE) in an April 9<sup>th</sup> [letter](#) to the Director. The association contends that the “serial” IPR problem is “at best, minimal in scope” and urges the USPTO to not adopt the proposed changes outlined in the lawmakers’ letter. Read more [here](#).
- The Copyright Alliance and the U.S. Chamber of Commerce’s Global Innovation Policy Center (GIPC) sent a letter to Chairman Mike Quigley (D-IL) and Ranking Member Tom Graves (R-GA) of the House Appropriations Financial Services and General Government (FSGG) Subcommittee expressing support for providing IPEC with sufficient resources to carry out its mission by, for the first time ever, funding IPEC as a stand-alone line item. The letter also supports a modest funding increase for IPEC in the FY2020 FSGG bill to at least \$2 million per year. Read more [here](#).