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PATENT & TRADEMARK POLICY REPORT MARCH 20, 2020



I. Congressional Developments:

- Lawmakers have enacted two emergency funding packages in what is expected to be a series of bills to provide economic relief and combat the coronavirus outbreak. President Trump signed the “phase two” [package](#) into law on Wednesday evening, which provides paid sick leave and free coronavirus testing, expands food assistance and unemployment benefits, and requires employers to provide additional protections for health care workers. Congress is working to quickly pass a third \$1 trillion economic stimulus package that includes direct payments to Americans and industry relief. Senate Majority Leader Mitch McConnell (R-KY) unveiled a proposal on Thursday evening that includes \$50 billion in loan guarantees for passenger air carriers, \$8 billion for cargo air carriers, and \$150 billion for other large businesses. The bill also includes \$300 billion for loan guarantees for small businesses. Majority Leader McConnell is now negotiating with Democratic Leaders on a final bill, which he hopes to pass the upper chamber in the coming days. House Democratic leaders have indicated that that lawmakers will not be asked to return to Washington until the bill is ready for a vote. However, the urgency to swiftly pass measures and recess seemed to heighten after the first members of Congress—Reps. Mario Diaz-Balart (R-FL) and Ben McAdams (D-UT)—announced on Wednesday that they had tested positive for the coronavirus.
- Late last week, Senate Judiciary IP Subcommittee Chairman Tillis (R-NC) and Ranking Member Coons (D-DE) sent United States Trade Representative (USTR) Robert Lighthizer a letter urging him to prioritize strong IP protections in free trade agreements (FTA), including during negotiations with the United Kingdom. Read more [here](#).

Headlines and Highlights:

- Congress works on series of emergency funding packages to combat spread of the coronavirus and support the economy.
- Senate Judiciary IP Subcommittee Chairman Tillis and Ranking Member Coons urge USTR to prioritize strong IP protections in FTAs.
- USTR notifies Congress of intent to negotiate an FTA with Kenya.
- USTR accepting applications for USMCA state-to-state dispute settlement panelists.
- Despite closing offices to the public, USPTO announces that all operations will “continue without interruption.”
- USPTO is waives petition fees for certain customers impacted by the coronavirus.

II. Administration Updates:

- Following the congressional consultation framework under the Trade Promotion Authority (TPA), USTR Lighthizer notified Congress on Tuesday that the Trump Administration intends to negotiate an FTA with Kenya. The notice cites that two-way goods trade between U.S. and Kenya totaled \$1.1 billion in 2019, up 4.9% from 2018. In accordance with TPA, USTR will publish objectives of the negotiations with Kenya at least 30 days before formal trade negotiations begin. More info. [here](#).

III. USPTO Updates:

- USPTO has instituted several measures in response to the COVID-19 pandemic. On Monday, USPTO announced that all offices will be closed to the public until further notice. In the same announcement, the Patent Office said that all operations will “continue without interruption” and that patent and trademark application deadlines and other deadlines are not extended. USPTO is also waiving petition fees for certain customers impacted by the coronavirus. On Thursday, the USPTO announced that it is waiving the requirements for an original handwritten signature for certain correspondence with the Office of Enrollment and Discipline and certain payments by credit card. Find more details on the USPTO notices regarding COVID-19 [here](#).
- On Wednesday, the USPTO posted responses from requests for comments on artificial intelligence (AI). The Patent Office also announced that it has launched a [dedicated page](#) on its website for AI information that provides the latest on the Office’s AI initiatives, public notices and responses, AI-related events, and outside resources. The USPTO stated that it received nearly “200 responses to the RFCs from individuals, corporations, associations, academia, and others.” View the [patent-related](#) and [non-patent](#) related comments in the hyperlinks.

IV. Judicial Updates:

- Last Friday, Broadcom, a leading manufacturer of semiconductor chips for cable set-top boxes, filed a patent infringement lawsuit against Netflix. Broadcom alleges in the lawsuit that Netflix has infringed on eight patents that have ultimately contributed to the rise of cord cutting, which has driven down demand for Broadcom’s chips. In its complaint, Broadcom writes “As a direct result of the on-demand streaming services provided by Netflix, the market for traditional cable services that require set top boxes has declined, and continues to decline, thereby substantially reducing Broadcom’s set top box business.” Per *Variety*, Broadcom claimed it informed Netflix of the infringement in September 2019, but that Netflix declined to engage in a negotiation to license Broadcom’s patents. Netflix has not issued a formal statement on the suit. Read more [here](#).
- On Thursday, the World Wrestling Entertainment, Inc. (WWE) was hit with a patent infringement lawsuit brought by Rothschild Broadcast Distribution. *Forbes* reports that Rothschild Broadcast Distribution is the holder of a “broad” software patent that covers the basic function of subscription streaming video services. According to *Forbes*, Rothschild has sued “about 25 companies” over this patent. WWE has not commented on this lawsuit. Read more [here](#).

V. International Updates:

- On Thursday, USTR published a notice requesting applications to serve as panelists for the general state-to-state dispute settlement panels and for specialized labor panels that were established under the United States-Mexico-Canada Agreement (USMCA). Applications are due on April 20th. More info. [here](#).

VI. Industry Updates:

- 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. The USPTO extended the deadline for nominations to May 1st. More info. [here](#) and [here](#).
- On Wednesday, Americans for Free Trade, a coalition of [more than one-hundred business organizations](#), sent a letter urging the Trump Administration to suspend tariffs on Chinese-made goods and global steel imports as part of the economic stimulus measures. The letter cites research from Trade Partnership Worldwide LLC that found that suspending the Section 301 and 232 tariffs imposed on imports from China, and China's associated retaliation, would provide a boost to the U.S. economy of over \$75 billion. Nevertheless, President Trump reiterated during a press conference on Wednesday that suspending tariffs on Chinese imports is not on the table. "China is paying us billions and billions of dollars in tariffs, and there's no reason to [suspend the tariffs]. They haven't even spoken to me about that. I can't imagine Americans asking for that," Trump declared. Read the full letter [here](#).