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## PATENT & TRADEMARK POLICY REPORT MAY 22, 2020



### I. Congressional Developments:

- In an editorial published in *USA Today* last week, Senate Democratic Leader Chuck Schumer (D-NY), Sen. Todd Young (R-IN), and Reps. Ro Khanna (D-CA) and Mike Gallagher (R-WI) caution that the COVID-19 has brought to clarity a decades-long underinvestment in scientific and technological discovery. While recognizing that “America’s pharmaceutical scientists are working tirelessly to develop a COVID-19 vaccine,” the lawmakers contend that “smarter, bolder investments in recent decades might have better prepared us for this moment.” As such, they are calling for a renewed national investment in public research and development. In the near term, the lawmakers propose investing in the urgent research and production needed to confront the coronavirus. This would include investments in federal and university labs and technical facilities, paired with infrastructure investments like the broadband build-out needed to tap the innovation potential of communities across America. In the longer term, the group calls for federal investment in the frontiers of modern science and technology. They have introduced the *Endless Frontier Act* to advance this agenda. Read more [here](#).

### II. Administration Updates:

- On Tuesday, the European Union’s resolution on the need to investigate a global response to the coronavirus pandemic was adopted at the 73<sup>rd</sup> World Health Assembly (WHA). The U.S. submitted a written statement disassociating from paragraphs 4, 8.2 and 9.8 of the resolution, claiming that they do not “adequately capture” all of the language in the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) and the Doha Declaration of 2001. The U.S. cautions that, as drafted, these paragraphs send

### Headlines and Highlights:

- Sens. Schumer and Young join Reps. Khanna and Gallagher to call for a renewed national investment in public research and development.
- USPTO releases additional information on the COVID-19 Prioritized Examination Pilot Program.
- U.S. and UK wrap first round of negotiations in pursuit of an FTA.
- U.S. submits written statement disassociating from certain paragraphs in EU resolution adopted at 73<sup>rd</sup> WHA.
- WTO Director-General bids due by July 8<sup>th</sup>.
- *Bloomberg Law* article highlights how *Bayh-Dole* enabled the public-private partnerships leading the race to develop COVID-19 vaccines and treatments.

the wrong message to the innovators who will be essential to combatting the pandemic. The document also clarifies the United States' understanding of the reference in 8.2 to "existing mechanisms for voluntary pooling ... of patents." The written statement clarifies that the U.S. interprets this reference as limited to voluntary mechanisms that existed before COVID-19, and not new or proposed "patent pooling" mechanisms created in response to the pandemic. Read the full statement [here](#).

### **III. USPTO Updates:**

- On Monday, the USPTO released additional information on the COVID-19 Prioritized Examination Pilot Program. Building on the pilot program, the Patent Office launched a related [webpage](#) where users can find additional resources and information pertinent to the program. As the USPTO outlined in its [May 8<sup>th</sup> release](#), "up to 500 qualifying patent applications will be accepted for prioritized examination and exempted from prioritized examination fees." Per the press release, "the USPTO will endeavor to reach final disposition of applications in this program within six months if applicants respond promptly to communications from the USPTO." Read more [here](#).

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

- On Monday, the United States Court of Appeals for the Federal Circuit released modifications to court procedures, indicating that all in-person oral arguments are suspended until further notice. While since March 16<sup>th</sup> the Federal Circuit had restricted court access to "(a) counsel and parties with a scheduled in-person hearing and (b) members of the press who present media credentials," the Court had been issuing public advisories on a month-by-month basis notifying all parties that all arguments will be held telephonically. In its modification order, the Chief Judge Prost clarified that all case scheduling will continue in accordance with existing procedures and that the Court may also choose to dispense with oral arguments where they are determined to be unnecessary. Read more [here](#).

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

- The first round of virtual negotiations in pursuit of a U.S.-UK Free Trade Agreement (FTA) concluded on May 15<sup>th</sup>. On Monday, UK Secretary of State for International Trade Liz Truss published an update on the status of the bilateral negotiations. She noted that both sides will quickly pursue a standalone Small and Medium Enterprises (SME) Chapter and will continue the UK-US SME Dialogue. According to her statement, the two sides also identified a mutually high ambition for services, investment, and digital trade, among other areas. The second two-week long negotiating round will start on June 15<sup>th</sup>. Read the full statement [here](#).
- The WTO announced this week that candidates seeking to succeed Roberto Azevêdo as Director-General must submit their nomination bid between June 8<sup>th</sup> and July 8<sup>th</sup>. As we previously noted, Roberto Azevêdo announced last week that he would step down on August 31<sup>st</sup>, a year before his term was slated to expire. Despite the Trump Administration's actions to paralyze the trade court through blocking appointments, USTR Lighthizer [said last week](#) that the U.S. "looks forward to participating in the process of selecting a new director general." Read the WTO's announcement [here](#).

## VI. Industry Updates:

- A *Bloomberg Law* article published on Thursday highlights how the *Bayh-Dole Act* has enabled the public-private partnerships that have produced the “most promising” COVID-19 treatments and vaccines being explored today. Since it was enacted in 1980, *Bayh-Dole* has spurred nearly 300 new drugs by encouraging companies to turn raw IP into viable products. The article cites that in the first two decades of *Bayh-Dole*, American universities experienced a ten-fold increase in the number of patent applications and created more than 2,200 companies to leverage their technology. Bauman also writes about the “tremendous pressure” the public has placed on drugmakers to ensure that any viable COVID-19 treatments or vaccines are affordable and widely accessible. Jon Soderstrom, managing director of the Office of Cooperative Research at Yale University, claims that a lot of private sector dollars are being funneled into COVID-19 research right now “without much hope at all of a financial payoff.” Read more [here](#).