

PATENT & TRADEMARK POLICY REPORT JANUARY 13, 2023



I. Congressional Developments:

- On the 15th ballot, the House of Representative elected Representative Kevin McCarthy (R-CA) to serve as the Speaker of the House in the 118th Congress. In order to earn the support needed to take the gavel, McCarthy and his allies made a series of concessions to conservatives, including allowing any members to call for a motion to vacate the speaker's chair. He also agreed to allow the House to vote on key conservative bills, such as a balanced budget amendment, congressional term limits, and border security. Read more [here](#).
- The *Wall Street Journal* reported this week that House Republicans plan to prob the Biden Administration's communications with Big Tech to see if social media companies censored legitimate viewpoints on issues such as COVID-19 that ran counter to White House policy. The House GOP is standing up a new Select Subcommittee on the Weaponization of the Federal Government, which will fall under the House Judiciary Committee. The White House has dismissed the effort, with spokesman Ian Sans calling it a partisan political stunt. He urged House Republicans to instead work with the president "to tackle the issues the American people care about the most like inflation." Read more [here](#).
- On Tuesday, the House also agreed to create a select subcommittee focused on U.S. competition with China through a 365-65 vote, with 146 Democrats joining Republicans to support the measure. The Select Committee will be chaired by Rep. Mike Gallagher (R-WI) and will investigate the Chinese Communist Party's economic, technological, and security progress

Headlines and Highlights:

- Rep. McCarthy elected House Speaker on 15th ballot.
- House GOP to stand up Select Subcommittee on the Weaponization of the Federal Government.
- House establishes Select Committee on China with broad bipartisan support.
- House Appropriations Subcommittee Chairs announced.
- Biden signs the Protecting American Intellectual Property Act into law.
- USPTO seeks public feedback on 2022-2026 Strategic Plan.
- Appeals Court hears bid by Apple, Google, Intel, and others to revive their challenge of a USPTO rule governing the power of administrative judges to reject IPR petitions based on the progress of related court litigation.

and the strategic competition between Beijing and Washington. The panel – which will be comprised of seven Republicans and five Democrats – will hold public hearings and is tasked with producing policy recommendations as a result of their investigations. Read more [here](#) and [here](#).

- News surfaced this week about which House Republicans will Chair the Subcommittees of the Appropriations Committee, which will be led by Kay Granger (R-TX). Of note, Rep. Hal Rogers (R-KY) is slated to Chair the Commerce-Justice-Science subpanel, Steve Womack (R-AR) will lead the Financial Services and General Government (FSGG) subpanel, and Rep. Mark Amodei (R-NV) will lead the Legislative Branch subpanel. Read more [here](#).

II. Administration Updates:

- On January 5th, President Biden signed the Protecting American Intellectual Property Act of 2022 ([S.1294](#)) into law. Introduced by Senators Van Hollen (D-MD) and Ben Sasse (R-NE) earlier last year, the bill requires sanctions on individuals and firms found to engage in, benefit from, or enable the significant and serial theft of trade secrets belonging to a U.S. entity. The bill had passed both chambers of Congress with broad support in December 2022. Read a press release from Senator Van Hollen’s office on the bill being signed into law [here](#).

III. USPTO Updates:

- USPTO is seeking public comments on its draft Strategic Plan for 2022-2026. The plan sets forth five goals: drive inclusive U.S. innovation and global competitiveness; promote the efficient delivery of reliable IP rights; promote the protection of IP against new and persistent threats; bring innovation to positive impact; and generate impactful employee and customer experiences by maximizing agency operations. Comments are due to USPTO by January 31st. Find more info. on how to provide feedback [here](#) and read the full draft plan [here](#).
- On February 28th, from 3:00-4:00pm, USPTO is hosting a free online webinar titled “Together in Innovation: Agricultural advances.” Special guests and expert panelists will cover: how diverse teams are an essential part of a successful business strategy; the challenges women innovators overcome in ag innovation; and valuable resources innovators can use to protect IP and secure funding for their enterprises. Find more info. and register for the special event [here](#).
- On January 19th, 2023, from 10:00am – 5:00pm ET, USPTO and the Food and Drug Administration (FDA) are hosting a joint public listening session on ways the two agencies can collaborate to ensure that the innovation system strikes the appropriate balance of encouraging meaningful innovation in drug development while supporting a competitive marketplace that can promote greater access to medicines for American families. Persons wishing to speak at the public listening session must submit their request no later than 5 p.m. ET on January 5th, 2023. Find more info. [here](#) and [here](#).
- USPTO has extended the comment period for stakeholders to submit comments on the Office’s initiatives to ensure the robustness and reliability of patent rights. Comments on the matter are now due February 1^s (instead of January 3rd). Find more info. [here](#) and [here](#).

IV. Judicial Updates:

- On Thursday, a U.S. Appeals Court heard a bid by Apple, Google, Intel, Cisco, and Edwards Lifesciences to revive their challenge of a USPTO rule governing the power of administrative judges to reject patent challenges. The case involves an internal PTO rule in 2018 that outlined that judges can reject IPR petitions based on the progress of related court litigation and other factors. A California federal court dismissed the companies' lawsuit challenging the policy in 2021, citing U.S. Supreme Court rulings that decisions about granting the petitions cannot be appealed. The high court also rejected petitions to review separate challenges to the rule by Apple and Mylan Laboratories last year. Read more from *Reuters* [here](#).

V. International Updates:

- As we approach the four-year anniversary of Poland's Industrial Property Act being amended to abolish the requirement for trademark applications to include a graphic representation, the *World Trademark Review* published a primer on the ramifications of the policy change. First, it notes that, surprisingly, only two sound mark applications have been filed with an MP3 file that is not accompanied by a requisite musical notation since the graphic representation requirement was abolished, despite the fact that the rule change eliminated the need for the requisite musical notation. Second, since the amendment, the Polish Patent Office has received 20 applications for position trademarks, although only four of these marks are now registered. The primer also notes that even fewer applications have been filed for pattern marks – 13 to be exact. Read more about trends in Polish patents since the rule change [here](#).