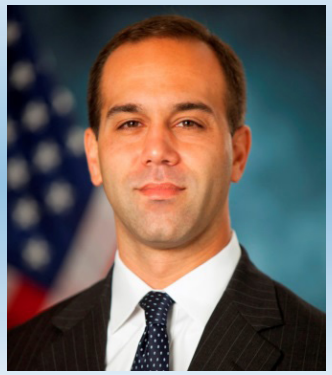
OFFICE OF THE UNITED STATES INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR

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# Intellectual Property Spotlight



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## Introduction

This edition of Intellectual Property Spotlight highlights the Administration's attention to U.S. patent reform, as well as our efforts to strengthen intellectual property protection through international trade policy. During his State of the Union Address in January 2014, President Obama urged Congress to pass patent reform legislation that allows businesses to stay focused on innovation rather than costly litigation. On December 5, 2013, the House of Representatives passed the Innovation Act, H.R. 3303, on a bipartisan basis, and on December 17, 2013, the Senate Judiciary Committee held a hearing on Chairman Leahy's Patent Transparency and Improvements Act. The Administration looks forward to working with Congress to address this important issue.

While Congress considers patent reform, the Administration is committed to strengthening the current patent system when feasible through Executive Actions. On February 20, 2014, the White House announced three new programs by the U.S. Patent and Trademark Office (USPTO), including a crowdsourcing initiative to assist in determining whether an invention is truly novel, an expansion of USPTO's Patent Examiner Technical Training Program to keep patent examiners up-to-speed on fast-changing technology, and increased resources to the *pro bono* and *pro se* program to improve patent system access to those who lack adequate resources.

The Administration is also focused on ensuring our trading partners provide effective intellectual property protections essential for fair market access for the IP-intensive industries that represent 30 million American jobs. On February 18, 2014, United States Trade Representative Michael Froman delivered an important speech to the Center for American Progress that clearly set forth the Administration's approach to U.S. trade policy. Ambassador Froman reiterated that strong intellectual property protections were ingrained in the U.S. Constitution and domestic laws, and through negotiated trade agreements, the United States will cultivate global norms of behavior for protecting intellectual property.

USTR also made news on February 12, 2014, when it published its annual "Notorious Markets List," which identifies infamous online and physical markets around the world that engage in commercial-scale intellectual property rights infringement. The markets, in diverse places such as South America, Asia, and Eastern Europe, are responsible for trafficking in large volumes of pirated works and counterfeit goods.

The Administration is committed to promoting strong intellectual property protections at home and abroad.

Alexander N.M. Niejelow
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## President Urges Patent Reform to Promote Innovation

On January 28, 2014, during the State of the Union Address, President Obama urged Congress to pass patent reform legislation. Noting the critical role that innovation will play for our nation to compete successfully in a global economy, the President pressed Congress to approve patent reform legislation that allows businesses to stay focused on innovation rather than costly litigation.



*"We know that the nation that goes all-in on innovation today will own the global economy tomorrow. This is an edge America cannot surrender," said President Obama. "And let's pass a patent reform bill that allows our businesses to stay focused on innovation, not costly, needless litigation."*

In addition, the President asked Congress to reverse the damaging cuts to Federally-funded basic research. Such basic research is a driver of new ideas and innovations, inspiring transformational technologies such as smartphones. The President indicated a desire to create the conditions needed to unleash the next great American discovery. A link to the President's State of the Union address is here.

## White House Announces New Executive Actions to Strengthen Patent System

On February 20, 2014, the White House announced three new Executive Actions to encourage innovation and strengthen the quality and accessibility of the patent system. In addition, the White House announced progress on six prior Executive Actions designed to protect innovators from frivolous litigation and to improve the patent system. These initiatives are part of the Administration's pledge to deliver a Year of Action on behalf of the American people by improving our patent system to foster innovation, not litigation.

The three new Executive Actions announced include:

- ***A Crowdsourcing Prior Art*** initiative, which expands ways for companies, experts and the public to assist patent examiners, holders and applicants to identify technical patent information to determine whether an invention is truly novel;
- An expansion of the ***Patent Examiner Technical Training Program*** to help patent examiners keep up with fast changing technologies; and
- An increase in the resources dedicated to ***Pro Bono and Pro Se assistance*** to increase accessibility of the patent system for inventors who lack legal representation.

In addition, the White House announced the delivery of six previously published Executive Actions designed to improve the U.S. patent system and reduce frivolous litigation. Those include:

- **Promoting Transparency** — publication of a draft rule to promote transparency by requiring patent owners to accurately record and regularly update ownership information;
- **Making Patents Clear** — USPTO developed and implemented a training program to help patent examiners rigorously examine so-called "functional claims" in patent applications to ensure that the claims are clear;
- **Protecting Main Street from Abuse** — USPTO is launching an online toolkit to ensure that consumers and main street retailers know their rights before entering into costly litigation or legal settlements;
- **Expanding Outreach & Focused Study** — USPTO is expanding the Edison Scholars Program, which brings academic experts to USPTO to conduct research and make available to the public information on abusive litigation;
- **Strengthening Exclusion Order Enforcement** — IPEC is launching an inter-agency review to make the enforcement of exclusion orders issued by the International Trade Commission more transparent and effective;
- **Innovation for Global Development** — the Administration is committing to sustain the Patents for Humanity program, which creates business incentives for using patented technology to address global humanitarian needs.

A link to the White House fact sheet that further describes the Executive Actions to Strengthen Our Patent System and Foster Innovation can be found here.

## USTR Ambassador Michael Froman Affirms Importance of IP in Values-Driven Trade Policy

On February 18, 2014, in remarks delivered at the Center for American Progress, United States Trade Representative Ambassador Michael Froman affirmed the important role of intellectual property to U.S. trade and jobs. Discussing the Administration's trade strategy, Ambassador Froman explained that the Administration is committed to promoting free trade in a way that is "consistent not just with our economic interests, but also with our values."

During the speech, Ambassador Froman explained how both economic interests and American values are advanced by negotiating strong and effective intellectual property protections modeled on U.S. law. The Ambassador explained that the American view, as set forth in the U.S. Constitution and domestic law, is that inventors and creators should be able to patent and copyright their respective inventions and works, and those values, incorporated into trade agreements, will raise intellectual property standards for U.S. trading partners. He noted that United States needs to "cultivate global norms rooted in promoting commerce, scientific progress and freedom of expression — norms reflected in our Constitution that encourage innovation and creation."

A link to the text of the speech is here.

## USTR Notorious Markets Report

On Wednesday, February 12, 2014, USTR published its fourth out-of-cycle "Notorious Markets List," which identifies particularly infamous markets around the world, both online and physical, that engage in commercial-scale intellectual property rights infringement. These markets harm American businesses and undermine U.S. workers. Twenty-three online marketplaces and over 35 physical markets were identified in USTR's report.



*Upon publication of the Notorious Markets List, U.S. Ambassador Michael Froman said, "The marketplaces identified here warrant the immediate attention of our trading partners."*

Regarding the online marketplaces, USTR's report identified sites engaged in copyright piracy, as well as the online sale of counterfeit goods. The sites were operated or hosted in diverse locations such as Canada, China, Russia, Sweden, and Ukraine. Copyright piracy sites facilitate streaming or downloading of copyright-protected first-run movies, television programs, movies, books and software, while counterfeiters use the Internet to market a wide array of unauthorized goods, from clothing to auto parts to luxury items and regulated pharmaceuticals.

With regard to physical marketplaces, the report identified locations in South America, China, India, Spain, Thailand, and Ukraine that sell counterfeit merchandise such as watches, handbags, clothing, and footwear, as well as pirated movies, games and music.

USTR noted numerous positive developments since the release of the last report in 2012. Several online marketplaces, such as Canada-based IsoHunt.com, a significant BitTorrent index, agreed to shut down; China's Xunlei.com closed its problematic GouGou.com platform and China's PaiPai.com streamlined its notice and takedown procedures. These markets were removed from the list.

USTR emphasized that its report is not meant to be an exhaustive list of all markets dealing with infringing products around the world. Instead, the report is meant to help the United States and foreign governments to prioritize enforcement of, and identify new types of threats to, intellectual property rights that protect job-supporting innovation and creativity in the United States and world-wide. A link to the USTR announcement is here.

# Guilty Pleas in Counterfeit Cases

## Guilty Pleas in Massive Counterfeit Goods Importation Conspiracy

In December 2013, nine members of an international counterfeit goods conspiracy pleaded guilty in Federal court in Newark, New Jersey to charges of, among other things, conspiracy to traffic in counterfeit goods and money laundering. According to court documents, from November 2009 through February 2012, the defendants conspired to import hundreds of containers of counterfeit goods, including handbags, footwear and perfume, from China into the United States. The goods, if legitimate, would have had a retail value of more than $300 million. A link to the ICE press release is here (USAO-D.NJ, FBI, ICE).

*"These nine individuals are linked to numerous containers of counterfeit goods that were smuggled into the United States," said Andrew McLees, special agent in charge of HSI Newark. "The sale of counterfeit items not only take jobs from hard working Americans, but the illicit funds generated also support other criminal activity."*

## Guilty Plea in Counterfeit Military Goods Case

In January 2014, Hao Yang, 25, of Bloomsburg, Pennsylvania, pleaded guilty to conspiracy to traffic in counterfeit goods, including counterfeit military-grade integrated circuits and defense goods. According to his plea agreement, Yang, a Chinese national, imported counterfeit goods from China and stored them at his residence. He later shipped specific items to buyers in the United States based on the order information provided by his co-conspirators. One specific co-conspirator located in China supplied the military-grade counterfeit circuits to Yang, and this co-conspirator sold, or attempted to sell the circuits to various individuals, companies and government agencies in the United States. A link to the ICE press release is here (USAO-D.MD, ICE).

## Pakistani Man Pleads Guilty to Trafficking Counterfeit Pharmaceuticals

*"Distributing counterfeit and misbranded drugs puts the health of the public at risk," said Tommy R. Hennesy, resident agent in charge of the FDA-OCI. "The FDA will take firm action to protect unsuspecting consumers from products that are deceptive and could be dangerous to their health."*

In January, 2014, Mohammad Jamal Rashid, 45, a U.S. permanent resident originally from Pakistan and residing in Houston, Texas, pleaded guilty to conspiracy to import counterfeit and misbranded drugs. A total of 3,200 counterfeit Viagra and 4,000 counterfeit Cialis pills were sent from China to Rashid's home. Although the pills looked authentic, when tested, law enforcement determined that the counterfeit Viagra had less active pharmaceutical ingredient than was stated on the packaging, and the counterfeit Cialis did not contain any of the brand's active pharmaceutical ingredients. A link to the ICE press release is here (USAO-SDTX, ICE, FDA-OCI).

## California Man Pleads Guilty to Trafficking Counterfeit Pharmaceuticals

On February 20, 2014, Ricky Lee Campbell, 60, of Sacramento, California, pleaded guilty to conspiracy to traffic in counterfeit pharmaceuticals. Campbell and his co-defendant, Susan Yvonne Eversoll, offered drugs for sale using CraigsList, Pennysaver, and via text message blasts. Searches of Campbell and Eversoll's residences produced more than 6,000 counterfeit tablets of Viagra and Cialis. Eversoll, 47, pleaded guilty to the conspiracy in December 2013, and was sentenced on March 6, 2014, to 18 months in prison. Campbell is scheduled to be sentenced in May. A link to the USAO-EDCA press release is here (USAO-EDCA, FBI, Sacramento County Sheriff's Office).

# Intellectual Property Enforcement Operations



*"The continued coordination of the federal partners is integral to the success of Intellectual Property Rights enforcement," said CBP Assistant Commissioner Susan T. Mitchell. "Together with partners like ICE HSI, USPIS, and the IPR Center we are able to protect American businesses from criminal activities that affect their bottom line."*

## Operation Team Player

On February 13, 2014, Federal officials announced the results of Operation Team Player, a nationwide law enforcement effort directed at counterfeit sports apparel from major professional sports leagues such as the National Football League, the National Basketball Association, and Major League Baseball. From June 2013 to February 2014, law enforcement investigators from U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and the U.S. Postal Inspections Service (USPIS), seized 397,140 items, including counterfeit jerseys, ball caps, T-shirts, jackets and souvenirs, worth a total MSRP of $37.8 million. The operation was coordinated by the National Intellectual Property Rights Coordination Center (IPR Center) in Arlington, Virginia.

During the week of the Super Bowl, as part of Operation Team Player, CBP seized more than 73,000 items with an MSRP of more than $7 million. Additionally, law enforcement seized 163 counterfeit Super Bowl tickets with an estimated value of $169,200. A link to the ICE press release is here (ICE, CBP, USPIS).

## Los Angeles City Attorney Secures $3.9 Million Judgment against Merchant of Counterfeit Goods

On January 15, 2014, Los Angeles City Attorney Mike Feuer announced that his office secured a $3.9 million judgment and permanent injunction against a downtown merchant for the sale and possession of counterfeit goods. Maria Luisa Sanchez was found to have committed 1,586 trademark violations since at least 2009 while selling counterfeit jewelry, apparel, handbags and related items at various downtown storefronts. The judgment is the largest amount ever secured by the City Attorney's Office in a counterfeiting case, and the second multi-million dollar judgment against a counterfeiter in the last six months. The City Attorney's Counterfeit Abatement Prosecution Program, funded by a grant from the U.S. Department of Justice's Bureau of Justice Assistance, secured the judgment and injunction on behalf of the City (Los Angeles City Attorney's Office, U.S. DOJ-BJA).

## Cook County (IL) Sheriff's Police Confiscate Counterfeit Airbags from Auto Shop

On February 12, 2014, Stanislaw Gondek, 31, of Hickory Hills, Illinois, was charged with felony counterfeit trademark, after Cooke County Sheriff's police, with assistance from ICE, seized 24 counterfeit airbags at Gondek's auto diagnostics business, G7 Auto Diagnostics, in Bridgeview, Illinois. The airbags were for Honda, Mazda, Ford, Lexus, Toyota, Chevrolet, and Volkswagen vehicles. CBP had previously notified Gondek on three separate occasions that the agency had seized counterfeit airbags that were originally to be shipped to his business. This operation was supported by a grant from the U.S. Department of Justice's Bureau of Justice Assistance. Links to the ICE and Cook County Sheriff's Office press releases are here and here, respectively (ICE, CBP, Cook County Sheriff's Office, U.S. DOJ-BJA).

# Education and Outreach

### *USPTO-WIPO Colloquium*

In December, USPTO and the World Intellectual Property Organization held a judicial colloquium on intellectual property rights at the USPTO Global Intellectual Property Academy. Judges from Barbados, Brunei Darussalam, Lebanon, Malawi, Malaysia, Tanzania, Thailand, Yemen and Zimbabwe participated in the program. Topics included trademark and copyright infringement analysis and issues in adjudicating infringement cases, civil remedies, misappropriation of trade secrets, investigating and prosecuting intellectual property cases, adjudicating criminal intellectual property cases, alternative dispute resolution and cases studies.

### *Commercial Law Development Program in the Kyrgyz Republic*

USPTO participated in a Commercial Law Development Program in the Kyrgyz Republic on February 6 and 7, 2014. The program, "Workshop on Customs Measures for the Protection of Intellectual Property," was co-sponsored by the Kyrgyz intellectual property office (Kyrgyzpatent) and the Kyrgyz Customs Service. Workshop attendees included Customs representatives, representatives from Kyrgyzpatent, private practitioners, and rights holders. In addition to USPTO, speakers included representatives from CBP, the World Customs Organization, Kyrgyz Customs and rights holders. The workshop consisted of presentations, case studies and exercises.

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If you feel that you have been the victim of an intellectual property crime, you can report the crime by clicking on the button to the left, calling the IPR Center at 1-866-IPR-2060, or contacting a field office of the FBI. To help you determine what to do when reporting an intellectual property crime, see DOJ's "Reporting Intellectual Property Crime: A Guide for Victims of Counterfeiting, Copyright Infringement, and Theft of Trade Secrets." DOJ also has created forms/checklists that identify the information you will need to provide when referring copyright infringement and trademark offenses and theft of trade secrets.