

*House Approves
Pilot Program To
Improve Patent
Expertise Of
District Court
Judges*

The U.S. House of Representatives passed H.R. 5418 that would establish a 10 year pilot program permitting random assignment of patent cases to judges “designated” in certain U.S. District Courts. The legislation appropriates \$5 million each fiscal year for educational and professional development of those designated district court judges in patent and plant variety protection and for compensation for law clerks having technical expertise applicable to patent and plant variety protection cases.

As passed, H.R. 5418 included an amendment that would restrict pilot districts to those courts with at least 10 district judges, where three of them have agreed to request designation for the program.

If the pilot program is signed into law, the program may affect federal court case dockets across the country as well patent litigation strategy in general including forum selection, timing of case initiation and managing patent litigation issues overall.

A five year progress report would be submitted to Congress which may include a comparison between participating and non-participating courts regarding claim construction reversal rate by the Federal Circuit, length of time for each case, and evidence of litigant’s use of the pilot courts for forum shopping.

A companion bill is pending in the Senate, S 3923, which mirrors H.R. 5418, except for the 10 judge limitation added by amendment. The House bill is now before the Senate which may be reviewed during this post-election lame-duck session and presented to the President.

We will continue to monitor Congress for action on this issue and provide updates as they occur.