

## PATENT & TRADEMARK POLICY REPORT JANUARY 29, 2021



### I. Congressional Developments:

- On Tuesday, the Senate Commerce, Science, and Transportation Committee held a [confirmation hearing](#) on Rhode Island Governor Gina Raimondo to be Commerce Secretary. During her [opening remarks](#), Governor Gina Raimondo outlined three areas she will focus on as Commerce Secretary. First, Governor Raimondo declared that the U.S. must immediately address the economic damage caused by the pandemic. She expanded on this point by stating that as Commerce Secretary, she would “scale and deploy additional resources to businesses and workers – with a focus on regions and communities that have often been left behind – to help them bounce back and grow stronger than ever.” Second, she emphasized the need to bolster American manufacturing competitiveness in the global economy. Specifically, she highlighted her intention to have the U.S. invest in innovation and technology and also take aggressive trade enforcement actions to combat China’s unfair trade practices. Further, she said she would work to reshore jobs that have gone overseas by “deploying the full resources of the agency to keep the American worker at the center of U.S. trade policy.” Lastly, in her opening statement, Governor Raimondo spoke of the need to address climate change. She declared that “climate crisis poses an existential threat to our economic security, and we must meet this challenge by creating millions of good, union jobs that power a more sustainable economy.” Of note, Agreeing with Senator Todd Young (R-IN), Governor Raimondo suggested that standard-setting could provide an avenue to outcompete China in emerging technology. She said that the National Institute of Standards and Technology

### Headlines and Highlights:

- Senate Commerce Committee holds nomination hearing for Governor Gina Raimondo to be Commerce Secretary.
- Senator Inhofe introduces bill to hold Chinese companies accountable for paying licensing fees.
- Senator Portman announces that he will not seek reelection.
- USPTO responds to congressional inquiry about a gender gap in patent practitioners.
- President Biden considers Big Tech nemesis Lina Khan for top antitrust role.
- EU urges President Biden to help draft rule book to rein in Big Tech.
- EU lawmakers ask Big Tech CEOs to testify at Feb. 1<sup>st</sup> hearing.

could play a pivotal role in standard-setting and declared that “America needs to lead in the standard-setting, especially as it relates to new technology.” Read a summary on the hearing [here](#).

- On Monday, Senator Jim Inhofe (R-OK) introduced the *Protecting American Innovation and Development (PAID) Act of 2021*. The bill directs the U.S. Department of Commerce to create a watch list of bad-actor Chinese companies who are selling wireless products in the U.S. market, but are refusing to pay licensing/royalty fees to free-market developers. Those companies identified as bad actors on the watch list would have 12 months to engage in negotiations or arbitration with free-market developers to set the appropriate licensing/royalty rate. If a deal is not reached, the bad actors would no longer be able to access the U.S. market to sell wireless devices such as phones, laptops, and TVs. Read more [here](#).
- On Monday, Senator Rob Portman (R-OH) announced that he will not seek another six-year term in the U.S. Senate when his current term expires in 2022. In a statement, Senator Portman explained that the increasing partisan gridlock contributed to his decision to not seek reelection. Read his full statement [here](#).
- Incoming Senate Judiciary Antitrust Subcommittee Chair Amy Klobuchar (D-MN) said this week that she is eager to advance antitrust legislation to address the power amassed by large technology companies. “With a new administration, new leadership at the antitrust agencies, and Democratic majorities in the Senate and the House, we’re well positioned to make competition policy a priority for the first time in decades,” Klobuchar said on Wednesday. “We need to start by working to strengthen antitrust enforcement and making it more effective.” Read more [here](#).
- In a memo obtained by *Axios* this week, House Energy & Commerce Committee Ranking Member Cathy McMorris Rodgers (R-WA) outlined her vision for holding Big Tech accountable. Of note, she urged her Republican colleagues to work with Democrats on an agreement to sunset or establish a reauthorization date for Section 230 of the Communications Decency Act (CDA). The plan includes other areas of action that could potentially garner bipartisan support, including exploring the power e-commerce giants exert in online marketplaces and making content moderation decisions more transparent. Read more [here](#).

## **II. Administration Updates:**

- News surfaced this week that Lina Khan, an antitrust expert who served as legal counsel in the House Judiciary Antitrust Subcommittee’s investigation into Amazon, Facebook, Google, and Apple, is being eyed to fill one of the open commissioner positions at the Federal Trade Commission (FTC). Commissioner Rohit Chopra has reportedly been advocating for Khan to fill his seat when he leaves the Commission to run the Consumer Financial Protection Bureau (CFPB). Khan burst into antitrust circles in 2017 when she released the legal paper “Amazon’s Antitrust Paradox,” which argued that current antitrust doctrine is ill-suited to rein in internet giants like the e-commerce website. Read more [here](#).

## **III. USPTO Updates:**

- Last week, USPTO responded to a December letter from Senator Mazie Hirono (D-HI) and Senate Judiciary IP Subcommittee leaders Thom Tillis (R-NC) and Chris Coons (D-DE) asking the Office about a gender gap in patent practitioners. Lawmakers sent the inquiry after Mary T. Hannon of DePaul University penned an article arguing that there is a formidable gender gap in individuals eligible for the patent bar, primarily based on the categories of technical background required to sit for the bar. In its response, USPTO cites that 29.22% of the 397 applicants that have taken or passed the registration examination since October 2019 selected the “Ms.” field on their applications. Meanwhile, of the 1,937 applicants who have submitted applications electronically since October 19, 2019, 65.67% chose the “Mr.” salutation while only 34.33% chose “Ms.” The USPTO also clarifies in the letter that it has not undertaken any formal studies specific to evaluating the impact of admission criteria to the patent bar on the diversity of patent practitioners. Read the response letter [here](#) and more [here](#).
- Late last week, USPTO launched an informational webpage on the Trademark Modernization Act of 2020 (TMA), which provides new procedures to challenge trademark applications and registrations with inaccurate claims of use in commerce. TMA also gives USPTO the authority to shorten response deadlines to move applications through the system more quickly. The new webpage identifies key provisions of the TMA and offers an email box to ask questions and provide feedback. More info. [here](#).

#### **IV. Judicial Updates:**

- On Thursday, iRobot Corp., maker of Roomba robotic vacuum cleaners, filed a patent infringement complaint at the U.S. International Trade Commission (ITC) seeking to get JS Global Lifestyle Co.’s SharkNinja vacuums and hybrid vacuum-moppers cut out of the U.S. market. The complaint claims that SharkNinja has incorporated the Massachusetts-based iRobot’s inventions into Chinese-made knockoffs. As such, it requests the Commission to ban the imports of various SharkNinja products, including the ION, IQ, and the AI wet/dry. Read more [here](#).

#### **V. International Updates:**

- In a speech to the Davos World Economic Forum delivered on Tuesday, European Commission President Ursula von der Leyen urged President Biden to help draw up a common rule book to rein in the power of Big Tech companies. “The business model of online platforms has an impact and not only on free and fair competition, but also on our democracies, our security and on the quality of our information,” von der Leyen said. “That is why we need to contain this immense power of the big digital companies.” Von der Leyen said that the digital economy rule book could encompass areas such as data protection, privacy rules, and security of critical infrastructure. Read more [here](#).
- Chinese President Xi Jinping warned U.S. and European leaders to refrain from forming an alliance against China or they risk pushing “the world towards division, if not confrontation” at the virtual gathering of the World Economic Forum. “Repeatedly, history and the reality reminded us that, if we walk down the path of confrontation — be it a cold war, a hot war, a trade war or a tech war — all countries are going to suffer in terms of their interests and their people’s well-being,” Xi said. The Biden Administration has criticized China for human rights abuses and unfair trade practices, but it has indicated that the

administration will pursue a multilateral response through international organizations. White House press secretary Jen Psaki responded Monday, “China’s engaged in conduct that hurts American workers, blunts our technological edge and threatens our alliances and our influence in international organizations,” she told reporters. “What we’ve seen over the last few years is that China’s growing more authoritarian at home and more assertive abroad. And Beijing is now challenging our security, prosperity and values in significant ways that require a new U.S. approach.” Read more [here](#).

## **VI. Industry Updates:**

- This week, EU lawmakers asked the CEOs of Amazon, Apple, Facebook, and Alphabet to testify at a hearing in Brussels on February 1<sup>st</sup>. The European Parliament is preparing input into proposals by the European Commission to force the tech giants to play fairly with rivals and fine those that do not sufficiently mitigate fake news or harmful content. “The purpose of the planned hearing is to have an exchange with the chief executive officers of the four globally leading platform companies to learn about their current business models and future concepts as they face the challenges of altering market conditions,” the invitation explained. “The event will contribute to preparing the members of the European Parliament for the upcoming discussions on potential new regulation for the digital sector.” Read more [here](#).