

register for trademark protection to provide an unequivocal assurance of the State's intention to waive sovereign immunity in any action to enforce or challenge a federal intellectual property right. A State must also certify that the State's sovereign immunity has not been asserted in any such action during the past year.

*Sec. 137. No retroactive effect*

Section 137 ensures that the amendments made by this subtitle are not given retroactive effect. Specifically, the amendments do not apply to any application by a State that was pending before the effective date of this subtitle, or to any assertion of sovereign immunity by a State made before the enactment of the IPPRA.

**TITLE II—RESTORATION OF PROTECTION FOR FEDERAL INTELLECTUAL PROPERTY RIGHTS**

*Sec. 201. Liability of States for patent violations*

Section 201 replaces section 296 of title 35, which was enacted pursuant to the Patent and Plant Variety Remedy Clarification Act of 1992 and invalidated by the Supreme Court in Florida Prepaid Postsecondary Educ. Expense Bd. v. College Savings Bank, 119 S. Ct. 2199 (1999).

Subsection (a) ensures the full availability of prospective relief to prevent State officials from violating the federal patent laws, and to allow challenges to assertions by State officials of rights secured under such laws, on the same terms and in the same manner as if such State officials were private individuals. Such relief is authorized under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), which held that an individual may sue a State official in an official capacity for prospective relief requiring the State official to cease violating federal law, even if the State itself is immune from suit under the Eleventh Amendment.

Subsection (b) provides a cause of action against States, State instrumentalities, and State officials acting in an official capacity for (1) taking a patent right in violation of the Fifth Amendment or (2) depriving a person of a patent right without due process of law in violation of the Fourteenth Amendment. Damages are fixed at "reasonable and entire compensation," which is the measure of damages available against the United States for infringement of a patent (see 28 U.S.C. 1498); treble damages are not available under this subsection. Injunctive relief is available to prevent or deter constitutional violations.

The remedy provided under subsection (b) is not available against States that have waived their sovereign immunity from suit in federal court, nor is it available against State officials in their individual capacity, who do not partake of the State's sovereign immunity. Such States and State officials remain subject to the remedies provided by other provisions of the federal patent laws, to the same extent as such remedies are available in an action against any private entity or individual. Thus, for example, a State official sued in an individual capacity may not assert any defense or claim of absolute or qualified immunity that would not be available to a private individual under similar circumstances.

Subsection (b) abrogates State sovereign immunity to the maximum extent permitted by the Constitution, pursuant to Congress's powers under the Fifth and Fourteenth Amendments and any other applicable provisions.

A claim under subsection (b) for taking a patent right is ripe at the time of the taking. In *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984), the Supreme Court held that the Public Use Clause of the Fifth Amend-

ment, made applicable to the States through the Fourteenth Amendment, prohibits a State from taking private property for a non-public use, even with just compensation. The Court further stated that "[t]he 'public use' requirement is . . . coterminous with the scope of a sovereign's police powers." 457 U.S. at 240. Because States making unauthorized uses of federal intellectual property rights are acting outside the scope of their sovereign powers, a State's infringement of a patent, even if compensated, is an unconstitutional taking of property for a non-public use; accordingly, the patent holder need not seek a remedy in State proceedings before filing a claim under subsection (b) in federal court.

Subsection (b)(4) addresses the burden of proof when a claimant produces *prima facie* evidence to support a claim under this subsection. Under subsection (b)(4), the burden of proof is on the State, except as to any elements of the claim that would have to be proved if the action were brought under another provision of this title. As to such elements, the burden of proof is unaffected. Thus, for example, if the adequacy of any State remedies became an issue, the State would bear the burden of proof thereon.

Subsection (c) clarifies that the federal patent laws and treaties supersede and preempt any power of a State to acquire or otherwise affect patent rights through the exercise of eminent domain.

*Sec. 202. Liability of States for violation of plant variety protection*

Section 202 establishes the same sorts of remedies for violations of protected plant varieties as section 201 establishes with respect to patents.

*Sec. 203. Liability of States for copyright violations*

Section 203 establishes the same sorts of remedies for violations of copyrights as section 201 establishes with respect to patents.

*Sec. 204. Liability of States for mask work violations*

Section 204 establishes the same sorts of remedies for violations of federally-protected rights in mask works as section 201 establishes with respect to patents.

*Sec. 205. Liability of States for original design violations*

Section 205 establishes the same sorts of remedies for violations of federally-protected rights in original designs as section 201 establishes with respect to patents.

*Sec. 206. Liability of States trademark violations*

Section 206 establishes the same sorts of remedies for violations of federally-registered trademarks and service marks as section 201 establishes with respect to patents.

*Sec. 207. Rules of construction*

Subsection (a) makes clear that the district courts shall have original jurisdiction under 28 U.S.C. §1338 of any action arising under this title. It follows that, pursuant to 28 U.S.C. §1295, the United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of any appeal from a final decision of a district court in an action arising under this title relating to patents, plant variety protection, and exclusive rights in designs under chapter 13 of title 17.

Subsection (b) provides that this title shall be construed in favor of a broad protection of intellectual property rights, to the maximum extent permitted by its terms and the Constitution.

**TITLE III—EFFECTIVE DATES**

*Sec. 301. Effective dates*

Subsection (a) provides that the opt-in procedures established by title I of the IPPRA shall take effect 90 days after the date of enactment of the IPPRA.

Subsection (b) provides that the remedial provisions established by title II of the IPPRA shall take effect with respect to violations by States that occur on or after the date of enactment of the IPPRA.

*Sec. 302. Severability*

Section 302 contains a strong severability clause. If any provision of the IPPRA or of any amendment made by the IPPRA, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of the IPPRA, the amendments made by the IPPRA, and the application of the provision to any other person or circumstance shall not be affected.

**ADDITIONAL COSPONSORS**

S. 311

At the request of Mr. ROBB, his name was added as a cosponsor of S. 311, a bill to authorize the Disabled Veterans' LIFE Memorial Foundation to establish a memorial in the District of Columbia or its environs, and for other purposes.

S. 345

At the request of Mr. ALLARD, the names of the Senator from Illinois (Mr. FITZGERALD) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of S. 345, a bill to amend the Animal Welfare Act to remove the limitation that permits interstate movement of live birds, for the purpose of fighting, to States in which animal fighting is lawful.

S. 777

At the request of Mr. FITZGERALD, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 777, a bill to require the Department of Agriculture to establish an electronic filing and retrieval system to enable the public to file all required paperwork electronically with the Department and to have access to public information on farm programs, quarterly trade, economic, and production reports, and other similar information.

S. 1020

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1020, a bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts.

S. 1109

At the request of Mr. McCONNELL, the names of the Senator from Delaware (Mr. ROTH) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 1109, a bill to conserve global bear populations by prohibiting the importation, exportation, and interstate trade of bear viscera and items, products, or substances containing, or labeled or advertised as containing, bear viscera, and for other purposes.

S. 1133

At the request of Mr. GRAMS, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1133, a bill to amend the Poultry Products Inspection Act to cover birds

of the order Ratitae that are raised for use as human food.

S. 1158

At the request of Mr. HUTCHINSON, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 1158, a bill to allow the recovery of attorney's fees and costs by certain employers and labor organizations who are prevailing parties in proceedings brought against them by the National Labor Relations Board or by the Occupational Safety and Health Administration.

S. 1315

At the request of Mr. BINGAMAN, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 1315, a bill to permit the leasing of oil and gas rights on certain lands held in trust for the Navajo Nation or allotted to a member of the Navajo Nation, in any case in which there is consent from a specified percentage interest in the parcel of land under consideration for lease.

S. 1384

At the request of Mr. ABRAHAM, the names of the Senator from Washington (Mrs. MURRAY), the Senator from New York (Mr. SCHUMER), the Senator from Louisiana (Ms. LANDRIEU), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 1384, a bill to amend the Public Health Service Act to provide for a national folic acid education program to prevent birth defects, and for other purposes.

S. 1419

At the request of Mr. ROBB, his name was added as a cosponsor of S. 1419, a bill to amend title 36, United States Code, to designate May as "National Military Appreciation Month."

At the request of Mr. MCCAIN, the names of the Senator from Connecticut (Mr. DODD), the Senator from New Mexico (Mr. DOMENICI), the Senator from New York (Mr. SCHUMER), the Senator from North Dakota (Mr. CONRAD), the Senator from Tennessee (Mr. FRIST), the Senator from Illinois (Mr. DURBIN), the Senator from Indiana (Mr. BAYH), and the Senator from Montana (Mr. BURNS) were added as cosponsors of S. 1419, *supra*.

S. 1455

At the request of Mr. ABRAHAM, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1455, a bill to enhance protections against fraud in the offering of financial assistance for college education, and for other purposes.

S. 1482

At the request of Ms. SNOWE, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1482, a bill to amend the National Marine Sanctuaries Act, and for other purposes.

S. 1528

At the request of Mr. LOTT, the names of the Senator from Hawaii (Mr. AKAKA) and the Senator from Iowa (Mr.

HARKIN) were added as cosponsors of S. 1528, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions.

S. 1590

At the request of Mr. CRAPO, the names of the Senator from Vermont (Mr. JEFFORDS) and the Senator from South Dakota (Mr. DASCHLE) were added as cosponsors of S. 1590, a bill to amend title 49, United States Code, to modify the authority of the Surface Transportation Board, and for other purposes.

S. 1592

At the request of Mr. DURBIN, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1592, a bill to amend the Nicaraguan Adjustment and Central American Relief Act to provide to certain nationals of El Salvador, Guatemala, Honduras, and Haiti an opportunity to apply for adjustment of status under that Act, and for other purposes.

S. 1600

At the request of Mr. HARKIN, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 1600, a bill to amend the Employee Retirement Income Security Act of 1974 to prevent the wearing away of an employee's accrued benefit under a defined benefit plan by the adoption of a plan amendment reducing future accruals under the plan.

S. 1638

At the request of Mr. ASHCROFT, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 1638, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to extend the retroactive eligibility dates for financial assistance for higher education for spouses and dependent children of Federal, State, and local law enforcement officers who are killed in the line of duty.

S. 1717

At the request of Mr. BOND, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 1717, a bill to amend title XXI of the Social Security Act to provide for coverage of pregnancy-related assistance for targeted low-income pregnant women.

S. 1770

At the request of Mr. LOTT, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 1770, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research and development credit and to extend certain other expiring provisions for 30 months, and for other purposes.

S. 1791

At the request of Mr. CAMPBELL, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 1791, a bill to authorize the Librarian of Congress to purchase papers of

Dr. Martin Luther King, Junior, from Dr. King's estate.

At the request of Mr. LIEBERMAN, the names of the Senator from Connecticut (Mr. DODD) and the Senator from Indiana (Mr. BAYH) were added as cosponsors of S. 1791, *supra*.

S. 1795

At the request of Mr. CRAPO, the name of the Senator from Minnesota (Mr. GRAMS) was added as a cosponsor of S. 1795, a bill to require that before issuing an order, the President shall cite the authority for the order, conduct a cost benefit analysis, provide for public comment, and for other purposes.

SENATE RESOLUTION 118

At the request of Mr. REID, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of Senate Resolution 118, a resolution designating December 12, 1999, as "National Children's Memorial Day."

SENATE RESOLUTION 200

At the request of Mr. GRAMS, the names of the Senator from South Carolina (Mr. THURMOND), the Senator from Indiana (Mr. LUGAR), the Senator from Florida (Mr. MACK), the Senator from Kentucky (Mr. BUNNING), the Senator from Rhode Island (Mr. REED), the Senator from Alabama (Mr. SHELBY), the Senator from Louisiana (Mr. BREAUX), the Senator from Mississippi (Mr. LOTT), the Senator from Alabama (Mr. SESSIONS), the Senator from Kansas (Mr. BROWNBACK), the Senator from North Carolina (Mr. HELMS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Tennessee (Mr. FRIST), the Senator from Vermont (Mr. JEFFORDS), the Senator from Oregon (Mr. SMITH), the Senator from Texas (Mr. GRAMM), the Senator from Vermont (Mr. LEAHY), the Senator from New Hampshire (Mr. SMITH), the Senator from West Virginia (Mr. BYRD), the Senator from Utah (Mr. HATCH), the Senator from Delaware (Mr. ROTH), the Senator from Ohio (Mr. DEWINE), the Senator from Missouri (Mr. BOND), the Senator from Maine (Ms. SNOWE), the Senator from Wyoming (Mr. ENZI), the Senator from Michigan (Mr. ABRAHAM), the Senator from Missouri (Mr. ASHCROFT), the Senator from Nebraska (Mr. HAGEL), the Senator from Utah (Mr. BENNETT), the Senator from Oklahoma (Mr. INHOFE), the Senator from Ohio (Mr. VOINOVICH), the Senator from Kansas (Mr. ROBERTS), the Senator from Colorado (Mr. CAMPBELL), the Senator from Alaska (Mr. STEVENS), the Senator from Idaho (Mr. CRAPO), the Senator from Mississippi (Mr. COCHRAN), the Senator from Kentucky (Mr. McCANNELL), the Senator from New Mexico (Mr. DOMENICI), the Senator from Colorado (Mr. ALLARD), the Senator from Alaska (Mr. MURKOWSKI), the Senator from New Hampshire (Mr. GREGG), the Senator from Wyoming (Mr. THOMAS), the Senator from Idaho (Mr. CRAIG), the Senator from Maine (Ms. COLLINS), the Senator from Nebraska (Mr.

KERREY), the Senator from Arizona (Mr. McCAIN), the Senator from Tennessee (Mr. THOMPSON), the Senator from Oklahoma (Mr. NICKLES), the Senator from Montana (Mr. BURNS), the Senator from Texas (Mrs. HUTCHISON), and the Senator from Iowa (Mr. GRASSLEY) were added as cosponsors of Senate Resolution 200, a resolution designating the week of February 14–20 as “National Biotechnology Week.”

**SENATE CONCURRENT RESOLUTION 63—CONDEMNING THE ASSASSINATION OF ARMENIAN PRIME MINISTER VAZGEN SARGSIAN AND OTHER OFFICIALS OF THE ARMENIAN GOVERNMENT AND EXPRESSING THE SENSE OF THE CONGRESS IN MOURNING THIS TRAGIC LOSS OF THE DULY ELECTED LEADERSHIP OF ARMENIA**

Mr. ABRAHAM (for himself, Mr. McCONNELL, Mr. TORRICELLI, Mr. ALLARD, Mr. REED, Mr. BENNETT, Ms. COLLINS, Mr. FITZGERALD, Mr. ENZI, Mr. KERRY, Mr. DURBIN, Mr. WARNER, Mr. EDWARDS, and Mr. LIEBERMAN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 63

Whereas on October 27, 1999, several armed individuals broke into Armenia’s Parliament and assassinated the Prime Minister of Armenia, Vazgen Sargsian, the Chairman of the Armenian Parliament, Karen Demirchian, the Deputy Chairman of the Armenian Parliament, Yuri Bakhshian, the Minister of Operative Issues, Leonard Petrossian, and other members of the Armenian Government;

Whereas Armenia is working toward democracy, the rule of law, and a viable free market economy since obtaining its freedom from Soviet rule in 1991; and

Whereas all nations of the world mourn the loss suffered by Armenia on October 27, 1999; Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring), That the Congress—*

(1) deplores the slaying of the Prime Minister of Armenia, Vazgen Sargsian, the Chairman of the Armenian Parliament, Karen Demirchian, the Deputy Chairman of the Armenian Parliament, Yuri Bakhshian, the Minister of Operative Issues, Leonard Petrossian, and other members of the Armenian Government struck down in this violent attack;

(2) strongly shares the determination of the Armenian people that the perpetrators of these vile acts will be swiftly brought to justice so that Armenia may demonstrate its resolute opposition to acts of terror;

(3) commends the efforts of the late Prime Minister and the Armenian Government for their commitment to democracy, the rule of law, and for supporting free market movements internationally; and

(4) continues to cherish the strong friendship between Armenia and the United States.

Mr. ABRAHAM. Mr. President, I rise today to express my deepest condolences to the family of the slain Prime Minister of Armenia, Vazgen Sargsian, and the other assassinated leaders of the Armenian Parliament who were tragically killed in the brutal attack on the Armenian Parliament on October 27, 1999. My thoughts and prayers

are also with the people of Armenia and the Armenian community around the world and in the United States.

The tragic turn of events that took place earlier this week should not be viewed as an impediment to the ongoing positive trends the world has seen in Armenia. Indeed, Armenia has proven its commitment to a democratic future in its recent elections which were deemed free and fair by international election monitors. They have also made substantial progress on the peace process regarding Nagorno Karabakh.

The United States is enjoying a growing and mutually beneficial relationship with Armenia. Our focus should be on our continued support of the Armenian people. We must not allow the recent terrorist activity to eschew our dedication in helping Armenia achieve the highest form of freedom, liberty, and opportunity. To reaffirm our commitment to the progress embodied by the fallen Armenian patriots not only should be our goal, but our duty as a global leader.

For this reason, I ask to submit a resolution that condemns the terrorist activities that took the lives of the Armenian Prime Minister, Vazgen Sargsian, and other leaders of the Armenian Parliament, and pledges continued alliance between our two countries. Our thoughts are with the families, friends and loved ones of those affected by this tragedy, and we send our hope that those who perpetrated this horrible act will be brought to justice.

Mr. President, I urge my colleagues to support this resolution.

**SENATE CONCURRENT RESOLUTION 64—EXPRESSING THE SENSE OF CONGRESS CONCERNING CONTINUED USE OF THE UNITED STATES NAVY TRAINING RANGE ON THE ISLAND OF VIEQUES IN THE COMMONWEALTH OF PUERTO RICO**

Mr. INHOFE (for himself, Mr. SMITH of New Hampshire, Mr. SESSIONS, Mr. HUTCHINSON, and Mr. KYL) submitted the following resolution; which was referred to the Committee on Armed Services:

S. CON. RES. 64

Whereas the success or failure of the Nation’s Armed Forces when sent into combat and the risk of loss of life, both to United States military personnel and to civilians, are a direct function of the degree of training received by members of the Armed Forces before combat;

Whereas from World War II through the most recent crisis in Kosovo the Nation’s military has been able to meet the call to arms due to training such as that afforded at the United States Navy training range on the island of Vieques in the Commonwealth of Puerto Rico;

Whereas in April 1999, following an accident at that training range that resulted in the death of a Navy civilian employee, training activities at that range were suspended by direction of the Secretary of the Navy pending a safety review;

Whereas officials of the Department of Defense have testified before congressional

committees that the Vieques training range is the only range along the Atlantic seaboard that allows critical combined arms live fire training that includes the coordinated use of naval surface fire support training, Navy/Marine amphibious combined arms training, Carrier Battle Group strike training and high altitude tactics, and subsurface training;

Whereas officials of the Department of Defense have testified before congressional committees that the safe conduct of operations on the island of Vieques has been and will remain the primary concern of the Department of the Navy and that the recent death of the civilian Navy employee on the range was the first civilian death on the range since its purchase in 1941;

Whereas the John F. Kennedy carrier battle group, which was unable to continue training at Vieques after the April accident, deployed in September 1999 in degraded readiness condition and the Dwight D. Eisenhower carrier battle group, which is scheduled to deploy in the spring of 2000, will be forced to deploy in a significantly degraded readiness condition if not allowed to conduct training activities at the Vieques training range before departing on that deployment;

Whereas the suspension of training activities at the Vieques training range has resulted in a loss of critical combat training that is essential to the Nation’s Navy and Marine forces; and

Whereas, given that recently deploying Navy and Marine Corps battle groups have been sent directly into combat operations in Kosovo and Iraq, thereby placing service personnel immediately in harm’s way, it would be unthinkable to knowingly deploy members of the Armed Forces in the future without this essential training, since to do so would place American lives, including the lives of members of the Armed Forces from Puerto Rico, at high risk: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring), That the Congress—*

(1) calls upon the Secretary of the Navy and the Attorney General of the United States to promptly ensure that the Federal property located at the Vieques training range in the Commonwealth of Puerto Rico is safe and secure and, once the range is safe and secure, for the Secretary of the Navy to resume critical live fire training at that range;

(2) calls upon the President, as Commander-in-Chief, to ensure that United States forces deploy with 100 percent of the combat qualifications needed to meet national security requirements;

(3) strongly urges the Department of Defense and the Government of Puerto Rico to reestablish a mutually supportive relationship, to resolve the issues between the Department of the Navy and the people of Puerto Rico, and to implement a program that addresses the economic and social needs and safety concerns of the residents of Vieques and the citizens of Puerto Rico; and

(4) recognizes the significant contribution by the residents of Vieques and the citizens of Puerto Rico to the Nation’s defense.

**SENATE RESOLUTION 209—EXPRESSING CONCERN OVER INTERFERENCE WITH FREEDOM OF THE PRESS AND THE INDEPENDENCE OF JUDICIAL AND ELECTORAL INSTITUTIONS IN PERU**

Mr. HELMS (for himself, Mr. LEAHY, Mr. COVERDELL, Mr. DODD, Mr. DEWINE, and Mr. JEFFORDS) submitted the following resolution; which was referred