

## INTELLECTUAL PROPERTY LEGISLATION

In the 117th and 118th sessions of Congress, many of pieces of legislation have proposed various ways to strengthen intellectual property protection. The bills listed in this appendix offer a representative sampling of the proposals dealing with copyrights, patents, or trademarks. In each case, descriptive paragraphs and complete texts of the legislation are available at [www.congress.gov](http://www.congress.gov). None of the bills listed below actually became public law, meaning that each one could become a prototype for an affirmative case on the 2024-25 intellectual property topic.

**Advancing America's Interests Act. H.R.3535 118<sup>th</sup> Congress. Sponsor: Rep. David Schweikert of Arizona.**

This bill limits the ability of certain persons (e.g., patent or trademark holders) to bring complaints before the U.S. International Trade Commission (ITC), and it requires the ITC to consider the public interest when determining whether to exclude articles that are under investigation. A complainant before the ITC must satisfy a domestic industry requirement obliging them to have made significant investment in the United States related to the articles that are the subject of the matter. One method to establish domestic industry is through reliance on licensing activities. The bill requires a complainant attempting to demonstrate domestic industry through licensing activities to show that those activities led to the adoption and development of articles that incorporate the patent, copyright, trademark, mask work, or design at issue. Further, the bill prohibits a complainant from relying upon activities by a licensee to demonstrate domestic industry unless the license leads to the adoption and development of articles that incorporate the claimed patent, copyright, trademark, mask work, or design for sale in the United States. In addition, the bill requires the ITC to determine that any exclusion of articles pursuant to an investigation is in the public interest. The ITC must also identify at the beginning of an investigation whether the matter involves a dispositive issue that is appropriate for expedited initial determination and direct the assigned judge to issue such determination not later than 100 days after the investigation is instituted.

**Affordable Prescriptions for Patients Through Improvements to Patent Litigation Act. H.R.2884 117<sup>th</sup>**

**Congress. Sponsor: Rep. Henry Johnson, Jr. of Georgia.** This bill limits in certain instances the number of patents that the manufacturer of a biologic drug can assert in a lawsuit against a company seeking to sell a biosimilar version of that drug. (A biologic drug is produced through natural processes or isolated from natural sources. A biosimilar version is substantially similar to the original biologic, which is the reference product, and is often marketed as a less expensive alternative.) The bill's provisions apply to an existing framework that gives the biosimilar manufacturer an abbreviated path to Food and Drug Administration approval to sell the biosimilar. Specifically, if the biosimilar manufacturer completes certain actions under the framework, such as sharing certain information about its product with the reference product manufacturer, the bill limits the number of certain patents that the reference product manufacturer may assert in a lawsuit, such as patents that were filed more than four years after the reference product received market approval. The limit shall not apply to patents claiming certain methods for using the biologic drug. The court in which the infringement lawsuit is filed may increase the limit if justice so requires or if there is good cause for the increase.

**Agricultural Right to Repair Act. S.3549 117<sup>th</sup> Congress. Sponsor: Sen. Jon Tester of Montana.** This bill

requires original manufacturers of electronics-enabled agricultural equipment to provide (on fair and reasonable terms) owners or independent repair shops with the documentation, parts, software, and tools needed to diagnose, maintain, or repair such equipment. If an original manufacturer stops providing required items, any related copyrights or patents held by that manufacturer shall be placed in the public domain. Furthermore, the bill allows individuals, in specified circumstances, to circumvent copyright protections to facilitate diagnosis, maintenance, or repair of electronics-enabled agricultural equipment. The bill provides for enforcement through the Federal Trade Commission.

**American IDEA Act. S.2566 118<sup>th</sup> Congress. Sponsor: Sen. Tammy Baldwin of Wisconsin.** This bill would

reauthorize certain provisions of the Prioritizing Resources and Organization for Intellectual Property Act of 2008, to create a new grant program to fund legal aid programs to assist small businesses to protect intellectual property, and for other purposes. The bill intends to prevent unlawful taking or use of intellectual property from corporations and universities located in the United States, particularly by entities or individuals located in a priority watch list country. No-cost or low-cost legal advice and

services would be provided to low-revenue small businesses relating to the protection and enforcement of intellectual property rights; and the development and delivery of training programs and materials for small businesses relating to the protection and enforcement of intellectual property rights.

American Music Fairness Act. S.253 118<sup>th</sup> Congress. Sponsor: Sen. Alex Padilla of California. This bill establishes that the copyright holder of a sound recording shall have the exclusive right to perform the sound recording through an audio transmission. (Currently, the public performance right only covers performances through a digital audio transmission in certain instances, which means that nonsubscription terrestrial radio stations generally do not have to get a license to publicly perform a copyright-protected sound recording.) Under the bill, a nonsubscription broadcast transmission must have a license to publicly perform such sound recordings. The Copyright Royalty Board must periodically determine the royalty rates for such a license. When determining the rates, the board must base its decision on certain information presented by the parties, including the radio stations' effect on other streams of revenue related to the sound recordings. Terrestrial broadcast stations (and the owners of such stations) that fall below certain revenue thresholds may pay certain flat fees, instead of the board-established rate, for a license to publicly perform copyright-protected sound recordings.

China Technology Transfer Control Act of 2023. H.R.2594 118<sup>th</sup> Congress. Sponsor: Rep. Mark Green of Tennessee. This bill controls exports of certain national interest technology and intellectual property to China. Specifically, covered technology or intellectual property includes items that (1) would contribute significantly to the Chinese military to the detriment of U.S. national security, (2) are included in a designated list of product components compiled by the U.S. Trade Representative (USTR), or (3) are used by China to violate human rights or religious liberties. The President must control exports to China of any covered technology or intellectual property. Further, the President must sanction (1) a foreign person who sells to China or purchases from China any covered item, and (2) a Chinese person who knowingly uses a covered item provided to them in violation of U.S. export control law. In addition to a specified list of industries subject to the bill, the USTR must identify certain products from China that either receive designated support from the Chinese government or are used by China to violate human rights or religious liberties.

China Technology Transfer Control Act of 2023. H.R.2594 118<sup>th</sup> Congress. Sponsor: Sen. Mark Green of Tennessee. This bill controls exports of certain national interest technology and intellectual property to China. Specifically, covered technology or intellectual property includes items that (1) would contribute significantly to the Chinese military to the detriment of U.S. national security, (2) are included in a designated list of product components compiled by the U.S. Trade Representative (USTR), or (3) are used by China to violate human rights or religious liberties. The President must control exports to China of any covered technology or intellectual property. Further, the President must sanction (1) a foreign person who sells to China or purchases from China any covered item, and (2) a Chinese person who knowingly uses a covered item provided to them in violation of U.S. export control law. In addition to a specified list of industries subject to the bill, the USTR must identify certain products from China that either receive designated support from the Chinese government or are used by China to violate human rights or religious liberties.

Conducting Legally Efficient Administration and Resolution of Patents Act of 2021 or the CLEAR Patents Act of 2021. H.R.5902 117<sup>th</sup> Congress. Sponsor: Rep. Darrell Issa of California. This bill establishes that a federal agency proceeding pertaining to a patent shall, in certain instances, be stayed while certain administrative validity challenges to that patent are pending. Specifically, if the U.S. Patent and Trademark Office institutes an inter partes review (IPR) or a postgrant review (PGR) of a patent and the cancellation of one of the patent's claims would materially affect a federal agency proceeding, that proceeding must be stayed until the IPR or PGR has been decided or otherwise terminated.

Copyright Clause Restoration Act of 2023. H.R.576 118<sup>th</sup> Congress. Rep. Gregory Steube of Florida. This bill shortens the copyright protection term to 28 years starting from the date the work was originally secured, to be renewable for an additional 28-year term. (Under current law, for works created after 1977, the general rule is that the copyright term lasts for the life of the author plus 70 years.) The bill shall apply to all works fixed on or after the bill's enactment, except that it shall have retroactive effect for copyrights belonging to an entity that (1) is involved in the motion picture or arts and entertainment industries, and (2) has a market capitalization of more than \$150 billion.

Defending Each and Every Person from False Appearances by Keeping Exploitation Subject to Accountability Act of 2021 or the DEEP FAKES Accountability Act. H.R.2395 117<sup>th</sup> Congress. Sponsor: Rep. Yvette Clarke of New York. This bill establishes requirements for advanced technological false personation records (i.e., deep fakes) and establishes criminal penalties for related violations. Specifically, it requires producers of deep fakes to generally comply with certain digital watermark and disclosure requirements (e.g., verbal and written statements). It establishes new criminal offenses related to (1) the production of deep fakes which do not comply with related watermark or disclosure requirements, and (2) the alteration of deep fakes to remove or meaningfully obscure such required disclosures. A violator is subject to a fine, up to five years in prison, or both. It also establishes civil penalties and permits individuals to bring civil actions for damages. Additionally, it revises the criminal offense of fraud in connection with certain identification documents to include deep fakes. The bill also directs the Department of Justice to take certain actions, such as publishing a report related to deep fakes that includes a description of the efforts of Russia and China to use technology to impact elections. Software manufacturers who reasonably believe software will be used to produce deep fakes must ensure it has the technical capability to insert watermarks and disclosures. Finally, the bill directs the Department of Homeland Security to establish a task force to, among other things, advance efforts of the federal government to combat the national security implications of deep fakes.

Economic and Commercial Opportunities and Networks Act of 2023 or the ECON Act. S.367 118<sup>th</sup> Congress. Sponsor: Sen. James Risch of Idaho. This bill addresses economic issues in foreign relations and intellectual property (IP) infringement. The bill expands the criminal offense of trade secrets theft to include the unauthorized modifying or developing of a product in a way that would not be possible without another party's trade secret. This offense shall apply to non-U.S. conduct if the offender attempts to import the product into the United States. Furthermore, the President may impose sanctions against a foreign person (individual or entity) that has committed a significant theft of IP belonging to a U.S. person. The President must also establish or designate a multiagency committee to (1) review petitions alleging such acts of IP theft, and (2) recommend whether to impose sanctions for the alleged theft.

Fair Trade with China Enforcement Act. S.153 118<sup>th</sup> Congress. Sponsor: Sen. Marco Rubio of Florida. This bill revises trade, finance, and tax provisions with respect to China. Specifically, the bill directs the Department of Commerce to prohibit the export of certain U.S. technology and intellectual property to China, and it places a shareholder cap on Chinese investments in certain U.S. entities. The bill prohibits federal agencies from using or procuring telecommunications equipment or services from Huawei Technologies Company, ZTE Corporation, or any other entity reasonably believed to be owned or controlled by China. Further, the bill requires the U.S. Trade Representative to list certain Chinese products that receive support pursuant to China's Made in China 2025 policy. The bill expedites the countervailing duty process (i.e., the imposition of duties to offset a subsidy by a foreign government) for products on this list. The bill amends the Internal Revenue Code to (1) repeal certain reduced withholding rates for residents of China, and (2) provide for the taxation of income received by China on certain U.S. investments.

Genomics Data Security Act. S.289 118<sup>th</sup> Congress. Sponsor: Sen. Marco Rubio of Florida. This bill establishes requirements and otherwise directs the National Institutes of Health (NIH) to take actions to address national security concerns in genomic and other research. Specifically, the bill prohibits the use of NIH funds by any Chinese company (or its subcontractors or subsidiaries). This includes companies (1) over which the Chinese government, a Chinese national, or an entity organized under Chinese law exercises control; or (2) in which the Chinese government has a substantial interest. It also requires, as a condition of certification, that clinical laboratories that have access to U.S. health data disclose ties to the Chinese government. In addition, the NIH must incorporate national security issues in its strategic plan and report annually on any improperly disclosed, vetted, or approved ties that NIH-funded researchers have to foreign governments. Furthermore, the Department of Health and Human Services must establish a working group to update the NIH's Genomic Data Sharing Policy with respect to intellectual property, national security, and privacy concerns.

Increasing Prescription Drug Competition Act. H.R.4692 118<sup>th</sup> Congress. Sponsor: Rep. Elissa Slotkin of Michigan. This bill provides that certifications in generic drug applications of certain patents involved in Risk Evaluation and Mitigation Strategy (REMS) programs have no effect upon the drug's approval.

(The Food and Drug Administration sometimes requires a REMS program for certain drugs with safety risks, which may include restrictions on a drug's distribution through elements to ensure safe use (ETASU), such as special requirements for pharmacies that dispense the drug.) Specifically, certifications in generic drug applications with respect to patents that involve an ETASU for REMS requirements have no effect on the effective date of the drug's approval, notwithstanding any other provisions that allow for a stay of approval pending litigation outcomes (i.e., 30-month stay). The bill also specifies that in a civil action alleging patent infringement with respect to REMS requirements, the sponsor of the approved brand-name drug may only seek damages from (rather than an injunction against) the generic drug applicant.

Intellectual Property Violators Accountability and Transparency Act. H.R.5635 117<sup>th</sup> Congress. Sponsor: Rep. Chrissy Houlahan. This bill requires the President to establish an interagency working group to combat the theft of U.S. intellectual property and examine ways to use foreign policy to protect U.S. intellectual property. The Department of State must, in consultation with the working group, report to Congress on issues related to the theft of U.S. intellectual property, including (1) any major foreign state-owned or state-influenced enterprises that have engaged in or benefited from such theft, and (2) authorities that Congress could provide to the President to combat such theft.

Interagency Patent Coordination and Improvement Act of 2023. S.79 118<sup>th</sup> Congress. Sponsor: Sen. Richard Durbin of Illinois. This bill establishes the Interagency Task Force on Patents to support coordination and communication between the U.S. Patent and Trademark Office (PTO) and the Food and Drug Administration (FDA) on activities relating to patents for human drugs and biological products. The task force's duties shall include sharing information about (1) the processes of each agency, including how each agency evaluates applications (e.g., patent applications at the PTO and new drug applications at the FDA); and (2) new approvals of patents, human drugs, biological products, and new technologies. The task force must also establish a process that requires (1) the PTO to request from the FDA information relating to certain patent applications to help patent examiners carry out their duties, (2) the FDA to provide such information to the PTO, and (3) the PTO to assist the FDA in its ministerial role of listing patents.

Internet Platform Accountability and Consumer Transparency Act or the Internet PACT Act. S.483 118<sup>th</sup> Congress. Sponsor: Sen. Brian Schatz of Hawaii. This bill requires providers of interactive computer services (e.g., social media companies) to publish their policy explaining the types of content that is permissible on the service and provide a system for users to submit complaints about content that may violate the policy or involve illegal content. Further, providers must establish a process for removing certain content that violates their policies and notifying the information content provider about the removal, including a mechanism to appeal the removal. Providers also must publish a report every six months that details the instances in which the company took action with respect to content, including removing content, deprioritizing content, and suspending content provider accounts. The bill removes certain liability protections for providers if the provider has actual knowledge of illegal content on its service and does not remove the content within specified time frames. The bill provides for enforcement of these requirements by the Federal Trade Commission.

No Stolen Trademarks Honored in America Act of 2023. H.R.1505 118<sup>th</sup> Congress. Sponsor: Rep. Darrell Issa of California. This bill modifies the bar against U.S. courts enforcing or validating trademarks that were confiscated by the Cuban government. The bill prohibits U.S. courts and executive branch agencies from enforcing or validating such confiscated trademarks if the mark has been used in connection with a confiscated business or asset. Currently, the prohibition is limited to U.S. courts and applies only if the confiscated trademark is being asserted in the United States by a Cuban national. Under the bill, the prohibition shall not apply if the original trademark owner, or a successor, has expressly consented to the enforcement action. The prohibition shall apply only if the entity asserting the trademark rights knew or should have known, when it acquired the rights, that the mark was the same or substantially similar to one connected to a confiscated business or asset.

Patent Eligibility Restoration Act of 2023. S.2140 118<sup>th</sup> Congress. Sponsor: Sen. Thomas Tillis of North Carolina. This bill amends the law relating to patent subject matter eligibility to establish that only specified subject matter (e.g., a natural process wholly independent of human activity) is ineligible for patenting. (Currently, subject matter eligibility is determined by examining whether the claimed

invention is directed to certain ineligible categories, and if so, whether there is an inventive concept. Subject matter eligibility is one of several requirements that an invention must satisfy in order to receive patent protection.) Under this bill, an invention shall be considered to involve patent-ineligible subject matter only if it falls within specified categories, such as (1) a mathematical formula that is not part of a useful process, machine, manufacture, or composition; (2) a mental process that is performed solely in the human mind; or (3) an unmodified human gene as the gene exists in the human body.

Patent Examination and Quality Improvement Act of 2022. S.4704 117<sup>th</sup> Congress. Sponsor: Sen. Thomas Tillis of North Carolina. This bill requires the Government Accountability Office to report to Congress on how to improve the patent examination process and the quality of issued patents. Within a year after the report is submitted to Congress, the U.S. Patent and Trademark Office must develop guidance for its patent examiners that take into consideration the report's findings and recommendations.

Patent Trial and Appeal Board Reform Act of 2022. S.4417 117<sup>th</sup> Congress. Sponsor: Sen. Patrick Leahy of Vermont. This bill modifies the authorities and procedures of the Patent Trial and Appeal Board (PTAB), the body within the U.S. Patent and Trademark Office (PTO) that decides administrative patent validity challenges and reviews (e.g., inter partes reviews and post-grant reviews). For example, the bill (1) authorizes the director of the PTO to review and set aside PTAB decisions, (2) modifies the time limits for filing such patent validity challenges at the PTAB, and (3) limits the institution of certain such challenges if the challenges are filed by the same petitioner and includes one or more of the same claims.

Patents for Humanity Act of 2022. S.4210 117<sup>th</sup> Congress. Sponsor: Sen. Patrick Leahy of Vermont. This bill provides statutory authority for a program to award certificates that may be used to accelerate certain proceedings and applications at the U.S. Patent and Trademark Office (PTO). The program established under this bill shall be treated as the successor to the existing Patents for Humanity program. Under this bill, the PTO must hold a competition at least once every two years to award certificates to eligible entities that submit a patent application that addresses a humanitarian issue.

Platform Accountability and Consumer Transparency Act or the PACT Act. S.797 117<sup>th</sup> Congress. Sponsor: Sen. Brian Shatz of Hawaii. This bill requires providers of interactive computer services (e.g., social media companies) to publish their policy explaining the types of content permissible on the service and provide a system for users to submit complaints about content that may violate the policy or involve illegal content. Further, social media companies must establish a process for removing certain content that violates their policies and notifying the information content provider about the removal, including a mechanism to appeal the removal. Social media companies also must publish a report every six months that details the instances in which the company took action with respect to content, including removing content, deprioritizing content, and suspending content provider accounts. The bill removes certain liability protections for companies if the company has actual knowledge of illegal content on its service and does not remove it within specified time frames. The bill provides for enforcement of these requirements by the Federal Trade Commission.

PREVAIL Act. S.2220 118<sup>th</sup> Congress. Sponsor: Sen. Christopher Coons of Delaware. This bill amends title 35, United States Code, to invest in inventors in the United States, maintain the United States as the leading innovation economy in the world, and protect the property rights of the inventors that grow the economy of the United States, and for other purposes. This Act may be cited as the "Promoting and Respecting Economically Vital American Innovation Leadership Act" or the "PREVAIL Act". This bill will correct the unintended consequences of the comprehensive 2011 reform of patent laws that have become evident during the decade preceding the date of enactment of this Act, including the strategic filing of post-grant review proceedings to depress stock prices and extort settlements, the filing of repetitive petitions for post-grant reviews that have the effect of harassing patent owners, and the unnecessary duplication of work by the district courts of the United States and the Patent Trial and Appeal Board, all of which drive down investment in innovation and frustrate the purpose of those patent reform laws.

Pride in Patent Ownership Act. S.2774 117<sup>th</sup> Congress. Sponsor: Sen. Patrick Leahy of Vermont. This bill requires disclosure of certain patent-related information, including information about ownership and funding. Under the bill, if a foreign or domestic governmental entity provides funding for fees related to a patent application or for paying an attorney (or patent agent) to prosecute the patent application, the

application must disclose the amount and source of such funding. Similarly, if any governmental entity provides funding for paying a patent's maintenance fees or for paying an attorney (or patent agent) to submit such maintenance fees, the patent owner must submit a statement disclosing the amount and source of such funding. The bill also requires patent owners to record information about the ownership of a patent with the U.S. Patent and Trademark Office (USPTO). Patent owners must also update this information when certain rights or interests in the patent have been conveyed to another individual or entity. A patent owner may not receive increased monetary damages for infringement of that patent that occurred while the owner was out of compliance with this ownership information recordation requirement. The USPTO must make this ownership information publicly available.

Protect America's Innovation and Economic Security from CCP Act. S.511 118<sup>th</sup> Congress. Sponsor: Sen. Rick Scott of Florida. This bill reestablishes an initiative related to China within the National Security Division of the Department of Justice (DOJ) and outlines the goals and requirements for this initiative. In 2022, DOJ ended a program named the China Initiative. This bill reestablishes and renames it the CCP Initiative to (1) counter nation-state threats to the United States; (2) curb spying by the Chinese Communist Party (CCP) on U.S. intellectual property and academic institutions; (3) identify and prosecute individuals engaged in trade secret theft, hacking, and economic espionage; and (4) protect U.S. critical infrastructure from foreign threats. DOJ must annually brief specified congressional committees on the progress and challenges of the initiative. The initiative terminates six years after enactment of this bill.

Protecting IP Act of 2021. S.1924 117<sup>th</sup> Congress. Sen. Steve Daines of Montana. This bill requires the U.S. Trade Representative (USTR) to enforce the actions related to intellectual property outlined in the Economic and Trade Agreement Between the Government of the United States of America and the Government of China (dated January 15, 2020). Such enforcement shall include civil, administrative, and criminal procedures and deterrent-level civil and criminal penalties as provided in the agreement. It shall also incorporate the USTR's authority to identify and take action against countries that deny (1) protection of intellectual property rights, or (2) market access to U.S. persons that rely upon intellectual property protection.

Protecting Patients from Counterfeit Medical Devices Act. S.3416 117<sup>th</sup> Congress. Sponsor: Sen. Christopher Murphy of Connecticut. This bill expands provisions in the Federal Food, Drug, and Cosmetic Act pertaining to counterfeit drugs to also cover counterfeit medical devices and addresses related issues. (Current law prohibits trafficking in counterfeit goods generally.) The bill prohibits certain actions, such as selling counterfeit devices or forging labels to make counterfeit medical devices. An individual or entity that makes or sells a counterfeit medical device shall be subject to fines, imprisonment for up to 10 years, or both. Counterfeit medical devices, packaging and labeling for counterfeit medical devices, and items used for making counterfeit medical devices may be seized pursuant to a federal court proceeding.

Restoring America's Leadership in Innovation Act of 2021. H.R.5874 117<sup>th</sup> Congress. Rep. Thomas Massie of Kentucky. This bill revises several aspects of patent law. The bill changes the U.S. patent system back to a first-to-invent system, in which the first inventor to conceive of an invention is entitled to a patent. Currently, the first person to file an application that meets all the necessary requirements is entitled to the patent. Several types of administrative patent challenge proceedings are abolished, as well as the Patent and Trademark Office (PTO) body that decides those proceedings. The bill relaxes the standard for what constitutes patent-eligible subject matter. The only ineligible inventions shall be those that exist in nature independent or prior to human activity or that exist solely in the human mind. The bill also makes it easier for a patent owner that has won an infringement case in court to secure a permanent injunction against the infringing defendant. Specifically, there shall be a presumption that further infringement would cause irreparable harm to the prevailing patent owner, and the burden shall be on the infringer to prove otherwise. (Currently, a prevailing patent owner seeking a permanent injunction must prove, among other things, that further infringement would cause irreparable harm.) The bill limits what types of publications shall be treated as prior art that could be used to make an invention be considered to be anticipated or obvious (and therefore not patentable). The bill authorizes the PTO to keep and spend all the fees that it collects.

Restoring the America Invents Act. S. 2891 117<sup>th</sup> Congress. Sponsor: Sen. Patrick Leahy of Vermont. This bill modifies various provisions related to administrative patent validity review proceedings conducted before the Patent Trial and Appeal Board (PTAB), a body within the Patent and Trademark Office (PTO). For example, the bill expands the scope of inter partes reviews (IPRs), one type of such review proceedings, by allowing challenges to a patent's validity based on statutory or obviousness-type double patenting grounds; authorizes the PTO director to review, modify, or set aside final PTAB decisions; authorizes governmental entities to file IPRs and post-grant reviews (PGRs), a related type of patent review proceeding; requires the PTO to institute an IPR (i.e., a decision to proceed with the full IPR proceeding) if there's a reasonable likelihood that the petitioner will prevail, subject to limited exceptions; establishes in statute factors for a court to consider when deciding a request to stay a patent infringement lawsuit involving a patent subject to a pending IPR or PGR; modifies provisions related to the joinder of parties and handling of multiple proceedings involving the same patent before the PTO; and modifies provisions relating to the time limitation for filing an IPR, including by establishing that a lawsuit dismissed without prejudice does not trigger the time limitation (generally, a petitioner wishing to file an IPR must do so within one year of being served a lawsuit alleging infringement of the patent).

Stop Theft of Intellectual Property Act of 2021. S.1409 117<sup>th</sup> Congress. Sponsor: Sen. Chuck Grassley of Iowa. This bill makes the misappropriation of trade secrets a ground for deporting or barring an alien from entry into the United States. Specifically, an alien may be denied entry into the United States if there are reasonable grounds to believe that the alien has violated, is violating, or is seeking entry to violate any U.S. law relating to the misappropriation of trade secrets or economic espionage. Similarly, an alien may be deported if the alien has violated, is violating, or after admission into the United States violates any U.S. law relating to the misappropriation of trade secrets or economic espionage.

Stopping Harmful Offers on Platforms by Screening Against Fakes in E-commerce Act or the SHOP SAFE Act. H.R.5374 117<sup>th</sup> Congress. Sponsor: Rep. Jerrold Nadler of New York. This bill makes an electronic commerce platform liable for infringement of a registered trademark by a third-party seller of goods that implicate health and safety unless the platform takes certain actions. Specifically, the platform may be contributorily liable if the seller uses a counterfeit mark in connection with selling, offering, or advertising such goods on the platform. The platform may avoid such liability by taking certain actions before the infringing act, including (1) requiring the seller to have a registered agent or a verified address for service of process in the United States, (2) verifying the seller's identity and contact information, (3) requiring the seller to agree to not use counterfeit marks with goods sold on the platform, (4) implementing procedures for trademark owners to request the removal of listings for counterfeit goods, and (5) implementing policies to remove and ban repeat offenders. A person who knowingly makes a material misrepresentation in a request to a platform to take down a seller listing (because the listing allegedly uses a counterfeit mark and implicates health and safety concerns) shall be civilly liable to the seller injured by the resulting improper takedown. If a person makes 10 or more such improper takedown requests, the platform may sue on behalf of the sellers who consent to the platform's lawsuit. A party suing under this bill may choose to receive statutory damages (as opposed to actual damages) of \$2,500-\$75,000 for each improper request, depending on the circumstances of the case.

Strengthening Measures to Advance Rights Technologies Copyright Act of 2022 or the SMART Copyright Act of 2022. S.3880 117<sup>th</sup> Congress. Sponsor: Sen. Thomas Tillis of North Carolina. This bill authorizes the Library of Congress to designate technical measures (i.e., measures that identify, manage, or protect copyrighted works) and requires providers of internet-related services to make reasonable accommodations for applicable designated technical measures. A copyright owner may sue and receive monetary damages from a service provider that fails to make such reasonable accommodations. The bill also modifies requirements relating to a provision that limits the liability of service providers for acts of copyright infringement committed by the service providers' users.

Targeting Rogue and Opaque Letters Act of 2021. H.R.192 117<sup>th</sup> Congress. Sponsor: Rep. Michael Burgess of Texas. This bill prohibits sending bad faith patent demand letters. A patent demand letter is a written communication claiming that the recipient may be liable for patent infringement. Bad faith means making knowingly false or misleading statements, making claims with reckless disregard for the truth, or omitting information with the intent to deceive. Bad faith representations include false or misleading claims about the sender's right to assert a patent and whether lawsuits have been filed.

They also include making written demands for compensation for invalid patents or to demand compensation without identifying the ultimate parent entity of the letter sender. The sender shall have an affirmative defense that it acted in good faith, by proving that its misstatements or omissions were unintentional and that it made an error in spite of procedures to avoid such errors. The bill preempts state laws relating to patent assertion communications. The Federal Trade Commission and state attorneys general may bring actions to enforce these provisions.

Trademark Licensing Protection Act of 2023. S.2173 118<sup>th</sup> Congress. Sponsor: Sen. Angus King of Maine.

This bill establishes that licensing a trademark or trademark registration for use by a related company does not contribute to establishing an employment relationship between the licensor and the licensee, nor does a licensor's exercise of control over how the licensed trademark is used.

Unleashing American Innovators Act of 2022. H.R.8697 117<sup>th</sup> Congress. Sponsor: Rep. Deborah Ross of North Carolina. This bill modifies the responsibilities of U.S. Patent and Trademark Office (PTO) satellite offices, increases the discount on patent-related fees for small and micro entities, and addresses related issues. Specifically, the bill modifies the statutory purpose of PTO satellite offices to include outreach and retention activities targeting underrepresented groups and individuals from economically, geographically, and demographically diverse backgrounds. For each satellite office established after July 1, 2022, the PTO must consider the office's proximity to anchor institutions (e.g., hospitals primarily serving veterans and institutions of higher education) and populations that are underrepresented in patent filings, including women, people of color, and rural populations. The PTO must establish (1) a satellite office in the southeastern United States within three years of this bill's enactment, (2) at least four community outreach offices throughout the United States within five years of this bill's enactment, and (3) a pilot program to help prospective first-time patent applicants assess the likelihood that a potential patent will be issued. The PTO must also (1) conduct and report to Congress a study on patent pro bono programs, including whether such programs are sufficiently serving underrepresented groups; and (2) use the study's findings to update such pro bono programs. In addition to increasing the discount on fees for small and micro entities, the bill also imposes penalties for making a fraudulent certification to obtain the discount, specifically by revoking any patent resulting from an application related to the fraudulent certification.