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PATENT & TRADEMARK POLICY REPORT
AUGUST 2, 2024

I. Congressional Update:

- On Tuesday, July 30, Senators Chris Coons (D-DE) and Tom Cotton (R-AR) introduced the *Realizing Engineering, Science, and Technology Opportunities by Restoring Exclusive (RESTORE) Patent Rights Act of 2024*, a bipartisan, bicameral bill that would restore the presumption that courts will issue an injunction to stop patent infringers, strengthening protections for U.S. inventors, entrepreneurs, universities, and startups. The House companion bill was introduced by Representatives Nathaniel Moran (R-TX) and Madeleine Dean (D-PA). The RESTORE Patent Rights Act is endorsed by the Innovation Alliance, Alliance of U.S. Startups & Inventors for Jobs, Association of University Technology Managers, Council for Innovation Promotion, Americans for Limited Government, Eagle Forum, Market Institute, and Conservatives for Property Rights. The text of the bill is available here. A one-pager is available here.

II. USPTO Updates:

- On Friday, August 2, USPTO's Trademark Public Advisory Committee (TPAC) conducted its quarterly meeting from 11 a.m. to 12:35 p.m. ET, both in Alexandria, Virginia, and online. Attendees received updates on trademark-related policies, goals, performance metrics, budgets, and user fees from committee members. An ACG summary is available upon request.

- On Monday, August 5, the USPTO will hold a roundtable titled "Protecting NIL, Persona, and

Headlines and Highlights:

- Senator Coons, Colleagues Introduce RESTORE Patent Rights Act
- TPAC Held Quarterly Meeting
- USPTO To Host August 5 Public Roundtable on AI and Protection of Likenesses, Names, and Reputations
- USPTO To Hold Private Listening Session on Fair Use
- USPTO Welcomes USCO Report on Digital Replicas
- DOE Launches VIPS Database with Thousands of Tech Patents and Software Packages

In the Blogs:

- **IPWatchdog:** Coons/Cotton RESTORE Patent Rights Act Would Abrogate eBay
- **IPWatchdog:** CAFC Says PTAB Did Not Err in Holding Private Sale Was Not a 'Public Disclosure' Under Prior Art Exception
- **IPWatchdog:** Conflicting Decisions over the FTC's Non-Compete Ban Leave Employers in Limbo

Reputation in the Age of Artificial Intelligence." Announced in the Federal Register on July 1, the roundtable seeks public input on whether existing laws protecting an individual's reputation and prohibiting unauthorized use of an individual's name, image, voice, likeness, or other indicia of identity are sufficient given the development and proliferation of AI technology. The roundtable will feature an in-person session and a separate virtual session. Supplementary information and a link to register to watch the livestream can be found here.

- On August 8, the USPTO will be hosting a virtual fireside chat titled "Fashion, Beauty, and Intellectual Property: Handbags" as part of their ongoing Fashion, Beauty, and IP series. The event will take place from 1-2 p.m. ET and feature Emily Blumenthal, a Professor of Entrepreneurship at the Fashion Institute of Technology. She will discuss various aspects of fashion and intellectual property, focusing on handbag design and the handbag industry. Blumenthal will also share insights from her book, Handbag Designer 101. This event is part of USPTO's Fashion, Beauty, and IP series, which offers webinars and hybrid events exploring fashion, beauty, and accessories in relation to IP protection. Topics covered include authentic brands, historical dress, sustainable fashion, traditional heritage dress and pattern protection, and wearable tech.

- On Tuesday, August 13, the USPTO will hold a private in-person stakeholder listening session focused on "transparency issues related to fair use and intellectual property." The USPTO aims to gather stakeholder views on AI issues to inform policymaking and assist in preparing recommendations on executive actions relating to intellectual property and AI under the President's Executive Order on AI. The Copyright Alliance has already been invited to participate.

III. Administration Update

- On Wednesday, July 31, the U.S. Copyright Office released Part 1 of its report on the legal and policy issues related to copyright and artificial intelligence, specifically addressing the topic of digital replicas. This section of the report "responds to the proliferation of videos, images, or audio recordings that have been digitally created or manipulated to realistically but falsely depict an individual." According to the Office, considering the gaps in existing legal protections, it "recommends that Congress enact a new federal law that protects all individuals from the knowing distribution of unauthorized digital replicas." In addition, the Office shared its recommendations on the details that should be included in drafting such a law. For more information about the Copyright Office's AI Initiative, please visit its website. The USPTO released a statement in support of this report, with Under Secretary of Commerce for Intellectual Property and Director of the USPTO Kathi Vidal stating, "There is almost nothing more personal, and from artists to athletes almost nothing more valuable, than an individual's name, voice, and likeness. The USPTO thanks the Copyright Office for its report and will consider the report's findings as we prepare recommendations for potential executive action on these issues to ensure the safe, secure, and trustworthy development and use of AI technologies.

- On July 31, the Department of Energy (DOE) launched the Visual Intellectual Property Search (VIPS) database, a new resource created in collaboration with Pacific Northwest National Laboratory (PNNL) engineers. VIPS provides access to over 14,000 patents and more than 6,200 software packages, sourced from the U.S. Patent and Trademark Office, the

DOE, and the Office of Scientific and Technical Information. The database allows researchers to explore and license technologies developed by various DOE national laboratories. The development of VIPS was led by Scott Dowson and his team of PNNL engineers, who utilized PNNL-developed AI software to ensure the system delivers the most relevant information to users. While VIPS aims to provide comprehensive access to DOE's intellectual property, it excludes classified technologies but can make special arrangements for previously licensed technologies to accommodate new licensees. Read more here.

IV. Judicial Updates:

- On Thursday, in a ruling by Judge Chen, the Federal Circuit upheld a USPTO inter partes review decision that invalidated all claims of Voice Tech's patents under 35 U.S.C. § 103. Unified had argued that Voice Tech forfeited its claim construction arguments on appeal by not including them in its request for rehearing under 37 C.F.R. § 42.71(d). However, the Federal Circuit disagreed, clarifying that an issue does not need to be raised in a rehearing request to be preserved for appeal. The right to appeal is "tied to the Board's issuance of a 'final written decision.'" The court explained that the requirement for a rehearing request to identify all matters the party believes the Board misapprehended or overlooked is narrower than the scope of all matters in a Board's final decision that a party may dispute. It would be illogical for certain claims to be forfeited on appeal if a rehearing request is filed but preserved if it is not. Read more here.

- On Wednesday, in an opinion by Judge Dyk, the Federal Circuit upheld a PTAB decision finding all claims of Sanho's patent unpatentable due to obviousness. Sanho contended that its inventor's private sale of a product embodying the claimed invention to Sanho constituted a public disclosure that predated the effective filing date of the prior art patent. However, the Federal Circuit rejected this argument, clarifying that "publicly disclosed" under section 102(b)(2)(B) is not analogous to general "disclosures" and does not include private sales. The court noted that the distinct usage of "publicly disclosed" and "disclosure" in the statute indicates Congress's intent for public disclosures to be a narrower subset of disclosures. Additionally, the purpose of 102(b)—to protect and prioritize a patent applicant who publicly disclosed their invention before filing an application—can only be achieved if the subject matter is indeed disclosed to the public. The legislative history further confirmed that a "public disclosure" necessitates making the invention available to the public. In Sanho's case, the subject matter was not publicly disclosed as the testimony only demonstrated a private sale arranged via private messages between two individuals. Read more here.

- On Tuesday, July 30, Amazon.com Inc. filed a lawsuit against Nokia in Delaware federal court, accusing the Finnish telecom company of infringing a dozen Amazon patents related to cloud-computing technology. Amazon alleges that Nokia misused Amazon Web Services (AWS) technology to enhance its own cloud offerings, specifically in areas such as cloud computing infrastructure, security, and performance. Nokia stated it would "review these matters and defend ourselves vigorously in court." Amazon, which launched AWS in 2006, claims that Nokia, having entered the cloud computing industry in 2020, is using its patented innovations without permission. Amazon seeks a court order to block the alleged infringement and an unspecified amount of monetary damages. This lawsuit follows previous patent disputes initiated by Nokia against Amazon over video streaming technology. The case is Amazon Technologies Inc v. Nokia Corp, U.S. District Court for the District of Delaware, No. 1:24-cv-00891.