

PATENT & TRADEMARK POLICY REPORT

FEBRUARY 14, 2020



I. Congressional Developments:

- On Tuesday, House Republicans on the Steering Committee unanimously approved Rep. Jim Jordan (R-OH) as the next top Republican on the Judiciary Committee. According to *Roll Call*, current Ranking Member Doug Collins (R-GA) will turn over the top post on the influential committee to Rep. Jordan on March 12th. Read more [here](#).
- On Tuesday, the House Small Business Committee's Subcommittee on Innovation and Workforce Development held a hearing to examine the collaborative relationship between research universities and small businesses that fuels technological innovation. Chairman Jason Crow (D-CO) emphasized the importance of universities and research institutions in creating thousands of patents that are then commercialized by small businesses through public-private partnerships. Specifically, Chairman Crow highlighted how "products like lifesaving drugs, groundbreaking medical devices, and advancements in agriculture are the result of collaboration among faculty, students, and the business community." Chairman Crow called for increased public investment as more states cut funding for research-based universities. Committee members also highlighted the success of Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs administered by the Small Business Administration (SBA). Chairman Crow touted the program as having provided billions in funding to small firms that have generated 70,000 patents, launched 700 initial public offerings, and attained \$41 billion in follow-on private investment. Dr. John Younger, Vice President of Science and Technology University City Science Center in Philadelphia, also cited that between 1996 and 2015, the technology transfer has created over \$1.3 trillion in gross

Headlines and Highlights:

- House Republicans on Steering Committee unanimously approve Rep. Jordan as next top Republican on the Judiciary Committee.
- House Small Business Subcommittee on Innovation and Workforce Development holds hearing to examine how research universities and small businesses fuel technological innovation.
- Senator Hawley releases proposal to move the FTC under the DOJ.
- Qualcomm argues before 9th U.S. Circuit Court of Appeals that its patent licensing doesn't injure competition, as the FTC contends.
- At DOJ workshop, VCs, academics, and regulators discuss whether big tech companies stifle innovation, and what role antitrust should play in leveling the playing field.

industrial product and more than 4.3 million new jobs. Despite this substantial economic impact, the witnesses noted how public R&D funding is rapidly declining as a percentage of GDP with federal R&D currently half of what it was in the mid-1960s. During the hearing, members questioned witnesses about ways that Congress can improve federally funded R&D and ensure strong partnerships between universities and research institutions and small businesses. More info. [here](#).

- On Monday, Senator Josh Hawley (R-MO) released a proposal to absorb the Federal Trade Commission (FTC) into the U.S. Justice Department (DOJ) as a way to mitigate concerns about big tech companies, such as Alphabet Inc.'s Google and Facebook. The proposal would eliminate the five commissioners who run the FTC in favor of a Senate-confirmed director reporting to DOJ leadership. It also recommended giving the FTC new powers to enforce rules designed to keep tech markets from favoring big players, including limiting the data that firms can acquire or use, as well as increasing the agency's fining authority and making ethics reforms. The freshman Senator from Missouri, who earned a spot on the Senate Judiciary Committee, has quickly emerged as a fervent critic of big tech, introducing a series of bills to address concerns surrounding tech moguls since assuming office. Read more [here](#).
- On Monday, House Judiciary Committee Ranking Member Collins (R-GA) and Antitrust Subcommittee Ranking Member Sensenbrenner (R-WI) sent a letter to Full Committee Chairman Nadler (D-NY) raising concern about the New York Democrat's recent public remarks regarding the subpanel's bipartisan investigation into big tech companies. In the letter, Collins and Sensenbrenner assert that they "will not participate in an investigation with pre-conceived conclusions that America's large tech companies are inherently bad, cannot be allowed to exist in society, and must be broken up." The pair also reiterates their view that "big" doesn't necessarily mean "bad," reasoning that lawmakers shouldn't punish tech companies simply because they have succeeded. Read more [here](#).

II. Administration Updates:

- On Tuesday, the FTC issued Special Orders to Alphabet, Amazon, Apple, Facebook, and Microsoft, seeking information about prior acquisitions not reported to the antitrust agencies under the *Hart-Scott-Rodino (HSR) Act*. In a press release, the FTC explained that it is seeking "information and documents on the terms, scope, structure, and purpose of" small and unreported transactions made between January 1st, 2010, and December 31st, 2019. The FTC will use the data and documents provided by the companies to "examine trends" in the tech industry's merger strategies and structures and to analyze "how small firms perform after they are acquired." If the FTC were to discover anticompetitive merger activity in the past, it could prompt the agency to take enforcement action. Read more [here](#) and [here](#).

III. USPTO Updates:

- The Trademark Trial and Appeal Board (TTAB) has an updated standard protective order (SPO) that took effect on February 5th. The new SPO was amended with minor changes to wording for readability and clarity. The new SPO comes after two years of discussions with stakeholders about whether to allow in-house counsel access to materials designated "Confidential - For Attorneys' Eyes Only." Because the feedback was evenly split on the

matter, no substantive changes were made to the SPO in the update. More info. [here](#).

- On Thursday, USPTO announced that it is hosting two job fairs for engineers this month. The Patent Examiner Recruitment Open House events are designed to attract soon-to-be graduates and professionals with backgrounds in biomedical, computer, electrical, and mechanical engineering. USPTO has hundreds of open positions available in Alexandria, Virginia; San Jose, California; and Detroit. USPTO also expects additional positions to open at the agency's Rocky Mountain Regional Office in Denver later this year. More info. [here](#).
- On February 19th, from 12:00 – 1:00 p.m. ET, USPTO is hosting the first Patent Quality Chat webinar of 2020, titled “Application readiness: Assessing incoming applications.” More info. [here](#).
- USPTO has delayed the effective date of its final rule mandating the electronic filing of trademark applications to February 15th, 2020. The rule, which was published on July 31st, also requires applicants to designate an email address to receive USPTO correspondence, with limited exceptions. The USPTO has issued a new exam guide explaining examination procedures in light of this rule change. Read more [here](#).
- Trademark Electronic Application System (TEAS) and Trademark Electronic Application System International (TEASi) will be unavailable due to system maintenance on Saturday, February 15th from 12:01 a.m. until 8:00 a.m. ET. More info. [here](#).

IV. Judicial Updates:

- On Thursday, Qualcomm argued before a three-judge panel on the 9th U.S. Circuit Court of Appeals in San Francisco that its patent licensing doesn't injure competition as the FTC contends. The California chipmaker seeks to overturn a lower court decision that sided with the FTC in its case over how it licenses its standard-essential patents. The DOJ, which argued in defense of Qualcomm on Thursday, has raised concerns that a ruling against the chipmaker would harm the United States' national security, giving an advantage to rivals such as Huawei in developing international standards for 5G. The *Wall Street Journal* reports that at the end of the hourlong hearing on Thursday, Judge Consuelo Callahan indicated that Qualcomm's practices had been “overly capitalistic but not necessarily anticompetitive.” Furthermore, Judge Stephen J. Murphy underscored that the case requires the justices on the bench to draw a line between anticompetitive behavior, which is illegal under the Sherman Act, and hypercompetitive behavior, which is not. A decision is expected in the coming months. Read more [here](#).

V. International Updates:

- This week, Google continued its efforts to overturn three antitrust rulings it lost against the European Union (EU), resulting in the tech mogul facing more than \$9 billion in fines. Although a final verdict isn't expected until early next year, stakeholders are following the litigation closely, as it is considered a test case for the new EU competition czar Margrethe Vestager, and the ongoing probes into Facebook, Apple, and Amazon. In 2017, Vestager found that Google abused its dominance over internet searches to favor Google's comparison-shopping service to the detriment of competing services. Speaking to the General Court in Luxembourg on Wednesday, Google countered that rival comparison shopping

services were demoted in the platform's search rankings because they offered inferior services. "Competition law does not require Google to hold back innovation or compromise its quality to accommodate rivals," Thomas Graf, a lawyer for Google, told the panel of five judges. Read more [here](#).

VI. Industry Updates:

- On Wednesday, around 200 venture capital investors, academics, and regulators gathered at Standard University's law school for the DOJ's workshop on whether big tech companies stifle innovation, and what role antitrust should play in leveling the playing field. One theme in the day's discussions was the notion of kill zones, which are supposed areas – social media, or search, or cloud, for instance – where big tech may be smothering startups, or even killing challengers through acquisitions. During his opening remarks, AAG Delrahim underscored that VCs and regulators both "care deeply about market conditions that encourage entrepreneurs to take calculated risks that benefit society." Read more [here](#).