



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

JUNE 21, 2024



I. Congressional Update:

- Last week House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet Chairman Darrell Issa (R-CA) reintroduced the *Stopping Harmful Offers on Platforms by Screening Against Fakes in E-commerce Act of 2024 (SHOP SAFE) Act* with cosponsors Jerry Nadler (D-NY), Hank Johnson (D-GA), and Ben Cline (R-VA). The bipartisan legislation aims to protect American consumers from the growing online counterfeit market by holding electronic commerce platforms who fail to comply with anti-counterfeiting measures contributorily liable in civil claims. The bill was introduced in previous sessions of Congress by Rep. Nadler. Read the text [here](#).
- On Tuesday, the Congressional Budget Office (CBO) published updated baseline projections concerning federal subsidies for health insurance coverage from 2024 to 2034. According to projections by the CBO and the Joint Committee on Taxation (JCT), federal subsidies for insured individuals are estimated at \$2.0 trillion in 2024, increasing to \$3.5 trillion annually by 2034, representing 8.5 percent of the gross domestic product. Over the period from 2025 to 2034, subsidies are projected to total \$27.5 trillion, with Medicare accounting for 46 percent, Medicaid and CHIP for 25 percent, employment-based coverage for 21 percent, subsidies for ACA marketplaces or the Basic Health Program for 5 percent, and other subsidies for 2 percent. CBO also projects an increase in the uninsured rate from an all-time low of 7.2 percent in 2023 to 8.9 percent by 2034, attributing much of this rise to the end of Medicaid's continuous eligibility provisions and

Headlines and Highlights:

- SHOP SAFE Act Reintroduced
- CBO's Updated Projections: Federal Health Insurance Subsidies from 2024 to 2034
- USPTO Appoints Farheena Y. Rasheed as New Deputy General Counsel and Solicitor
- FTC Supports Proposed USPTO Rule to Enhance Antitrust Oversight in Patent Settlements
- Microsoft Settles Patent Infringement Lawsuit Over Cortana Technology

In the Blogs:

- *IPWatchdog*: [A Mid-Year Review of Prominent Patent Verdicts](#)
- *IPWatchdog*: [Patents in China: Developments in 2024 and What's to Come](#)

enhanced marketplace subsidies post-2025, policies initially implemented during the pandemic. For more information, read [here](#).

II. USPTO Updates:

- On Thursday, the USPTO announced the appointment of Farheena Y. Rasheed as the new Deputy General Counsel for Intellectual Property Law and Solicitor. In this role, Rasheed will lead the Office of the Solicitor, providing legal counsel on intellectual property law matters and collaborating with the Department of Commerce on interagency issues and with the Department of Justice on court advocacy, including appearances before the Supreme Court and the U.S. Court of Appeals for the Federal Circuit. She will also serve as the chief litigator for the USPTO, overseeing the strategic direction set by the Under Secretary of Commerce for Intellectual Property and Director, advocating and defending USPTO actions in the judicial system. Rasheed, who has been with the USPTO since 2010 and most recently served as acting Solicitor, brings extensive experience and a deep understanding of intellectual property law, positioning her to play a key role in shaping U.S. law and policy to advance innovation, particularly in areas such as artificial intelligence. For more information, see [here](#).
- On Thursday, the USPTO announced the release of the ninth installment of its Motion to Amend (MTA) Study by the Patent Trial and Appeal Board (PTAB). This comprehensive study analyzes motions to amend filed under the America Invents Act (AIA) in trial proceedings, covering both pilot and pre-pilot program motions up to March 2024, spanning five years of data from March 15, 2019, to March 31, 2024. Concurrently, the USPTO issued a notice of proposed rulemaking on March 4, 2024, seeking to permanently adopt options from the MTA pilot program and revise rules of practice in AIA trials regarding motions to amend. Stakeholders had until May 3, 2024, to provide feedback during the public comment period. For further details, please see [here](#).
- On Thursday, the USPTO updated its special report on America Invents Act (AIA) proceedings focused on challenges to patent claims covering FDA-approved pharmaceuticals and biologics, commonly referred to as Orange Book-listed patents and biologic patents. The updated report, accessible on the USPTO website, highlights several key findings. It notes a decline in the percentage of AIA petitions challenging Orange Book-listed patents, dropping from a peak of 7.5% in FY 2016 to less than 2% in the current fiscal year. Similarly, after reaching nearly 4% of all petitions in FY 2017, challenges to biologic patents have stabilized at around 2% in subsequent years. The report also compares the institution rates for claims in biologic patents and Orange Book-listed patents, finding them to be similar, although Orange Book-listed patents have seen a higher percentage of claims upheld in final decisions by the Patent Trial and Appeal Board (PTAB). For further insights, see [here](#).

III. Administration Updates:

- On Tuesday, the Federal Trade Commission (FTC) expressed its support for a proposed USPTO rule aimed at enhancing antitrust oversight over patent settlement agreements, particularly those in the pharmaceutical sector. The proposed rule, part of broader changes to PTAB proceedings, would mandate the disclosure of all pre-institution patent settlement agreements, including collateral agreements, regardless of when they occur relative to PTAB trial proceedings. This move, endorsed unanimously by the FTC, is intended to bolster

regulatory efforts by both the FTC and the Department of Justice in identifying and addressing potentially anticompetitive behaviors. By expanding disclosure requirements beyond settlements occurring after PTAB trial initiation, the rule aims to prevent practices like reverse payment settlements that can stifle competition, particularly in pharmaceutical markets, thereby potentially keeping drug prices artificially high. This comment submission marks the FTC's latest initiative in its ongoing efforts to uphold fair competition and consumer welfare in the pharmaceutical industry and beyond. Read more [here](#).

IV. Judicial Updates:

- On Tuesday, Microsoft settled a patent infringement lawsuit over its Cortana virtual-assistant technology after losing a \$242 million jury verdict last month. The case, filed by IPA Technologies in 2018, accused Microsoft of infringing patents related to personal digital assistants and voice-based data navigation, originally developed by SRI International's Siri Inc., which Apple acquired in 2010. Details of the settlement were not disclosed, and representatives from Microsoft, IPA, and Wi-LAN did not comment. IPA, a subsidiary of patent-licensing company Wi-LAN, has also sued Google and Amazon over similar patents, with Amazon successfully defeating the lawsuit in 2021 and Google's case still ongoing. The case is recorded as IPA Technologies Inc v. Microsoft Corp, U.S. District Court for the District of Delaware, No. 1:18-cv-00001. Read more [here](#).