

101ST CONGRESS  
2D SESSION

# S. 2193

To amend title 35, United States Code, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of patents, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private entity.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 27 (legislative day, JANUARY 23), 1990

Mr. DECONCINI (for himself, Mr. SIMON, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 35, United States Code, to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of patents, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private entity.

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. SHORT TITLE.

4 This Act may be cited as the "Patent Remedy Clarifica-  
5 tion Act".

1 SEC. 2. LIABILITY OF STATES, INSTRUMENTALITIES OF  
2 STATES, AND STATE OFFICIALS FOR INFRINGE-  
3 MENT OF PATENTS.

4 (a) LIABILITY AND REMEDIES.—(1) Section 271 of title  
5 35, United States Code, is amended by adding at the end the  
6 following:

7 “(h) As used in this section, the term ‘whoever’ includes  
8 any State, any instrumentality of a State, and any officer or  
9 employee of a State or instrumentality of a State acting in his  
10 or her official capacity. Any State, and any such instrumen-  
11 tality, officer, or employee, shall be subject to the provisions  
12 of this title in the same manner and to the same extent as  
13 any nongovernmental entity.”.

14 (2) Chapter 29 of title 35, United States Code, is  
15 amended by adding at the end the following new section:

16 “§ 296. Liability of States, instrumentalities of States, and  
17 State officials for infringement of patents

18 “(a) IN GENERAL.—Any State, any instrumentality of a  
19 State, and any officer or employee of a State or instrumentality  
20 of a State acting in his or her official capacity, shall not be  
21 immune, under the eleventh amendment of the Constitution  
22 of the United States or under any other doctrine of sovereign  
23 immunity, from suit in Federal court by any person, including  
24 any governmental or nongovernmental entity, for infringe-  
25 ment of a patent under section 271, or for any other violation  
26 under this title.

1       “(b) REMEDIES.—In a suit described in subsection (a)  
2 for a violation described in that subsection, remedies (includ-  
3 ing remedies both at law and in equity) are available for the  
4 violation to the same extent as such remedies are available  
5 for such a violation in a suit against any private entity. Such  
6 remedies include damages, interest, costs, and treble dam-  
7 ages under section 284, attorney fees under section 285, and  
8 the additional remedy for infringement of design patents  
9 under section 289.”.

10       (b) CONFORMING AMENDMENT.—The table of sections  
11 at the beginning of chapter 29 of title 35, United States  
12 Code, is amended by adding at the end the following new  
13 item:

“Sec. 296. Liability of States, instrumentalities of States, and State officials for in-  
fringement of patents.”.

14 **SEC. 3. EFFECTIVE DATE.**

15       The amendments made by this Act shall take effect with  
16 respect to violations that occur on or after the date of the  
17 enactment of this Act.

