

Ed Lebow, Robert LeBlanc in World Intellectual Property Review: Trade Relations: Sending in the Big Guns

By Edward M. Lebow | April 16, 2019

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Haynes Boone Counsel [Ed Lebow](#) and Associate Robert LeBlanc talked with *World Intellectual Property Review (WIPR)* about the Trump administration's use of trade tools to combat alleged IP theft by Chinese companies.

Here are excerpts:

The message from the U.S. trade department was clear: China's government has used discriminatory licensing requirements to transfer technologies from U.S. to Chinese companies and conducted cyber intrusions into U.S. corporations.

That's according to March 2018's U.S. Trade Representative (USTR) section 301 report into "China's Acts and Policies on IP, Technology Transfer and Innovation."

The report, which stoked the flames of U.S. President Donald Trump's China IP theft rhetoric, spurred the use of section 301 as a trade tool to force negotiations.

Ed Lebow, counsel at Haynes Boone in Washington, D.C., disagrees that the USTR has overextended the usage of section 301.

"However, the administration's unilateral approach will likely be no more effective than a multilateral approach that would not have cost us so much loss of goodwill from our erstwhile allies," he cautions.

Lebow says there's nothing wrong per se with looking at trade enforcement actions for their negotiating leverage, but the problem is when the wrong vehicle is used.

"In particular, the use of section 232 national security tariffs to raise the price of imported steel is inappropriate, as there is no way that imports from allies such as Canada can sensibly be construed as a threat to US national security," he says.

Chinese opera

The US Patent and Trademark Office (USPTO) is also attempting to stem the alleged tide of Chinese bad actors in the trademark sector, although less overtly. In February, the office issued a proposal which would require foreign-domiciled trademark applicants and registrants to use a US attorney.

The proposal comes in response to the growing problem of foreign trademark applicants who purportedly act pro se (where the applicant represents him/herself) and are filing inaccurate and possibly fraudulent submissions.

It appears that a number of these filings stem from China. Robert LeBlanc, a Dallas-based Haynes Boone associate, says: “If it weren’t politically taboo, there could be a section header in the rule change that reads ‘The USPTO is seeking to curtail problematic Chinese filings.’”

To read the full article, click [here](#).