

PATENT & TRADEMARK POLICY REPORT MARCH 3, 2023



I. Congressional Developments:

- On Wednesday, the Senate Judiciary Committee held a hearing on “Oversight of the Department of Justice.” The entire Judiciary Committee was in attendance, and the Honorable Merrick B. Garland (Attorney General, United States Department of Justice) testified on behalf of the Department of Justice (DOJ). Attorney General Garland addressed a variety of issues facing the DOJ, including – Section 230, antitrust laws, climate change, fentanyl, and protests at the homes of Supreme Court justices. Despite some areas of agreement between Democrats and Republicans, such as the need for stronger regulation of tech companies and the importance of preventing concentration in industries and mergers, disagreements emerged on other topics. Many Republican Senators focused on issues such as the protection of Supreme Court justices’ homes and the labeling of judges based on their political affiliations, while Democratic Senators concentrated on gun control and climate change. Regarding antitrust, the hearing emphasized the need for collaboration between Congress and the DOJ to regulate the tech industry better and prevent concentration in already concentrated industries. Committee Chair Dick Durbin (D-IL) stressed the bipartisan effort to address Section 230, citing its adverse effects on drug addiction and children’s mental health. He called for stronger enforcement actions against social media companies to combat the spread of illegal drugs, suggesting that current laws provide too much protection from liability. Meanwhile, Sen. Amy Klobuchar (D-MN) inquired about antitrust priorities, particularly in the tech sector. Sen. Chuck Grassley (R-IA) expressed concern about concentration in industries and mergers, highlighting

Headlines and Highlights:

- Senate Judiciary Committee holds oversight hearing for the Department of Justice.
- Senate Judiciary Privacy and Tech Subcommittee to hold hearing on “Platform Accountability: Gonzalez and Reform.”
- USPTO and NOAA announce collaboration to promote further innovation in climate and “green” tech areas.
- In precedential Director review decision, Director Vidal clarifies that her June 2022 “compelling merits” memo was not intended to replace PTAB’s analysis under *Fintiv*.
- Effective May 1st, all PTE applications must be submitted electronically via Patent Center or EFS-Web.
- USPTO commences PPH pilot program with MyIPO.

the DOJ's monitoring of the agriculture and pharmaceutical sectors. Attorney General Garland expressed his openness to stronger enforcement actions and signaled his willingness to support legislation that better regulates the tech industry. He indicated a desire to collaborate with Congress to modernize antitrust laws to account for network effects in current two-sided platforms. Watch the full hearing [here](#).

- On Wednesday, March 8th, at 2:00pm ET, the Senate Judiciary Privacy and Technology Subcommittee will hold a hearing titled "Platform Accountability: Gonzalez and Reform." The Supreme Court heard oral arguments in the case concerning Section 230 of the Communications Decency Act last month. The hearing will be livestreamed [here](#) and read more about the case [here](#). No witnesses have been listed yet for the hearing.
- Next Wednesday, March 8th, at 10:00am ET, the House Judiciary IP Subcommittee is holding a hearing on "Intellectual Property and Strategic Competition with China: Part I." Find the hearing notice [here](#).

II. Administration Updates:

- In a press release published this week, the DOJ announced that a man was sentenced in federal court in San Antonio to five years of probation for mail fraud and misrepresentation of Indian Goods under the Indian Arts and Crafts Act. The DOJ claims that Kevin Charles Kowails fraudulently marketed and sold jewelry online that he had received from a manufacturer in the Philippines as "Native American Indian Handmade," "genuine Indian handcrafted," "Zuni," and "Navajo." "For those selling counterfeit Indian art and craftwork it is important to know that wherever you are we will diligently work to find and prosecute you under the Indian Arts and Crafts Act," said Director Meridith Stanton of the U.S. Department of the Interior's Indian Arts and Crafts Board. "This case provides a vivid demonstration of that commitment." Read the full press release [here](#).

III. USPTO Updates:

- On Tuesday, USPTO and the National Oceanic and Atmospheric Administration (NOAA) announced a collaboration to promote and advance further innovation in the climate and "green" technology areas. Under the program, USPTO and NOAA employees will serve out a "detail" at the sister agency for several months, with the intended goal of infusing new knowledge into both agencies. For instance, NOAA experts will provide training to USPTO patent examiners reviewing patent applications related to climate and environmental technologies, and will advise the agency on USPTO green initiatives to help foster innovations in these critical areas. Read more [here](#).
- On Monday, USPTO Director Kathi Vidal issued a precedential Director review decision clarifying that her June 2022 "compelling merits" memo was not intended to replace the PTAB's analysis under *Fintiv*. In her decision, Vidal underscored that the compelling merits standard articulated in the memo is a higher standard than the one set for institution by statute and that the Board must provide its reasoning in determining that the merits are compelling. Read more [here](#) and [here](#).
- On Thursday, USPTO published a Final Rule in the Federal Register announcing that effective May 1st, all patent term extension (PTE) applications, interim PTE applications,

and any related submissions to the USPTO must be submitted electronically via the Office's patent electronic filing system (Patent Center or EFS-Web). More info. [here](#).

- The USPTO has announced an extension of the written comment period for the Federal Register Notice "Joint USPTO-FDA Collaboration Initiatives; Notice of Public Listening Session and Request for Comments," which was published on November 7, 2022. The deadline for submission of comments has been extended until March 10, 2023, to allow all stakeholders sufficient time to provide their input on the issues raised in the notice. Interested parties can read the full text of the notice in the Federal Register and find additional information on the USPTO-FDA collaboration initiatives page. Read more [here](#).

IV. International Updates:

- On Thursday, USPTO commenced a Patent Prosecution Highway (PPH) pilot program with the Intellectual Property Corporation of Malaysia (MyIPO). The PPH program is a worksharing arrangement between two or more patent offices that enables an applicant who receives a positive ruling on patent claims from one participating office to request accelerated prosecution of corresponding claims in another participating office. Therefore, the PPH program allows the applicant to obtain an expedited patentability decision in the second office. Find more information about the pilot program [here](#).
- On Thursday, an American computer scientist urged the United Kingdom's Supreme Court to rule that he is entitled to patents over inventions created by his artificial intelligence (AI) system DABUS. His attempt to register the patents in question was denied in 2019 on the grounds that the inventor must be a human or company, and not a machine. Meanwhile, lawyers from the UK's Intellectual Property Office argued that the appeal should be dismissed. Read more [here](#).