

PATENT & TRADEMARK POLICY REPORT NOVEMBER 10, 2022



I. Congressional Developments:

- Members of the 117th Congress will return to town on November 14th for what is expected to be a very busy lame duck session. Without a red wave producing a significant Republican majority for the 118th Congress, it is expected that there will be more political oxygen for members to strike deals this fall on major outstanding items and send them to President Biden's desk for final signature in the coming weeks. The biggest outstanding item is funding the government when the current continuing resolution (CR) expires on December 16th. To avert a government shutdown (or partial shutdown), Congress will either need to broker a deal on the twelve annual appropriations bills or pass another CR to fund all (or some) of the twelve titles at current levels. At this point, a short-term CR (one-week) may be needed. But it seems most likely that there will be an end-of-the-year omnibus appropriations package to fund the government through Fiscal Year (FY) 2023, as we have seen in recent years. There is also additional political pressure for members to broker a deal on FY2023 appropriations before the end of the year since the leaders of the Senate Appropriations Committee – Leahy (D-VT) and Shelby (R-AL) – are both retiring. An omnibus appropriations package also appears to be the most likely vehicle for Congress to attach emergency funding to help with Hurricane Ian recovery efforts to. Another so-called “must pass” legislative item on the agenda for the lame duck session is the annual defense authorization bill, the National Defense Authorization Act (NDAA), which has been passed and enacted for 61 years. Some members will also be pushing for an end-of-year tax extender package to reauthorize a number of temporary tax relief

Headlines and Highlights:

- Congress to return for busy lame duck session next week.
- House Democratic leadership elections slated for November 30th – and House GOP leadership elections scheduled for November 15th.
- USPTO and the Center for Innovation Policy at Duke Law hold joint briefing on SMEs and IP featuring remarks from the head of patent offices in the United States, European Union, and Japan.
- Self-proclaimed “upcycler” settles trademark infringement lawsuit brought by Louis Vuitton in U.S. District Court for the Southern District of Texas.
- Amazon identifies and dismantles three counterfeiting operations in China.

provisions that expired at the end of 2021 and a slate of provisions that are slated to expire at the end of this year as well (full list [here](#)).

Meanwhile, looking ahead to the 118th Congress – which will convene on January 3rd, 2023 – New Member Orientation in the House of Representatives will begin next week. The House Democratic Caucus is expected to hold leadership elections on November 30th and the House Republican Caucus is expected to hold their leadership elections on November 15th. In the upper chamber, the Senate GOP is expected to hold their leadership elections on November 16th and the Democratic Caucus’ Senate elections should be held sometime in early December. All eyes will be on the Georgia runoff election for their Senate seat on December 6th.

II. USPTO Updates:

- On Wednesday, November 30th, from 1:00 – 4:00 p.m. ET, USPTO is hosting a free, online Veterans Innovation and Entrepreneurship Program. The program will include a fireside chat with Dr. Rory Cooper, U.S. Army veteran and inventor; Founder, Director, and CEO of the Human Engineering Research Laboratories. Cooper will discuss obstacles he’s overcome, specific inventions that have helped veterans and people with disabilities, and his strong desire to continue his service. Register for the event [here](#).
- Later this month and in early December, USPTO’s Stakeholder Offerings and Resources (SOaR) program is hosting a series of virtual training sessions on the eligibility requirements of patents for inventions, under title 35 U.S.C. § 101. The events will be held on November 29th and 30th, as well as December 1st. Find more info. [here](#).
- USPTO has extended the comment period for stakeholders to submit comments on the Office’s initiatives to ensure the robustness and reliability of patent rights. Comments on the matter are now due February 1^s (instead of January 3rd). Find more info. [here](#) and [here](#).
- On November 15th, from 1:00 – 3:30pm ET, USPTO is hosting a presentation on the fundamentals of patent litigation in the United States. It will feature remarks from USPTO attorneys, federal judges, and in-house counsel on Federal district courts, the U.S. International Trade Commission, and the PTAB. Register online [here](#).

III. Judicial Updates:

- *The Fashion Law* reports that a wholesaler in the business of “upcycling” has quietly agreed to settle a trademark infringement lawsuit brought against them by Louis Vuitton. Louis Vuitton filed suit against the wholesaler in question - Sandra Ling Designs, Inc. – in February 2021 for allegedly infringing their trademarks by offering up apparel, handbags, and accessories made from “purportedly authentic pre-owned” Louis Vuitton goods that they altered by “disassembl[ing] and deconstruct[ing]” to craft new products and/or by “adding decorations, such as tassels, stones, or beading.” Sandra Ling claimed that her goods did not infringe the trademarks because the reconstructed items no longer “meet Louis Vuitton’s strict quality standards.” However, in a filing last month in the U.S. District Court for the Southern District of Texas, Sandra Ling Designs, Inc. and its owner Sandra Ling offered to allow a judgment to be entered against them, including a \$603,000 sum and a permanent injunction, and also moved to drop the counterclaims they lodged against Louis

Vuitton in order to bring the case to a close. Read more [here](#).

- Last Friday, *Vice* reported that GitHub programmers filed a lawsuit against Microsoft and Open AI for allegedly violating their open-source licenses and using their code to train Microsoft's latest AI tool, called Copilot. "I am grateful to the programmers and users who came forward to bring this case to fruition and ensure that corporations like Microsoft, GitHub, and OpenAI cannot unfairly profit from the work of open-source creators," said Joseph Saveri, the lawyer whose firm is filing the class-action lawsuit. "This case represents the first major step in the battle against intellectual-property violations in the tech industry arising from artificial-intelligence systems. In this case, the work of open-source programmers is being exploited. But this will not be the last community of creators who are affected by AI systems. Our firm is committed to standing up for these creators and ensuring that companies developing AI products are held accountable under the law." Read more [here](#).

IV. International Updates:

- On Tuesday, November 8th, from 10:00 – 11:30am ET, USPTO and the Center for Innovation Policy at Duke Law held a joint briefing on “International perspectives: Intellectual property, small and medium-sized enterprises, and global markets.” Elizabeth Dougherty with the USPTO’s regional office kicked off the event by providing some background on the research triangle region. She highlighted that the region converges business, government, and academia to successfully create an innovation hub. The triangle region has over 7,000 companies representing a diverse array of industries, including Ag Tech, Fintech, and Life Sciences. The program featured three panels with speakers in government – including the heads of the patent offices in Japan, the European Union, and the United States – and innovators in the private sector. The meeting was held as part of the 40th conference of the Trilateral Cooperation, a forum that the three offices established in 1983 to explore ways to streamline and harmonize patent examination practices and procedures for the benefit of the global innovation community. During the first panel, USPTO Director Kathi Vidal, European Patent Office President António Campinos, and Japan Patent Office Commissioner Koichi Hamano spoke about how their Offices are supporting SMEs and the unique challenges those entities face in their country/region. In one interesting exchange, Campinos underscored the importance of ensuring that IP systems are interoperable globally. To highlight some of the challenges surrounding patenting for smaller companies, Mr. Campinos said that one company informed him that it would cost 1 million euros to change their name across the different jurisdictions. Read more about the event [here](#).

V. Industry Updates:

- On Wednesday, Amazon announced that it has identified and dismantled three counterfeiting operations in China, resulting in law enforcement seizing more than 240,000 counterfeit items in the Guangdong and Jiangxi provinces. The seized items included counterfeit items of luxury, sports and automotive brands. Read more [here](#).