

## PATENT & TRADEMARK POLICY REPORT APRIL 9, 2021



### I. Congressional Developments:

- Next Wednesday, April 14<sup>th</sup>, at 10:00 a.m. ET, the Senate Committee on Commerce, Science, and Transportation, will convene a hearing titled, “Legislative Hearing on the Endless Frontier Act.” The hearing will address potential actions to strengthen the U.S. innovation ecosystem, including increasing National Science Foundation research funding; growing and diversifying the STEM pipeline; improving technology transfer; and investing in regional innovation centers. Witnesses will also have the opportunity to discuss other opportunities to strengthen U.S. innovation policy. Senate Majority Leader Schumer (D-NY) [has said](#) that the [Endless Frontiers Act](#), a bill to increase federal investment in critical and emerging technologies that he introduced alongside Senator Todd Young (R-IN) last Congress, will serve as the centerpiece of a bipartisan China competition package he [intends](#) to bring to the floor this spring. The Schumer/Young bill proposed setting aside \$100 billion over five years to fund key technologies to increase American competitiveness. Majority Leader Schumer also said that the bill will make “serious investments” to strengthen the U.S. semiconductor industry. The hearing will be livestreamed [here](#).

### II. Administration Updates:

- *POLITICO* reports that the Biden Administration is struggling to fill the Assistant Attorney General for Antitrust at the DOJ due to White House ethics officials objecting to candidates who have represented critics of Big Tech companies. Those concerns have reportedly

### Headlines and Highlights:

- Senate Commerce Committee to hold hearing on *Endless Frontier Act* next Wednesday.
- DOJ reportedly struggling to fill DOJ AAG for Antitrust role due to ethics concerns raised about past anti-Big Tech representation.
- USPTO launches a special category for its Patents for Humanity Program for inventions that address the pandemic.
- Nokia and Lenovo settle multi-year global patent fight.
- UK launches Digital Markets Unit.
- New report confirms Amazon’s growing presence in U.S. digital advertising market.
- Merchant groups form coalition to target Amazon over perceived anticompetitive behavior.

prompted one prime candidate, Terrell McSweeney, to pull herself out of the running, and would pose a major obstacle to hiring another contender, Jonathan Kanter, since he has represented many clients with complaints about Google. The White House is in a bind as President Biden simultaneously faces immense pressure from the left to not hire lawyers who have worked for major Silicon Valley companies. *POLITICO* reports that the other major candidate for the top antitrust post, former Obama administration lawyer Jonathan Sallet, would face fewer ethics obstacles, although he worked for the state of Colorado and a multistate coalition of attorneys general on a parallel antitrust case filed against Google late last year. Read more [here](#).

- A U.S. Customs and Border Protection (CBP) official told *CNN* that they have observed an “exponential increase” in counterfeit mask seizures in the last few months. CBP has seized more than 34 million counterfeit masks since the start of the pandemic, and around 20 million of those masks were caught in 2021. Some of these counterfeit masks resemble n95 respirators, but do not offer the same level of protection. In addition to counterfeit masks, officials seized around 180,000 unauthorized COVID-19 tests. Read more [here](#).

### III. USPTO Updates:

- On Monday, the USPTO announced that it is launching a special category of its Patents for Humanity Program for inventions that address the COVID-19 pandemic. The new award category will provide business incentives for patent applicants, holders, and licensees whose inventions track, prevent, diagnose, or treat COVID-19. “Innovation is central to alleviating the difficulties COVID-19 has brought upon the public, and this new Patents for Humanity COVID-19 category allows us to provide special recognition to innovators tackling this unprecedented challenge,” said Drew Hirshfeld, who is currently performing the functions and duties of the USPTO Director. Read more [here](#).

### IV. Judicial Updates:

- On Wednesday, news surfaced that Finland’s Nokia has settled a multi-year patent fight with China’s Lenovo Group, resolving all pending litigation across all jurisdictions. *Reuters* reports that Lenovo will make a net balancing payment to Nokia, although the details of the cross-license agreement remain confidential. The global dispute began in 2019 when Nokia claimed that Lenovo had infringed 20 video-compression technology patents. In addition to filing suit in California, Nokia launched legal battles in Brazil, India, and Germany. Read more [here](#).
- On Wednesday, a Brazilian Supreme Court judge suspended extensions of drug patents in the country, citing the “public health emergency arising from COVID-19” in his ruling. Justice Dias Toffoli’s ruling must still go before the Supreme Court for consideration, meaning it could be reversed. Federal prosecutors are asking the Supreme Court to reconsider parts of Brazil’s Industrial Property Law, which they claim harms “social interest” by protecting patents for an “excessive time period.” Brazilian law protects drug patents for 20 years from the date of a patent application and allows for a renewal of another 10 years. The case was originally slated to be considered by the court on Wednesday but was pulled from the agenda for proceedings. Read more [here](#).

## V. International Updates:

- On Wednesday, the United Kingdom [launched](#) the Digital Markets Unit (DMU), a regulatory body aimed at policing allegations of anticompetitive behavior among the world's largest tech companies. The creation of the DMU was announced in November 2020, but the new regulatory body will not have the power to levy fines on tech companies or reverse corporate mergers until Parliament approves legislation governing its oversight power. In the meantime, the agency will focus on staffing up and drafting what will become a legally binding code of conduct for companies. The DMU will be housed inside Britain's main antitrust regulator, the Competition and Markets Authority (CMA). "Today is a major milestone in the path to creating the world's most competitive online markets, with consumers, entrepreneurs and content publishers at their heart," U.K. Digital Secretary Oliver Dowden said in a statement. Read more [here](#).

## VI. Industry Updates:

- According to a new report from the research firm eMarketer, Amazon's share of the digital ad market was 10.3 percent in 2020, up from 7.8 percent in 2019. Even though the uptick in Amazon's digital ad share can likely be attributed to the pandemic-induced increase in online shopping, Nicole Perrin, a principal analyst at eMarketer, told the *Wall Street Journal* that she thinks the trend will continue. "This is one of these situations where the pandemic accelerated something that was happening anyway," she said. "We are expecting pretty notable continued gains in share through at least 2023, specifically looking at the search side." The research firm predicted that Amazon will make up 10.7 percent of the U.S. digital ad market this year, 11.9 percent in 2022, and 12.8 percent in 2023. Meanwhile, the two largest players in the industry, Google and Facebook, made up 28.9 percent and 25.2 percent of the market respectively in 2020. eMarketer expects Google's market share to decrease to 26.2 percent in 2023. Read more [here](#).
- On Tuesday, the National Grocers Association, the American Booksellers Association, and the Alliance for Pharmacy Compounding joined a number of merchant groups to launch Small Business Rising, a new coalition that will campaign for stricter antitrust laws aimed at reining in Amazon. In particular, they are pushing for tougher enforcement of competition laws, as well as federal legislation to prevent the owner of a dominant online marketplace from selling its own products in competition with other sellers. Read more [here](#).