

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 628

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## AN ACT

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,*

1 **SECTION 1. PILOT PROGRAM IN CERTAIN DISTRICT**  
2 **COURTS.**

3 (a) ESTABLISHMENT.—

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

7 (A) those district judges of that district  
8 court who request to hear cases under which 1  
9 or more issues arising under any Act of Con-  
10 gress relating to patents or plant variety protec-  
11 tion are required to be decided, are designated  
12 by the chief judge of the court to hear those  
13 cases;

14 (B) cases described in subparagraph (A)  
15 are randomly assigned to the judges of the dis-  
16 trict court, regardless of whether the judges are  
17 designated under subparagraph (A);

18 (C) a judge not designated under subpara-  
19 graph (A) to whom a case is assigned under  
20 subparagraph (B) may decline to accept the  
21 case; and

22 (D) a case declined under subparagraph  
23 (C) is randomly reassigned to 1 of those judges  
24 of the court designated under subparagraph  
25 (A).

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

5           (3) RIGHT TO TRANSFER CASES PRESERVED.—  
6           This section shall not be construed to limit the abil-  
7           ity of a judge to request the reassignment of or oth-  
8           erwise transfer a case to which the judge is assigned  
9           under this section, in accordance with otherwise ap-  
10          plicable rules of the court.

11          (b) DESIGNATION.—

12           (1) IN GENERAL.—Not later than 6 months  
13          after the date of the enactment of this Act, the Di-  
14          rector of the Administrative Office of the United  
15          States Courts shall designate not less than 6 United  
16          States district courts, in at least 3 different judicial  
17          circuits, in which the program established under  
18          subsection (a) will be carried out.

19           (2) CRITERIA FOR DESIGNATIONS.—

20           (A) IN GENERAL.—Except as provided  
21          under subparagraph (B), the Director shall  
22          make designations under paragraph (1) from—

23                   (i) the 15 district courts in which the  
24                   largest number of patent and plant variety

1 protection cases were filed in the most re-  
2 cent calendar year that has ended; or

3 (ii) the district courts that have  
4 adopted local rules for patent and plant va-  
5 riety protection cases.

6 (B) EXCEPTIONS.—The Director may only  
7 designate a court in which—

8 (i) at least 10 district judges are au-  
9 thorized to be appointed by the President,  
10 whether under section 133(a) of title 28,  
11 United States Code, or on a temporary  
12 basis under other provisions of law; and

13 (ii) at least 3 judges of the court have  
14 made the request under subsection  
15 (a)(1)(A).

16 (c) DURATION.—The program established under sub-  
17 section (a) shall terminate 10 years after the end of the  
18 6-month period described in subsection (b).

19 (d) APPLICABILITY.—The program established under  
20 subsection (a) shall apply in a district court designated  
21 under subsection (b) only to cases commenced on or after  
22 the date of such designation.

23 (e) REPORTS TO CONGRESS.—

24 (1) IN GENERAL.—At the times specified in  
25 paragraph (2), the Director of the Administrative

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

9 (A) an analysis of the extent to which the  
10 program has succeeded in developing expertise  
11 in patent and plant variety protection cases  
12 among the district judges of the district courts  
13 so designated;

14 (B) an analysis of the extent to which the  
15 program has improved the efficiency of the  
16 courts involved by reason of such expertise;

17 (C) with respect to patent cases handled by  
18 the judges designated pursuant to subsection  
19 (a)(1)(A) and judges not so designated, a com-  
20 parison between the 2 groups of judges with re-  
21 spect to—

22 (i) the rate of reversal, by the Court  
23 of Appeals for the Federal Circuit, of such  
24 cases on the issues of claim construction  
25 and substantive patent law; and

1 (ii) the period of time elapsed from  
2 the date on which a case is filed to the  
3 date on which trial begins or summary  
4 judgment is entered;

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

9 (E) an analysis of whether the pilot pro-  
10 gram should be extended to other district  
11 courts, or should be made permanent and apply  
12 to all district courts.

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

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

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

20 (3) PERIODIC REPORTS.—The Director of the  
21 Administrative Office of the United States Courts,  
22 in consultation with the chief judge of each of the  
23 district courts designated under subsection (b) and  
24 the Director of the Federal Judicial Center, shall  
25 keep the committees referred to in paragraph (1) in-

1       formed, on a periodic basis while the pilot program  
2       is in effect, with respect to the matters referred to  
3       in subparagraphs (A) through (E) of paragraph (1).

4       (f) AUTHORIZATION FOR TRAINING AND CLERK-  
5 SHIPS.—

6           (1) IN GENERAL.—In addition to any other  
7       funds made available to carry out this section, there  
8       are authorized to be appropriated not less than  
9       \$5,000,000 in each fiscal year for—

10           (A) educational and professional develop-  
11       ment of those district judges designated under  
12       subsection (a)(1)(A) in matters relating to pat-  
13       ents and plant variety protection; and

14           (B) compensation of law clerks with exper-  
15       tise in technical matters arising in patent and  
16       plant variety protection cases, to be appointed  
17       by the courts designated under subsection (b)  
18       to assist those courts in such cases.

1           (2) AVAILABILITY OF FUNDS.—Amounts made  
2           available pursuant to this subsection shall remain  
3           available until expended.

          Passed the House of Representatives March 17,  
2009.

Attest:

*Clerk.*



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