



AMERICAN CONTINENTAL GROUP

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## PATENT & TRADEMARK POLICY REPORT

### SEPTEMBER 8, 2023



#### I. Congressional Developments:

- On Wednesday, the Senate Judiciary Committee held a nomination hearing for Deborah Robinson's appointment as the Intellectual Property Enforcement Coordinator (IPEC) at the Executive Office of the President. The hearing included questions from Senators Durbin, Padilla, Hirono, Welch, and Coons. Of note, Senator Coons announced plans to reintroduce the SHOP SAFE Act and announced he is about to release a proposal to protect individuals against unauthorized reproductions of their voice, name, image, and likeness. Further, Senator Coons suggested no-fault injunctions as a remedy in the US. He also submitted a letter of endorsement for Ms. Robinson that included organizations such as the Copyright Alliance, the Motion Picture Association, the Screen Actors Guild, Universal Music Group, and others. A full memo from ACG can be provided upon request.
- On August 28<sup>th</sup>, *The New York Times* reported that Senator Chuck Schumer (D-NY) will begin the first of nine AI listening sessions next month with a group of tech leaders including Elon Musk of Tesla, Sundar Pichai of Google, Sam Altman of OpenAI, Satya Nadella of Microsoft, Mark Zuckerberg of Meta, Jensen Huang of Nvidia, and Eric Schmidt, the former CEO of Google. The first session is a closed-door listening session for lawmakers and will be held in Washington on September 13. According to the article, "Mr. Schumer, the majority leader, said the sessions were intended to educate members of Congress on the risks posed by A.I. on jobs, the spread of disinformation and intellectual property theft. Lawmakers will also learn

#### Headlines and Highlights:

- FTC to consider Orange Book policy statement and September 14<sup>th</sup> Open Meeting.
- USPTO extends deadline for public to submit comments on counterfeiting and piracy and potential solutions through August 31<sup>st</sup>.
- USPTO reportedly looking to use AI to improve prior art searches, per *FedScoop*.
- Amazon and its Counterfeit Crimes Unit file two lawsuits against individuals and co-conspirators for allegedly attempting to evade Amazon's brand protection systems to sell counterfeit luxury goods.
- New Democrat Coalition establishes first-ever AI working group.
- USPTO launches Patent Petitions webpage.
- China reportedly expected to attend UK AI summit this fall.

about opportunities created by the technology in the field of research on diseases, his office said.” Read more [here](#).

- On August 15<sup>th</sup>, the New Democrat Coalition announced the first ever artificial intelligence working group, which will aim to develop and advance forward-thinking policies that both encourage innovation and guard against potential risks. Led by Chair Derek Kilmer (D-WA-06) and Vice Chairs Don Beyer (D-VA-08), Jeff Jackson (D-NC-14), Sara Jacobs (D-CA-51), Susie Lee (D-NV-02), and Haley Stevens (D-MI-11), the working group will engage with the Biden Administration, key stakeholders and lawmakers on both sides of the aisle to develop and advance sensible, bipartisan policies to address the emerging technology. Rep. Derek Kilmer released the following statement. “As AI’s applications expand and change, it is incumbent on lawmakers to address its unique opportunities and challenges by creating a regulatory framework that both encourages growth while guarding against potential risks. This AI Working Group will focus on understanding AI’s many applications, assessing their benefits and drawbacks, and proposing policies that position the U.S. as a world leader in AI innovation and safety.” Read more [here](#).
- On July 28<sup>th</sup>, Reps. Anna G. Eshoo (D-CA-16), Rep. Michael McCaul (D-TX-10), Rep. Don Beyer (D-VA-08), and Rep. Jay Obernolte (D-CA-23), Co-Chairs and Vice-Chairs of the Congressional Artificial Intelligence Caucus, introduced *the Creating Resources for Every American To Experiment with Artificial Intelligence Act of 2023 (CREATE AI Act)*. According to the press release, the *CREATE AI Act* establishes the National Artificial Intelligence Research Resource (NAIRR) as a shared national research infrastructure that provides AI researchers and students from diverse backgrounds with greater access to the complex resources, data, and tools needed to develop safe and trustworthy artificial intelligence. A Senate companion bill was introduced at the same time by Sens. Martin Heinrich (D-NM), Sen. Todd Young (R-IN), Sen. Cory Booker (D-NJ), and Sen. Mike Rounds (R-SD). The legislation has four primary goals. (1) Spur innovation and advance the development of safe, reliable, and trustworthy AI research and development. (2) Improve access to AI resources for researchers and students, including groups typically underrepresented in STEM. (3) Improve capacity for AI research in the United States. (4) Support the testing, benchmarking, and evaluation of AI systems developed and deployed in the United States. Read the full bill text [here](#). Read a fact sheet on the CREATE AI Act [here](#). Read the press release from Rep. Eshoo’s office [here](#).

## II. Agency Updates:

- The Federal Trade Commission (FTC) has published a tentative agenda for its open meeting on September 14<sup>th</sup>. Among other matters, the Commission will consider whether to issue a policy statement concerning the improper listing of patents in the Food and Drug Administration’s publication of Approved Drug Products With Therapeutic Equivalence Evaluations, commonly known as the “Orange Book.” The policy statement will discuss whether improper listing of patents in the Orange Book may increase the cost of and reduce access to essential prescription drugs, imposing costs on individuals and society alike. The policy statement also assesses whether the listing of patents in the Orange Book that do not comport with listing requirements may constitute an unfair method of competition. The open meeting will commence at 11 a.m. ET and will begin with time for members of the public to address the Commission. Find the full agenda [here](#).

- Data recently released by the Centers for Disease Control and Prevention shows that the percentage of overdose deaths associated with counterfeit prescription drugs in the United States more than doubled between 2019 and 2021. Furthermore, the percentage of overdose deaths connected to counterfeit drugs more than doubled in certain states out west, such as Arizona, Alaska, Colorado, and Nevada. Of note, in 41.4 percent of cases where fake drugs were found, the only substance responsible for the deaths was fentanyl, the CDC states. Read more [here](#).
- On August 21<sup>st</sup>, *Fortune* reported that Director of the White House Office of Science and Technology Policy (OSTP) Arati Prabhakar stated that the Biden Administration is considering multiple different measures to regulate artificial intelligence and that the public should expect announcements on them in the near future. “Many measures are under consideration. I don’t have a timeline for you. I will just say fast. And that comes directly from the top. The president has been clear that this is an urgent issue.” There have been recent rumors of an AI executive order, and potential legislation being crafted with the help of Senate Majority Leader Chuck Schumer and his group of bipartisan senators. Read more from *Fortune* [here](#).

### III. USPTO Updates:

- On August 29<sup>th</sup>, *FedScoop* reported that the USPTO is looking to use AI to improve its searches for “prior art” during the patent process. The article notes that the USPTO has published a request for information (RFI) saying that “the exponential growth of prior art and tremendous pace of technological innovation make it increasingly more difficult to quickly discover the most relevant prior art.” According to the RFI, the office is looking for solutions that would leverage technologies such as AI and machine learning to “expand, rank and sort the results of existing patent search systems so that prior art that might have otherwise not been present in or near the top of a list of search results is made readily available to examiners.” Responses must be filed by September 11<sup>th</sup>, 2023. Read more [here](#).
- On August 25<sup>th</sup>, *IPWatchdog* reported that in a letter to the USPTO, Google argues that proposed rule changes to inter partes review (IPR) proceedings would stifle innovation in the AI space. “The USPTO evaluates hundreds of thousands of claimed inventions each year, with an ever-growing percentage involving claims over new AI technology. Unfortunately, various new proposals would make it much harder for the agency to correct any errors in the patent examination process, stifling developers and U.S. innovation,” wrote DeLaine Prado, Google’s General Counsel. According to the article, Google also proposed three actions the USPTO could take to improve AI innovation. First, maintain access to the IPR program by withdrawing proposals that would restrict access. Second, develop comprehensive technical training for patent examiners so they can better understand AI innovation. The third and final proposal was to increase patent filing and examination fees for large companies in order to increase the office’s budget for technical training. Read more [here](#).
- The USPTO recently rolled out a new Patents Petitions Webpage. Find the new webpage [here](#) and read more about the effort [here](#).

- On August 17<sup>th</sup>, the USPTO announced its plans to rename its Edison Visiting Scholars Program after Dr. Marian Rogers Croak, a pioneer in Voice over Internet Protocol (VoIP) technologies, inventor of the text-to-donate system, and a 2022 inductee into the National Inventors Hall of Fame. Read more [here](#).
- In a Federal Register notice published on September 5<sup>th</sup>, USPTO announced that, effective January 20<sup>th</sup>, 2024, all existing and new attorney support staff with an attorney-sponsored USPTO.gov account will be required to verify their identity to access trademark filing systems. USPTO is making the change after discovering that some U.S.-licensed attorneys have sponsored accounts for individuals who are not directly supervised attorney support staff, and that many of these sponsored accounts appear to be shared by multiple foreign agents and attorneys. Read the full Federal Register notice [here](#).
- In a Federal Register notice published on August 31<sup>st</sup>, USPTO announced that it is extending the deadline for the public to submit comments on the evolution of counterfeiting and piracy in recent years and ways to combat it. In particular, the Office is seeking information from consumers, IP rights holders, online marketplaces and platforms, physical marketplaces, parties who provide goods to the public, and other private sector stakeholders. Read the full Federal Register notice extending the deadline [here](#).
- USPTO has issued a notice regarding a collaborative initiative with the International Trade Administration (ITA) and the National Institute of Standards and Technology (NIST) to address standards and intellectual property at the intersection of innovation and technology. In response to the United States Government National Standards Strategy for Critical and Emerging Technology announced in May 2023, the agencies are seeking stakeholder input on the current state of U.S. firm participation in standard setting and their ability to adopt standards for emerging technologies. The public listening session will be held on Wednesday, September 20, 2023, from 1 to 5 p.m. ET. Persons seeking to speak at the listening session must attend in person and register by 5 p.m. on September 13, 2023. Persons seeking to attend, either in person or virtually but not speak at the event, must register by September 18, 2023. Seating is limited for in-person attendance. Written comments will be accepted until September 29, 2023. Read more [here](#).

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

- This week, a federal judge in Delaware delivered a win to Google in an audio patent case, declaring that a jury verdict delivering Google a \$15.1 million loss to patent holding company Personal Audio could not stand. Personal Audio has said that they plan to appeal the ruling and still believe that “the jury got it right.” Personal Audio sued Google in 2015, claiming that Google’s streaming-music app Google Play Music featured downloading, navigation, and editing features that violated its patent rights. Google discontinued Google Play Music in 2020. In the new verdict, delivered on Tuesday, the federal judge said that Personal Audio had failed to prove infringement because Google’s technology did not include a “sequencing file” that the patents in question described. Read more [here](#).
- On August 4<sup>th</sup>, *Bloomberg Law* reported that a special committee of Federal Circuit judges had voted to sanction a 96-year-old Judge Pauline Newman of the appeals court, over her refusal to cooperate with an investigation into her mental fitness. The three-judge panel

unanimously recommended suspending Newman’s case assignments for a year “or at least until she ceases her misconduct and cooperates such that the Committee can complete its investigation.” The probe began after judges and staff raised concerns about Judge Newman’s health, with one specific instance pointing to a “fainting spell” that left her unable to walk without assistance after oral arguments. Newman has called the allegations around her health “fabrications and exaggerations.” Read more from *Bloomberg Law* [here](#).

## **V. International Updates:**

- On August 25<sup>th</sup>, *POLITICO* reported that China is expected to attend the UK AI summit later this fall. According to three people familiar with the U.K.’s plans for the AI summit, the Rishi Sunak Administration is determined to involve the Chinese government in some form — despite resistance from Japan, the United States, and the European Union. In a speech this April related to working with China, Cleverly stated, “We have an obligation to future generations to engage because otherwise we would be failing in our duty to sustain – and shape – the international order. Shirking that challenge would be a sign not of strength but of weakness.” Cleverly also told the United Nations Security Council in July that no country will be untouched by AI, so “we must involve and engage the widest coalition of international actors from all sectors,” while AI Minister Jonathan Berry told *POLITICO* last month that China will have to be involved “one way or the other” in global conversations on addressing the risks of AI. Read more [here](#).

## **VI. Industry Updates:**

- On September 6<sup>th</sup>, Amazon and its Counterfeit Crimes Unit (CCU) announced that it was filing two lawsuits against two individuals and their co-conspirators for allegedly attempting to evade Amazon’s brand protection systems in an effort to promote, advertise, and facilitate the sale of counterfeit luxury fashion goods such as jewelry, handbags, and accessories. The lawsuits claim that the individuals in question – Kamryn Russell and Ashley Hawat – attempted to use a “hidden links” scheme in which they posted links on their social media pages that directed their followers to seemingly generic product listing pages in the Amazon store. Furthermore, according to Amazon, Russell and Hawat’s co-conspirators disguised the infringing nature of the products they were selling in order to avoid detection by Amazon and the brands they were imitating. The lawsuits were filed in the federal U.S. District Court for the Western District of Washington. Read more [here](#).