

110TH CONGRESS  
1ST SESSION

# H. R. 34

To establish a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2007

Mr. ISSA (for himself and Mr. SCHIFF) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

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,*

3 **SECTION 1. PILOT PROGRAM IN CERTAIN DISTRICT**  
4 **COURTS.**

5 (a) ESTABLISHMENT.—

6 (1) IN GENERAL.—There is established a pro-  
7 gram, in each of the United States district courts  
8 designated under subsection (b), under which—

9 (A) those district judges of that district  
10 court who request to hear cases under which

1 one or more issues arising under any Act of  
2 Congress relating to patents or plant variety  
3 protection must be decided, are designated by  
4 the chief judge of the court to hear those 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 one of those  
15 judges of the court designated under subpara-  
16 graph (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.—The Director of the Administra-  
4 tive Office of the United States Courts shall, not later  
5 than 6 months after the date of the enactment of this Act,  
6 designate not less than 5 United States district courts,  
7 in at least 3 different judicial circuits, in which the pro-  
8 gram established under subsection (a) will be carried out.  
9 The Director shall make such designation from among the  
10 15 district courts in which the largest number of patent  
11 and plant variety protection cases were filed in the most  
12 recent calendar year that has ended, except that the Direc-  
13 tor may only designate a court in which—

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

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

20 (c) DURATION.—The program established under sub-  
21 section (a) shall terminate 10 years after the end of the  
22 6-month period described in subsection (b).

23 (d) APPLICABILITY.—The program established under  
24 subsection (a) shall apply in a district court designated

1 under subsection (b) only to cases commenced on or after  
2 the date of such designation.

3 (e) REPORTING TO CONGRESS.—

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

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

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

22 (C) with respect to patent cases handled by  
23 the judges designated pursuant to subsection  
24 (a)(1)(A) and judges not so designated, a com-

1           parison between the 2 groups of judges with re-  
2           spect to—

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

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

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

15                  (E) an analysis of whether the pilot pro-  
16                  gram should be extended to other district  
17                  courts, or should be made permanent and apply  
18                  to all district courts.

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

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

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

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

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

14                 (1) educational and professional development of  
15                 those district judges designated under subsection  
16                 (a)(1)(A) in matters relating to patents and plant  
17                 variety protection; and

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

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

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