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## PATENT & TRADEMARK POLICY REPORT JULY 10, 2020



### I. Congressional Developments:

- On Wednesday, the Biden-Sanders Unity Task Force issued their 110 page report listing policy recommendations for a Biden presidency. To combat perceived anti-competitive actions by the pharmaceutical industry, the document proposes: ending “Pay-for Delay” deals and providing the Federal Trade Commission (FTC) resources for aggressive enforcement; using antitrust authority to challenge mergers that lessen generic competition; directing the National Academy of Medicine to document cost impact and develop policies to overcome abusive practices such as patent thickets, evergreening, and product hopping; allowing individuals to import high-quality and safe prescription drugs; and supporting policies to develop manufacturer approval and distribution of generics. Read the full report [here](#).
- On Monday, the House Judiciary Committee issued a press release confirming that the Antitrust subcommittee will hold a hearing with the CEOs of Amazon, Apple, Facebook, and Google, as a part of the subcommittee’s ongoing investigation of competition in the digital marketplace. The hearing will take place on Monday, July 27<sup>th</sup> at 12:00pm. The Committee notice stated that the hearing will take place in Rayburn, although the CEOs are allowed to testify virtually. House Judiciary Committee Chairman Jerry Nadler and Antitrust Subcommittee chairman David Cicilline stated in a join press release “Given the central role these corporations play in the lives of the American people, it is critical that their CEOs are forthcoming. As we have said from the start, their testimony is essential for us to complete this investigation.” Read the press release [here](#).

### Headlines and Highlights:

- Binders-Sanders Unity Task Force unveil policy recommendations, including proposals to end “Pay-for-Delay” deals
- Tech CEOs hearing confirmed for July 27
- President Trump and Mexican President Andrés Manuel López Obrador meet in DC to celebrate USMCA
- USPTO launches Fast-Track Appeals Pilot Program
- USPTO to hold Patent Center Beta training session
- U.S. & Kenya kick off negotiations in pursuit with a free trade agreement
- Country Group Lady A files trademark lawsuit
- National Law Journal reports recent uptick in patent trademark infringement suits

## II. Administration Updates:

- The U.S. and Kenya kicked off the first round of virtual negotiations in pursuit of a free trade agreement (FTA) on Tuesday. Kenya hopes to broker a trade deal with the U.S. before the Africa Growth and Opportunity Act (AGOA), which allows sub-Saharan African states to export thousands of products to the United States without tariffs or quotas, expires in 2025. President Trump [announced](#) his intention to seek a trade agreement with Kenya after a meeting with President Uhuru Kenyatta in February, and following the congressional consultation framework under the Trade Promotion Authority (TPA), USTR officially [notified](#) Congress of these plans on March 17<sup>th</sup>. Read more [here](#).

## III. USPTO Updates:

- On Thursday, the USPTO launched its new “Fast-Track Appeals Pilot Program.” In a press release, Director Iancu stated “The Fast-Track Appeals Pilot Program serves as an extension of the Track One prioritized examination program, which has proven to be very popular with our nation’s innovators. For the first time in USPTO history, applicants will be able to speed up both patent examination and ex parte appeals, thus obtaining decisions on their most important inventions in about half the time of a typical application.” Petition grants for fast-track review of ex parte appeals will initially be limited to a maximum of 500 per fiscal year, or 125 per quarter, for the program’s duration. In order to keep appeals on schedule, oral hearings under the program will be expedited and, once scheduled, will not be rescheduled or relocated. More info [here](#).
- Next Monday, July 13, the USPTO will host a training session on how to use various features in its Patent Center Beta, including filing in DOCX. Register to attend [here](#).

## IV. Judicial Updates:

- On Wednesday, *Forbes* reported that Country group “Lady A,” former known as Lady Antebellum, filed a trademark lawsuit against blue singer Anita White, who also goes by the name “Lady A.” Per *Forbes*, the band Lady A attempted to work out a solution that would enable both parties to perform under the name Lady A, but negotiations broke down after White asked for \$10 million. Per the lawsuit, the country group alleged to have held the trademark for “Lady A” since 2011. The country group did not seek monetary damages in the complaint, nor did it seek to halt Lady A from performing under that moniker. Rather, the country group sought for the court to rule that its use of Lady A is lawful and doesn’t infringe on White’s “alleged trademark rights.” Read more [here](#).

## V. International Updates:

- President Donald Trump and Mexican President Andrés Manuel López Obrador (AMLO) met in Washington this week to celebrate the U.S.-Mexico-Canada Agreement (USMCA). The pair issued a [joint declaration](#) commemorating the July 1<sup>st</sup> entry-into-force of the modernized trade pact, claiming that it “marks the beginning of a new era that will benefit the workers, farmers, engineers, and entrepreneurs of both countries.” Noticeably absent from the USMCA celebrations was Canadian Prime Minister Justin Trudeau, who signaled last week that he would stay home, citing the pandemic and threats from the Trump Administration to reintroduce ten percent tariffs on Canadian aluminum exports. “We’ll

have a separate day with Canada with them coming down at an appropriate time,” Mr. Trump said during the signing ceremony. Read more [here](#).

## **VI. Industry Updates:**

- Last week, The National Law Journal reported that district court filings for patent infringement for the first half of 2020 were up 16% over the previous six months. National Law Journal reported that most of the uptick came during the second quarter, leading to some “speculation that investor reallocation of capital to alternative investments such as litigation funding might be boosting the activity.” The article stated that patent owners filed 2,051 district court cases through June 30, compared to 1,762 for the previous six months and 3,062 for all of 2019. Per the National Law Journal, the top five filers are tech-focused nonpracticing entities, and the Western District of Texas appearing to be “entrenched as the most popular filing destination.” Read more [here](#).