

## PATENT & TRADEMARK POLICY REPORT MARCH 13, 2020



### I. Congressional Developments:

- On Wednesday, House Judiciary Committee Chairman Jerrold Nadler (D-NY) and Ranking Member Doug Collins (R-GA), IP Subcommittee Chair Hank Johnson (D-GA) and Ranking Member Martha Roby (R-AL), and Senate Judiciary IP Subcommittee Chair Thom Tillis (R-NC) and Ranking Member Chris Coons (D-DE) introduced the *Trademark Modernization (TM) Act of 2020*. This legislation seeks to mitigate the significant increases in fraudulent trademark filings by: creating new expedited ex parte cancellation procedures that would allow a new-market entrant or other third party to request cancellation of a registration when the mark was never used or was not used before registration; codifying additional trademark examination procedures to give USPTO flexibility and additional authority to gather evidence during examination; and clarifying that, notwithstanding the Supreme Court’s decision in a patent case, *eBay, Inc. v. MercExchange LLC*, a rebuttable presumption of irreparable harm exists for trademark violations. More info. [here](#).
- On Tuesday, the Senate Judiciary Antitrust Subcommittee held a hearing dedicated to “Competition in Digital Technology Markets: Examining Self-Preferencing by Digital Platforms.” Witnesses included [Mr. Gene Kimmelman](#) (Senior Advisor, Public Knowledge), [Ms. Sally Hubbard](#) (Director Of Enforcement Strategy, Open Markets Institute), [Professor Thomas Hazlett](#) (H.H. Macaulay Endowed Professor Of Economics, Clemson University), [Mr. Morgan Reed](#) (President, ACT | The App Association), and [Mr. Luther Lowe](#) (Senior Vice President, Public Policy, Yelp Inc.). The discussion focused on tech platforms using the tactic of self-preferencing, in which a platform uses dominance in one area to leverage its other products or services, even if these products

### Headlines and Highlights:

- House and Senate Judiciary Committee leaders introduce the *Trademark Modernization Act of 2020* to mitigate the significant increase in fraudulent trademark filings.
- Senate Judiciary Antitrust Subcommittee examines self-preferencing by digital platforms during hearing.
- Canadian legislature passes legislation to implement the USMCA.
- IBM sues Airbnb for allegedly infringing four of its patents, as the short-term rental company plans to go public this year.
- USPTO announces that examiner and examining attorney interviews, PTAB and TTAB oral hearings, and other similar meetings scheduled to take place at USPTO will be conducted remotely by video or telephone until further notice.

or services are not a consumer's best option. For instance, members and witnesses highlighted Google's use of Google Search to promote results from its shopping, advertising, mapping, and local review services, rather than competitors' results. Of note, Subcommittee Chairman Mike Lee (R-UT) said he is interested in holding a separate hearing on online platforms' use of self-preferencing in the online ad market. Sens. Amy Klobuchar (D-MN) and Blumenthal touted their [newly-introduced Anticompetitive Exclusionary Conduct Prevention \(AECP\) Act](#), which seeks to respond to anticompetitive behavior by Google and other big tech companies. Sens. Josh Hawley (R-MO) and Blumenthal also referenced a [joint letter](#) they sent to the Department of Justice (DOJ) on Tuesday urging it to narrowly focus its Google antitrust investigation on the company's advertising business. More info. [here](#).

## II. Administration Updates:

- On Monday, the Department of Commerce and the U.S. Patent and Trademark Office issued a joint statement congratulating Daren Tang, Singapore's Chief Executive of Intellectual Property, on his election to the post of Director General for the World Intellectual Property Organization (WIPO). Both Secretary of Commerce Wilbur Ross and USPTO Director Andrei Iancu lauded the nomination. Secretary Ross called his appointment "good news for the global economy." Director Iancu expressed enthusiasm on collaborating with Mr. Tang to "enhance multilateral cooperation and build consensus on IP issues." Read the statement [here](#).
- The Office of the United States Trade Representative (USTR) is expected to officially notify Congress of its intent to negotiate a comprehensive free trade deal with Kenya as soon as this week. According to *POLITICO*, Lighthizer met with members of the House Ways & Means Committee on Wednesday to discuss the administration's plans to pursue a trade deal with the Kenyan government. President Trump [announced](#) his intention to seek a trade agreement with Kenya after meeting with President Uhuru Kenyatta last month, but the Trade Promotion Authority (TPA) requires the U.S. to notify Congress in writing 90 days before it officially convenes trade talks. Read more [here](#).

## III. USPTO Updates:

- Until further notice, examiner and examining attorney interviews, Patent Trial and Appeal Board (PTAB) and Trademark Trial and Appeal Board (TTAB) oral hearings, and other similar in-person meetings with parties and stakeholders scheduled to take place at USPTO offices will be conducted remotely by video or telephone. Parties will receive further instructions on how to participate by video or telephone in advance of an interview, hearing, or meeting. More info. [here](#).
- USPTO is seeking nominations for the 2020 National Medal of Technology and Innovation (NMTI). Bestowed by the President of the United States, NMTI is the nation's highest honor for technological achievement. Applications are due on April 3<sup>rd</sup>. Learn more about the award [here](#).

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

- News surfaced this week that IBM is taking Airbnb to court, alleging that the short-term rental company infringed four of its patents relating to functions such as “presenting advertising in an interactive service” and “improved navigation using bookmarks.” IBM used one of the patents in question, U.S. patent 7,072,849, as part of a dispute with coupon site Groupon. After a bruising two-year court battle, Groupon eventually agreed to pay \$57 million to settle the patent dispute. The suit comes as Airbnb has announced plans to go public this year. Read more [here](#).
- On Tuesday, interactive media company Eko filed suit against Quibi alleging that the new short-form streaming service, which is slated to launch April 6<sup>th</sup>, infringed one of its patents and misappropriated its trade secrets. The lawsuit claims that Quibi’s “turnstyle,” which allows users to shift their viewpoint in a video by turning their phone vertically or horizontally, copies Eko’s patented mobile technology. A day prior to Eko filed suit, Quibi proactively filed legal documents asking a federal court in LA to issue a declaratory judgement on the matter. Read more [here](#).

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

- On Friday, Canadian legislators passed legislation to implement the United States–Mexico–Canada Agreement (USMCA), bringing the modernized trade pact close to full ratification. The House of Commons included the implementing legislation—Bill C-4—as part of a motion to suspend Parliament until after April 20<sup>th</sup> in an effort to stem the spread of the coronavirus. The bill still requires royal assent, which Deputy Prime Minister Chrystia Freeland said is expected later today. Canada will become the third and final participating country to ratify the modernized pact. Read more [here](#) and [here](#).
- On Thursday, Italy’s antitrust watchdog said that it is investigating Amazon and eBay for an allegedly excessive rise in the price of products such as disinfectant gel and protective masks during the coronavirus crisis. It is also looking into allegations of misleading advertisements about such products being effective against the coronavirus. Read more [here](#).

#### **VI. Industry Updates:**

- In light of the coronavirus outbreak, IPWatchdogCon has been postponed from March 15-18<sup>th</sup> to September 13-15<sup>th</sup>. The event will be held in Dallas, Texas, and is slated to feature 110 speakers from industry and government. More info. [here](#).