I. Congressional Developments:

- According to GOP sources, Rep. Jim Jordan (R-OH) has been selected as the next ranking Republican on the House Judiciary Committee. Rep. Jordan will replace Rep. Doug Collins (R-GA) as Ranking Member of the House Judiciary Committee as Collins runs for the Senate in a primary against Sen. Kelly Loeffler, who was appointed to complete the term of former Georgia Senator Johnny Isakson. While the full Republican conference will need to approve Jordan for the position, the panel usually supports the steering committee’s recommendation. Read more here.

- On Wednesday, at 10:00 a.m. ET, House Ways & Means Trade Subcommittee member Rep. Stephanie Murphy (D-FL) hosted a briefing on “The Role of Congress in Trade and Tariff Policy.” A panel with academic and industry representatives provided insight into ongoing efforts to reform the executive branch’s ability to impose tariffs without congressional consent. C. Fred Bergsten with the Peterson Institute for International Economics discussed the negative macro and microeconomic impacts of the trade war, advocated for the need to restore Congress’ statutory authority to levy tariffs, and criticized the Administration’s unilateral approach to negotiating trade agreements. Kathleen Claussen with the University of Miami School of Law voiced her support for Reps. Murphy, Cooper (D-TN), and Cunningham’s (D-SC) Reclaiming Congressional Trade Authority Act of 2019 (H.R. 3477), and recommended several additional statutory revisions intended to restore Congress’ role in negotiating trade provisions. H.R. 3477, which was introduced in the upper chamber by Sens. Kaine (D-VA) and Carper (D-DE), would require congressional approval for national security tariffs within 120 days of the Administration initiating them. In addition to Murphy, Reps.

Headlines and Highlights:


- Secretary of Commerce Wilbur Ross appoints David Gooder as the new Commissioner for Trademarks.


- GIPC releases 2020 International Intellectual Property Index.

- FTC and FDA release joint guidance to enhance competition for biologics.

- Huawei files two lawsuits in federal district court against Verizon seeking compensation for alleged unauthorized use of patents.
Cooper (D-TN) and Costa (D-CA) were present and briefly asked questions. Watch the briefing online here.

II. Administration Updates:

- Last Friday, President Trump issued an executive order (EO) on “Ensuring Safe & Lawful E-Commerce for US Consumers, Businesses, Government Supply Chains, and Intellectual Property Rights.” The EO appears to build on the presidential memorandum on counterfeit and pirated goods issued by President Trump last April. The EO directs the Secretary of the Department of Homeland Security (DHS) to establish criteria importers must meet in order to obtain an importer record number. This will include a provision providing that any person debarred or suspended by U.S. Customs and Border Protection (CBP) for lack of present responsibility for reasons related to importation or trade shall be ineligible to obtain an importer record number for the duration of their debarment. It also directs the DHS Secretary to consider appropriate measures to ensure that express consignment operators carriers, hub facilities, and licensed customs brokers cease to facilitate business activity that requires an importer of record number. Furthermore, the EO directs the DHS Secretary to work with the CBP Commissioner and the United States Trade Representative (USTR) to develop an “International Mail Non-Compliance metric” to formulate an overall compliance score for each international post, which will be updated on a quarterly basis. For any international post that is deemed as non-compliant for eight or more consecutive quarters, CBP, DHS, and USPS will take measures to protect the U.S. from shipments from these posts. Finally, DHS will publish information about seizures arising in the international mail “on a periodic basis.” Read the full EO here.

- During his third State of the Union (SOTU) address on Tuesday, President Trump touted his victories on trade as some of the signature achievements of his tenure in office. For instance, the president was pleased to report that he had signed legislation to implement the U.S.-Mexico-Canada Agreement (USMCA) into law six days prior, claiming that the modernized pact will bring trade with Mexico and Canada “to a much higher level.” Turning to China, Trump underscored that he had just signed a “groundbreaking” agreement with Beijing that will “defend our workers, protect our intellectual property, bring billions and billions of dollars into our treasury, and open vast new markets for products made and grown right here in the USA.” Of note, Trump did not offer any details about a potential second-phase trade deal to address the issues left on the table after the preliminary agreement. Read Trump’s full remarks here.

- The Federal Trade Commission (FTC) and the Food and Drug Administration (FDA) released joint guidance this week seeking to enhance competition for biologics, including biosimilars. The FTC and FDA establish the following joint goals: coordinate to promote greater competition in biologic markets; deter anticompetitive conduct that restricts access to samples vital for the development of biosimilars; monitor the use of citizen positions to deter or delay entry; take action against false or misleading statements about biologics, including biosimilars; and review patent settlement agreements involving biologics and biosimilars. More info. here and here.

- On Thursday, the U.S. International Trade Commission (ITC) announced that it is launching a patent investigation into certain audio players and controllers sold by Google based on a compliant by rival smart speaker maker Sonos. Sonos filed suit against Google in Los
Angeles District Court and before the ITC last month for allegedly infringing five of its patents, including on technology that lets multiple wireless speakers connect and synchronize. Sonos executives have also raised concern that Amazon and Google are flooding the market with cheap speakers. In a statement Thursday, a Google spokesman said, “Sonos has made misleading statements about our history of working together. Our technology and devices were designed independently. We deny their claims vigorously, and will be defending against them.” Reuters points out that the ITC has issued exclusion orders in past cases, banning products from U.S. entry on grounds they infringe U.S. patents. Read more here.

- On Wednesday, the Copyright Office hosted an event with the World Intellectual Property Organization (WIPO) titled “Copyright in the Age of Artificial Intelligence.” USPTO Director Iancu was present and provided remarks. He said that artificial intelligence (AI) is not a new issue, but reasoned that it presents challenges for many forms of IP. For instance, Director Iancu acknowledged the complexities in answering questions on whether an AI algorithm should be considered an author or inventor, and determining the human involvement in a machine-created invention. Iancu stated that USPTO aims to issue a report in the next few months based on comments it received on the issue of AI and IP. Lastly, Iancu called for patience and the need to have a steady and deliberate hand when tackling issues surrounding AI.

- On Monday, the New York Times reported that Makan Delrahim, Assistant Attorney General for the Antitrust Division of the U.S. Department of Justice (DOJ), has recused himself from the investigation into Google’s alleged anticompetitive practices. The Times reported that two individuals with knowledge of the decision cited a potential conflict of interest related to Delrahim’s past work for the platform. When Delrahim was in private practice in 2007, Delrahim lobbied on behalf of Google during its bid to acquire the ad-technology company DoubleClick. A DOJ spokesman told the Times that “He and the ethics office have decided that he should now recuse himself from a matter within the tech review in an abundance of caution.” The Agency spokesman stated that Associate Deputy Attorney General Ryan Shores will continue to oversee the tech review. Deputy Assistant Attorney General Alex Okuliar, who recently joined the Antitrust Division, will reportedly assist in the review. Read more here.

III. USPTO Updates:

- On Thursday, the Patent Public Advisory Committee (PPAC) held its first meeting of the year at USPTO’s headquarters in Alexandria, VA. PPAC Chair Julie Mar-Spinola moderated the meeting. USPTO Director Andrei Iancu delivered opening remarks, and several other USPTO officials and PPAC members delivered updates and presentations. In his opening remarks, Director Iancu stated that he anticipates a continued emphasis on expanding innovation among the groups identified in the SUCCESS Act. On IT and innovation, Iancu similarly stated that he expects a heightened emphasis throughout 2020 on enhanced IT systems and AI. Iancu affirmed that Section 101 remains the top issue in patent policy and lauded the Agency’s guidance in this area. Lastly, Director Iancu highlighted the recently-announced agreement with the Mexican Institute of Industrial Property (IMPI), which is designed to make it easier for those with patents in the U.S. to obtain corresponding patents in Mexico. Nick Matich, Senior Legal Advisor for the Director, delivered an update on the Arthrex case, and noted that the en banc briefing is complete and a decision could come at
any time. PPAC unveiled two new subcommittees, the Innovation Expansion and Artificial Intelligence subcommittees. Valencia Martin Wallace, Deputy Commissioner for Patent Quality, discussed a newly formed National Council for Expanding American Innovation (NCEAI) to foster the involvement of underrepresented groups in the patent system. Laura Peter, Deputy Director, outlined a USPTO AI strategic plan, which aims to optimize development and delivery of information technology tools, including AI and machine learning, for internal users of patent systems. Read more here.

• On Friday, the Trademark Public Advisory Committee (TPAC) held its first quarter meeting. TPAC Chair Elisabeth Escobar moderated the meeting, Director Andrei Iancu and Deputy Director Laura Peter delivered opening remarks, and several other USPTO officials and TPAC members delivered updates and presentations. Director Iancu opened the meeting by welcoming David Gooder, the new Commissioner for Trademarks, and Jay Hoffman, the new CFO. Deputy Director Peter noted that the PTO is moving its IT systems to the modern era by leveraging cloud services and AI to achieve agile systems. Deputy Peter also warned about the rise of counterfeit and pirated goods. She noted that these illicit goods threaten consumer safety and health and negatively impact the job market. Deputy Peter stated that the PTO is committed to combatting this problem by collaborating with international IP offices and providing training to both foreign and domestic examiners. She also noted that the Patent Office is partnering with the United States Postal Inspection Service (USPIS) to support the inspection of suspicious packages in airports that could potentially contain counterfeit goods. Lastly, Deputy Peter stated that this problem cannot be solved without stopping the demand for these goods. On this front, the PTO is increasing its public outreach and education to raise awareness of the harms of counterfeit and pirated goods. More info. Here.

• On Wednesday, USPTO announced that Secretary of Commerce Wilbur Ross appointed David Gooder as the new Commissioner for Trademarks, effective March 2nd. Gooder was the Chief Trademark Counsel for Brown-Forman Corporation, which owns over 30 distilled spirits and wine brands. He has also served as the Managing Director and Chief Trademark Counsel at Jack Daniel’s Properties and practiced trademark, copyright, and entertainment law at Graham & James in Los Angeles and Luce Forward in San Diego. Gooder has been an Officer and Director for the International Trademark Association (INTA) and a founding architect and Director of the International Federation of Spirits Producers (IFSP). In a press release, USPTO Director Iancu said he is “delighted” to have Gooder join the Agency’s leadership team. Read more here.

• On Wednesday, the USPTO issued a notice of proposed rulemaking to create a small entity government use license exception. USPTO is proposing to amend the rules of practice in patent cases to “clarify and expand exceptions to the rule pertaining to government use licenses and their effect on small entity status for purposes of paying reduced patent fees so as to support independent inventors, small business concerns and nonprofit organizations in filing patent applications.” Per the notice, the proposal is “designed to encourage persons, small business, and nonprofit organizations to collaborate with the federal government by providing an opportunity to qualify for the small entity patent fees discount for inventions made during the course of federally-funded or federally-supported research.” Public comments are due to the USPTO by March 23rd. 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:

News surfaced this week that Huawei Technologies Co. has filed two lawsuits against Version Communications Inc. in federal district court in Texas seeking compensation for alleged unauthorized use of patents for optical transmission, digital communications, and related services. The Chinese company claims that some of the telecommunications equipment that Verizon purchases from third-party vendors contains Huawei technology that does not have cross-license agreements. In a press release, Huawei chief legal officer Song Liuping said "Huawei is simply asking that Verizon respect Huawei's investment in research and development by either paying for the use of our patents, or refraining from using them in its products and services." The lawsuits do not specify how much compensation Huawei, which is the world’s largest telecommunications equipment maker and leading smartphone brand, is seeking from Verizon. Read more [here](#).

### V. International Updates:

On Thursday, the U.S. Chamber of Commerce’s Global Innovation Policy Center (GIPC) released its 2020 International Intellectual Property Index. In its eighth edition, the Index maps the IP ecosystem in 53 global economies, representing over 90% of global Gross Domestic Product. The Index evaluates the IP framework in each country across 50 indicators which industry believes represent economies with the most effective IP systems. For the “patents, related rights, and limitations” indicator, 13 high-performing economies received over 90% of the overall score, with Singapore leading the way at 97.22%. Japan, South Korea, Switzerland, and the U.S. are tied for second place with 94.44%. The report highlights the USPTO’s efforts to promote reliability in the patent system in recent years, while indicating that certain challenges persist. For instance, while underscoring that the USPTO took a positive step to provide clarity on patent eligibility with its 2019 revised guidance, the report points out that this guidance is not binding on the courts and the interpretation of the Supreme Court’s decisions in *Myriad, Mayo, and Alice* by lower courts remains inconsistent and difficult to apply. For the “trademarks, related rights, and limitations,” indicator, both the UK and U.S. received 100% of the available score. While many of the countries studied have basic forms of trademark protection in place, the report cautions that the proliferation of counterfeit goods in the online ecosystem continues to create challenges for rights-holders around the world. Read more [here](#).

On Monday, the *South China Morning Post* published an article detailing the escalating tension between the U.S. and China over the WIPO Director General position. While there are ten candidates vying for the position, Mark Magnier of the *South China Morning Post* claimed that there are only two viable candidates – China’s Wang Binying, WIPO’s current
deputy director general, and Singaporean Daren Tang, who leads a WIPO office in Singapore. The U.S., Belgium, Japan, and Taiwan support Tang’s bid and, per the article, are attempting to drum up support for his candidacy to counter China’s vast resources and clout in the developing world where most votes reside. Sources quoted in the articles state that Jared Kushner have urged Brazil to support its own Jose Graca-Aranha as a potential compromise candidate. This petition has reportedly been rebuked from Brazil due to internal politics. A Wang victory would give China five spots at specialized UN agencies, compared to the U.S.’s four positions. IP Academics have voiced concerns about a potential China-led WIPO. Mark Cohen, Director of Law and Technology Center at UC Berkeley, stated, “If Wang steps into those shoes, 10 years from now we will no longer have an IP system based on markets.” Read more here.

- On Thursday, following a meeting with Kenyan President Uhuru Kenyatta, President Trump announced his intention to initiate trade agreement negotiations with the Republic of Kenya. USTR Lighthizer said in a statement that the U.S. looks forward to negotiating “a comprehensive, high-standard agreement with Kenya that can serve as a model for additional agreements across Africa.” Following the congressional consultation framework in the Trade Promotion Authority (TPA), the Trump Administration plans to officially notify Congress of its intention to start negotiations, solicit public feedback on the effort, and publish objectives for negotiations at least 30 days before they begin. Read more here.

VI. Industry Updates:

- As reported by The Washington Post, White House adviser Peter Navarro has accused Amazon CEO Jeff Bezos of backing out of a meeting to discuss counterfeit products on the e-commerce platform. After months of unsuccessfully trying to secure a one-on-one meeting with Bezos to enlist Amazon’s help in the effort to crack down on counterfeiters, Navarro pulled Bezos aside at the annual Alfalfa Club dinner on January 25th, just one day after the Administration published its 54-page report on the perceived problem. According to Navarro, Bezos agreed to meet and instructed him to call Amazon’s senior vice president of global corporate affairs to “get it done.” Despite this personal assurance, Navarro claims that Amazon is offering him meetings with senior executives. Navarro told the Post that President Trump is also angry about counterfeit goods on the e-commerce platform and “thinks it’s outrageous what the e-commerce platforms are getting away with” at the expense of brick-and-mortar retail stores. Read more here.