

507–512, 514, 517–519, title VI, sections 703, 902, 905, 906, 1103, 1104, 1107–1110, 1114, and 1115 of the Senate amendment, and modifications committed to conference: Messrs. LOBIONDO, SHUSTER, and OBERSTAR.

From the Committee on Ways and Means, for consideration of sections 102, 121, 201, 203, and 301 of the House bill, and sections 201, 203, 304, 401–404, 407, and 1105 of the Senate amendment, and modifications committed to conference: Messrs. THOMAS, SHAW, and RANGEL.

There was no objection.

#### FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 3930. An act to authorize trial by military commission for violations of the law of war, and for other purposes.

#### ESTABLISHING A PILOT PROGRAM IN CERTAIN DISTRICT COURTS

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5418) to establish a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges, as amended.

The Clerk read as follows:

H.R. 5418

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. PILOT PROGRAM IN CERTAIN DISTRICT COURTS.

##### (a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established a program, in each of the United States district courts designated under subsection (b), under which—

(A) those district judges of that district court who request to hear cases under which one or more issues arising under any Act of Congress relating to patents or plant variety protection must be decided, are designated by the chief judge of the court to hear those cases;

(B) cases described in subparagraph (A) are randomly assigned to the judges of the district court, regardless of whether the judges are designated under subparagraph (A);

(C) a judge not designated under subparagraph (A) to whom a case is assigned under subparagraph (B) may decline to accept the case; and

(D) a case declined under subparagraph (C) is randomly reassigned to one of those judges of the court designated under subparagraph (A).

(2) SENIOR JUDGES.—Senior judges of a district court may be designated under paragraph (1)(A) if at least 1 judge of the court in regular active service is also so designated.

(3) RIGHT TO TRANSFER CASES PRESERVED.—This section shall not be construed to limit the ability of a judge to request the reassignment of or otherwise transfer a case to which the judge is assigned under this section, in accordance with otherwise applicable rules of the court.

(b) DESIGNATION.—The Director of the Administrative Office of the United States Courts shall, not later than 6 months after the date of the enactment of this Act, designate not less than 5 United States district courts, in at least

3 different judicial circuits, in which the program established under subsection (a) will be carried out. The Director shall make such designation from among the 15 district courts in which the largest number of patent and plant variety protection cases were filed in the most recent calendar year that has ended, except that the Director may only designate a court in which—

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

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

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

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

##### (e) REPORTING TO CONGRESS.—

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

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

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

(C) with respect to patent cases handled by the judges designated pursuant to subsection (a)(1)(A) and judges not so designated, a comparison between the 2 groups of judges with respect to—

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

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

(D) a discussion of any evidence indicating that litigants select certain of the judicial districts designated under subsection (b) in an attempt to ensure a given outcome; and

(E) an analysis of whether the pilot program should be extended to other district courts, or should be made permanent and apply to all district courts.

(2) TIMETABLE FOR REPORTS.—The times referred to in paragraph (1) are—

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

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

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

(f) AUTHORIZATION FOR TRAINING AND CLERKS.—In addition to any other funds made available to carry out this section, there is authorized to be appropriated not less than \$5,000,000 in each fiscal year for—

(1) educational and professional development of those district judges designated under sub-

section (a)(1)(A) in matters relating to patents and plant variety protection; and

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

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

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin.

□ 1930

#### GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5418, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5418 to establish a pilot program in certain U.S. district courts to encourage enhancements of expertise in patent cases among district judges. It is widely recognized that patent litigation has become too expensive, too time consuming, and too unpredictable. This addresses those concerns by authorizing a pilot program to improve the expertise of Federal district judges responsible for hearing patent cases.

The need for such a program is apparent. Patent cases account for nearly 10 percent of complex cases and consume significant judicial resources. Despite the investment of the additional resources by district judges to these cases, the rate of reversal on claim construction issues remains excessive.

One sitting Federal judge characterized the manner that the judiciary employs to resolve these cases as marked by "institutional ineptitude." I would say, parenthetically, that that is a remarkable admission by a Federal judge.

The premise underlying H.R. 5418 can be stated in three words: practice makes perfect. Judges who are able to focus more attention on patent cases are more likely to avoid error and thus reduce the likelihood of reversal.

The bill requires the director of the Administrative Office of the Courts to select five district courts to participate in a 10-year pilot program to enhance judicial patent expertise. The bill specifies criteria that the director must employ in determining eligible districts and then preserves the continued random assignment of cases to prevent the pilot districts from becoming magnets for forum-shopping litigants.

Finally, the legislation will require the director to provide both the House