

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide the Federal Circuit jurisdiction over the interlocutory appeal of claim construction orders and for other purposes.

IN THE SENATE OF THE UNITED STATES—110th Cong., 2d Sess.

S. 1145

To amend title 35, United States Code, to provide for patent reform.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

1 On page 102, line 13, after “appeal.” insert the fol-
2 lowing: “The district court, in its discretion, can approve
3 an interlocutory appeal of a claim construction order if
4 (i) there was a reasonable ground for difference of opinion,
5 and (ii) such an appeal may advance the ultimate termi-
6 nation of the litigation. For the first interlocutory appeal
7 of a claim construction order in a given case, the United
8 States Court of Appeals for the Federal Circuit shall ac-
9 cept the appeal if so ordered by the district court. After

1 the first interlocutory appeal, the United States Court of
2 Appeals for the Federal Circuit has discretion as to wheth-
3 er or not to accept the appeal of a subsequent claim con-
4 struction order in the same case.”.