

PATENT & TRADEMARK POLICY REPORT

FEBRUARY 19, 2021



I. Congressional Developments:

- On Sunday, Senate Democratic Whip Dick Durbin (D-IL), Chair of the Senate Judiciary Committee, and Senator Chuck Grassley (R-IA), Ranking Member of the Senate Judiciary Committee, announced the establishment of the Subcommittees for the 117th Congress, and the assignment of Chairs and Ranking Members to these Subcommittees. Senator Patrick Leahy (D-VT) will Chair the Subcommittee on Intellectual Property and Senator Thom Tillis (R-NC) will serve as its Ranking Member. Senator Durbin also reestablished the Privacy and Technology Subcommittee “to focus on timely legal issues in the Judiciary Committee’s jurisdiction.” Senator Chris Coons (D-DE) will Chair that subpanel and Senator Ben Sasse (R-NE) will serve as its Ranking Member. Read more [here](#).
- On Tuesday, Senate Judiciary IP Subcommittee Ranking Member Tillis sent a letter urging President Biden to select a USPTO Director that is committed to continuing the administrative reforms made by previous Director Andrei Iancu. Furthermore, Ranking Member Tillis urged President Biden to select a candidate that understands the importance of critical and emerging technologies, such as 5G, quantum computing, and artificial intelligence to America’s innovation economy and national security; is a consistent advocate for the inclusion of strong IP protections in all future trade agreements; and is committed to increasing diversity in our nation’s IP system. Read more [here](#).

Headlines and Highlights:

- Senate Judiciary Subcommittees announced.
- Senate Judiciary IP Subcommittee Ranking Member Tillis urges President Biden to select a USPTO Director that will continue the administrative reforms made by Director Iancu.
- House Judiciary Antitrust Subcommittee announces hearing series to consider modernizing antitrust laws.
- Congressional Democrats and White House discuss strategies for regulating Big Tech.
- Senate Finance Committee to consider the nomination of Katherine C. Tai to serve as USTR next Thursday.
- *IP Watchdog* editorial warns that gutting IP protections for COVID-19 medications would “set a terrible precedent” and “chill future medical innovation.”

- On Wednesday, the House Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law announced that, starting next week, it will hold a series of hearings to consider legislative proposals to address the rise and abuse of market power online and to modernize the antitrust laws. The first hearing on “Reviving Competition, Part 1: Proposals to Address Gatekeeper Power and Lower Barriers to Entry Online” will take place on February 25th at 10:00 a.m. ET. According to a statement announcing the hearings, they will focus on: addressing the rise, entrenchment, and abuse of gatekeeper power; lowering barriers to entry and ensuring the survival of trustworthy sources of news online; modernizing and strengthening the tools available to police illegal mergers and monopolization, as well as other anticompetitive conduct; and other improvements to the antitrust laws, current enforcement levels, and congressional oversight as identified by the [Majority Staff Report and Recommendations](#) released last year. Read more [here](#).
- The Washington Post reports that Facebook CEO Mark Zuckerberg, Google CEO Sundar Pichai, and Twitter CEO Jack Dorsey are slated to testify before the House Energy & Commerce Committee on March 25th. Democrats on the panel raised concern on Thursday that the social media companies had allowed misinformation to spread with “real-life, grim consequences for public health and safety.” Read more [here](#).

II. Administration Updates:

- Congressional Democrats have reportedly been in talks with the White House about the best way to approach regulating the tech industry, according to congressional aides and Representative Tom Malinowski (D-NJ), who say that topics so far have included Section 230 and antitrust enforcement. The talks are the first signal that the White House is actively engaged in efforts to tackle Big Tech. Read more [here](#).
- The Senate Finance Committee will consider the nomination of Katherine C. Tai to be the United States Trade Representative (USTR) during an executive session at 10:00 a.m. ET on Thursday, February 25th. More info. [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 Modernization Act. Register [here](#).
- On March 4th, from 7:00 – 8:45 p.m. ET, USPTO will host a webinar on protecting and enforcing intellectual property in Southeast Asia. The program will feature IP specialists from the U.S. government, academia, and the private sector. Register to attend [here](#).

IV. Judicial Updates:

- In a brief filed Thursday in Los Angeles federal court, defunct streaming service Quibi alleged that Elliot Management’s involvement in financing a patent lawsuit against the company was motivated by a personal relationship between the hedge fund’s founder and a colleague. Specifically, Quibi claims that Elliot’s founder and co-Chief Executive Officer Paul Singer is in a romantic relationship with an Elliott colleague whose son is employed by Eko, the party claiming trade-secret theft. The hedge fund’s general counsel Richard Zabel

insisted that the claims were unfounded in a statement, stating that “The irrelevance of Quibi’s focus on personal matters in order to put forward a false narrative about Elliott’s role related to this case demonstrates Quibi’s reluctance to engage forthrightly on the actual underlying legal issues.” Eko has claimed that Quibi’s “turnstyle” feature, which allowed viewers to adjust their perspective depending on the orientation of their devices, infringes the interactive-video company’s technology. A judge ruled in December that Eko presented enough circumstantial evidence to suggest that some of Quibi’s employees had taken elements of Eko’s technology with them when they joined the streaming service, but dismissed many of Eko’s other arguments, as well as its request for a preliminary injunction. Read more [here](#).

V. International Updates:

- On Thursday, News Corp announced that it reached an agreement on a three-year partnership with Google to provide journalism from its news sites around the world in return for “significant” payments by Google. News Corp Chief Executive Robert Thomson said the deal would have “a positive impact on journalism around the globe as we have firmly established that there should be a premium for premium journalism.” The following News Corp publications will be joining Google News Showcase: The Wall Street Journal, Barron’s, MarketWatch, and the New York Post; in the UK: The Times and The Sunday Times, and The Sun; and in Australia: The Australian, news.com.au, Sky News, and multiple metropolitan and local titles. Under the deal, the companies will also enter into an ad revenue-sharing agreement, develop a subscription platform, and YouTube will invest in video journalism. The deal comes as the Australian government considers legislation to require online platforms such as Google and Facebook to pay news outlets for displaying and linking to their content. Read News Corp’s full statement on the deal [here](#).

VI. Industry Updates:

- In an editorial published in *IP Watchdog* this week, Peter J. Pitts, a Visiting Professor at the University of Paris Descartes Medical School and President of the Center for Medicine in the Public Interest, warned that gutting IP protections for COVID-19 medications would “set a terrible precedent” and “chill future medical innovation.” In particular, Pitts raises doubt that the South Africa’s proposal asking the World Trade Organization to suspend IP protections for COVID-19 vaccines and treatments would fulfill its intended goal of accelerating vaccine distribution to developing countries. He cites that historically when developing countries have issued “compulsory licenses,” it has taken years for generic manufacturers to receive the drug formulas, work out logistical and payment challenges, and scale up production. Read more [here](#).