

114TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To ensure that venue in patents cases is fair and proper, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

Mr. FLAKE (for himself, Mr. GARDNER, and Mr. LEE) introduced the following bill; which was read twice and referred to the Committee on

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**A BILL**

To ensure that venue in patents cases is fair and proper,  
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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Venue Equity and  
5 Non-Uniformity Elimination Act of 2016”.

6 **SEC. 2. VENUE.**

7 (a) AMENDMENT.—Section 1400 of title 28, United  
8 States Code, is amended by striking subsection (b) and  
9 inserting the following:

1           “(b) Notwithstanding subsections (b) and (c) of sec-  
2 tion 1391, any civil action for patent infringement or any  
3 action for a declaratory judgment that a patent is invalid  
4 or not infringed may be brought only in a judicial dis-  
5 trict—

6           “(1) where the defendant has its principal place  
7 of business or is incorporated;

8           “(2) where the defendant has committed an act  
9 of infringement of a patent in suit and has a regular  
10 and established physical facility that gives rise to the  
11 act of infringement;

12           “(3) where the defendant has agreed or con-  
13 sented to be sued in the instant action;

14           “(4) where an inventor named on the patent in  
15 suit conducted research or development that led to  
16 the application for the patent in suit;

17           “(5) where a party has a regular and estab-  
18 lished physical facility that such party controls and  
19 operates, not primarily for the purpose of creating  
20 venue, and has—

21           “(A) engaged in management of significant  
22 research and development of an invention  
23 claimed in a patent in suit prior to the effective  
24 filing date of the patent;

1           “(B) manufactured a tangible product that  
2           is alleged to embody an invention claimed in a  
3           patent in suit; or

4           “(C) implemented a manufacturing process  
5           for a tangible good in which the process is al-  
6           leged to embody an invention claimed in a pat-  
7           ent in suit; or

8           “(6) in the case of a foreign defendant that  
9           does not meet the requirements of paragraph (1) or  
10          (2), in accordance with section 1391(c)(3).”.

11          (b) MANDAMUS RELIEF.—For the purpose of deter-  
12          mining whether relief may issue under section 1651 of title  
13          28, United States Code, a clearly and indisputably erro-  
14          neous denial of a motion under section 1406(a) of such  
15          title to dismiss or transfer a case on the basis of section  
16          1400(b) of such title shall be deemed to cause irremediable  
17          interim harm.

18          (c) TELEWORKERS.—The dwelling or residence of an  
19          employee or contractor of a defendant who works at such  
20          dwelling or residence shall not constitute a regular and  
21          established physical facility of the defendant for purposes  
22          of section 1400(b)(2) of title 28, United States Code, as  
23          added by subsection(a).