

## PATENT & TRADEMARK POLICY REPORT MAY 12, 2023



### I. Congressional Developments:

- On Tuesday, May 16<sup>th</sup>, the Senate Judiciary Committee’s Subcommittee on Privacy, Technology, and the Law will hold a hearing at 10 am titled “Oversight of AI: Rules for Artificial Intelligence”. According to *The Washington Post*, Christina Montgomery, vice president and chief privacy and trust officer at IBM, and Gary Marcus, a professor emeritus at New York University, are also slated to testify before the Senate Judiciary panel. More information can be found [here](#) and from *The Washington Post* [here](#).
- On Wednesday, May 17<sup>th</sup>, the House Judiciary Committee’s Subcommittee on Courts, Intellectual Property, And The Internet will hold a hearing at 10am titled, “Artificial Intelligence and Intellectual Property: Part I — Interoperability of AI and Copyright Law.” Find more info. [here](#).
- Next Monday, a group of bipartisan House members, hosted by Ted Lieu (D-CA) and Mike Johnson (R-LA), will reportedly have a closed-door, members-only dinner with the CEO of OpenAI Sam Altman. The goal of the dinner is to “educate members,” said Rep. Lieu as more than 50 lawmakers have already RSVP’d. “We’ve all become aware of the extraordinary potential and unprecedented threat that artificial intelligence presents to humanity and the urgent calls for Congress to engage and act thoughtfully before it’s too late,” Rep. Johnson said. “This bipartisan discussion with Mr. Altman will be a very timely and important part of this process.”

### Headlines and Highlights:

- President Biden nominates Deborah Robinson for the role of Intellectual Property Enforcement Coordinator.
- Senate Judiciary Privacy, Technology, and the Law Subcommittee to consider rules for AI during hearing next week.
- House Judiciary IP Subcommittee to hold first hearing in series on AI and IP next week, focused on the interoperability of AI and copyright law.
- Bipartisan group of representatives reportedly having dinner with OpenAI CEO.
- UK Competition and Markets Authority launches an inquiry into the impact of AI on the UK economy.

Read more from *NBC News* [here](#).

## **II. Administration Updates:**

- On Tuesday Morning, President Joe Biden announced his intent to nominate Deborah Robinson for the role of Intellectual Property Enforcement Coordinator (IPEC). Deborah Robinson has held leadership roles during her time as a corporate attorney and in public service as a former prosecutor. As head of intellectual property enforcement at Paramount Global (formerly ViacomCBS), Robinson developed and implemented anti-piracy protocols to protect music, television, digital, and consumer-products properties. Prior to joining Paramount Global, Robinson spent five years protecting music creators' rights at the Recording Industry Association of America and seven years as an Assistant District Attorney for the city of Philadelphia. Robinson received her B.A. from Howard University, her J.D. from University of Pittsburgh School of Law, and she is a member of Alpha Kappa Alpha Sorority, Inc. Read the full press release announcing her nomination [here](#).
- On Wednesday, Federal Trade Commission (FTC) Chair Lina Khan went on CNBC's "Squawk Box" to say that antitrust enforcement, rather than the absence of it, can better position the U.S. to stay ahead of China in the race to innovate new technologies. "What history and experience have shown us is what best positions the United States to compete internationally, to stay ahead internationally, is making sure that we are a home for innovation," Khan said in an interview with CNBC's Andrew Ross Sorkin. "And what best produces breakthrough innovations, cutting edge technologies, is competition. I think we've seen time and time again monopolies and incumbent firms arguing that they need to preserve their monopoly to make sure that the U.S. stays ahead. But historically the U.S. has instead enforced competition laws, enforced antitrust and that is what has led us to be the home of cutting-edge technologies." Read and watch more [here](#).

## **III. USPTO Updates:**

- The next PPAC meeting is scheduled for May 18<sup>th</sup>.
- The next TPAC executive session is scheduled for May 25<sup>th</sup>.
- This week, the USPTO announced that it is seeking nominations to fill up three upcoming vacancies of the Patent Public Advisory Committee (PPAC) and up to three upcoming vacancies on the Trademark Public Advisory Committee (TPAC). The three-year term for new members, who can participate in the committees remotely, will start on December 1<sup>st</sup>, 2023. Nominations must be postmarked or electronically submitted on or before July 3<sup>rd</sup>. You may find more info. [here](#) and [here](#).

## **IV. Judicial Updates:**

- On Tuesday, news surfaced that a jury had cleared Gilead Sciences in a case brought by the federal government in 2019 alleging that Gilead violated the Centers for Disease Control and Prevention's patents on an HIV prevention drug. In a statement, Gilead General Counsel Deb Telman said that the decision confirms the company's "longstanding belief that we have always had the rights to make Truvada and Descovy for PrEP available to all who need it." The Department of Health and Human Services (HHS), the parent entity of

the CDC, did not immediately respond to a request for comment on the verdict. Read more [here](#).

- Last week, the U.S. Merit Systems Protection Board, which hears grievance cases involving federal employees, determined that the USPTO tribunal unlawfully retaliated against one of its own judges for claiming his colleagues improperly added judges to a panel in a patent dispute between Nike Inc and Adidas AG. The decision did not suggest that the outcome of the patent review was affected. Read more [here](#).

## V. International Updates:

- Late last week, *Digital Music News* reported that the UK's Competition and Markets Authority (CMA) is launching an inquiry into the impact of AI on the UK economy. "AI has burst into the public consciousness over the past few months but has been on our radar for some time," adds Sarah Cardell, Chief Executive of the CMA. "It's a technology developing at speed and has the potential to transform the way businesses compete as well as drive substantial economic growth." According to the article, the CMA will investigate how the development of AI models has raised issues revolving around security, copyright, privacy, and economic impact. The CMA is seeking views and evidence from stakeholders and welcomes submissions through June 2, 2023. This inquiry comes on the heels of the UK Government's white paper on AI which noted that "a pro-innovation and proportionate approach to the regulation of how AI is used is key to realize the benefits it has to offer." Read more [here](#).
- On Thursday, the European Union voted on their long-awaited AI Act in what many are calling the de facto global standard for AI. According to *Bloomberg*, Parliamentarians for the EU's internal market and justice committees agreed Thursday that companies creating "foundational" AI models should be required to produce risk assessments, summarize copyrighted material used to train the models, and make sure users know when they're interacting with AI or watching a deepfake. They also voted to ban the real-time use of AI for identifying people in public. The majority of lawmakers, 84, voted for the additional controls in a vote on the EU's Artificial Intelligence Act, while seven voted against the measure and 12 abstained. "Europe is the first regional bloc to significantly attempt to regulate AI, which is a huge challenge considering the wide range of systems that the broad term 'AI' can cover," said Sarah Chander, senior policy adviser at digital rights group EDRI. The entire European Parliament plenary will vote on the full AI Act proposal next month and then the parliament will have to negotiate a final deal with the commission and the EU's 27 member states, according to *Bloomberg*. Recently added provisions to the EU's AI Act would require "foundation" AI models to disclose copyright material used to train the systems, according to a recent partial draft of the legislation obtained by *The Associated Press*. Once the Act does receive final approval, which is expected to be by the end of 2023 or early 2024, there will still be a grace period for implementation. Read more [here](#) and [here](#).