



AMERICAN CONTINENTAL GROUP

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PATENT & TRADEMARK POLICY REPORT

SEPTEMBER 22, 2023



I. Congressional Developments:

- Last week, Senators Chris Coons, Josh Hawley, Amy Klobuchar, and Susan Collins introduced the bipartisan *Protect Elections from Deceptive AI Act*. The bill would ban the use of AI to generate content that falsely depicts federal candidates in political ads with the intent of influencing federal elections. According to the press release, the bill would allow federal candidates targeted by materially deceptive content to have that content taken down and enable them to seek damages in federal court. Read more [here](#).
- Last week, the House Oversight and Accountability Cybersecurity, Information Technology, and Government Innovation Subcommittee held a hearing titled “How are Federal Agencies Harnessing Artificial Intelligence?” The hearing discussed the potentially transformative impact of AI across various sectors, especially its influence on government agencies. Witnesses highlighted the importance of American leadership in AI, the risks associated with the technology, and the government's role in managing them. A hearing summary from ACG can be provided upon request.
- On Tuesday September 19, Congresswoman Deborah Ross (D-NC-02) introduced the Protect Working Musicians Act of 2023. The legislation will give small

Headlines and Highlights:

- Thune and Klobuchar Hint at AI Legislation.
- Sen. Bennet Calls for New Independent Regulators for AI.
- SJC to Hold Vote on IPEC Nomination.
- FTC and FDA issued a warning to pharmaceutical companies about patent listings in the Orange Book.
- USPTO Appoints Mary Fuller as Regional Director of Silicon Valley Office.
- USPTO Releases Streamlined Search Tools to Aid Innovators.

independent artists and music creators the power to collectively negotiate with both streaming platforms and generative artificial intelligence (AI) developers for fair compensation. The legislation allows independent artists to band together and collectively negotiate with large streaming platforms and AI developers, without the obstacles of antitrust laws. The Protect Working Musicians Act is endorsed by the American Association of Independent Music (A2IM) and the Artist Rights Alliance (ARA). The press release can be found [here](#).

- This week, Senators John Tune (R-SD) and Amy Klobuchar (D-MN) announced intentions to introduce legislation to address growing concerns over artificial intelligence by categorizing the technology based on risk and subjecting developers to disclosure or self-certification requirements. According to Bloomberg Government, the bill aims to promote safety and transparency by targeting high-risk uses of AI. It's poised to be "the most comprehensive, well-thought-out piece of AI legislation that we have yet seen from Congress, and that's why we are happy to support it," said Ryan Hagemann, co-director of IBM Policy Lab. It is expected that the legislation will be introduced sometime next week. Read more from *Politico* [here](#).
- On September 28 at 10 a.m. ET in Room 216 of the Hart Senate Office Building, the Senate Judiciary Committee (SJC) will hold an Executive Business Meeting to vote on various Presidential nominees, including Deborah Robinson's nomination as the next Intellectual Property Enforcement Coordinator (IPEC). The meeting will be livestreamed [here](#).

II. Administration Updates:

- On September 14, 2023, the FTC and FDA jointly issued a warning to pharmaceutical companies regarding their patent listings in the Orange Book, signaling increased scrutiny. The statement highlights concerns about improper listings, which can stifle competition, limit consumer choice, and potentially lead to monopolistic behavior. This marks a shift in the FTC's approach, as it may take action without waiting for patent enforcement, prompting companies to review and verify their Orange Book patent listings to avoid regulatory and legal issues. Read more [here](#).

III. USPTO Updates:

- On September 20, the USPTO, along with ITA and NIST, hosted a public listening session to discuss the implementation of the White House's National Standards Strategy for Critical and Emerging Technology. This strategy covers various technology sectors, including Communication and Networking, Semiconductors, AI, Biotechnology, and more. Participants, including major companies like Apple and Amazon, shared insights on U.S. firms' involvement in standard-setting processes for these technologies and emphasized the importance of international collaboration, system improvements, SME support, competitiveness, and global standard-setting participation. Director Kathi Vidal encouraged

collaboration with the private sector, and NIST issued a Request for Information for feedback on the strategy's implementation.

- On September 19, the U.S. Patent and Trademark Office (USPTO) announced the appointment of Mary Fuller as Regional Director of its Silicon Valley Regional Office (SVRO), located in San Jose, CA. The SVRO serves current and rising inventors and entrepreneurs in the Western Region of the United States. As Regional Director, “Fuller will carry out the strategic direction of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Kathi Vidal, and ensure that USPTO initiatives and programs are tailored to the region's ecosystem of industries and stakeholders. Read more [here](#).
- On Monday, September 18, 2023, the USPTO announced major enhancements to its search tools, as part of an ongoing modernization effort. These improvements include a new website search tool introduced in May, offering advanced filtering and easy access to patent and trademark databases. The Patent Public Search (PPUBS) tool, introduced last year, facilitates full-text searching of U.S. patents and pre-grant publications. The USPTO plans to launch a new trademark search tool, replacing TESS, and will provide demos and training while seeking customer feedback. Under Secretary Kathi Vidal emphasized their commitment to serving innovators better and encouraged user feedback. They also offer training sessions and webinars for searchers of all levels. Read more [here](#).
- Starting on November 8, 2023, the U.S. Patent and Trademark Office (USPTO) will replace the EFS-Web and Private PAIR systems with the Patent Center for electronic patent application filing and management. This transition aims to provide enhanced features and user experience. The USPTO has refined the Patent Center over six years with user feedback and rigorous testing. It offers capabilities like simultaneous file uploads, combining documents into one, batch downloading, and clear submission and payment receipts. The USPTO is conducting training events and providing guides for a smooth transition. This update reflects the USPTO's commitment to innovation and improving online services for users. For details, read [here](#).

V. International Updates:

- On Monday, September 18, *The Verge* reported that the UK's Competition and Markets Authority has set out seven principles to help guide AI regulations and development. The seven principles are (1) Making sure developers and businesses that use AI models are accountable for the output that consumers are given, (2) Ensuring broad access to chips and processors and the training data needed to develop these AI systems, (3) Offering a diversity of business models by including open and closed models, (4) Companies should provide a choice for businesses to decide how to use the model, (5) Offer flexibility or interoperability to switch to other models or use multiple models at the same time, (6)

Avoid anti-competitive actions like bundling or self-preferencing, and (7) Offer transparency into the risks and limitations of generative AI content. Read more [here](#).

- On Tuesday, September 19, the European Patent Office (EPO) released a study that found 3D printing patent filings have grown eight times faster than the average of all technologies in the last decade. According to the report, 3D printer patent filings grew at a 26.3% annual rate between 2013 and 2020. The US leads the way in 3D printer patent filings at around 40%, followed by European countries at 33%. Read more [here](#).
- On Tuesday, September 19, *Reuters* reported that Britain has officially invited China to its global AI summit in November after weeks of speculation. Britain's Foreign Minister James Cleverly stated, "We cannot keep the UK public safe from the risks of AI if we exclude one of the leading nations in AI tech." Britain has opted to take a more inclusive approach towards AI, as opposed to the United States. Expected topics for the summit include how AI is a potential threat to biosecurity as well as potential benefits of the technology, such as safer transportation. Read more [here](#).

VI. Judiciary Update

- On Friday, September 22, the U.S. Court of Appeals for the Federal Circuit (CAFC) affirmed a Patent Trial and Appeal Board (PTAB) decision finding certain claims of Elekta Limited's U.S. Patent No. 7,295,648 unpatentable as obvious. Elekta challenged the Board's findings regarding motivation to combine and reasonable expectation of success. In particular, the court said the Board's findings on reasonable expectation of success, which it did not articulate explicitly, were not in error because "a finding of reasonable expectation of success can be implicit." Addressing the seeming tension with the Administrative Procedure Act (APA), which requires the Board to explain its findings with "sufficient precision," the court said, "there is no such tension where the Board makes an implicit finding on reasonable expectation of success by considering and addressing other, intertwined arguments, including, as we hold today, a motivation to combine." Read more [here](#).

VII. Industry Update

- On Thursday, September 21, the Department of Justice announced that Yale University and one of its faculty members have resolved their ketamine patent dispute with the Department of Veteran Affairs (VA) by agreeing to pay \$1.5 million. The disagreement stemmed from their failure to share patent royalties related to an intranasal ketamine spray designed for depression treatment. Although the patent applications acknowledged VA funding, the government alleged that the applicants did not properly disclose the patents to the VA. U.S. Attorney Vanessa Roberts Avery for the District of Connecticut emphasized the importance of disclosing inventions funded with taxpayer money to the government,

stating, "This settlement demonstrates our dedication to ensuring fair compensation for all taxpayer-funded inventions." Read more [here](#).