

PATENT & TRADEMARK POLICY REPORT JANUARY 27, 2023



I. Congressional Developments:

- On Tuesday, the Senate Committee on the Judiciary [held a hearing](#) titled “That’s the Ticket: Promoting Competition and Protecting Consumers in Live Entertainment.” The hearing focused on competition regarding the \$12 billion live music entertainment market, prompted by November’s cancellation of public sales for a Taylor Swift tour. The cancellation followed a website crash amid massive demand. The Committee hosted President & CEO of LiveNation Joe Berchtold alongside six other witnesses, including Jack Groetzinger, CEO of SeatGeek, singer-songwriter Clyde Lawrence, and multiple antitrust experts. Senators had the opportunity to question LiveNation directly regarding claims of market monopolization demonstrated in the form of excessive control of concert venues and the structure of ticket prices and service fees. Full hearing coverage from ACG can be provided upon request.
- On Thursday, the Senate Democrats released their rosters for the 118th Congress. The following members will serve on the Senate Judiciary Committee: Chairman Durbin (D-IL) and Sens. Feinstein (D-CA), Whitehouse (D-RI), Klobuchar (D-MN), Coons (D-DE), Blumenthal (D-CT), Hirono (D-HI), Booker (D-NJ), Padilla (D-CA), Ossoff (D-GA), and Welch (D-VT). More info can be found [here](#).
- Last week, House Judiciary Committee Chairman Jim Jordan (R-OH) announced the Republican representatives who will serve on the Committee during the 118th Congress. Of note, the following Republican

Headlines and Highlights:

- Senate Judiciary Committee holds hearing to examine competition in the ticketing market for live entertainment.
- House Judiciary Committee members announced.
- DOJ files civil antitrust suit against Google for allegedly monopolizing multiple digital advertising technology products in violation of Sections 1 and 2 of the Sherman Act.
- USPTO extends deadline for comments on strategic plan to February 17th.
- USPTO to host virtual panel discussion on the duty of disclosure and duty of reasonable inquiry on February 23rd.
- In *Hill* editorial, I-MAK Co-Executive Directors call on Congress to address rising drug prices through reforming the U.S. patent system.

members will be new to the Committee: Reps. Ben Cline (R-VA), Lance Gooden (R-TX), Jeff Van Drew (R-NJ), Barry Moore (R-AL), Troy Nehls (R-TX), Russell Fry (R-SC), Harriet Hageman (R-WY), Wesley Hunt (R-TX), Kevin Kiley (R-CA), Laurel Lee (R-FL), and Nathaniel Moran (R-TX). More info. [here](#).

II. Administration Updates:

- On Tuesday, the Department of Justice (DOJ) filed a civil antitrust suit against Google for allegedly monopolizing multiple digital advertising technology products in violation of Sections 1 and 2 of the Sherman Act. The complaint alleges that Google monopolizes key digital advertising technologies, collectively referred to as the “ad tech stack,” that website publishers depend on to sell ads and that advertisers rely on to buy ads and reach potential customers. “The complaint filed today alleges a pervasive and systemic pattern of misconduct through which Google sought to consolidate market power and stave off free-market competition,” said Deputy Attorney General Lisa O. Monaco. “In pursuit of outsized profits, Google has caused great harm to online publishers, advertisers, and American consumers. This lawsuit marks an important milestone in the Department’s efforts to hold big technology companies accountable for violations of the antitrust laws.” In 2020, the Justice Department [filed a civil antitrust suit against Google](#) for monopolizing search and search advertising; the past claim represents different markets from the digital advertising technology markets at issue in the lawsuit filed today. The Google search litigation is scheduled for trial in September 2023. Read more [here](#).

III. USPTO Updates:

- On February 23rd, from 3:00 – 4:00 pm ET, USPTO is hosting a virtual panel discussion on the duty of disclosure and reasonable inquiry. Last July, USPTO issued a Federal Register notice clarifying these duties, including materials or statements material to patentability or statements made to the USPTO that are inconsistent with statements submitted to the Food & Drug Administration and other government agencies. More info on the event [here](#) and find a Federal Register notice [here](#).
- USPTO extended the comment period for [Expanding Opportunities to Appear before the Patent Trial and Appeal Board](#) and [Expanding Admission Criteria for Registration to Practice in Patent Cases before the United States Patent and Trademark Office](#) until January 31, 2023. USPTO explained that the extension should help ensure that all stakeholders have sufficient opportunity to submit comments on the PTAB proposal and Patent proposals. More info. [here](#).
- USPTO is seeking public comments on its draft Strategic Plan for 2022-2026. The plan sets forth five goals: drive inclusive U.S. innovation and global competitiveness; promote the efficient delivery of reliable IP rights; promote the protection of IP against new and persistent threats; bring innovation to positive impact; and generate impactful employee and customer experiences by maximizing agency operations. Comments are due to USPTO by February 17th (previously January 31st). Find more info on how to provide feedback [here](#) and read the full draft plan [here](#).
- On February 28th, from 3:00-4:00pm, USPTO is hosting a free online webinar titled “Together in Innovation: Agricultural advances.” Special guests and expert panelists will

cover: how diverse teams are an essential part of a successful business strategy, the challenges women innovators overcome in ag innovation, and valuable resources innovators can use to protect IP and secure funding for their enterprises. Find more info and register for the special event [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](#).

IV. Industry Updates:

- On Tuesday, *TechCrunch* reported that the National AI Research Resource’s [final report](#) recommended a new multibillion-dollar research organization to improve the capabilities and accessibility of artificial intelligence (AI). The report’s executive summary states, “To realize the positive and transformative potential of AI, it is imperative to harness all of America’s ingenuity to advance the field in a manner that addresses societal challenges, works for all Americans, and upholds our democratic values... A widely accessible AI research cyberinfrastructure that brings together computational resources, data, testbeds, algorithms, software, services, networks, and expertise, as described in this report, would help to democratize the AI research and development (R&D) landscape in the United States for the benefit of all.” To fund this new project, Congress would have to allocate nearly \$750 million every two years over a six-year period, totaling \$2.25 billion. According to the article, it would require \$60 to \$70 million yearly in operating costs. Read more [here](#).
- This week, *The Hill* published an editorial by co-executive directors of the Initiative for Medicines, Access & Knowledge (I-MAK) Tahir Amin and Priti Krishtel calling on Congress to reform the U.S. patent system to stem rising drug prices. The article claims that one key contributor to the rising drug prices is the USPTO granting multiple patents to a single drug (so-called “patent thickets.”) The editorial suggests that Congress could address the perceived problem by ‘authorizing the executive branch to raise the bar for patents and provide oversight that incentivizes real competition...’ The I-MAK co-executive directors also suggest that Congress could “give the American people multiple seats on the USPTO’s advisory committee,” as well as create a public-led committee to identify emerging issues and propose solutions. Read the full editorial [here](#).