

109TH CONGRESS
2^D SESSION

H. R. 5418

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2006

Received

NOVEMBER 13, 2006

Read twice and referred to the Committee on the Judiciary

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
9 one or more issues arising under any Act of
10 Congress relating to patents or plant variety
11 protection must be decided, are designated by
12 the chief judge of the court to hear those cases;

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

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

21 (D) a case declined under subparagraph
22 (C) is randomly reassigned to one of those
23 judges of the court designated under subpara-
24 graph (A).

25 (2) SENIOR JUDGES.—Senior judges of a dis-
26 trict court may be designated under paragraph

1 (1)(A) if at least 1 judge of the court in regular ac-
2 tive service is also so designated.

3 (3) RIGHT TO TRANSFER CASES PRESERVED.—

4 This section shall not be construed to limit the abil-
5 ity of a judge to request the reassignment of or oth-
6 erwise transfer a case to which the judge is assigned
7 under this section, in accordance with otherwise ap-
8 plicable rules of the court.

9 (b) DESIGNATION.—The Director of the Administra-
10 tive Office of the United States Courts shall, not later
11 than 6 months after the date of the enactment of this Act,
12 designate not less than 5 United States district courts,
13 in at least 3 different judicial circuits, in which the pro-
14 gram established under subsection (a) will be carried out.
15 The Director shall make such designation from among the
16 15 district courts in which the largest number of patent
17 and plant variety protection cases were filed in the most
18 recent calendar year that has ended, except that the Direc-
19 tor may only designate a court in which—

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

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

1 (c) DURATION.—The program established under sub-
2 section (a) shall terminate 10 years after the end of the
3 6-month period described in subsection (b).

4 (d) APPLICABILITY.—The program established under
5 subsection (a) shall apply in a district court designated
6 under subsection (b) only to cases commenced on or after
7 the date of such designation.

8 (e) REPORTING TO CONGRESS.—

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

19 (A) an analysis of the extent to which the
20 program has succeeded in developing expertise
21 in patent and plant variety protection cases
22 among the district judges of the district courts
23 so designated;

1 (B) an analysis of the extent to which the
2 program has improved the efficiency of the
3 courts involved by reason of such expertise;

4 (C) with respect to patent cases handled by
5 the judges designated pursuant to subsection
6 (a)(1)(A) and judges not so designated, a com-
7 parison between the 2 groups of judges with re-
8 spect to—

9 (i) the rate of reversal by the Court of
10 Appeals for the Federal Circuit, of such
11 cases on the issues of claim construction
12 and substantive patent law; and

13 (ii) the period of time elapsed from
14 the date on which a case is filed to the
15 date on which trial begins or summary
16 judgment is entered;

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

21 (E) an analysis of whether the pilot pro-
22 gram should be extended to other district
23 courts, or should be made permanent and apply
24 to all district courts.

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

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

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

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

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

21 (1) educational and professional development of
22 those district judges designated under subsection
23 (a)(1)(A) in matters relating to patents and plant
24 variety protection; and

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

6 Amounts made available pursuant to this subsection shall
7 remain available until expended.

Passed the House of Representatives September 28,
2006.

Attest:

KAREN L. HAAS

Clerk.