

## PATENT & TRADEMARK POLICY REPORT APRIL 30, 2021



### I. Congressional Developments:

- On Thursday, the Senate Judiciary Committee passed the Inventor Diversity for Economic Advancement (IDEA) Act. The bill would “collect demographic data – including gender, race, military or veteran status, and income level, among others – from patent applicants on a voluntary basis.” The legislation would seek to address that only 22% of all U.S. patents list a woman as an inventor and women only make up 13% of all inventors. More info [here](#).
- In an editorial published in *The Hill* on Friday, Senate Judiciary IP Subcommittee Ranking Member Thom Tillis (R-NC) voiced his strong opposition to a proposal under consideration at the World Trade Organization (WTO) to waive IP rights in relation to the prevention, containment, and treatment of COVID-19. “I am profoundly concerned about this proposal, and I am shocked that my Democratic colleagues would support policies that threaten American intellectual property,” Ranking Member Tillis asserts. He also attempts to dispel the notion that the proposal would promote broader access to vaccines needed to halt the spread of the pandemic. He points out that the waiver would not “spontaneously transfer the complex technical and logistical know-how to develop vaccines, nor would it generate the necessary infrastructure to distribute the shots safely and quickly.” Furthermore, Tillis raises alarm that the waiver is too broad in scope, since it is not limited to patents. Read more [here](#).
- On Tuesday, May 4<sup>th</sup>, the House Energy and Commerce Subcommittee on Health will hold a hearing titled

### Headlines and Highlights:

- Senate Judiciary Committee reports IDEA Act favorably out.
- Senate Commerce Committee holds a confirmation hearing for Dr. Eric Lander to serve as the next OSTP Director.
- USTR publishes annual Special 301 Report.”
- President Biden taps Celeste Drake to lead “Buy American” initiative.
- European Commission makes preliminary conclusion that Apple’s App Store breaks competition rules after Spotify compliant.
- USPTO to host quarterly PPAC meeting on May 6<sup>th</sup>.
- Brazil’s Senate approves bill to suspend patent protections for COVID-19 vaccines, tests, and medications.

“Negotiating A Better Deal: Legislation to Lower the Cost of Prescription Drugs.” More info [here](#).

- On Thursday, the Senate Commerce Committee held a confirmation hearing for Dr. Eric Lander to serve as the next Director of the Office of Science and Technology Policy (OSTP). Some senators on the committee criticized Lander for not doing enough to address gender and minority gaps as founder and director of the Broad Institute. Lander stated that, if confirmed, he would make addressing the gender and minority gap in STEM a priority. He also said that he would work to strengthen the government’s cybersecurity and continue the fight with China to advance next generation technologies like AI and quantum computing. More info [here](#).
- On Wednesday, House Judiciary IP Subcommittee Chairman Hank Johnson (D-GA) and Ranking Member Darrell Issa (R-CA) introduced H.R. 2884, “To amend title 35, United States Code, to clarify and improve the process for subsection (k) applicants to resolve patent infringement claims for biological products (commonly known as the "patent dance"), and for other purposes.” More info. [here](#).
- Last week, Senator Lindsey Graham (R-SC) introduced *The Combating Chinese Purloining (CCP) of Trade Secrets Act*. The bill seeks to protect American businesses and government institutions from attacks designed to steal sensitive information by increasing the maximum statutory penalty from 5 to 20 years of imprisonment for those individuals attempting to benefit a foreign government by manufacturing, distributing, possessing, or advertising any wire, oral, or electronic communication intercepting devices. The bill also expands available penalties for foreign persons who misappropriate a trade secret and creates grounds of inadmissibility and deportability for those who seek to enter the U.S. to engage in espionage, theft of intellectual property, including trade secrets, involvement in commercial fraud schemes, and improper interference in U.S. elections. Read more [here](#).
- Last month, Senators Chris Coons and Dick Durbin (D-IL) re-introduced the *Innovation Centers Acceleration Act*. The bill intends to help the U.S. compete with China by placing renewed emphasis on sectors key to economic resiliency and productivity, including biomedical technology, advanced manufacturing, and more. “The Innovation Centers Acceleration Act will not only fund new R&D so that we stay ahead of China and strategic competitors, but it will also ensure that growth does not concentrate in a handful of large cities,” Senator Coons said in a statement announcing the bill’s re-introduction. Reps. Joseph Morelle (D-NY) and Terri Sewell (D-AL) sponsored the bill in the House of Representatives. Read more [here](#).

## II. Administration Updates:

- On Friday, the Office United States Trade Representative (USTR) published its Special 301 Report on the adequacy and effectiveness of U.S. trading partners’ protection and enforcement of IP rights. The annual report details USTR’s findings of more than 100 trading partners after significant research and enhanced engagement with stakeholders. Of note, in reference to the pandemic, while USTR recognizes the role of IP protection in the development of new medicines, the report asserts that the U.S. “respects a trading partner’s right to protect public health and, in particular, to promote access to medicines for all.” The report also notes that China recently amended its Patent Law, Copyright Law, and Criminal

Law, but USTR found that “these steps toward reform require effective implementation and fall short of the full range of fundamental changes needed to improve the IP landscape in China.” Read more [here](#).

- The White House has for weeks declined to state its position on a proposal to waive IP rights related to COVID-19 currently being considered at the World Trade Organization. However, on Tuesday, White House spokeswoman Jen Psaki stated that the Administration is weighing several considerations. “Our focus is on maximizing production and supply for the world at the lowest possible cost, and there are a lot of different ways to do that,” she said. Psaki went on to say that the Biden Admin needs to evaluate whether its more effective to increase domestic manufacturing to provide supply to the world, or use the waiver. Read more [here](#).
- On Tuesday, President Biden announced Celeste Drake — a longtime trade expert from AFL-CIO and former head of government relations for the Directors Guild of America — to be the first director of his initiative to steer more federal dollars to U.S. manufacturers and producers. Biden created the post in late January, when he signed an executive order aimed at adding requirements for federal agencies to “Buy American.” Drake will be responsible for ensuring that the federal procurement process rewards U.S.-based businesses, including small companies and minority entrepreneurs. Read more [here](#).

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

- On Thursday, May 6<sup>th</sup> the USPTO will host the quarterly meeting of the Patent Public Advisory Committee (PPAC). The meeting allows for a review of policies, goals, performance, budget and user fees, among other USPTO issues. More info [here](#).
- USPTO is seeking nominations for the 2021 National Medal of Technology and Innovation (NMTI). The NMTI is the nation’s highest honor for technological achievement and is presented to recipients by the President of the United States at a White House ceremony. NMTI staff will hold a webinar to answer questions about the award and the nomination process on June 2<sup>nd</sup> at 12:00 p.m. ET, and nominations are due by July 30<sup>th</sup>. More info. [here](#).
- On Thursday, May 13<sup>th</sup>, from 12:00 – 1:00 p.m. ET, USPTO is hosting a discussion about preparing for an appeal brief for independent inventors, new practitioners, and those interested in learning more about the Patent Trial and Appeal Board (PTAB). Vice Chief Judge Janet Gongola, Lead Judge James Worth, Judge Eric Jeschke, Judge Frances Ippolito, Judge Nina Medlock, and Acting IT Branch Chief Joy Weber are all slated to participate in the discussion. More info. [here](#).

### **IV. International Updates:**

- On Thursday, Brazil’s Senate approved a bill to suspend patent protections for COVID-19 vaccines, tests, and medications during the pandemic by a 55-19 vote. Under the bill, patent holders would be required to provide authorities with all the information needed to produce COVID-19 vaccines and medications, allowing the government to produce them locally under a licensing agreement under a state of emergency. The proposal will now be sent to the lower house of Congress for consideration and possible amendments. The president’s

office and the health ministry both did not immediately respond to *Reuters*' request for comment. Read more [here](#).

- On Friday, news surfaced that the European Commission has made a preliminary conclusion that “Apple exercises considerable market power in the distribution of music streaming apps to owners of Apple devices.” The Commission opened an antitrust investigation into the App Store last year after Spotify brought a complaint about the Big Tech company’s license agreements in 2019. Apple responded that the EU’s case was the “opposite of fair competition.” Read more [here](#).
- On Wednesday, the Australian Competition and Consumer Commission (ACCC) made news when it said app developers should be allowed to provide customers with alternative payment options and data collected by Google and Apple should be kept separate from the Big Tech companies’ other operations. The competition watchdog also asserted that consumers should be allowed to change or remove pre-installed or default apps. The ACCC suggested that regulation might be required if the companies do not take such steps voluntarily. Read more [here](#).

## **V. Industry Updates:**

- In a recent editorial published in the *Roll Call*, Dr. Walter G. Copan, a senior adviser at the Center for Strategic and International Studies and co-founder of its Renewing American Innovation project, warned of “misguided efforts” that are “pushing the very ecosystem that lays our golden eggs of innovation toward the brink of downfall.” Specifically, he points to domestic activists calling for the government to use Bayh-Dole’s “march-in” provision to seize control over IP rights from companies that commercialize university inventions — and impose price controls. Dr. Copan argues that invoking that law to thwart IP rights “fundamentally misunderstands the principles under which it was founded.” If the Biden Administration and Congress want to make it easier to license and commercialize breakthroughs, Dr. Copan suggests that they should consider a recent legislative proposal from the National Institute of Standards and Technology (NIST). The NIST proposal would further modernize the law and maximize opportunities for technology transfer, increase access to technologies from publicly funded research, expand entrepreneurship and enable more public-private partnerships. Read more [here](#).