

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

IP FRONTIERS

Trump's presidency and intellectual property law

Donald Trump became the president-elect of the United States on Nov. 8. The switch in presidential party affiliation and resulting shift in upper-tier government personnel will have significant implications on many areas of the law. The non-existent political track record of Trump compounds the mystery of what these implications will be.

Issues surrounding intellectual property law and policy were not even remotely central to candidate campaigns, but there are questions about what effects the Trump presidency will have on patents, copyrights, trademarks, and other forms of intellectual property.

Statements or even mere indications from Trump regarding his views on IP law and policy have been rare. IP law and policy per se are clearly not at the forefront of his agenda, suggesting that the current course in terms of IP law and policy as plotted during the Obama administration may continue. Many people speculate this would have been the outcome under a Hillary Clinton administration.

In any event, conclusions about how Trump's presidency will affect IP law and policy are highly speculative. The most telling indicators are Trump's positions on various general technology issues. Much of what comes out of his presidency from an IP standpoint may be dictated by how it happens to fit into his general policies on those issues. Trump does not appear to have any particularly strong affiliations to major stakeholders, though a meeting with various tech groups in October reportedly involved entertainment lobbyists for the Motion Picture Association of America.

Trump and trade

Trump has been very vocal about his intention to dismiss existing trade part-



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Daily Record
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nerships like NAFTA and proposed partnerships including the Trans-Pacific Partnership and the companion Transatlantic Trade and Investment Partnership and to implement or increase tariffs/taxes on imported goods. This might incentivize black market and counterfeit activity. Meanwhile, such a seclusive position would naturally degrade cooperation among jurisdictions regarding IP rights recognition and sharing, emphasizing the territoriality of IP rights.

Another stance somewhat informative of his position on IP law and policy is his emphasis on job creation. Trump's clearest statements yet on IP matters deal with IP enforcement as it relates to China. Trump stated that "China engages in ... rampant theft of intellectual property ... Just enforcing intellectual property rules alone could save millions of American jobs." The take-away here is that the targeted IP enforcement policy is born from the apparent effect it will have on stimulating job growth, which has been a significant part of Trump's broader platform.

A strengthening in IP rights enforcement headed by the government would tend to incentivize domestic research and development and subsequent procurement of IP rights pertaining to those innovations. A likely effect is the promotion of growth in companies both large and small.

Trump also indicated a "zero-tolerance" policy on the issue of China's forced technology transfer, referring to the compelled

sharing/transfer of IP held by an American company to Chinese entities as a pre-requisite for the American company to enter the Chinese market.

Policies relating to internet freedom have IP law implications, for instance, in the field of copyright. Trump has expressed a desire to exert influence in this realm; for example, he suggested "closing" parts of the internet in the name of counterterrorism, which generally does not align with stances of those who support certain copyright reform.

Protecting trademarks

From a trademark perspective, Trump has a personal history of being deeply involved in securing and protecting his own trademarks. The natural conclusion is that Trump would favor positions of applicants for trademark and enforcement of broad protections for mark-holders.

Patent reform, especially that directed to post-issuance activities and litigation by non-practicing entities (so-called "patent trolls"), has been a particular focus recently for policymakers. Though Trump's views on this topic are largely unknown, Vice President-elect Mike Pence is connected to the House Freedom Caucus, a group of conservative Republican U.S. representatives that appears to align in opposition to patent reform.

Further on the patent front, the U.S. Patent & Trademark Office is an agency of the U.S. Department of Commerce. Trump will appoint a secretary of commerce who will appoint a commissioner of patents to head the agency. Trump will therefore have at least some control over the Commissioner and by proxy the examination policies of the USPTO. Examination policies of

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the USPTO determine grant/issuance of trademark and patent rights. Obvious candidates for the secretary of commerce position will have a strong background in business and/or finance, the likely values of which – pro-business, broad protection, etc. – may be reflected in the selection of

commissioner and consequently manifest themselves in policies set by the USPTO that affect applicants.

There is nothing to suggest that a Trump administration will cause a radical shift in U.S. IP law or policy. However, several areas outlined above may be affected, perhaps by policies focused on targeted improvements to the IP industry, but more

likely as mere means to achieving Trump's overriding policies directed to trade reform and job creation.

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