



AMERICAN CONTINENTAL GROUP

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## PATENT & TRADEMARK POLICY REPORT SEPTEMBER 6, 2024



### I. Congressional Update:

- On Friday, September 6, Representatives Kevin Kiley (R-CA) and Scott Peters (D-CA) introduced the House version of the Patent Eligibility Restoration Act of 2024, which mirrors a Senate bill first introduced by Senators Thom Tillis (R-NC) and Chris Coons (D-DE). PERA aims to eliminate judicial exceptions to patent eligibility, which have restricted the scope of patentable inventions in the U.S. Kiley stated that the U.S. patent system is "one of the most restrictive" due to Supreme Court rulings, and argued that the new legislation would help American inventors patent a broader range of innovations, similar to those allowed in countries like China, fostering economic growth, job creation, and technological advancements.
- On August 29, Rep. Lloyd Doggett (D-TX), along with Sens. Angus King (I-ME) and Elizabeth Warren (D-MA), sent a letter to Health and Human Services (HHS) Secretary Xavier Becerra and Commerce Secretary Gina Raimondo, urging them to swiftly finalize guidance on exercising federal "march-in rights" under the Bayh-Dole Act to lower drug prices. The lawmakers emphasized the unambiguous authority granted by Congress to use march-in rights to address high drug costs, especially in light of the Supreme Court's recent decision overturning the Chevron doctrine. They stressed the need to finalize the Draft Interagency Guidance Framework, which aims to boost competition for pharmaceuticals developed with taxpayer funding. Read more [here](#).

### Headlines and Highlights:

- Reps. Kiley and Peters Introduce House version of PERA
- Lawmakers Urge Finalization of Bayh-Dole "March-In" Rights Guidance
- U.S. Government Funding Led to Over 1,000 China-Based Patents Since 2010
- USTR Seeks Public Comments on Notorious Markets for Counterfeiting
- Justice Department Eyes Breaking Up Google After Antitrust Ruling
- USTR Seeks Input on China and Russia WTO Compliance for Annual Report
- USPTO Holds First PPAC Meeting Since November 2023
- USPTO Launches Open Beta for TTAB Center for Trademark Disputes
- Accenture Awarded \$75 Million USPTO Contract to Implement AI in Patent Examination
- USPTO Reports Data Breach in Patent Center, Limits Exposure
- California Judge Overturns \$600,000 Verdict Against Disney in Motion-Capture Tech Case
- WIPO Releases Early Data on 2024 Global Innovation Index
- Podcast: ACG's Chris Israel Discusses March-In Rights, Patent Law, and Innovation Politics

- On August 19, 2024, Chairman John Moolenaar (R-MI), Ranking Member Raja Krishnamoorthi (D-IL), Rep. Neal Dunn, M.D. (R-FL), and Rep. Anna Eshoo (D-CA) sent a letter to FDA Commissioner Robert Califf, urging the FDA to investigate U.S. biopharmaceutical companies conducting clinical trials alongside China's People's Liberation Army (PLA) and in Xinjiang, where the Uyghur population is subjected to genocide. The lawmakers expressed concerns over the potential transfer of sensitive intellectual property (IP) to the PLA and the ethical issues surrounding trials conducted in Xinjiang. They requested specific details from the FDA regarding its review process for these trials and any associated risks of IP transfer. The letter also emphasized the need for the FDA to take a more active role in safeguarding U.S. national security interests in biotechnology. Read more [here](#).

## II. Administration Updates:

- On September 5, *POLITICO* reported that Vice presidential candidate J.D. Vance's pro-antitrust stance is creating tension within the GOP's tech circles. Vance's interventionist approach contrasts with the traditional Republican preference for minimal regulation, sparking uncertainty about how industrial policy will evolve if he takes office. The Chamber of Progress' Adam Kovacevich suggested that a Harris administration could see a shift from the largely hostile attitude of President Joe Biden's White House, opening the door to liberal policymakers with their own vision for how tech and society can flourish side-by-side. "I don't know that Democrats are going to ditch the anti-corporate focus from a campaign rhetoric perspective," he said, "but the policy direction they take is up for grabs." Read more [here](#).
- On August 29, Reuters reported that U.S. government funding has led to over 1,000 patents for China-based inventors since 2010, including in sensitive areas like biotechnology and semiconductors. Data from the U.S. Patent Office, shared with a House committee, showed that agencies like the Department of Defense, NASA, and the Department of Energy supported the research. Critics argue that this highlights the risks of the U.S.-China Science and Technology Agreement, which is currently under review. The agreement has come under scrutiny as concerns grow over China's military power and alleged intellectual property theft. Despite calls to end the deal, some argue that cutting ties would hinder U.S. access to China's technological advancements. Read more [here](#).
- On Tuesday, August 20, a Texas Federal Court blocked the nationwide enforcement of the Federal Trade Commission's (FTC) rule banning nearly all non-compete agreements, which was set to take effect on September 4, 2024. As a result, existing non-competes remain valid, employers can still enter into new non-competes, and there is no requirement to notify employees of any changes. The FTC may appeal the decision, but the process could take months or even years, possibly reaching the U.S. Supreme Court. Employers should be aware that state laws governing non-competes continue to evolve, and the FTC is still pursuing cases against overly broad non-competes. Legal counsel should be consulted to ensure compliance with state laws and explore other options like non-solicitation, trade secret, and confidentiality agreements to protect business interests. Read more [here](#).
- On Monday, August 19, in an interview with Undersecretary of State Jose Fernandez, *POLITICO* reported that Fernandez did not disclose any information on why the

USTR has not announced the Biden administration's final decision on proposed 301 tariff increases that were originally scheduled to take effect beginning Aug. 1. "That's a USTR question," he said. "The bottom line is, again, we're taking action to protect American workers and businesses from unfair trade practices." USTR has previously said it now expects to issue its final decision sometime in August, once it sorts through the large volume of comments it received. Read more [here](#).

- On Friday, August 16, the U.S. Trade Representative (USTR) published a Federal Register notice requesting public comments to identify online and physical markets for inclusion in the 2024 Review of Notorious Markets for Counterfeiting and Piracy. The Notorious Markets List highlights examples of markets that reportedly engage in or facilitate significant copyright piracy or trademark counterfeiting. This year's focus will examine online pharmacies and counterfeit medicines. The deadline for submitting written comments is October 2, 2024, and rebuttal comments are due by October 16, 2024. Read more [here](#).
- On August 15, it was announced that Deborah Robinson, the President's nominee for Intellectual Property Enforcement Coordinator (IPEC), joined the International Anti-Counterfeiting Coalition (IACC) as Senior Vice President, Intellectual Property Enforcement and Senior Counsel. A link to the IACC's press release can be found [here](#).
- On August 14, the Federal Trade Commission (FTC) announced a final rule banning fake reviews, including AI-generated ones, and prohibiting the buying or selling of false reviews and testimonials. FTC Chair Lina M. Khan emphasized the rule's goal of protecting consumers and promoting fair competition, stating, "By strengthening the FTC's toolkit to fight deceptive advertising, the final rule will protect Americans from getting cheated." The rule also targets insider reviews, company-controlled review sites, review suppression, and the misuse of fake social media indicators. The FTC can now seek civil penalties against violators, with the rule becoming effective 60 days after its publication in the Federal Register. Read more [here](#).
- On August 13, it was revealed that Justice Department officials are considering significant actions against Google after a ruling determined the tech giant had illegally maintained a monopoly in online search services. Judge Amit Mehta's August 6 decision found Google violated antitrust laws, leading to discussions about remedies, including breaking off parts of the company, such as its Chrome browser or Google AdSense, or requiring it to share data with competitors and end default search engine deals with companies like Apple. A hearing is scheduled for September 6 to discuss next steps, as the government explores options to curb Google's dominance. These deliberations are part of broader antitrust scrutiny involving other major tech companies like Amazon, Meta, and Apple. Competitors, such as DuckDuckGo, have proposed additional measures to level the playing field, including banning default search engine agreements, providing easier search engine switching, and giving rivals access to Google's search and advertising data under regulatory oversight. Read more [here](#).
- On Thursday, August 8, 2024, the U.S. Trade Representative (USTR) issued two requests for public comments to aid in preparing its annual reports to Congress on China's compliance

with World Trade Organization (WTO) commitments and Russia’s implementation of its WTO commitments. For China, the USTR seeks input on various trade issues, including intellectual property rights and unresolved compliance issues that require review. A public hearing on China’s WTO compliance is scheduled for September 24, 2024, with written comments, requests to testify, and written testimony due by September 10. For Russia, the USTR is focusing on its progress in implementing WTO agreements, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The USTR also requests general input on Russia’s trade commitments and intellectual property rights enforcement. A public hearing on Russia’s WTO compliance will take place on October 10, 2024, at 10:00 a.m. ET, with written comments, requests to testify, and written testimony due by September 18. Read more on China [here](#) and on Russia [here](#).

### III. USPTO Update

- On Thursday, September 5, 2024, the Patent Public Advisory Committee (PPAC) held its first meeting since November 30, 2023. Another meeting will be held in November 2024. Details will be released on the PPAC website at a later date. Overall, the meeting covered topics related to reducing patent pendency and provided more information on the request for comments process. The meeting concluded with a celebration of the 25th Anniversary of PPAC. A full summary from ACG can be provided upon request.
- On Thursday, August 29, the USPTO launched the open beta of the new Trademark Trial and Appeal Board (TTAB) Center, allowing customers to file notices of opposition to trademark registrations. The beta will run for six months, during which filers can choose between the TTAB Center and the current Electronic System for Trademark Trials and Appeals (ESTTA). The USPTO encourages users to provide feedback on the TTAB Center’s features to enhance the system before its full launch in spring 2025. TTAB Center will offer improved filing security, better options for saving and sharing drafts, and a centralized docket for all filings. Read more [here](#).
- On Wednesday, August 28, *Investing.com* reported that a subsidiary of Accenture – Accenture Federal Services -- will be given a five year, \$75 million contract from the USPTO to “implement artificial intelligence in patent examination processes...to enhance the quality and efficiency.” Due to the “increasingly complex” task and rapid pace of issuing patents, the USPTO and Accenture are working together to “drive innovation and strengthen the IP system through AI.” Read more [here](#).
- On Thursday, August 15, the U.S. Patent and Trademark Office (USPTO) informed the public about a potential data breach within its Patent Center. The breach, first reported on August 1, involved limited protected information from unpublished patent applications being accessible via the Assignments page. The exposed data included application titles, numbers, owner names, filing dates, and inventor names, but no sensitive details like specifications or drawings. The USPTO disabled the affected functionality and notified those impacted. The breach resulted from a computer configuration error, and only one instance of unauthorized viewing was confirmed. The USPTO assured that no patent rights were at risk and provided a webpage for further information. Read more [here](#).

### IV. Judicial Updates:

- On Friday, September 5, Texas-based startup Xockets filed a lawsuit against Nvidia and Microsoft, accusing them of widespread patent infringement. The lawsuit alleges that the tech giants engaged in "predatory infringement" by using Xockets' patented technology—designed to offload tasks from overburdened processors—during the development of their advanced AI systems. Xockets claims that the companies' strategy is to steal intellectual property and rely on legal teams to resolve the issues later.
- On Wednesday, August 28, the U.S. Court of Appeals for the Federal Circuit (CAFC) upheld the International Trade Commission's (ITC) decision to end its investigation into alleged nail gun patent infringement. Koki Holdings had sought to overturn the ITC's ruling and revive the investigation against its competitor, Kyocera Senco Industrial Tools. However, the CAFC dismissed Koki's appeal, stating that Koki failed to demonstrate sufficient injury to establish standing. Kyocera's covenant not to sue Koki over the original or modified products was a key factor in the dismissal, eliminating any ongoing legal controversy between the parties. Read more [here](#).
- On Monday, August 26, a California federal judge overturned a \$600,000 jury verdict against Disney, which had found the company liable for infringing on Rearden LLC's motion-capture technology in its 2017 remake of *Beauty and the Beast*. Rearden had claimed Disney used its Contour facial-capture software without permission through a third-party contractor, Digital Domain, and sought a portion of the film's \$1.25 billion in profits. However, U.S. District Judge Jon Tigar ruled that Disney couldn't have known its contractor was misusing the software, making the verdict against Disney unsustainable. The case stemmed from a 2017 lawsuit, though Disney and Rearden previously settled related claims involving other films. Read more [here](#).
- On Monday, August 26, La Jolla Pharmaceuticals filed a lawsuit against the U.S. Patent and Trademark Office (USPTO) in a Virginia district court, seeking to overturn the USPTO's rejection of several claims in its patent application for a shock treatment. La Jolla argues that the Patent Trial and Appeal Board (PTAB) wrongly determined that the claims were obvious and unpatentable. The company claims the decision was "arbitrary" and a violation of law. La Jolla originally applied for the patent in 2022, and the lawsuit requests the court to deem the rejected claims valid and grant the patent. Read more [here](#).
- On Friday, August 23, a Texas federal jury awarded Lashify Inc. \$30.5 million in lost profits and set a 30% royalty rate after finding that Chinese company Worldbeauty willfully infringed on three of Lashify's patents for artificial eyelash extension kits. Lashify filed the lawsuit in 2022, accusing Worldbeauty of copying its patented DIY-lash control kit. The jury rejected Worldbeauty's argument that the patents were invalid, determining that the infringement was intentional. Lashify's legal counsel, Saina Shamilov, expressed satisfaction with the outcome, calling it a victory for innovators in the beauty industry. This case is part of a broader legal campaign by Lashify, with more trials pending. Read more [here](#).
- On Friday, August 23, a trademark controversy sparked when an unrelated man from Washington State filed a trademark for the viral TikTok phrase "very demure, very mindful," popularized by Chicago-based content creator Jools Lebron. TMZ reported that Lebron, who started the trend with her August 2 video showcasing a "very demure" approach to everyday

tasks, reacted negatively to the filing. In response, Lebron has since filed her own trademark for the phrase. The situation has led to discussion about the complexities of trademarking viral content, with Lebron's fans expressing frustration over others trying to profit from her success. Her legal team is now working to protect her brand, while other trademark filings remain under review. Read more [here](#).

- On Wednesday, August 14, a Delaware federal judge overturned a \$107.5 million jury verdict that had ordered AstraZeneca to pay Pfizer for allegedly infringing on cancer drug patents. Pfizer, which sued AstraZeneca in 2021, claimed that AstraZeneca's lung cancer drug Tagrisso violated patents related to the breast cancer drug Nerlynx. However, the judge ruled that Pfizer's patents were invalid due to insufficient written descriptions and lack of enablement, preventing scientists from reproducing the inventions. This decision nullified the earlier jury award in favor of Pfizer. Read more [here](#).
- On Monday, August 5, *IPWatchdog* reported that the U.S. District Court for the District of Columbia [ruled](#) that Google violated antitrust law and has a monopoly on the search and text advertising industries. U.S. District Judge Amit Mehta said that the search engine giant controls 90% of online searches. The ruling could set up another trial about solutions to remedy the unfair monopoly, including breaking up Google's parent company Alphabet. Read the full *IPWatchdog* coverage [here](#).

## V. International Updates:

- On Thursday, August 29, Romania announced its upcoming inclusion in the Unitary Patent (UP) system, effective September 1, 2024. This expansion will bring the total number of participating EU Member States to 18, adding Romania's population of 19 million to the system's coverage. The UP system, which streamlines patent protection across Europe, offers cost-effective and uniform protection, particularly benefiting small and medium-sized enterprises (SMEs). Over 1,000 patent holders have expressed interest in extending their protection to Romania, further enhancing the appeal of the UP system for innovative businesses. Read more [here](#).
- On Tuesday, August 27, the World Intellectual Property Organization (WIPO) released early data from the 2024 Global Innovation Index (GII), showing that China and the United States dominate the top science and technology clusters globally. Tokyo-Yokohama was ranked first, followed by Shenzhen-Hong Kong-Guangzhou. The top ten includes seven clusters in Asia and three in the U.S., with San Jose-San Francisco being the leading U.S. cluster, ranked sixth. Notably, clusters in middle-income economies like China and Egypt showed the fastest growth, while many clusters in high-income economies saw slower growth or declines in output. The full 2024 GII report will be released on September 26, 2024. Read more [here](#).

## VI. Industry Updates:

- On Monday, August 12, *IPWatchdog* published a podcast with ACG Partner Chris Israel, discussing innovation and patent politics. During their discussion they talked about matters ranging from proposed guidelines from the National Institute of Standards and Technology

(NIST) relating to use of march-in rights to control drug prices, to the [recently introduced \*RESTORE Act\*](#), which in little more than one-page would largely, if not completely, overrule the Supreme Court's *eBay* decision and create a presumption that victorious patent owners who have proved infringement and withstood all invalidity challenges would be presumed to be entitled to injunctive relief. Since joining ACG, Chris has worked with some of the largest and most innovative companies in the world, and he has developed a particular expertise and focus leading a coalition of top venture capitalists and innovative startups. He has also been named one of the 50 most influential people on IP. To hear the entire conversation click [here](#).