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PATENT & TRADEMARK POLICY REPORT FEBRUARY 12, 2021



I. Congressional Developments:

- The Senate Judiciary Committee, under the leadership of Chairman Richard Durbin, is in the process of reorganizing its subcommittees. The Committee will be forming two new subcommittees; one handling human rights issues to be chaired by Sen. Dianne Feinstein and another handling technology issues to be chaired by Sen. Coons. The Intellectual Property Subcommittee will be chaired by Sen. Patrick Leahy who has long played an active role in IP matters including his leadership in the passage of the America Invents Act. As of this writing, the corresponding ranking Republican seats and overall subcommittee member assignments have not yet been finalized.
- Next Thursday, February 18th at 2:00 p.m. ET, the House Judiciary IP Subcommittee is holding a virtual hearing titled “The Supreme Court’s Shadow Docket.” No witnesses have been listed yet.

II. Administration Updates:

- On Wednesday, the White House said that President Joe Biden’s first budget proposal will be delayed, citing a lack of cooperation during the transition from budget staff in former President Donald Trump’s administration as the cause of the hold-up. Read more [here](#).

III. USPTO Updates:

- On March 1st, from 1-3 p.m. ET, the USPTO will hold a virtual roundtable to gather public input on issues relating to its implementation of the Trademark

Headlines and Highlights:

- Senate Judiciary Committee begins reorganizing subcommittees.
- Amazon and Salvatore Ferragamo file joint lawsuits accusing four sellers and three businesses of advertising and facilitating the sale of counterfeit goods.
- USPTO to hold public roundtable to gather input on issues relating to its implementation of the Trademark Modernization Act.
- *NYT* editorial urges President Biden to consider his goal of advancing racial equity when selecting the next USPTO Director.
- Alliance of inventors and startups files amicus brief supporting American Axle & Manufacturing, Inc.’s petition for certiorari with the U.S. Supreme Court in Section 101 case.

Modernization Act. Register [here](#).

- In an editorial published in the *New York Times* on Tuesday, Priti Krishtel, the founder and an executive director of the Initiative for Medicines, Access & Knowledge, a nonprofit organization working to address structural inequities in how medicines are developed and distributed, urged President Biden to consider his goal of advancing racial equity when selecting the next USPTO Director. Krishtel states that there is a “direct line” between what the USPTO does “and the systemic disenfranchisement of Black people.” For instance, Krishtel points out that enslaved people in the U.S. were not allowed to patent their inventions, and in the South, their white enslavers often got the patents instead. She cites that the cotton gin and the mechanical reaper are thought to have been at least partly invented by people who were enslaved. Krishtel raises concern that today, Black people account for only a tiny fraction of patent holders. She encourages President Biden to select a USPTO Director that will prioritize collecting demographic data about applicants, as well as to strongly consider a person of color for the role. Furthermore, Krishtel urges Biden’s USPTO to combat rising drug prices by making it more difficult to extend the life of a patent, or by making it easier for generic manufacturers or others acting in the public interest to challenge what she calls “unjust patents.” Read more [here](#).

IV. Judicial Updates:

- After news surfaced that scammers have distributed millions of fake N95 masks to health-care workers in at least five states, 3M told *CNBC* that it has been working around the clock with law enforcement to combat the sale of counterfeit personal protective equipment (PPE). “We have taken very strong steps around attacking the problems of counterfeiting or price gouging. And that has occurred over the last year in this constrained supply and very strong demand environment on critical products such as the N95,” said Mike Vale, who leads 3M’s safety and industrial business group. 3M has apparently seized 10 million fake N95s in total. Read more [here](#).
- As reported by *IP Watchdog*, the Alliance of U.S. Startups & Inventors for Jobs (USIJ) filed an amicus brief supporting American Axle & Manufacturing, Inc.’s petition for certiorari with the U.S. Supreme Court in the closely-watched Section 101 patent eligibility case involving driveshaft automotive technology. American Axle & Manufacturing, Inc. is asking the High Court to review the Federal Circuit’s July 31st modified judgement and October 2019 panel opinion affirming the district court’s holding that the claims in question are ineligible for patenting as merely invoking a natural law, and “nothing more” because the claims “invoked the equation, $F = kx$ (Hooke’s Law).” USIJ’s brief argues that the panel majority decision fails to comply with eligibility precedents established by the Court and Federal Rule of Civil Procedure 56; and investments in technology startups in America have been declining for more than a decade. Read more [here](#) and the full brief [here](#).

V. International Updates:

- On Thursday, Amazon and Salvatore Ferragamo, an Italian luxury brand, filed joint lawsuits against four sellers and three businesses for allegedly advertising and facilitating the sale of counterfeit goods. The four third-party sellers name in the lawsuits, which were filed in U.S. District Court for the Western District of Washington, are Zhao Hao Jun of China; Zhang Lianfa of China; Li Yong; and Wu Pianpian. The lawsuit claims that the businesses and

sellers used Amazon to peddle counterfeit belts that featured Ferragamo's branding and design elements. Read more [here](#).

VI. Industry Updates:

- This week, the Bayh-Dole Coalition, a diverse group of research and scientific organizations, submitted a white paper to President Biden explaining the long-lasting impact of the Bayh-Dole Act and urging his administration to preserve and protect the landmark legislation. The white paper points out that Bayh-Dole “spurred decades of public-private sector collaboration,” bolstering U.S. economic output by up to \$1.7 trillion, supporting 5.9 million jobs, and helping lead to more than 13,000 start-up companies. It also encourages the Biden Administration to uphold the precedent set by past administrations rejecting using the statute's march-in provision as a government price-setting mechanism for successfully commercialized inventions. Read the full white paper [here](#).