

## PATENT & TRADEMARK POLICY REPORT MAY 19, 2023



### I. Congressional Developments:

- On Tuesday, the Senate Judiciary Subcommittee on Privacy, Technology, and the Law held a hearing titled, “Oversight of A.I.: Rules for Artificial Intelligence.” The hearing encompassed a wide range of concerns related to AI, including privacy, job disruption, copyright, licensing, and the impact of Section 230. Senators heard from the following witnesses: [Samuel Altman](#), CEO, OpenAI; [Christina Montgomery](#), Chief Privacy & Trust Officer, IBM; and [Gary Marcus](#), Professor Emeritus, New York University. The focus of the hearing was on identifying the regulatory measures needed to address these concerns and ensure the responsible development and deployment of AI technologies. There was agreement among Senators and witnesses about the significant risks posed by AI and the need for government regulation. However, there were differing opinions on the specific form and nature of such regulation. Senator Coons (D-DE) confirmed there will be hearings in the Senate IP subcommittee on AI this summer. Multiple Senators and Professor Marcus repeatedly emphasized that Congress had failed to tackle the risks associated with social media during its early stages and pledged to avoid repeating those errors with AI such as Section 230. A full summary memo from ACG can be provided upon request and you may watch the full hearing [here](#).

### II. Administration Updates:

- From May 8<sup>th</sup> – 15<sup>th</sup>, the Office of the United States Trade Representative (USTR) and the Department of Commerce participated in the third negotiating round for

### Headlines and Highlights:

- Senate Judiciary Subcommittee on Privacy, Technology, and the Law considers AI policy at hearing.
- USTR and Department of Commerce participate in third negotiating round for the Indo-Pacific Economic Framework for Prosperity.
- Next TPAC executive session on May 25<sup>th</sup>.
- USPTO proposes creating a separate design patent practitioner bar in NPRM.
- UK’s Competition and Markets Authority (CMA) to block Microsoft’s proposed \$69 billion acquisition of Activism Blizzard.
- In comments responding to USPTO inquiry, Google states that AI technology should not be considered an “inventor” under U.S. patent law.

the Indo-Pacific Economic Framework for Prosperity (IPEF) in Singapore. According to a readout of the negotiating round from USTR, building on the discussions that took place during the second negotiating round in Bali, Indonesia, in March, the U.S. delegation successfully led in-depth discussions with IPEF partners on Pillars I (Trade), II (Supply Chains), III (Clean Economy), and Pillar IV (Fair Economy). The IPEF negotiating round hosted by Singapore is the final round prior to the IPEF Ministerial in Detroit, Michigan, on May 27<sup>th</sup>. Find a full readout of the talks [here](#).

### **III. USPTO Updates:**

- The next TPAC executive session is scheduled for May 25<sup>th</sup>.
- On Tuesday, USPTO issued a notice of proposed rulemaking (NPRM) to create a separate design patent practitioner bar. Presently, there is only one patent bar that applies to those who practice in patent matters before the Office, including in utility, plant, and design patents. In the NPRM, USPTO clarified that the creation of a design patent practitioner bar would not impact the ability of those already registered to practice in any patent matters, including design patent matters, before the USPTO to continue to practice in any patent matters before the Office. Comments on the NPRM are due to the Office by August 14<sup>th</sup>. More info. [here](#).
- On June 8<sup>th</sup>, from 3:00 – 4:45pm ET, the USPTO is hosting an in its Proud Innovation 2023 series on business and funding. During the event, participants will have the opportunity to hear about how LGBTQIA+ entrepreneurs and small business owners are making valuable contributions to local, regional, and national economies. Find more info. and register online [here](#).

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

- On Thursday, in a 9-0 decision delivered by Justice Neil Gorsuch, the Supreme Court said that Amgen patents relating to its cholesterol drug Repatha shouldn't have been granted by the USPTO. The ruling upholds a 2021 decision by the U.S. Court of appeals for the Federal Circuit in a dispute between Amgen and rival pharmaceutical firm Sanofi. The dispute dates back to 2014, when Amgen filed a suit alleging that Sanofi and its partner Regeneron Pharmaceuticals infringed its patents. In a statement, an Amgen spokeswoman said that the company is disappointed with the outcome, but it will “continue to fight for patent laws and policies that provide meaningful patent protection needed to foster breakthrough innovation.” Read more [here](#).

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

- On the heels of news that the UK's Competition and Markets Authority (CMA) is blocking Microsoft's proposed \$69 billion acquisition of Activism Blizzard, CMA Chief Executive Sarah Cardell told a panel of lawmakers on Tuesday that she is not seeking to create a “hostile environment” for tech companies. However, Cardell told the panel that she stood by the decision to block the deal, even after Brussels gave its approval on Monday. The U.S. Federal Trade Commission (FTC) has also filed a complaint to block the deal. Microsoft has indicated that it will fight both attempts to block the deal with Activism Blizzard. Read more [here](#).

## VI. Industry Updates:

- *Axios* reports that in its response to the USPTO's request for comments on AI, Google has argued that AI technology should not be considered an "inventor" under U.S. patent law. The tech company's senior patent counsel Laura Sheridan told *Axios* in a statement that Google also believes that "people should hold patents on innovations brought about with the help of AI." Its comments declare that "current industry uses of AI are well within the zone where humans are properly named as the inventors and AI is leveraged as a tool in the invention process" and Google expects "to remain in this zone for some time." Read more [here](#).
- On Tuesday, Taco Bell filed a petition with the USPTO requesting that a trademark on the phrase "Taco Tuesday" be reversed. The trademark is held by Taco John's, which has about 400 locations in 23 states. "Nobody should have exclusive rights in a common phrase. Can you imagine if we weren't allowed to say 'what's up' or 'brunch?' Chaos," the filing reasons. In response to the petition, Taco John's, which obtained the trademark in 1989, rolled out a two-week long Taco Tuesday deal offering two tacos for \$2. Read more from *NPR* [here](#).