

111TH CONGRESS
1ST SESSION

H. R. 628

IN THE SENATE OF THE UNITED STATES

MARCH 18, 2009

Received; 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 1
9 or more issues arising under any Act of Con-
10 gress relating to patents or plant variety protec-
11 tion are required to be decided, are designated
12 by the chief judge of the court to hear those
13 cases;

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

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

22 (D) a case declined under subparagraph
23 (C) is randomly reassigned to 1 of those judges
24 of the court designated under subparagraph
25 (A).

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

5 (3) RIGHT TO TRANSFER CASES PRESERVED.—
6 This section shall not be construed to limit the abil-
7 ity of a judge to request the reassignment of or oth-
8 erwise transfer a case to which the judge is assigned
9 under this section, in accordance with otherwise ap-
10 plicable rules of the court.

11 (b) DESIGNATION.—

12 (1) IN GENERAL.—Not later than 6 months
13 after the date of the enactment of this Act, the Di-
14 rector of the Administrative Office of the United
15 States Courts shall designate not less than 6 United
16 States district courts, in at least 3 different judicial
17 circuits, in which the program established under
18 subsection (a) will be carried out.

19 (2) CRITERIA FOR DESIGNATIONS.—

20 (A) IN GENERAL.—Except as provided
21 under subparagraph (B), the Director shall
22 make designations under paragraph (1) from—

23 (i) the 15 district courts in which the
24 largest number of patent and plant variety

1 protection cases were filed in the most re-
2 cent calendar year that has ended; or

3 (ii) the district courts that have
4 adopted local rules for patent and plant va-
5 riety protection cases.

6 (B) EXCEPTIONS.—The Director may only
7 designate a court in which—

8 (i) at least 10 district judges are au-
9 thorized to be appointed by the President,
10 whether under section 133(a) of title 28,
11 United States Code, or on a temporary
12 basis under other provisions of law; and

13 (ii) at least 3 judges of the court have
14 made the request under subsection
15 (a)(1)(A).

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

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

23 (e) REPORTS TO CONGRESS.—

24 (1) IN GENERAL.—At the times specified in
25 paragraph (2), the Director of the Administrative

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

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

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

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

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

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

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

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

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

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

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

20 (3) PERIODIC REPORTS.—The Director of the
21 Administrative Office of the United States Courts,
22 in consultation with the chief judge of each of the
23 district courts designated under subsection (b) and
24 the Director of the Federal Judicial Center, shall
25 keep the committees referred to in paragraph (1) in-

1 formed, on a periodic basis while the pilot program
2 is in effect, with respect to the matters referred to
3 in subparagraphs (A) through (E) of paragraph (1).

4 (f) AUTHORIZATION FOR TRAINING AND CLERK-
5 SHIPS.—

6 (1) IN GENERAL.—In addition to any other
7 funds made available to carry out this section, there
8 are authorized to be appropriated not less than
9 \$5,000,000 in each fiscal year for—

10 (A) educational and professional develop-
11 ment of those district judges designated under
12 subsection (a)(1)(A) in matters relating to pat-
13 ents and plant variety protection; and

14 (B) compensation of law clerks with exper-
15 tise in technical matters arising in patent and
16 plant variety protection cases, to be appointed
17 by the courts designated under subsection (b)
18 to assist those courts in such cases.

