

PATENT & TRADEMARK POLICY REPORT NOVEMBER 6, 2020



I. Congressional Developments:

- The CEOs of Facebook and Twitter are reportedly slated to appear before the Senate Judiciary Committee on November 17th. The Committee voted last week to authorize Chairman Lindsey Graham (R-SC) to subpoena Facebook CEO Mark Zuckerberg and Twitter CEO Jack Dorsey to testify about allegations of anti-conservative bias. In a [Tweet](#) after the vote, Senate Judiciary IP Subcommittee Chairman Thom Tillis (R-NC) declared that it is “past time” that the Big Tech CEOs “answer for not only their censorship of conservative voices but also their willingness to allow for rampant online piracy and copyright infringement.” Read more [here](#).

II. Administration Updates:

- According to a statement from UK Trade Secretary Liz Truss, negotiations in pursuit of a U.S.-UK free trade agreement are in “advanced stages,” and the two sides have agreed to continue talks in the weeks after the U.S. elections. “A significant proportion of legal text has been agreed across multiple chapters,” Truss said in a written statement, adding “We believe we are in a good position to move forward after the U.S. election.” The fifth round of negotiations – which concluded on October 30th – covered 38 sessions on 19 different chapter areas of the deal, including IP and digital issues. Read the full statement [here](#).

Headlines and Highlights:

- Senate Judiciary IP Subcommittee to hear testimony from Big Tech CEOs on November 17th.
- USPTO seeks public input to inform its state sovereign immunity study, as directed by Senators Tillis and Leahy.
- Google to tell district court how it will respond to DOJ antitrust lawsuit by mid-November.
- U.S.-UK FTA negotiations are in “advanced stages,” according to UK Trade Secretary Liz Truss.
- EU antitrust chief suggests splitting up Big Tech will not be necessary in interview.
- Stakeholders ask for opportunity to comment on any plan at USPTO to mask the email addresses of attorneys on trademark applications.

III. USPTO Updates:

- On Thursday, USPTO announced that it is seeking public feedback to inform its study of the extent to which patent or trademark rights holders are experiencing infringement by state entities without adequate remedies under state law, and the extent to which such infringements appear to be based on intentional or reckless conduct. Senate Judiciary IP Subcommittee Chairman Thom Tillis (R-NC) and Senator Patrick Leahy (D-VT) asked USPTO to study this matter after the Supreme Court decision in *Allen v. Cooper* that the Copyright Remedy Clarification Act, which abrogated states' immunity for liability for copyright infringement, was unconstitutional. Comments are due to the USPTO by December 21st. Read the full notice [here](#).

IV. Judicial Updates:

- At a status conference last Friday, Google lawyer John Schmidlein agreed to tell the U.S. District Court for the District of Columbia by November 13th if the search and advertising giant planned to ask for the case to be thrown out on a summary judgment. Judge Amit Mehta also said that the two sides should make initial disclosures about potential witnesses and evidence that might be used at trial by November 20th. The next status conference is scheduled for November 18th. The Department of Justice filed its highly-anticipated antitrust lawsuit against Google last month, alleging that the tech giant uses anticompetitive tactics to preserve a monopoly for its flagship search engine and related advertising business. The suit accuses the search giant of using billions of dollars collected from advertisements on its platform to pay for mobile-phone manufacturers, carriers, and browsers, to maintain Google as their preset, default search engine. Read more [here](#).

V. International Updates:

- European Competition Commissioner Margrethe Vestager made news on Sunday when she said that splitting up large tech companies such as Google and Facebook will not be necessary as part of the bloc's digital regulation rewrite. She is poised to announce draft rules for the digital sector on December 2nd, at which point she will have to reconcile her proposal with those from member countries and the European Parliament. "It'll never come to that," Vestager told the *Frankfurter Allgemeine Sonntagzeitung* newspaper when discussing the possibility of breaking up tech companies. "Up until now we haven't had any cases that could lead to such a move." Vestager outlined some of the changes that might be included in the new regulation last month. "They'll have to tell us how they decide what information and products to recommend to us, and which ones to hide, and give us the ability to influence those decisions, instead of simply having them made for us. And they'll have to tell us who's paying for the ads that we see, and why we've been targeted by a certain ad," she said. Read more [here](#) and [here](#).
- As reported by *IP Watchdog*, the Standing Committee of China's National People's Congress completed its amendments to China's Patent Law on October 17th, its first revision to the law since 2008. The amendments – slated to take effect in July 2021 – include increased statutory damages for parties proving patent infringement and the creation of punitive damages to increase damages awards up to five times upon findings that a party intentionally infringed patent claims. Read more [here](#).

VI. Industry Updates:

- *World Trademark Review* reports that some stakeholders have raised concerns after trademark commissioner David Gooder suggested at last week's TPAC meeting that the USPTO had plans underway to mask the email addresses of attorneys on trademark applications. In April, responding to privacy concerns, USPTO announced that it would be masking the email addresses of trademark owners, so that that information would no longer be visible in documents filed electronically through the TEAS online platform. When asked during TPAC whether a similar plan of action was in the works for the email information of attorneys-of-records and correspondents, commissioner Gooder confirmed that there are "plans to mask the email addresses of attorneys similar to how it masked the email addresses of unrepresented applicants." Some stakeholders have raised concerns about the potential unintended consequences of such an action. For instance, Nehal Madhani, founder and CEO of trademark docketing service Alt Legal, raised concern that "potential opposers of another party's trademarks no longer have the ability to readily and immediately communicate with the attorney representing the other party to engage in constructive dialogue before filing an opposition." A USPTO spokesperson confirmed with *World Trademark Review* that it was looking into the proposal, but said that the Office would "certainly seek/welcome comment from the trademark community." Read more [here](#).