

PATENT & TRADEMARK POLICY REPORT

OCTOBER 18, 2019



I. Congressional Developments:

- On Tuesday, House Judiciary Committee (HJC) leaders spearheading the investigation of big tech companies announced that they received initial documents from Apple, Facebook, Amazon, and Google, answering a slew of questions the lawmakers sent the companies last month. A joint statement issued by HJC Chairman Jerry Nadler (D-NY) and Ranking Member Doug Collins (R-GA), as well as Antitrust Subcommittee Chairman David Cicilline (D-RI) and Ranking Member Jim Sensenbrenner (R-WI), explained that “the committee will review all of the information received from the companies in order to help inform next steps.” These next steps will likely include additional hearings, discussions, and roundtables, according to the statement. Read more [here](#).
- On Thursday, House Small Business Committee Chair Nydia Velázquez (D-NY) formally invited representatives from Facebook, Google, Amazon, and Apple to testify at a hearing in November about whether their practices harm small businesses. In a statement, Chairwoman Velázquez explained that given how the growth in platforms has shifted many traditional business models, it is appropriate and necessary to bring big tech and small businesses to the table “to discuss how the rise in online retail and digital platforms is shaping the playing field for America’s small firms.” Velázquez has asked the big tech companies to respond to her invitation by October 31st. Read more [here](#).
- On Monday, Senator Bernie Sanders (I-VT) unveiled his new antitrust agenda, called the Corporate Accountability and Democracy Plan. This plan combines several key aspects of Senator Sanders’ campaign platform—such as combatting income inequality, bolstering workers’ rights, ensuring corporate

Headlines and Highlights:

- House Judiciary Committee receives initial responses in antitrust probe from Apple, Facebook, Amazon, and Google.
- House Small Business Committee Chair Nydia Velázquez invites tech behemoths to testify at November hearing.
- Amazon responds to AAFA’s 2019 Notorious Markets List submission.
- USPTO CIO Jamie Holcombe discusses the Office’s desire to hire its first ever senior-level AI expert with *Nextgov*.
- U.S. and China reach a “Phase One” trade deal.
- WIPO announces that China has become the biggest patent filer globally.

accountability, and mitigating the dangers of corporate consolidation—into one. Senator Sanders wrote on his website that this plan “will give workers an ownership stake in the companies they work for, break up corrupt corporate mergers and monopolies, and finally make corporations pay their fair share.” As part of the antitrust arm of this plan, Senator Sanders pledges to review all mergers that took place during the Trump Administration; expand the authority of the Federal Trade Commission (FTC); institute new merger guidelines; and ensure fair contracts between corporations and employers by banning non-compete clauses and other anticompetitive exclusivity agreements. Read more [here](#).

- Speaking at a press conference on Monday, Speaker of the House Nancy Pelosi (D-CA) stated that the House was working on USMCA throughout the two-week October recess, and she “hopes to be on a path to yes.” However, Speaker Pelosi stated that she is still waiting for assurances on enforceability. During a Fox Business interview on Tuesday, Rep. Debbie Dingell (D-MI) confidently stated that “We will end up with a trade deal, somehow some way... by next year’s election.” Watch Speaker Pelosi’s press conference [here](#) and Rep. Dingell’s interview [here](#).

II. Administration Updates:

- On Tuesday, Amazon sent a four-page letter to Daniel Lee, the Acting Assistant U.S. Trade Representative for Innovation and IP, attempting to discredit the American Apparel and Footwear Association’s (AAFA) claims that the e-commerce platform is not doing enough to mitigate the solicitation of counterfeit apparel on the site. The AAFA [recommended](#) last month that various foreign Amazon extensions—including amazon.ca (Canada), amazon.fr (France), and amazon.in (India)—be included in the USTR’s 2019 Notorious Markets List as online markets that facilitate the sale of counterfeit goods. In its letter to the Administration, Amazon details its efforts to combat the spread of counterfeit products through a variety of initiatives designed to register and authenticate products. It further points out that despite Amazon’s “best efforts” to engage with AAFA to address these concerns, “many of its member brands have not adopted Amazon’s brand protection tools.” Read more [here](#).
- Late last week after an Oval Office meeting with Chinese Vice Premier Liu He, President Trump announced that the two leaders had brokered a “Phase One” trade deal that includes a reduction in Chinese agriculture tariffs; Chinese agriculture purchases between 40 and 50 billion dollars, unspecified IP provisions, a halt on U.S. tariff increases, and a currency manipulation agreement. The negotiating teams will now be tasked to work out the details and finalize text before the Asia-Pacific Economic Cooperation (APEC) Summit in Chile on November 16th-17th. At the moment, the deal means that the current tariff status quo will hold, namely 25% tariffs on Lists 1-3, 15% on List 4A, and zero on List 4B. As a technical matter, List 4B—with consumer electronics and big ticket consumer items—is still slated to go into effect at 15% on December 15th, per the active [Federal Register Notice](#). Negotiations continue over whether it will be included in the Phase One deal. More info. [here](#).

III. USPTO Updates:

- This week, the Chief Information Officer (CIO) for the USPTO Jamie Holcombe, sat down for an interview with *Nextgov*, during which he discussed the Office’s desire to hire its first ever senior-level artificial intelligence (AI) expert to advance the agency’s applications of the emerging technology and provide technical expertise to keep employees on the leading edge.

“We need to figure out how we can use those algorithms to the best of our abilities,” Holcombe said. “We’ve seen an explosion in AI submissions and so AI is now maturing to a point to where it actually can be used—we don’t want it to be a buzzword.” Read more [here](#).

- On Thursday, the USPTO released an update of its Patent Eligibility Guidance. The USPTO first prepared revised guidance for subject matter eligibility in January of this year and sought public comment on the guidance. The October 2019 Patent Eligibility Guidance addresses the issues raised by public comments. According to the USPTO notice, the new guidance addresses five major themes expressed in the feedback it received, which are: (1) evaluation of whether a claim recites a judicial exception; (2) the groupings of abstract ideas enumerated in the 2019 Patent Eligibility Guidance; (3) evaluation of whether a judicial exception is integrated into a practical application; (4) the prima facie case and the role of evidence with respect to eligibility rejections; and (5) the application of the 2019 Patent Eligibility Guidance in the patent examining corps. The USPTO explained in its announcement that the revision is intended to assist office personnel, and the office continues to welcome public feedback. More info. [here](#).
- Effective October 26th, two-step authentication will be required to access the Trademark Electronic Application System (TEAS) and TEASi (international). The USPTO is hosting a webinar from 3:00 – 4:00 p.m. ET on October 8th to help users prepare for this login requirement change. More info. [here](#). and [here](#).

IV. Judicial Updates:

- Last week, online banking company Finco Services Inc. (d/b/a Current), filed a trademark infringement case in the SDNY against Facebook. Current alleged in the complaint that the company hired Character, a branding and design agency, in 2016 to develop a logo and branding strategy for the company’s banking services and mobile app. Facebook also hired Character to create the logo for the creation of its digital currency Libra, which began using the logo in advertisements and promotions in June 2019. Current alleged that the logo used by Libra is “not only confusingly similar, but virtually identical to the Current Mark.” IP Watchdog reported that Current became aware of the Calibra logo around the time of the digital currency’s launch, and subsequently sent the company a letter. Current received no response, and thus sent a letter to Facebook’s General Counsel in an attempt to reach a “mutually acceptable solution.” Nevertheless, Current has maintained that these efforts “have not been fruitful.” More info. [here](#).

V. International Updates:

- The World Intellectual Property Organization (WIPO) announced this week that China’s intellectual property office received 1.54 million patent applications in 2018, making it the biggest filer in the world. Chinese patents accounted for 46.4% of total patent filings globally. The U.S. came in second with 597,141 filings, followed by Japan, South Korea, and the European Patent Office. Read more [here](#).

VI. Industry Updates:

- On Thursday, Forbes contributor Gil Press published an article citing several survey results and studies on the progress of AI and expectations regarding the business benefits of AI.

MIT Management Review and BCG surveys suggest that 93% of executives worldwide expect to get some value from AI, but 65% report that they are not seeing value from the AI investments they have made in recent years. Furthermore, the article states that these surveys show that 40% of organizations making “significant investments” in AI do not report business gains from AI. Press also cites a Wells Fargo & Co report that found that up to 200,000 banking industry workers in the U.S. could find their jobs eliminated because of AI by 2030. However, the article notes that 52% of U.S. healthcare leaders expect AI to create more work opportunities, per an Optum survey of healthcare industry leaders. The article also cites a speech that USPTO Director Iancu delivered regarding recognizing AI systems that develop new products for inventors, in which he stated, “I don't yet fully subscribe to the view that the machine is completely autonomous and operates without human intervention. At least as of today, and probably the foreseeable future, the AI machine is just another tool.” More info. [here](#).