

## PATENT & TRADEMARK POLICY REPORT SEPTEMBER 10, 2021



### I. Congressional Developments:

- At the request of Senate Judiciary IP Subcommittee Chairman Patrick Leahy (D-VT) and Ranking Member Thom Tillis (R-NC), on August 31<sup>st</sup>, USPTO sent a report to Congress “analyzing infringement disputes between patent and trademark rights holder and states and state entities.” The request was in response to the [Allen v. Cooper](#) Supreme Court decisions in March 2020. In its research, USPTO identified 78 instances of asserted state infringements over a period running from 1985 to the present, including 49 assertions made with respect to patents and 29 made regarding trademarks. However, the report concludes that the precise legal significance of these numbers cannot, at present, be ascertained. This is because the Supreme Court did not provide precise guidance as to how the “widespread and persisting” standard should be applied. Read the full report [here](#).
- On September 7<sup>th</sup>, Reps. DelBene (D-WA) and Schweikert (R-TX) introduced the *Advancing America’s Interests Act*, which seeks to modernize the International Trade Commission (ITC) and its processes to ensure that resources are properly directed toward advancing America’s interests and protecting its industries, workers, and consumers. Under the bill, the “domestic industry” standard would require that a U.S. company cannot be used as a plaintiff/complainant unless they voluntarily join a complaint requesting the ITC’s relief. The bill would also require the ITC to consider public interest as paramount to the exercise of its remedial powers (regarding an exclusion order) and affirmatively determine that any exclusion serves the

### Headlines and Highlights:

- USPTO sends report to Congress “analyzing infringement disputes between patent and trademark rights holders and states and state entities.”
- Reps. DelBene and Schweikert introduce the *Advancing America’s Interests Act*.
- Chairman Leahy and Ranking Member Tillis ask USPTO to improve prior art references and searches between the USPTO and other federal agencies, specifically the FDA.
- USPTO extends deadline for submitting comments on the state of patent eligibility jurisprudence to October 15<sup>th</sup>.
- Deadline for submitting applications for the USPTO Patents for Humanity COVID-19 award is September 30<sup>th</sup>.

public interest. Read more [here](#).

- On September 9<sup>th</sup>, Senate Judiciary IP Subcommittee Chairman Leahy and Ranking Member Tillis sent USPTO a letter asking the office to improve prior art references and searches between the USPTO and other federal agencies, specifically the FDA. The competition policy executive order (EO) that President Biden signed on July 9<sup>th</sup> tasked the FDA with writing to the USPTO to help ensure that the patent system, while incentivizing innovation, does not also “unjustifiably” delay generic drug and biosimilar competition “beyond that reasonably contemplated by applicable law.” Read the full letter [here](#) and EO [here](#).
- *The Verge* reports that Senators Elizabeth Warren (D-MA) and Richard Blumenthal (D-CT), along with Representatives Pramila Jayapal (D-WA) and Mondaire Jones (D-NY), wrote a [letter](#) to Attorney General Merrick Garland and Acting U.S. Attorney General Nicholas Ganjei of Texas, calling for an investigation into a possible secret 2018 agreement between Google and Facebook concerning digital advertising. “The Jedi Blue agreement [allegedly guaranteed that Facebook](#) would receive a fixed percentage of advertising bids on Google. In return, Facebook agreed to curtail its involvement with header bidding in ad auctions,” the complaint states. Read more [here](#).

## II. Administration Updates:

- The Federal Trade Commission (FTC) has released a tentative agenda for its September 15<sup>th</sup> meeting. During the open meeting, which is slated to begin at 11:00 a.m. ET, commissioners will consider a wide array of topics, including a proposed policy statement on privacy breaches by health apps and connected devices, proposed revisions to FTC procedural rules concerning petitions for rulemaking, and proposed withdrawal of 2020 vertical merger guidelines. Find a tentative agenda [here](#).

## III. USPTO Updates:

- USPTO has extended the deadline for submitting comments on the state of patent eligibility jurisprudence and its effect on investment and innovation in the United States to October 15<sup>th</sup>. Read more [here](#).
- The deadline for the submission of applications for the USPTO Patents for Humanity COVID-19 award is September 30<sup>th</sup> at 5:00 p.m. ET. More info. [here](#).
- On August 19<sup>th</sup>, USPTO wrote Senate Judiciary IP Subcommittee Chairman Leahy and Ranking Tillis, as well as Senators Cotton (R-AR), Hirono (D-HI), Coons (D-DE), and Cornyn (R-TX), thanking them for requesting the USPTO to fund and engage the Administrative Conference of the United States to study and recommend whether and how a small claims patent tribunal could be established and how it might function. The letter states that the USPTO is reviewing the previous work from the ABA and the USPTO on the matter and “will provide additional information soon.”

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

- On September 10<sup>th</sup>, an East Texas federal court ruled that PNC Bank must face claims that its mobile banking technology infringes military-focused financial services group United Services Automobile Association's (USAA) patents. USAA first sued PNC last year for infringing four patents related to a system for depositing checks remotely using mobile device. It also filed a separate suit against PNC in March alleging that the bank infringed two additional mobile-banking patents. Read more [here](#).

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

- The first formal meeting of the U.S. – EU Trade and Technology Council (TTC) will be held in Pittsburgh on September 29<sup>th</sup> and 30<sup>th</sup>. Commerce Secretary Gina Raimondo stated that the group, which was set up to coordinate digital and trade policies across the Atlantic, “will discuss semiconductors, the troubled EU – U.S. data transfer agreement known as Privacy Shield, supply chain security and ‘the proper way to regulate platform companies.’” Read more [here](#).

#### **VI. Industry Updates:**

- On September 15<sup>th</sup>, *POLITICO* is hosting a virtual event titled “At a Digital Crossroads — Washington and Silicon Valley,” where they will explore the evolving relationship between the power corridors of Washington and the tech sector. So far, Acting FCC Chair Jessica Rosenworcel, Rep. Yvette Clarke (D-NY), Pittsburgh Mayor William Peduto, and the CEOs of tech trade groups NetChoice, Chamber of Progress and the Internet Association are slated to speak at the event. Register online [here](#).