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Citation: 2 An Act to Amend Title 35 United States Code with  
to Patents on Biotechnological Processes Pub. L.  
109 Stat. 351 S 14569 1995

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Tue Mar 19 17:15:31 2013

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Mr. GRAMM. Mr. President, I ask unanimous consent that the resolution be agreed to, that the motion to reconsider be laid upon the table, and that any statements related to the resolution appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the resolution (S. Res. 176) was agreed to, as follows:

S. RES. 176

*Resolved*, That section 2(3) of Senate Resolution 294, Ninety-sixth Congress, agreed to April 29, 1980, is amended—

(1) By striking “and” after “Capitol” and inserting a comma; and

(2) by inserting before the semicolon at the end the following: “, and copies of the calendar ‘We The People’ published by the United States Capitol Historical Society”.

SEC. 2. Copies of the calendar “We The People” published by the United States Capitol Historical Society shall be deemed to be Federal publications described in section 6(b)(1)(B)(v) of Public Law 103-283.

ATTORNEY'S FEES EQUITY ACT

Mr. GRAMM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 10, S. 144.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows.

A bill (S. 144) to amend section 526 of title 28, United States Code, to authorize awards of attorney's fees.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. GRAMM. Mr. President, I ask unanimous consent that the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table, and that any statements related to the bill be printed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 144) was deemed read the third time and passed, as follows:

S. 144

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

SECTION 1. AWARDS OF ATTORNEYS FEES.

(a) SHORT TITLE.—This Act may be cited as the “Attorney's Fees Equity Act of 1995”.

(b) AWARDS OF ATTORNEY'S FEES.—Section 526 of title 28, United States Code, is amended by adding at the end the following new subsection:

“(c)(1)(A) A current or former Department of Justice attorney; agent; or employee who supervises an agent who is the subject of a criminal or disciplinary investigation, instituted on or after the date of enactment of this subsection, arising out of acts performed in the discharge of his or her duties in prosecuting or investigating a criminal matter, who is not provided representation under Department of Justice regulations, shall be entitled to reimbursement of reasonable attorney's fees incurred during and as a result of the investigation if the investigation does not result in adverse action against the attorney, agent, or employee.

“(B) A current or former attorney; agent; or employee who supervises an agent employed as or by a Federal public defender who is the subject of a criminal or disciplinary investigation instituted on or after the date of enactment of this subsection, arising out of acts performed in the discharge of his or her duties in defending or investigating a criminal matter in connection with the public defender program, who is not provided representation by a Federal public defender or the Administrative Office of the United States Courts is entitled to reimbursement of reasonable attorney's fees incurred during and as a result of the investigation if the investigation does not result in adverse action against the attorney, agent, or employee.

“(2) For purposes of paragraph (1), an investigation shall be considered not to result in adverse action against an attorney, agent, or employee if—

“(A) in the case of a criminal investigation, the investigation does not result in indictment, the filing of a criminal complaint against, or the entry of a plea of guilty by the attorney, agent, or supervising employee; and

“(B) in the case of a disciplinary investigation, the investigation does not result in discipline or results in only discipline less serious than a formal letter of reprimand finding actual and specific wrongdoing.

“(3) The Attorney General shall provide notice in writing of the conclusion and result of an investigation described in paragraph (1).

“(4) An attorney, agent, or supervising employee who was the subject of an investigation described in paragraph (1) may waive his or her entitlement to reimbursement of attorney's fees under paragraph (1) as part of a resolution of a criminal or disciplinary investigation.

“(5) An application for attorney fee reimbursement under this subsection shall be made not later than 180 days after the attorney, agent, or employee is notified in writing of the conclusion and result of the investigation.

“(6) Upon receipt of a proper application under this subsection for reimbursement of attorney's fees, the Attorney General and the Director of the Administrative Office of the United States Courts shall award reimbursement for the amount of attorney's fees that are found to have been reasonably incurred by the applicant as a result of an investigation.

“(7) The official making an award under this subsection shall make inquiry into the reasonableness of the amount requested, and shall consider—

“(A) the sufficiency of the documentation accompanying the request;

“(B) the need or justification for the underlying item;

“(C) the reasonableness of the sum requested in light of the nature of the investigation; and

“(D) current rates for equal services in the community in which the investigation took place.

“(8)(A) Reimbursements of attorney's fees ordered under this subsection by the Attorney General shall be paid from the appropriation made by section 1304 of title 31, United States Code.

“(B) Reimbursements of attorney's fees ordered under this Act by the Director of the Administrative Office of the United States Courts shall be paid from appropriations authorized by section 3006A(1) of title 18, United States Code.

“(9) The Attorney General and the Director of the Administrative Office of the United States Courts may delegate their powers and duties under this subsection to an appropriate subordinate.”.

BANKRUPTCY CODE REFERENCE  
CORRECTIONS

Mr. GRAMM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 190, S. 977.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 977) to correct certain references in the Bankruptcy Code.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. GRAMM. I ask unanimous consent, Mr. President, that the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So, the bill (S. 977) was deemed read three times and passed, as follows:

S. 977

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

SECTION 1. REFERENCE.

Section 1228 of title 11, United States Code, is amended by striking “section 1222(b)(10)” each place it appears and inserting “section 1222(b)(9)”.

BIOTECHNOLOGICAL PROCESSES  
PATENTS

Mr. GRAMM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 191, S. 1111.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1111) to amend title 35, United States Code, with respect to patents on biotechnological processes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. GRAMM. Mr. President, I ask unanimous consent that the bill be deemed read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So, the bill (S. 1111) was deemed read three times and passed as follows:

S. 1111

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

SECTION 1. BIOTECHNOLOGICAL PROCESS PATENTS; CONDITIONS FOR PATENTABILITY; NONOBVIOUS SUBJECT MATTER.

Section 103 of title 35, United States Code, is amended—

(1) by designating the first paragraph as subsection (a);

(2) by designating the second paragraph as subsection (c); and

(3) by inserting after the first paragraph the following:

“(b)(1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—

“(A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and

“(B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.

“(2) A patent issued on a process under paragraph (1)—

“(A) shall also contain the claims to the composition of matter used in or made by that process, or

“(B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.

“(3) For purposes of paragraph (1), the term ‘biotechnological process’ means—

“(A) a process of genetically altering or otherwise inducing a single- or multi-celled organism to—

“(i) express an exogenous nucleotide sequence,

“(ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or

“(iii) express a specific physiological characteristic not naturally associated with said organism;

“(B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and

“(C) a method of using a product produced by a process defined by (A) or (B), or a combination of (A) and (B).”

#### SEC. 2. PRESUMPTION OF VALIDITY; DEFENSES.

Section 282 of title 35, United States Code, is amended by inserting after the second sentence of the first paragraph the following: “Notwithstanding the preceding sentence, if a claim to a composition of matter is held invalid and that claim was the basis of a determination of nonobviousness under section 103(b)(1), the process shall no longer be considered nonobvious solely on the basis of section 103(b)(1).”

#### SEC. 3. EFFECTIVE DATE.

The amendments made by section 1 shall apply to any application for patent filed on or after the date of enactment of this Act and to any application for patent pending on such date of enactment, including (in either case) an application for the reissuance of a patent.

#### CIRCUIT JUDGE AUTHORIZATION

Mr. GRAMM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 133, S. 531.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 531) to authorize a circuit judge who has taken part in an en banc hearing of a case to continue to participate in that case after taking senior status, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment; as follows:

(The parts of the bill intended to be struck through are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 531

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

#### SECTION 1. AMENDMENT.

【The last sentence of section 46(c) of title 28, United States Code, is amended by striking “as a member” and all that follows through the period and inserting the following: “as a member of an in banc court—

“(1) reviewing a decision of a panel of which such judge was a member; or

“(2) continuing to participate in the decision of a case or controversy that was heard or reheard by the court in banc at a time when such judge was in regular active service.”】

*The last sentence of section 46(c) of title 28, United States Code, is amended by inserting “(1)” after “eligible” and by inserting before the period at the end of the sentence “, or (2) to continue to participate in the decision of a case or controversy that was heard or reheard by the court in banc at a time when such judge was in regular active service”.*

Mr. GRAMM. Mr. President, I ask unanimous consent that the committee amendment be agreed to, that the bill then be deemed read a third time, passed, that the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 531), as amended, was passed, as follows:

S. 531

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

#### SECTION 1. AMENDMENT.

The last sentence of section 46(c) of title 28, United States Code, is amended by inserting “(1)” after “eligible” and by inserting before the period at the end of the sentence “, or (2) to continue to participate in the decision of a case or controversy that was heard or reheard by the court in banc at a time when such judge was in regular active service”.

#### DEFENSE PRODUCTION ACT AMENDMENTS OF 1995

Mr. GRAMM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 178, S. 1147.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the bill by title. The assistant legislative clerk read as follows:

A bill (S. 1147) to extend and reauthorize the Defense Production Act of 1950, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. GRAMM. Mr. President, I ask unanimous consent that the bill be deemed read the third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 1147) was deemed read the third time, and passed, as follows:

S. 1147

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Defense Production Act Amendments of 1995”.

#### SEC. 2. EXTENSION OF PROGRAMS.

Section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended in the first sentence, by striking “Title I (except section 104), title III, and title VII (except sections 708, 714, 719 and 721) of this Act, and all authority conferred thereunder, shall terminate at the close of September 30, 1995” and inserting “Title I (except section 104), title III, and title VII (except sections 708 and 721) of this Act, and all authority conferred thereunder, shall terminate at the close of September 30, 1998”.

#### SEC. 3. AUTHORIZING APPROPRIATIONS FOR TITLE III PROJECTS.

Section 711 of the Defense Production Act of 1950 (50 U.S.C. App. 2161) is amended—

(1) in subsection (a), by striking “(a) AUTHORIZATION.—” and all that follows through “subsection (c),” and inserting the following:

“(a) AUTHORIZATION.—Except as provided in subsection (b),”;

(2) by striking subsections (b) through (d) and inserting the following:

“(b) TITLE III AUTHORIZATION.—There are authorized to be appropriated for each of fiscal years 1996, 1997, and 1998, such sums as may be necessary to carry out title III.”.

#### DEPARTMENT OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1996

The Senate continued with the consideration of the bill.

Mr. GRAMM. Mr. President, I ask unanimous consent to continue the consideration of H.R. 2076 in order to reconsider and table the vote by which the managers’ amendment was agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

#### ORDERS FOR FRIDAY, SEPTEMBER 29, 1995

Mr. GRAMM. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9 a.m.

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