

In the Senate of the United States,

December 13, 2010.

Resolved, That the bill from the House of Representatives (H.R. 628) entitled “An Act to establish a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges.”, do pass with the following

AMENDMENT:

Strike all after the enacting clause and insert the following:

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-

1 gress relating to patents or plant variety protec-
2 tion are required to be decided, are designated
3 by the chief judge of the court to hear those
4 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 1 of those judges
15 of the court designated under subparagraph
16 (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.—

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.—The Director shall
13 make designations under paragraph (1) from—

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

18 (ii) the district courts that have
19 adopted, or certified to the Director the in-
20 tention to adopt, local rules for patent and
21 plant variety protection cases.

22 (B) SELECTION OF COURTS.—From
23 amongst the district courts that satisfy the cri-
24 teria for designation under this subsection, the
25 Director shall select—

1 (i) 3 district courts that each have at
2 least 10 district judges authorized to be
3 appointed by the President, whether under
4 section 133(a) of title 28, United States
5 Code, or on a temporary basis under any
6 other provision of law, and at least 3
7 judges of the court have made the request
8 under subsection (a)(1)(A); and

9 (ii) 3 district courts that each have
10 fewer than 10 district judges authorized to
11 be appointed by the President, whether
12 under section 133(a) of title 28, United
13 States Code, or on a temporary basis
14 under any other provision of law, and at
15 least 2 judges of the court have made the
16 request under subsection (a)(1)(A).

17 (c) DURATION.—The program established under sub-
18 section (a) shall terminate 10 years after the end of the
19 6-month period described in subsection (b).

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

24 (e) REPORTS TO CONGRESS.—

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

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

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

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

24 (i) the rate of reversal by the Court of
25 Appeals for the Federal Circuit, of such

1 cases on the issues of claim construction
2 and substantive patent law; and

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

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

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

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

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

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

22 (3) PERIODIC REPORTS.—The Director of the
23 Administrative Office of the United States Courts,
24 in consultation with the chief judge of each of the
25 district courts designated under subsection (b) and

1 the Director of the Federal Judicial Center, shall
2 keep the committees referred to in paragraph (1) in-
3 formed, on a periodic basis while the pilot program
4 is in effect, with respect to the matters referred to
5 in subparagraphs (A) through (E) of paragraph (1).

Attest:

Secretary.

11TH CONGRESS
2^D SESSION

H.R. 628

AMENDMENT