



AMERICAN CONTINENTAL GROUP

1800 M Street NW | 5th Floor | Washington D.C. 20036
Tel: (202) 327-8100 | Fax: (202) 327-8101

PATENT & TRADEMARK POLICY REPORT NOVEMBER 19, 2021



I. Congressional Developments:

- On Monday, Senator Patrick Leahy (D-VT), Chairman of the Senate Judiciary IP Subcommittee, announced his decision to not run for reelection in 2022. A longtime champion of copyright and intellectual property rights, his announcement was bittersweet for many. As is custom for DC, there are already rumors on who will fill his vacancy in the Senate. Vermont's sole Congressman, Rep. Peter Welch, is the early favorite. Although he has not said anything on the matter, he has been a vocal advocate for reinstating net neutrality rules, rural broadband, consumer privacy, and regulating social media platforms. Read more [here](#).
- The House Energy and Commerce Committee marked up the *INFORM Consumers Act* ([H.R. 5502](#)) on Wednesday. The text of the bill, which was reported favorably out of the Committee by a voice vote, has also been filed as an amendment in the Senate to the annual NDAA. The bill directs online platforms that allow for third-party sellers of consumer products to verify the identity of high-volume third party sellers, enabling consumers to identify basis identification and contact information for certain high-volume third-party sellers. More info. [here](#).
- On Wednesday, the Senate Commerce Committee held a nomination hearing for FCC Chair Jessica Rosenworcel and FTC nominee Alvaro Bedoya. Overall, the committee members seemed pleased with Ms. Rosenworcel and the job she has done and has pledged to do. The majority of the questions directed at her were very amicable and looking forward to working

Headlines and Highlights:

- Senate Judiciary IP Subcommittee Chairman Leahy announces his decision not to run for reelection in 2022.
- House Energy & Commerce Committee reports *INFORM Consumers Act* favorably out by a voice vote.
- Senate confirms Kanter as AAG of the DOJ Antitrust Division.
- *WSJ* reports that some senior officials at the FTC have felt excluded from deliberations and believe their views are not valued.
- USPTO publishes rule to implement Trademark Modernization Act of 2020.
- Nonpartisan organization releases toolkit for state officials looking to reign in Big Tech.

with her after her expected confirmation. Mr. Bedoya, on the other hand, had a more interesting experience. The Republican members of the committee pulled up his Twitter account and questioned him about his tweets and retweets, many of which were against the Trump Administration and Republican party as a whole. This dynamic was somewhat expected as Rosenworcel has showcased her bipartisan work at the FCC while Mr. Bedoya is widely considered to be a “progressive pick” by the Biden Administration. Senate Commerce Chair Maria Cantwell (D-WA) is eyeing the week after Thanksgiving to hold a hearing on President Joe Biden’s other telecom nominees Gigi Sohn and Alan Davidson. The committee will likely vote on Rosenworcel and Bedoya’s nominations during the same session. Watch the full nomination hearing [here](#).

II. Administration Updates:

- On Tuesday, the Senate voted 68-29 to confirm Jonathan Kanter to serve as the Assistant Attorney General (AAG) of the Department of Justice’s (DOJ) Antitrust Division. Of note, Senate Judiciary Committee Ranking Member Chuck Grassley (R-IA) and Antitrust Subcommittee Ranking Member Mike Lee (R-UT) voted in favor of Kanter’s confirmation. Kanter’s confirmation completes what some stakeholders are calling the “trifecta” of progressive heads on government agencies (Lina Kahn at the FTC, Tim Wu in the White House, and now Jonathan Kanter at DOJ). Read more [here](#).
- *The Wall Street Journal* published an article this week detailing discontent among career officials at the FTC who “have felt like an afterthought” in commissioners’ agendas. Sources told the *WSJ* that some senior officials have felt excluded from deliberations and believe their views are not valued. During a speech last week, Republican FTC Commissioner Christine Wilson hinted at the reported problem when she accused the commission’s current leadership of sidelining and disdainning their staff. After the speech, Chairwoman Lina Khan, who was sworn in to lead the Commission in June, sent a commission-wide internal memo to address “commentary about the environment at the agency” and expressing her eagerness to build bridges among staff. Read more [here](#).

III. USPTO Updates:

- On Wednesday, the USPTO published a final rule in the federal register amending the rules of practice in trademark cases to implement provisions of the Trademark Modernization Act of 2020 (TMA). The rule, which becomes effective on December 18th, establishes ex parte expungement and reexamination proceedings for cancellation of a registration when the required use in commerce of the registered mark has not been made; provides for a new nonuse ground for cancellation before the Trademark Trial and Appeal Board (TTAB); establishes flexible Office action response periods; and amends the existing letter-of-protest rule to indicate that letter-of-protest determinations are final and nonreviewable. It also sets fees for petitions requesting institution of ex parte expungement and reexamination proceedings, and for requests to extend Office action response deadlines. More info. [here](#).
- USPTO announced this week that it is delaying the effective date for a new fee for patent applications that are not filed in DOCX format from January 1st, 2022 to January 1st, 2023. More info. [here](#).

IV. Judicial Updates:

- On Monday, Ohio Attorney General Dave Yost announced that he had [filed a lawsuit against Meta](#), saying the company misled the public on its harms to children in order to boost its stock and deceive its shareholders. “This suit is without merit, and we will defend ourselves vigorously,” Meta spokesperson Andy Stone said in a statement. The company has consistently denied allegations that it prized profits over users’ safety.
- News surfaced this week that a Texas federal jury has decided that Google and its video platform YouTube owes nearly \$26 million for infringing a streaming-video patent owned by VideoShare LLC. The jury also rejected the Big Tech giant’s claim that the patent was invalid for containing elements that were “well-understood, routine, and conventional.” Read more [here](#).

V. International Updates:

- Former USPTO Directors Andrei Iancu and David Kappos, along with former Secretary of Commerce Gary Locke, released a White Paper on Wednesday stating their opposition to the Biden Administration’s decision to support the TRIPS waiver. “The real barriers to vaccinating the developing world are not IP protections. Forcing vaccine makers to give up intellectual property will not lower barriers; it will only create new ones, both for today’s global vaccination project and in future pandemics. Rather, a combination of logistical, regulatory, and infrastructure challenges is slowing global vaccination efforts. Fortunately, these are problems U.S. economic resources and technological innovation can readily solve.” Read the full paper [here](#) and an *IPWatchdog* article [here](#).

VI. Industry Updates:

- Last week, the American Economics Liberties Projects released a toolkit for state officials interested in challenging the dominance of Big Tech corporations such as Apple, Google, Amazon, and Facebook. Among the report’s suggestions are regulating app store dominance; adopting common carrier rules to stop Big Tech’s self-preferencing; halting subsidies for Big Tech’s expansion; adopting a digital ad revenue tax; and adopting a “right to repair” law for consumer electronics. Where applicable, the report provides model bills that have been introduced in states that other officials can emulate. Of note, while the report is targeted at state officials, its introduction also encourages the federal government to approve complementary measures through Congress and agencies such as the FTC to rein in Big Tech. The American Economic Liberties Project is a nonpartisan organization that advocates for new antitrust laws to take on powerful Big Tech companies. Read the full report [here](#).