

## Union Calendar No.

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 2955

[Report No. 109-]

To amend title 28, United States Code, to clarify that the Court of Appeals for the Federal Circuit has exclusive jurisdiction of appeals relating to patents, plant variety protection, or copyrights, and for other purposes.

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### IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2005

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on the Judiciary

MARCH --, 2006

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

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## A BILL

To amend title 28, United States Code, to clarify that the Court of Appeals for the Federal Circuit has exclusive jurisdiction of appeals relating to patents, plant variety protection, or copyrights, and for other purposes.

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. SHORT TITLE.**

2 This Act may be cited as the “Intellectual Property  
3 Jurisdiction Clarification Act of 2005”.

4 **SEC. 2. STATE COURT JURISDICTION.**

5 Section 1338(a) of title 28, United States Code, is  
6 amended by striking the second sentence and inserting the  
7 following: “No State court shall have jurisdiction over any  
8 claim for relief arising under any Act of Congress relating  
9 to patents, plant variety protection, or copyrights.”.

10 **SEC. 3. COURT OF APPEALS FOR THE FEDERAL CIRCUIT.**

11 Section 1295(a)(1) of title 28, United States Code,  
12 is amended to read as follows:

13 “(1) of an appeal from a final decision of a dis-  
14 trict court of the United States, the District Court  
15 of Guam, the District Court of the Virgin Islands,  
16 or the District Court of the Northern Mariana Is-  
17 lands, in any civil action in which a party has as-  
18 serted a claim for relief arising under any Act of  
19 Congress relating to patents or plant variety protec-  
20 tion;”.

21 **SEC. 4. REMOVAL.**

22 (a) IN GENERAL.—Chapter 89 of title 28, United  
23 States Code, is amended by adding at the end the fol-  
24 lowing new section:



1 **“§ 1454. Patent, plant variety protection, and copy-**  
2 **right cases**

3 “(a) IN GENERAL.—A civil action in which any party  
4 asserts a claim for relief arising under any Act of Con-  
5 gress relating to patents, plant variety protection, or copy-  
6 rights may be removed to the district court of the United  
7 States for the district and division embracing the place  
8 where such action is pending.

9 “(b) SPECIAL RULES.—The removal of an action  
10 under this section shall be made in accordance with sec-  
11 tion 1446 of this chapter, except that if the removal is  
12 based solely on this section—

13 “(1) the action may be removed by any party;  
14 and

15 “(2) the time limitations contained in section  
16 1446(b) may be extended at any time for cause  
17 shown.

18 “(c) REMAND.—If a civil action is removed solely  
19 under this section, the district court—

20 “(1) shall remand all claims that are not within  
21 the original or supplemental jurisdiction of the dis-  
22 trict court under any Act of Congress; and

23 “(2) may, under the circumstances specified in  
24 section 1367(c), remand any claims within the sup-  
25 plemental jurisdiction of the district court under sec-  
26 tion 1367.”.

1       (b) ~~CONFORMING AMENDMENT.—~~The table of sec-  
2       tions for chapter 89 of title 28, United States Code, is  
3       amended by adding at the end the following new item:

      “1454. Patent, plant variety protection, and copyright cases.”.

4       **SEC. 5. EFFECTIVE DATE.**

5       The amendments made by this Act shall apply to any  
6       civil action commenced on or after the date of the enact-  
7       ment of this Act.

8       **SECTION 1. SHORT TITLE.**

9       *This Act may be cited as the “Intellectual Property*  
10      *Jurisdiction Clarification Act of 2006”.*

11      **SEC. 2. STATE COURT JURISDICTION.**

12      *Section 1338(a) of title 28, United States Code, is*  
13      *amended by striking the second sentence and inserting the*  
14      *following: “No State court shall have jurisdiction over any*  
15      *claim for relief arising under any Act of Congress relating*  
16      *to patents, plant variety protection, or copyrights.”.*

17      **SEC. 3. COURT OF APPEALS FOR THE FEDERAL CIRCUIT.**

18      *Section 1295(a)(1) of title 28, United States Code, is*  
19      *amended to read as follows:*

20             “(1) of an appeal from a final decision of a dis-  
21             trict court of the United States, the District Court of  
22             Guam, the District Court of the Virgin Islands, or the  
23             District Court of the Northern Mariana Islands, in  
24             any civil action in which a party has asserted a

1 *claim for relief arising under any Act of Congress re-*  
2 *lating to patents or plant variety protection;”.*

3 **SEC. 4. REMOVAL.**

4 *(a) IN GENERAL.—Chapter 89 of title 28, United*  
5 *States Code, is amended by adding at the end the following*  
6 *new section:*

7 **“§ 1454. Patent, plant variety protection, and copy-**  
8 **right cases**

9 *“(a) IN GENERAL.—A civil action in which any party*  
10 *asserts a claim for relief arising under any Act of Congress*  
11 *relating to patents, plant variety protection, or copyrights*  
12 *may be removed to the district court of the United States*  
13 *for the district and division embracing the place where such*  
14 *action is pending.*

15 *“(b) SPECIAL RULES.—The removal of an action*  
16 *under this section shall be made in accordance with section*  
17 *1446 of this chapter, except that if the removal is based*  
18 *solely on this section—*

19 *“(1) the action may be removed by any party;*  
20 *and*

21 *“(2) the time limitations contained in section*  
22 *1446(b) may be extended at any time for cause*  
23 *shown.*

24 *“(c) REMAND.—If a civil action is removed solely*  
25 *under this section, the district court—*

1           “(1) shall remand all claims that are not within  
2           the original or supplemental jurisdiction of the dis-  
3           trict court under any Act of Congress; and

4           “(2) may, under the circumstances specified in  
5           section 1367(c), remand any claims within the sup-  
6           plemental jurisdiction of the district court under sec-  
7           tion 1367.”.

8           (b) **CONFORMING AMENDMENT.**—*The table of sections*  
9           *for chapter 89 of title 28, United States Code, is amended*  
10          *by adding at the end the following new item:*

*“1454. Patent, plant variety protection, and copyright cases.”.*

11       **SEC. 5. TRANSFER BY COURT OF APPEALS FOR THE FED-**  
12                               **ERAL CIRCUIT.**

13           (a) **IN GENERAL.**—*Chapter 99 of title 28, United*  
14           *States Code, is amended by adding at the end the following*  
15           *new section:*

16       **“§ 1632. Transfer by the Court of Appeals for the Fed-**  
17                               **eral Circuit**

18           *“When a case is appealed to the Court of Appeals for*  
19           *the Federal Circuit under section 1295(a)(1), and no claim*  
20           *for relief arising under any Act of Congress relating to pat-*  
21           *ents or plant variety protection is the subject of the appeal*  
22           *by any party, the Court of Appeals for the Federal Circuit*  
23           *shall transfer the appeal to the court of appeals for the re-*  
24           *gional circuit embracing the district from which the appeal*  
25           *has been taken.”.*

1       (b) *CONFORMING AMENDMENT.*—*The table of sections*  
2 *for chapter 99 of title 28, United States Code, is amended*  
3 *by adding at the end the following new item:*

      “1632. *Transfer by the Court of Appeals for the Federal Circuit.*”.

4   **SEC. 6. EFFECTIVE DATE.**

5       *The amendments made by this Act shall apply to any*  
6 *civil action commenced on or after the date of the enactment*  
7 *of this Act.*

Amend the title so as to read: “A bill to amend title 28, United States Code, to clarify that the Court of Appeals for the Federal Circuit has exclusive jurisdiction of appeals relating to patents or plant variety protection, and for other purposes.”.

