

111TH CONGRESS  
1ST SESSION

# S. 299

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

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IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2009

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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

1 or more issues arising under any Act of Con-  
2 gress relating to patents or plant variety protec-  
3 tion are required to be decided, are designated  
4 by the chief judge of the court to hear those  
5 cases;

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

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

14 (D) a case declined under subparagraph  
15 (C) is randomly reassigned to 1 of those judges  
16 of the court designated under subparagraph  
17 (A).

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

22 (3) RIGHT TO TRANSFER CASES PRESERVED.—  
23 This section shall not be construed to limit the abil-  
24 ity of a judge to request the reassignment of or oth-  
25 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.—

4 (1) IN GENERAL.—Not later than 6 months  
5 after the date of the enactment of this Act, the Di-  
6 rector of the Administrative Office of the United  
7 States Courts shall designate not less than 6 United  
8 States district courts, in at least 3 different judicial  
9 circuits, in which the program established under  
10 subsection (a) will be carried out.

11 (2) CRITERIA FOR DESIGNATIONS.—

12 (A) IN GENERAL.—Except as provided  
13 under subparagraph (B), the Director shall  
14 make designations under paragraph (1) from—

15 (i) the 15 district courts in which the  
16 largest number of patent and plant variety  
17 protection cases were filed in the most re-  
18 cent calendar year that has ended; or

19 (ii) the district courts that have  
20 adopted local rules for patent and plant va-  
21 riety protection cases.

22 (B) EXCEPTIONS.—The Director may only  
23 designate a court in which—

24 (i) at least 10 district judges are au-  
25 thorized to be appointed by the President,

1           whether under section 133(a) of title 28,  
2           United States Code, or on a temporary  
3           basis under other provisions of law; and

4                   (ii) at least 3 judges of the court have  
5           made the request under subsection  
6           (a)(1)(A).

7           (c) DURATION.—The program established under sub-  
8           section (a) shall terminate 10 years after the end of the  
9           6-month period described in subsection (b).

10          (d) APPLICABILITY.—The program established under  
11          subsection (a) shall apply in a district court designated  
12          under subsection (b) only to cases commenced on or after  
13          the date of such designation.

14          (e) REPORTS TO CONGRESS.—

15               (1) IN GENERAL.—At the times specified in  
16               paragraph (2), the Director of the Administrative  
17               Office of the United States Courts, in consultation  
18               with the chief judge of each of the district courts  
19               designated under subsection (b) and the Director of  
20               the Federal Judicial Center, shall submit to the  
21               Committee on the Judiciary of the House of Rep-  
22               resentatives and the Committee on the Judiciary of  
23               the Senate a report on the pilot program established  
24               under subsection (a). The report shall include—

1 (A) an analysis of the extent to which the  
2 program has succeeded in developing expertise  
3 in patent and plant variety protection cases  
4 among the district judges of the district courts  
5 so designated;

6 (B) an analysis of the extent to which the  
7 program has improved the efficiency of the  
8 courts involved by reason of such expertise;

9 (C) with respect to patent cases handled by  
10 the judges designated pursuant to subsection  
11 (a)(1)(A) and judges not so designated, a com-  
12 parison between the 2 groups of judges with re-  
13 spect to—

14 (i) the rate of reversal by the Court of  
15 Appeals for the Federal Circuit, of such  
16 cases on the issues of claim construction  
17 and substantive patent law; and

18 (ii) the period of time elapsed from  
19 the date on which a case is filed to the  
20 date on which trial begins or summary  
21 judgment is entered;

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

1           (E) an analysis of whether the pilot pro-  
2           gram should be extended to other district  
3           courts, or should be made permanent and apply  
4           to all district courts.

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

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

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

12          (3) PERIODIC REPORTS.—The Director of the  
13          Administrative Office of the United States Courts,  
14          in consultation with the chief judge of each of the  
15          district courts designated under subsection (b) and  
16          the Director of the Federal Judicial Center, shall  
17          keep the committees referred to in paragraph (1) in-  
18          formed, on a periodic basis while the pilot program  
19          is in effect, with respect to the matters referred to  
20          in subparagraphs (A) through (E) of paragraph (1).

21          (f) AUTHORIZATION FOR TRAINING AND CLERK-  
22          SHIPS.—

23          (1) IN GENERAL.—In addition to any other  
24          funds made available to carry out this section, there

1 are authorized to be appropriated not less than  
2 \$5,000,000 in each fiscal year for—

3 (A) educational and professional develop-  
4 ment of those district judges designated under  
5 subsection (a)(1)(A) in matters relating to pat-  
6 ents and plant variety protection; and

7 (B) compensation of law clerks with exper-  
8 tise in technical matters arising in patent and  
9 plant variety protection cases, to be appointed  
10 by the courts designated under subsection (b)  
11 to assist those courts in such cases.

12 (2) AVAILABILITY OF FUNDS.—Amounts made  
13 available pursuant to this subsection shall remain  
14 available until expended.

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