



## The Innovator's Legal Aid Clinic

**FRIDAY FORTNIGHTLY: THE IP & COMPETITION NEWSLETTER**  
**(ED. 2023 WEEK 44 NO. 41)**

Dear Readers,

In this edition, as always, you will find an overview of the key developments in Competition, Copyright, Patents and Trademarks for October 2023.

In addition to the newsletter, you can also connect with us on [LinkedIn](#) and [Instagram](#). The Innovator's Legal Aid Clinic's (TILC) information initiatives – Friday Fortnightly and IP Talks – are open to contributions by students and alumni from the intellectual property law programmes offered at the Faculty of Law, Maastricht University.

We very much look forward to your feedback, inputs, and suggestions.

With kind regards,

H. Venkatesh, S.Semina, Ü. Özkürkçü and A. Šťastná

# 1. Competition Law

## 1.1. 'Intel' Anti-Competitive Actions



*Photo by Verdict, available [here](#).*

The European Commission has re-imposed a fine of €376.36 million on Intel for abusing its dominant position in the market for x86 CPUs. In 2009, the Commission fined Intel €1.06 billion for engaging in anticompetitive practices, including conditional rebates and naked restrictions. The General Court partially annulled the decision in 2022, but confirmed that naked restrictions constituted an abuse of dominant market position. The Commission re-imposed the fine for anticompetitive practices such as naked restrictions, reflecting a narrower scope of infringement.

Under Article 102 Treaty on the Functioning of the European Union ('TFEU'), naked restrictions constitute an abuse of a dominant position within the internal market or in a substantial part of it. such abuse can take the form of (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions, (b) limiting production, markets or technical development to the prejudice of consumers, applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, making the conclusion of contracts subject to acceptance by the other parties of supplementary

obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts».

Sources: *European Commission*, 22 September 2023, available [here](#). *Fortune*, 22 September 2023, available [here](#). *Digit News*, 22 September 2023, available [here](#).

### **1.2 Antitrust: Commission fines defence company €1.2 million in cartel settlement**



*Photo by Transfer pricing news, available [here](#).*

The European Commission has fined Diehl €1.2 million for participating in a cartel with RUAG concerning the sale of military hand grenades. It was found that the two major manufacturers split national markets across the European Economic Area (‘EEA’) between themselves for almost 14 years. Both companies cooperated with the Commission under the leniency programme. Diehl’s rival RUAG avoided being fined by revealing the cartel to the Commission, while Delhi achieved a 50% reduction of the fine. Commissioner Didier Reynders highlighted that this was the first cartel decision in the defence sector but regardless, it should serve as a reminder that cartels won't be tolerated in any sectors.

Sources: *European Commission*, 21 September 2023, available [here](#). *EUreporter*, 25 September 2023, available [here](#). *Euronews*, 22 September 2023, available [here](#).

### **1.3 FTC Sues Amazon for Illegally Maintaining Monopoly Power (US)**

The Federal Trade Commission (‘FTC’) and 17 State Attorneys General have sued Amazon.com, Inc (‘Amazon’). The complaint alleges that Amazon is a monopolist that uses anticompetitive and unfair strategies to illegally maintain its monopoly power. It is argued that Amazon's actions allow it to degrade quality for consumers, overcharge sellers, stifle innovation, and prevent rivals from fairly competing against Amazon. The lawsuit seeks to hold Amazon accountable for these monopolistic practices and restore free and fair competition. Allegedly Amazon’s anticompetitive conduct occurs in two markets: (1) the online superstore market that serves shoppers and (2) the market for online marketplace services purchased by sellers. The FTC is seeking a permanent

injunction in federal court that would prohibit Amazon from engaging in its unlawful conduct and restore competition.



*Photo by Investor's Business Daily, available [here](#).*

*Sources: U.S. Federal Trade Commission, 26 September 2023, available [here](#). ABCnews, 26 September 2023, available [here](#). JDsupra, 29 September 2023, available [here](#).*





## 2. Copyright

### 2.1 Thomson Reuters AI copyright dispute

Thomson Reuters and ROSS Intelligence Inc. are involved in a major legal dispute over copyright infringement in the field of artificial intelligence. Starting in 2020, the case focused on ROSS Intelligence allegedly copying content from Thomson Reuters' Westlaw legal research platform to develop its own AI-powered legal system.

In a recent ruling, Judge Stephanos Bibas of the United States District Court for the District of Delaware determined that the case must be decided by a jury. While recognizing ROSS's unauthorized use of copyrighted material, the judge left the essential elements, including infringement and fair use, to the jury's discretion.

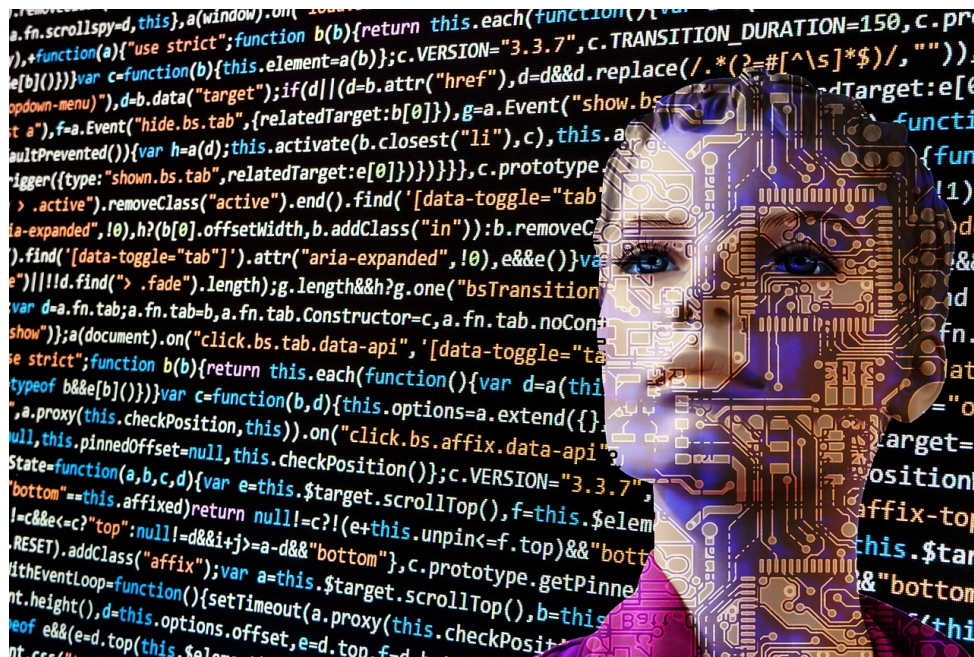


Photo by pixabay, available [here](#)

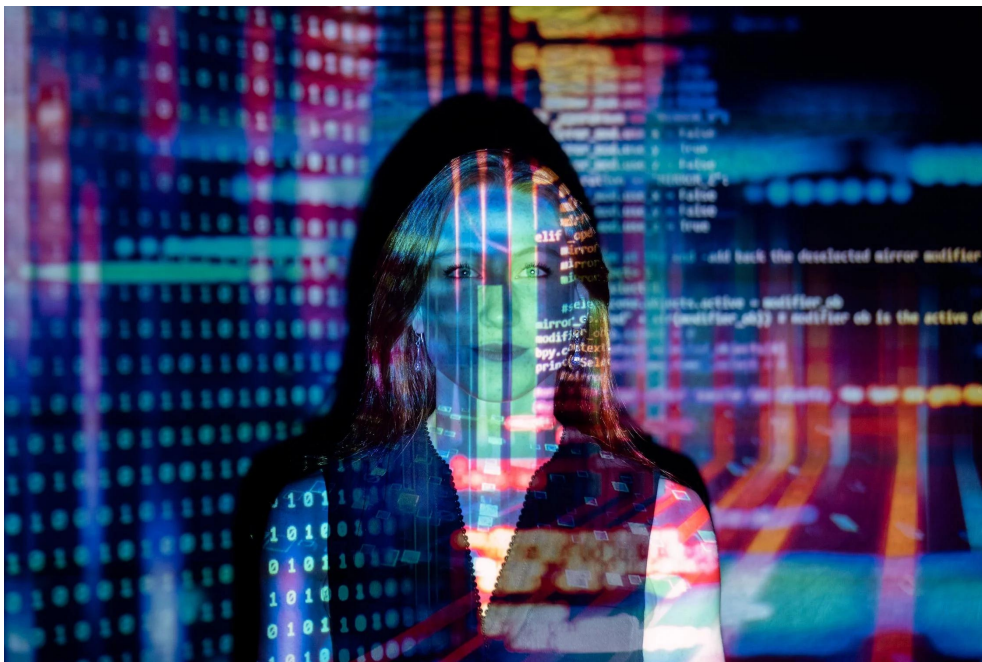
It is important to note that Judge Bibas raised important public interest issues regarding ROSS's copying and use of Reuters data for training purposes. He emphasized the balance between protecting creators' rights and considering the potential public benefits arising from such

copying, especially when training AI. This debate revolves around the controversial question of whether allowing AI training with copyrighted material serves the public interest.

Filed in 2020, it procedurally precedes many recent cases involving tech giants like OpenAI and Meta Platforms. These cases involved allegations of copyright infringement due to the unauthorized use of third-party copyrighted material to train large language models such as ChatGPT. The outcome of this is expected to be groundbreaking, addressing important aspects of AI, copyright infringement, and fair use. Furthermore, it is expected to establish a framework for courts in different jurisdictions to address new issues arising from the widespread adoption of generative AI technologies. This case is at the forefront of the evolving future of intellectual property law related to AI.

*Sources: The Fashion Law, September 28 2023 available [here](#), Reuters, September 26 2023 available [here](#), Bloomberg Law, September 27 2023 available [here](#)*

## **2.2 Authors' lawsuit against OpenAI could 'fundamentally reshape' artificial intelligence, according to experts**



*Photo by Pexels, available [here](#)*

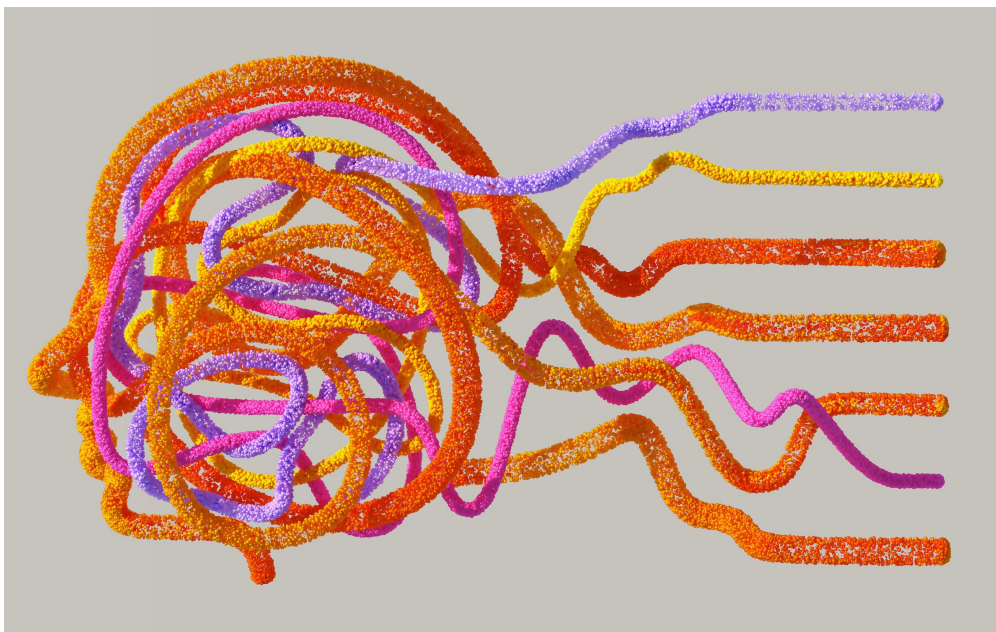
Prominent authors including Sarah Silverman, Christopher Golden, and Richard Kadrey have filed a lawsuit against OpenAI and Meta for alleged copyright infringement in the development of AI models. These authors claim that OpenAI's ChatGPT and Meta's LLaMA (Large Language Model) were trained on datasets obtained from illegal sources, such as “shadow library” websites like Bibliotik and Library Genesis. They claim that these AI models violate their copyright by summarizing their books. Additionally, OpenAI faces a class action lawsuit filed by authors including George R.R. Martin and Jodi Picoult, who claimed ChatGPT copied their work for training purposes without permission. The result of the lawsuit could affect the future of creative

AI, raising questions about copyright, fair use, and the use of author's work in AI training. This could lead to a reassessment of the balance between protecting creators' rights and promoting AI innovation, which could affect AI company operations and author compensation. This legal battle highlights the complexities surrounding AI, copyright, and the need for clearer guidance in the evolving technology landscape.

Sources: *The Verge*, Jul 9, 2023 available [here](#), *Yahoo Finance* September 30, 2023, available [here](#), *abc News* September 25, 2023 available [here](#)

### **2.3 AI-Generated Art Lacks Copyright Protection, D.C. Court Says**

On August 18, 2023, the U.S. District Court for the District of Columbia made a significant ruling, stating that artworks generated by artificial intelligence lack copyright protection under U.S. law. The court upheld the decision made by the U.S. Copyright Office (USCO) to deny copyright registration for a work titled "A Recent Entrance to Paradise," generated by computer scientist Stephen Thaler's AI system, known as "Creativity Machine." Thaler had argued that his AI-created artwork should be eligible for copyright protection, but the court sided with the USCO, emphasizing that "human authorship is a bedrock requirement of copyright." The court clarified that copyright law in the US is designed to protect works of human creation, and AI-generated works, lacking any human input, do not qualify for copyright protection.



*Photo by Pexels, available [here](#)*

This ruling is important as it establishes a clear boundary in the legal protection of AI-generated artwork, impacting digital artists globally. Thaler, who had previously sought patent protection for inventions attributed to his AI system, DABUS, also faced rejections in his patent applications. His attorney expressed disagreement with the court's decision and announced plans to appeal. The court acknowledged the complexities involved in integrating AI into creative processes, emphasizing that the case was simple because Thaler was not involved in the creation of the



artwork. This landmark decision marks the beginning of a new era in copyright law, sparking discussions about the level of human input needed for AI-generated works to qualify. protects copyright and raises difficult questions about the future of artistic works and intellectual property rights.

*Sources: Bloomberg Law Aug. 18, 2023 available [here](#) , Reuters August 21, 2023 available [here](#), Cullen Dykman August 28, 2023 available [here](#)*

## 3. Patents

### **3.1. German court suspends mRNA patent trial against BioNTech**



*Photo by coronavirus.brussels, available [here](#).*

A recent development in the legal arena involves a suspension of the patent trial initiated by the German biotechnology company CureVac against BioNTech, specifically regarding the employment of mRNA technology for Covid-19 vaccines. CureVac asserts its involvement in researching this technology spanning decades and alleges that BioNTech has infringed upon two of their patents and three industrial patterns. As a result, CureVac is seeking reasonable compensation for this perceived infringement. In response, BioNTech maintains that their research in mRNA technology is entirely original and non-infringing. To ensure a thorough and just resolution, the regional court in Düsseldorf has determined that further clarification is necessary from CureVac. They have decided to temporarily suspend the trial pending additional insights and rulings from both the German and European patent offices, which are poised to examine the patent validity questioned by BioNTech. The outcome of this examination is anticipated to be disclosed in December, shedding light on the case's final verdict.

*Sources: Reuters, 28 September 2023, available [here](#). Südwestrundfunk, 28 September 2023, available [here](#). The Economic Times, September 2023, available [here](#).*



### **3.2. Huawei reached global patent cross-licensing with Xiaomi**

This significant agreement encompasses 5G technologies and serves to amicably resolve an ongoing patent licensing dispute between two tech giants, Huawei and Xiaomi. Notably, Huawei, one of the biggest patent holders in the world, had filed a lawsuit against Xiaomi in March, alleging infringement in areas pertaining to wireless communication, screen lock mechanisms, and smartphone photography. What adds an intriguing layer to this development is that Huawei had previously established patent licensing agreements with other prominent industry players, such as Samsung and Ericsson. This context highlights the complex landscape of intellectual property rights and the delicate balance between competition and collaboration in the tech sector.



*Photo by Flickr, available [here](#).*

*Sources: Huawei, 13 September 2023 available [here](#). Reuters, 13 September 2023, available [here](#). Technews, 14 September 2023, available [here](#).*

### **3.3. Paypal applies for NFT marketplace patent**

*Photo by Flickr, available [here](#).*

In a noteworthy development this September, PayPal unveiled its patent application regarding non-fungible tokens (NFTs), a publication that is now under review. The patent application outlines a groundbreaking concept: a digital marketplace where users can seamlessly engage in the buying and selling of NFTs, facilitated through a yet-to-be-disclosed third-party service provider. Notably, the application alludes to the involvement of Ethereum in this innovative ecosystem. PayPal's vision revolves around harnessing the full potential of NFTs for tokenization, thus enabling the representation of virtually any form of data through a digital token, making it traceable and secure. The system's versatility shines, offering customization options to users who can opt for their own digital wallet or, alternatively, entrust a third-party broker to provide a

diverse array of storage and checkout services. What's more, this visionary system is designed to seamlessly integrate with a wide spectrum of cryptocurrencies, underlining PayPal's commitment to remaining at the forefront of the digital finance frontier. It's also worth noting that in August, PayPal introduced its stablecoin, the PayPal USD, signaling their dedication to expanding and evolving the world of digital finance and tokenization.



*Photo by Flickr, available [here](#).*

*Sources: [NFT Plazas, 1 October 2023, available here](#). [Cointelegraph, 28 September 2023, available here](#). [United States Patent Application Publication, 21 September 2023, available here](#).*

## 4. Trademarks

### 4.1. X sues X (Formerly known as Twitter) in a Trademark Infringement Suit



*Photo by Bastian Riccardi, 2023 on [Unsplash](#).*

A social media agency for lawyers, called X Social Media has filed a federal lawsuit against X Corp, formerly known as Twitter, in Florida. The name change of X Corp, according to X Social Media, violates its trademark, which includes the letter "X," leading to consumer confusion. This lawsuit may mark the beginning of potential trademark disputes over the letter "X" with Elon Musk's company. Many tech companies, including Microsoft and Meta Platforms, use "X" in their trademarks. Recently, X Corp submitted an application for its own "X" related U.S. trademarks.

The agency claims to have spent over \$400 million on Facebook advertising to reach its potential clients. According to the lawsuit, Twitter's rebranding has already caused consumer confusion and the agency has lost sales, thus leading to a loss of revenue as well. Apart from seeking an injunction from using X, the Social Media agency has also sought damages.

*Sources: Reuter, 02 October 2023 available [here](#), TheVerge, 03 October 2023 available [here](#), Dexerto, 03 October 2023 available [here](#)*

### 4.2. Irish cybersecurity firm sued for alleged trademark infringement over “SECURITAS”:



*Photo by [RTE](#).*

Dksu4securitas Ltd, a cybersecurity company established in Dublin, and its parent company, 4Securitas Italia SRL, are being sued by Securitas AB, a Swedish company, for infringement of the trademark "SECURITAS". Securitas AB alleges that the defendants are offering computer software, consulting services, and security-related goods and services under the similar name SECURITAS. Securitas AB is seeking an injunction restraining the defendants from advertising, offering, marketing or selling computer software and computer consultancy services and/or goods and services relating to security and/or cybersecurity under the names and/or signs *Dksu4securitas and/or 4Securitas and/or Securitas*, or similar names.

Apart from this, the Swedish company is also seeking damages or an account of profits in lieu of the trademark infringement. Securitas AB claims that it has a strong reputation within the EU and generates significant sales revenue within the European market under the trademark SECURITAS and therefore, the said trademark has acquired a high level of distinctive character. Securitas AB is also opposing the defendants' EU Trademark application for "4Securitas".

The Swedish company states that the defendants failed to comply with the cease and desist notice and since there was no means for resolution, the Swedish company commenced legal proceedings against the defendant. The case was entered into the Commercial Court on consent between the parties by Mr Justice Denis McDonald who has now scheduled it to be heard next February.

*Sources: [Irish Examiner](#), 09 October 2023 available [here](#); [Irish Times](#), 09 October 2023 available [here](#)*

### **4.3. YEWS! What a Trademark**



*Photo from [Getty Images](#).*

Kanye West, popularly known as “Ye” has recently filed 26 Trademark Applications for the mark “YEWS” across several categories such as education, banking services, amusement park attractions, clothing, cosmetic, footwear, jewellery, online gambling, restaurants etc. The filing appears to have been made by an LLC called Ox Paha Inc. There is no information regarding the association of Kanye West to the said company. However, the address corroborates with the office address of Kanye West which has now resulted in this speculation.

The choice of the word “YEWS” has raised eyebrows, given the rapper’s anti-semitic comments in Alex Jone’s show for an interview wherein he also admitted to liking Hitler. The public are speculating the word “YEWS” to be connected to the word “JEWS” in view of the comments made by Kanye West in the TV Show. West's previous anti-Semitic comments have seen a host of brands drop him or attempt to distance themselves. Among them were Adidas, Gap, Def Jam Records and his honorary alma mater the School of the Art Institute of Chicago who rescinded his doctorate.

*Sources: [Times Now World](#), 07 October 2023 available [here](#), [Daily Mail UK](#), 06 October 2023 available [here](#), [INSIDER](#), 07 October 2023 available [here](#)*





## 5. Other News

### **5.1 Amazon joins the EUIPO's Intellectual Property Enforcement Portal**



*The photo is available [here](#).*

Amazon became the first major online marketplace to join the European Union Intellectual Property Office's IP Enforcement Portal (IPEP), which aims to combat counterfeit goods. IPEP is a platform that acts as a collaborative space for rights holders, customs officials, police, and market surveillance authorities, in facilitating the identification and detection of counterfeit products. It is already in use by over 1400 brand owners and 81 enforcement agencies across the EU. The involvement of online and e-commerce marketplaces including that of Amazon would encourage and further strengthen this collaborative effort aimed at combating counterfeit goods. EUIPO has already developed a set of functionalities that can be used to support cooperation between e-commerce marketplaces and rights holders as a first step. Now, the EUIPO and e-commerce marketplaces will work on a new set of functionalities under the IPEP to support exchange of information and point of contacts with law enforcement authorities across the European Union. While IPEP won't replace existing takedown methods, it will strengthen the sharing of information between e-commerce platforms, rights holders, law enforcement and other IP stakeholders. *"We are excited to be signing up to the EUIPO's Intellectual Property Enforcement Portal,*

*both as a rights holder and as a marketplace service provider committed to protecting the intellectual property rights of others”, says Amazon.*

*Sources: Amazon EU, 29 September available [here](#). EUIPO, 29 September available [here](#).*

## **5.2 The Council of the European Union adopts two positions on designs protection legislation**



*Photo by Global Finance, available [here](#).*

On September 25, 2023, after months of negotiations, the Council of the European Union adopted the recast of the Directive for legal protection of designs and amended the Regulation on Community designs. The legislative reform is viewed as an opportunity for updating design protection, simplification of registration procedures as well as increasing the speed of processing applications. Although The Council supported the package of changes prepared by the European Commission, The Council’s own proposals were made in addition. Thus, The Council introduced such amendments as an update of the definitions of "design" and «product», simplification of the requirements for representing a design, clarification of the non-mandatory nature of national administrative invalidity procedures and an extension of the transposition period for Member States to implement the new legislation to 36 months. The updated law is expected to be fully adopted and enter into force in the first half of 2024.

*Sources: Council of the European Union, 25 September 2023, available [here](#). Ideas powered for business, 26 September 2023, available [here](#).*

## **5.3 US Patent and Trademark Office issues 1 millionth design patent**



*Photo by flickr available [here](#)*

The U.S. Patent and Trademark Office (USPTO) has issued its one-millionth design patent, a milestone that highlights the significance of design protection in American innovation. The patent was granted to Agustina Huckaby for her inventive dispensing comb, which is a comb with a bottle attached that dispenses liquid through the comb.

Design patents, unlike utility patents, protect the appearance of a product rather than its function. Huckaby's success shows how design patents can help entrepreneurs secure funding and thrive in competitive markets.

The issuance of this milestone patent emphasizes the growing trend of inventors seeking design protection. In the past year alone, the USPTO received more than 50,000 design patent applications, a 20% increase over the past 5 years.

Design patents have protected historically iconic and distinctive designs, from the original Coca-Cola bottle to the Statue of Liberty, to characters like R2D2 and Yoda at War between the stars. To better support inventors and increase the importance of design patents, the USPTO has reorganized, creating a dedicated design group within the patent organization.

This achievement honors the creativity of inventors around the world and recognizes the dedication of more than 300 USPTO design patent examiners. The issuance of one million design patents, 181 years after the first design patent was issued in 1842, marks an important step in stimulating the national economy, stimulating consumer demand, promoting new business and creating jobs.

*Sources: GovDelivery, September 26, 2023 available [here](#), The Washington Times - Thursday, September 28, 2023 available [here](#), wtopnews September 28, 2023 available [here](#)*

