

110TH CONGRESS
1ST SESSION

H. R. 34

To establish a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2007

Mr. ISSA (for himself and Mr. SCHIFF) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. PILOT PROGRAM IN CERTAIN DISTRICT**
4 **COURTS.**

5 (a) ESTABLISHMENT.—

6 (1) IN GENERAL.—There is established a pro-
7 gram, in each of the United States district courts
8 designated under subsection (b), under which—

9 (A) those district judges of that district
10 court who request to hear cases under which

1 one or more issues arising under any Act of
2 Congress relating to patents or plant variety
3 protection must be decided, are designated by
4 the chief judge of the court to hear those cases;

5 (B) cases described in subparagraph (A)
6 are randomly assigned to the judges of the dis-
7 trict court, regardless of whether the judges are
8 designated under subparagraph (A);

9 (C) a judge not designated under subpara-
10 graph (A) to whom a case is assigned under
11 subparagraph (B) may decline to accept the
12 case; and

13 (D) a case declined under subparagraph
14 (C) is randomly reassigned to one of those
15 judges of the court designated under subpara-
16 graph (A).

17 (2) SENIOR JUDGES.—Senior judges of a dis-
18 trict court may be designated under paragraph
19 (1)(A) if at least 1 judge of the court in regular ac-
20 tive service is also so designated.

21 (3) RIGHT TO TRANSFER CASES PRESERVED.—
22 This section shall not be construed to limit the abil-
23 ity of a judge to request the reassignment of or oth-
24 erwise transfer a case to which the judge is assigned

1 under this section, in accordance with otherwise ap-
2 plicable rules of the court.

3 (b) DESIGNATION.—The Director of the Administra-
4 tive Office of the United States Courts shall, not later
5 than 6 months after the date of the enactment of this Act,
6 designate not less than 5 United States district courts,
7 in at least 3 different judicial circuits, in which the pro-
8 gram established under subsection (a) will be carried out.
9 The Director shall make such designation from among the
10 15 district courts in which the largest number of patent
11 and plant variety protection cases were filed in the most
12 recent calendar year that has ended, except that the Direc-
13 tor may only designate a court in which—

14 (1) at least 10 district judges are authorized to
15 be appointed by the President, whether under sec-
16 tion 133(a) of title 28, United States Code, or on a
17 temporary basis under other provisions of law; and

18 (2) at least 3 judges of the court have made the
19 request under subsection (a)(1)(A).

20 (c) DURATION.—The program established under sub-
21 section (a) shall terminate 10 years after the end of the
22 6-month period described in subsection (b).

23 (d) APPLICABILITY.—The program established under
24 subsection (a) shall apply in a district court designated

1 under subsection (b) only to cases commenced on or after
2 the date of such designation.

3 (e) REPORTING TO CONGRESS.—

4 (1) IN GENERAL.—At the times specified in
5 paragraph (2), the Director of the Administrative
6 Office of the United States Courts, in consultation
7 with the chief judge of each of the district courts
8 designated under subsection (b) and the Director of
9 the Federal Judicial Center, shall submit to the
10 Committee on the Judiciary of the House of Rep-
11 resentatives and the Committee on the Judiciary of
12 the Senate a report on the pilot program established
13 under subsection (a). The report shall include—

14 (A) an analysis of the extent to which the
15 program has succeeded in developing expertise
16 in patent and plant variety protection cases
17 among the district judges of the district courts
18 so designated;

19 (B) an analysis of the extent to which the
20 program has improved the efficiency of the
21 courts involved by reason of such expertise;

22 (C) with respect to patent cases handled by
23 the judges designated pursuant to subsection
24 (a)(1)(A) and judges not so designated, a com-

1 parison between the 2 groups of judges with re-
2 spect to—

3 (i) the rate of reversal by the Court of
4 Appeals for the Federal Circuit, of such
5 cases on the issues of claim construction
6 and substantive patent law; and

7 (ii) the period of time elapsed from
8 the date on which a case is filed to the
9 date on which trial begins or summary
10 judgment is entered;

11 (D) a discussion of any evidence indicating
12 that litigants select certain of the judicial dis-
13 tricts designated under subsection (b) in an at-
14 tempt to ensure a given outcome; and

15 (E) an analysis of whether the pilot pro-
16 gram should be extended to other district
17 courts, or should be made permanent and apply
18 to all district courts.

19 (2) TIMETABLE FOR REPORTS.—The times re-
20 ferred to in paragraph (1) are—

21 (A) not later than the date that is 5 years
22 and 3 months after the end of the 6-month pe-
23 riod described in subsection (b); and

24 (B) not later than 5 years after the date
25 described in subparagraph (A).

1 (3) PERIODIC REPORTING.—The Director of the
2 Administrative Office of the United States Courts,
3 in consultation with the chief judge of each of the
4 district courts designated under subsection (b) and
5 the Director of the Federal Judicial Center, shall
6 keep the committees referred to in paragraph (1) in-
7 formed, on a periodic basis while the pilot program
8 is in effect, with respect to the matters referred to
9 in subparagraphs (A) through (E) of paragraph (1).

10 (f) AUTHORIZATION FOR TRAINING AND CLERK-
11 SHIPS.—In addition to any other funds made available to
12 carry out this section, there is authorized to be appro-
13 priated not less than \$5,000,000 in each fiscal year for—

14 (1) educational and professional development of
15 those district judges designated under subsection
16 (a)(1)(A) in matters relating to patents and plant
17 variety protection; and

18 (2) compensation of law clerks with expertise in
19 technical matters arising in patent and plant variety
20 protection cases, to be appointed by the courts des-
21 ignated under subsection (b) to assist those courts
22 in such cases.

23 Amounts made available pursuant to this subsection shall
24 remain available until expended.

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