Overview

The U.S. Intellectual Property Enforcement Coordinator (IPEC), Vishal Amin, testified on February 26th, before the Senate Judiciary Committee’s Subcommittee on Intellectual Property to discuss the Annual IPEC Report to Congress. The hearing was chaired by Senator Tillis (R-NC), also in attendance were Senator (and Ranking Member) Chris Coons (D-DE), Marsha Blackburn (R-TN) and Richard Blumenthal (D-CT).

This hearing was the first held by the Judiciary Committee’s newly re-established Subcommittee on Intellectual Property. There was a broad range of topics discussed during the hearing, including the US-Mexico-Canada Agreement and trade issues with respect to China; patent reform; online piracy; prescription drug pricing issues; and capacity building, among others.

IPEC Opening Statement

IPEC Amin noted that his office has issued two reports since he was confirmed in the position in August 2017, and in those reports he laid out the Administration’s 4-part strategic approach: “(1) engaging with our trading partners; (2) making effective use of all of our authorities, including our trade tools; (3) supporting increased law enforcement cooperation; and (4) engaging and partnering with private sector and other stakeholders.” He also noted that his office recently solicited public comments on the next 3-year Joint Strategic Plan. His office has established the White House IP Roundtable Series which “brings together industry, interested stakeholders, and government officials to examine pressing IP issues impacting our economy to develop new initiatives, examine legislative priorities, and find real world solutions.” These Roundtables have focused on automotive anti-counterfeiting efforts, trade secrets protection and enforcement, illicit streaming devices, international IP issues impacting the bio-pharmaceutical sector, and examining the problems posed by international express shipments and small packages. He also highlighted that he led inter-agency delegations to Asia, the Middle East and Europe.

Questions/Discussions with Senators

Sen. Tillis asked about the importance of the biologics data protections provisions in the US-Mexico-Canada Agreement. IPEC Amin noted that IP and IP Enforcement are a high priority in trade agreements and noted that it was important that trade agreements reflect US standards and US law. Sen. Tillis also asked about India and their practices with respect to compulsory licensing and narrow grounds for patentability. IPEC Amin noted that he has participated in the Trade Policy Forum with India and has raised and will continue to raise these issues as part of those discussions. Sen. Tillis also asked about IPEC’s views on patent reform with respect to section 101, and whether he had any views on what Congress should do. IPEC Amin recognized that Sen. Tillis and Coons had convened a series of roundtables to discuss these issues and did
not want to get out in front of this process. He emphasized that it was important that the USPTO ensure that high quality patents are issued, and he and his office are monitoring judicial cases in this area. Sen. Tillis also asked about capacity building efforts undertaken by the Department of Commerce’s Commercial Law Development Program. IPEC Amin noted that these efforts are targeted and focused on furthering U.S. economic interests and aligned with the Special 301 process. Lastly, Sen. Tillis asked about Customs & Border Protection’s (CBP) recent e-commerce strategy; IPEC Amin noted that the Roundtable on Express Shipping had come about as a result of this strategy.

Sen. Coons highlighted the fact that the Subcommittee wanted to elevate IP theft and counterfeiting to a high priority within the US Government. His first question asked IPEC Amin what he and his office were planning to do about online copyright piracy. IPEC Amin noted that online piracy was a high priority alongside health and safety with respect to trademark counterfeiting. He noted that as technology evolves, so does the piracy, and so it is important to get ahead of the technology, and that is why his office held a recent roundtable on streaming device boxes. He also stressed that it is important to work with hardware manufacturers on these issues. Sen. Coons noted that the IPEC Report to Congress also mention some “failures” and asked IPEC Amin to elaborate on these. IPEC Amin noted that in the past, US-China trade dialogues have not had meaningful progress on IP issues, and that is why USTR Lighthizer undertook the Section 301 investigation into China’s IP practices. He also noted that another challenge is ensuring that capacity building efforts are properly targeted. Lastly, IPEC Amin praised the IP Attaches and Foreign Service officers at Embassies around the world for their work on IP.

Sen. Blackburn noted that she represents the artists and creators in Nashville and Memphis and asked IPEC Amin what his office is doing to address concerns with respect to file ripping. IPEC Amin noted that his office raises these issues when he travels overseas and in fact noted that he had raised the issue of illegal streaming with officials in India. Sen. Blackburn also asked whether IPEC supported efforts to ensure that traditional radio broadcasters compensated performers; but, IPEC Amin demurred on this issue, noting that he is monitoring the implementation of the Music Modernization Act, but had no other specific domestic copyright proposals. Sen. Blackburn also asked IPEC Amin whether algorithms should be patented or copyrighted. Again IPEC Amin demurred and noted that it was a complicated question.

In the most heated part of the hearing, Sen Blumenthal expressed concerns that pharmaceutical companies often use patents to stifle competition and keep drug prices high; he wanted to know if IPEC Amin agreed with the need to revisit patent laws to prevent such abuse. IPEC Amin noted that President Trump is interested in ensuring affordable medicines, and the Administration is working on these issues. Sen. Blumenthal pressed IPEC Amin on whether he agreed that patents keep drug prices high; IPEC Amin noted that it was important to ensure high quality patents are issued and the Administration is working on drug price issues; but, he feels that it is important to ensure that the patent system remains strong and is not weakened. Sen. Blumenthal kept pressing IPEC Amin as to whether the IPEC office would do anything to
prevent companies from “exploiting our patent laws to choke out competition”; but, IPEC Amin maintained his demurral on this issue.

**Testimony**
IPEC Amin’s prepared testimony can be found here:
https://www.judiciary.senate.gov/imo/media/doc/Amin%20Testimony.pdf

Sen. Tillis’ opening statement can be seen here:
https://www.youtube.com/SenatorTillis

**Link to the Webcast of the hearing:**

**Tweets about the hearing:**
Sen. Blackburn (R-TN):
“The today at the @SenJudiciary hearing on Intellectual Property, we discussed the progress of the #MusicModernizationAct and how we can ensure music creators are fairly compensated.”
https://t.co/Lhc3I6HvKJ

Sen. Blumenthal (D-CT):
“The unacceptable. Trump Admin refused to commit to scrutinizing Big Pharma’s routine abuse of America’s intellectual property laws. Their patent shenanigans artificially raise prices for consumers—we must have a strong watchdog looking out for consumers’ pocketbooks.”
https://t.co/xAUN8dZN44