

## PATENT & TRADEMARK POLICY REPORT JULY 16, 2021



### I. Congressional Developments:

- On Tuesday, the Senate Judiciary Antitrust Subcommittee held a hearing titled “A Prescription for Change: Cracking Down on Anticompetitive Conduct in Prescription Drug Markets.” The following witnesses testified before the Committee: Mr. Michael Kades (Washington Center for Equitable Growth); Mr. Alden Abbott (The Mercatus Center, George Mason University); Mr. Geoffrey Levitt (testifying on behalf of PhRMA); Dr. Rachel Moodie (Fresenius Kabi); and Mr. David Mitchell (Patients for Affordable Drugs). Senators on both sides of the aisle inquired about how Congress can act to combat rising prescription drug prices through legislation to address perceived anticompetitive behavior in the industry. In particular, senators inquired about possible solutions to combat the perceived anticompetitive actions of product hopping, patent thickening, rebate traps, and sham petitions. Of note, during the Q&A portion of the hearing, Senator Cotton (R-AR) also raised concern for the Biden Administration’s support for the WTO IP waiver. At the end of the hearing, Chair Klobuchar (D-MN) said she was leaving the hearing more confident about the viability of legislative reform than she was entering. Among other areas, Chair Klobuchar identified high interest from members on both sides of the aisle for addressing patent thickening and ensuring that enforcement agencies are adequately funded. Watch the full hearing [here](#).
- On Wednesday, the Senate passed legislation by unanimous consent to ban the import of products from China’s Xinjiang region. Under the *Uyghur Forced*

### Headlines and Highlights:

- Senate Judiciary Antitrust Subcommittee considers how Congress can act to combat rising prescription drug prices through legislation to address perceived anticompetitive behavior in the industry at hearing.
- Senate Finance Committee reports favorably out of Committee two deputy U.S. trade representative nominees.
- Huawei settles patent infringement lawsuits it had filed against Verizon.
- President Biden signs sweeping EO on competition policy.
- Top EU digital enforcer Margrethe Vestager calls on countries to cooperate in their efforts to check the power of Big Tech companies.
- USPTO unveils details on “Invention-Con 2021.”

*Labor Prevention Act* ([S. 65](#)), there will be a “rebuttable presumption” that goods manufactured in the region are made with forced labor and are therefore banned under the 1930 Tariff Act, unless otherwise certified by U.S. authorities. The legislation was sponsored by Sens. Marco Rubio (R-FL) and Jeff Merkley (D-OR). Although it does not have a House companion, aides on both sides of the aisle told *Reuters* that they expect the measure to get strong support in the House. The lower chamber passed a similar measure with nearly unanimous support last year. Read more [here](#).

- On Tuesday, the Senate Finance Committee reported favorably out of Committee two deputy U.S. trade representative nominees. Sarah Bianchi’s nomination was approved by a 27-1 vote, with just Senator Lankford (R-OK) voting against it. Meanwhile, Jayme White was approved by a 25-3 vote, with the following Republicans opposing his nomination: Lankford, Scott (R-SC), and Daines (R-MT). Bianchi’s portfolio will include Asia, Africa, Investment, Services, Textiles, and Industrial Competitiveness, while White’s will include the Western Hemisphere, Europe, the Middle East, Labor, and Environment. More info. [here](#) and [here](#).

## II. Administration Updates:

- Late last week, President Biden signed a sweeping executive order (EO) on competition policy. The EO includes 72 initiatives by more than a dozen federal agencies to promptly tackle what the Biden Administration has identified as “the most pressing competition problems across our economy.” It establishes a White House Competition Council, which will be Chaired by the Assistant to the President for Economic Policy and Director of the National Economic Council, to oversee the order’s implementation. Among other issues, the EO includes directives related to drug pricing, standard-essential patents, right to repair, and competition in seed markets. On drug pricing, it directs the HHS Secretary to submit a report to the Council within 45 days detailing how the agency plans to combat “excessive pricing” of prescription drugs and enhance domestic pharmaceutical supply chains, reduce the prices paid by the Federal Government for such drugs, and address the “recurrent problem of price gouging.” It also directs the HHS Secretary, the Commissioner of Food and Drugs, will write a letter to the USPTO Director “enumerating and describing any relevant concerns of the FDA” regarding generic drug and biosimilar competition being unjustifiably delayed under the patent system. Find the full EO [here](#), a fact sheet [here](#), and a memo from ACG summarizing key elements [here](#).

## III. USPTO Updates:

- USPTO is hosting a free online event titled “Invention-Con 2021” from August 18<sup>th</sup>-20<sup>th</sup>. The August 18<sup>th</sup> event will feature Gitanjali Rao, inventor and TIME magazine’s 2020 Kid of the Year, and other young innovators who will share their experiences and insights. Invention-Con 2021 will also include a wide range of virtual resource booths from the USPTO and other federal government agencies. More info. [here](#).
- USPTO is celebrating the 75<sup>th</sup> anniversary of the passage of the Lanham Act – the primary federal trademark law of the U.S. – on July 27<sup>th</sup> from 1:00 – 2:00 p.m. ET. Senator Chuck Grassley (R-IA) will deliver remarks at the event, which will also feature a screening of the Lanham Act documentary produced by the National Inventors Hall of Fame. More info. and register [here](#).

- USPTO has issued a NPRM to amend the rules of practice to permit the submission of physical media larger than compact discs for electronic versions of amino acid and nucleotide sequence information, information compiled in a large table, and information relating to a computer program listing. Comments to the NPRM are due by July 26<sup>th</sup>. 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. Nominations are due by July 30<sup>th</sup>. More info. [here](#).

#### IV. Judicial Updates:

- On Monday, news surfaced that Huawei Technologies has settled two U.S. patent infringement lawsuits brought against Verizon Communications Inc. Huawei had filed suit in two federal courts in 2020, demanding that Verizon pay it for fees for the use of dozen of patents. Although the terms of the settlement were not disclosed, Verizon said that it is “happy with the settlement” in a statement, praising its team for doing “an outstanding job bringing this protracted matter to a close.” Read more [here](#).
- On Wednesday, Senators Bob Menendez (D-NJ) and Cory Booker (D-NJ) introduced legislation to safeguard the personally identifiable information of federal judges and their immediate families. The bill is crafted in response to the fatal, targeted attack on U.S. District Court Judge Esther Salas’s New Jersey home. The Daniel Anderl Judicial Security and Privacy Act of 2021—named for Salas’s son who was murdered during the violent home invasion— is cosponsored by Sens. Lindsay Graham (R-SC), Senate Judiciary Committee chairman Dick Durbin (D-IL), John Kennedy (R-LA), and Dianne Feinstein (D-CA). In the House, Rep. Mike Sherrill (D-NJ) introduced companion legislation, which Rep. Brian Fitzpatrick (R-PA) also signed onto. Read more [here](#).

#### V. International Updates:

- On Monday, during a *Washington Post Live* interview, Margrethe Vestager, Europe’s top digital enforcer, called for countries to cooperate in their efforts to check the power of Big Tech companies. “We do not have a global competition enforcer, but we have global companies,” Vestager declared. “The more we are aligned, the better chance we have.” Vestager added that she was “really encouraged” by the uptick in antitrust actions in the U.S. in recent years, in particular praising President Biden’s sweeping competition policy [executive order](#). She also spoke fondly of the new FTC Chair Lina Khan, saying that Khan “brings new ideas,” and has demonstrated “a readiness to push enforcement.” Read more [here](#).

#### VI. Industry Updates:

- *IPWatchdog* reports that over one-hundred professors and academics from around the world signed an open letter supporting India and South Africa’s proposed waiver of certain provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The U.S. made news in May when the Biden Administration expressed its support

for the waiver, which the EU has continued to oppose in ongoing talks. The letter insists that the waiver is a “a necessary and proportionate legal measure towards the clearing of existing intellectual property barriers to scaling up of production of COVID-19 health technologies in a direct, consistent and effective fashion.” Furthermore, it claims that the strategies deployed so far to help ensure that the vaccine is equitably distributed, such as the World Health Organization (WHO) COVAX initiative or voluntary licensing provisions, are insufficient to addressing shortages. Read more [here](#).