

Appendix O

Title 28 — Judiciary and Judicial Procedure, U.S. Code

Part I — Organization of Courts Chapter 5 — District Courts

§ 137 · *Division of business among district judges*¹

(a) IN GENERAL. — The business of a court having more than one judge shall be divided among the judges as provided by the rules and orders of the court.

The chief judge of the district court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.

If the district judges in any district are unable to agree upon the adoption of rules or orders for that purpose the judicial council of the circuit shall make the necessary orders.

(b) RANDOM ASSIGNMENT OF RATE COURT PROCEEDINGS. —

(1) IN GENERAL. —

(A) DEFINITION. — In this paragraph, the term ‘performing rights society’ has the meaning given the term in section 101 of title 17.

(B) DETERMINATION OF LICENSE FEE. — Except as provided in subparagraph (C), in the case of any performing rights society subject to a consent decree, any application for the determination of a license fee for the public performance of music in accordance with the applicable consent decree shall be made in the district court with jurisdiction over that consent decree and randomly assigned to a judge of that district court according to the rules of that court for the division of business among district judges, provided that any such application shall not be assigned to—

(i) a judge to whom continuing jurisdiction over any performing rights society for any performing rights society consent decree is assigned or has previously been assigned; or

(ii) a judge to whom another proceeding concerning an application for the determination of a reasonable license fee is assigned at the time of the filing of the application.

(C) EXCEPTION. — Subparagraph (B) does not apply to an application to determine reasonable license fees made by individual proprietors under section 513 of title 17.

(2) **RULE OF CONSTRUCTION.**— Nothing in paragraph (1) shall modify the rights of any party to a consent decree or to a proceeding to determine reasonable license fees, to make an application for the construction of any provision of the applicable consent decree. Such application shall be referred to the judge to whom continuing jurisdiction over the applicable consent decree is currently assigned. If any such application is made in connection with a rate proceeding, such rate proceeding shall be stayed until the final determination of the construction application. Disputes in connection with a rate proceeding about whether a licensee is similarly situated to another licensee shall not be subject to referral to the judge with continuing jurisdiction over the applicable consent decree.

Part IV — Jurisdiction and Venue

Chapter 85 — District Courts; Jurisdiction

§ 1338 · *Patents, plant variety protection, copyrights, mask works, designs, trademarks, and unfair competition*²

(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights. For purposes of this subsection, the term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(b) The district courts shall have original jurisdiction of any civil action asserting a claim of unfair competition when joined with a substantial and related claim under the copyright, patent, plant variety protection or trademark laws.

(c) Subsections (a) and (b) apply to exclusive rights in mask works under chapter 9 of title 17, and to exclusive rights in designs under chapter 13 of title 17, to the same extent as such subsections apply to copyrights.

Chapter 87 — District Courts; Venue

§ 1400 · *Patents and copyrights, mask works, and designs*³

(a) Civil actions, suits, or proceedings arising under any Act of Congress relating to copyrights or exclusive rights in mask works or designs may be instituted in the district in which the defendant or his agent resides or may be found.

(b) Any civil action for patent infringement may be brought in the judicial district where the defendant resides, or where the defendant has committed acts of infringement and has a regular and established place of business.

Chapter 91 — United States Court of Federal Claims

§ 1498 · *Patent and copyright cases*⁴

(b) Hereafter, whenever the copyright in any work protected under the copyright laws of the United States shall be infringed by the United States, by a corporation owned or controlled by the United States, or by a contractor, subcontractor, or any person, firm, or corporation acting for the Government and with the authorization or consent of the Government, the exclusive action which may be brought for such infringement shall be an action by the copyright owner against the United States in the Court of Federal Claims for the recovery of his reasonable and entire compensation as damages for such infringement, including the minimum statutory damages as set forth in section 504(c) of title 17, United States Code: Provided, That a Government employee shall have a right of action against the Government under this subsection except where he was in a position to order, influence, or induce use of the copyrighted work by the Government: Provided, however, That this subsection shall not confer a right of action on any copyright owner or any assignee of such owner with respect to any copyrighted work prepared by a person while in the employment or service of the United States, where the copyrighted work was prepared as a part of the official functions of the employee, or in the prepara-

tion of which Government time, material, or facilities were used: And provided further, That before such action against the United States has been instituted the appropriate corporation owned or controlled by the United States or the head of the appropriate department or agency of the Government, as the case may be, is authorized to enter into an agreement with the copyright owner in full settlement and compromise for the damages accruing to him by reason of such infringement and to settle the claim administratively out of available appropriations.

Except as otherwise provided by law, no recovery shall be had for any infringement of a copyright covered by this subsection committed more than three years prior to the filing of the complaint or counterclaim for infringement in the action, except that the period between the date of receipt of a written claim for compensation by the Department or agency of the Government or corporation owned or controlled by the United States, as the case may be, having authority to settle such claim and the date of mailing by the Government of a notice to the claimant that his claim has been denied shall not be counted as a part of the three years, unless suit is brought before the last-mentioned date.

(c) The provisions of this section shall not apply to any claim arising in a foreign country.

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(e) Subsections (b) and (c) of this section apply to exclusive rights in mask works under chapter 9 of title 17, and to exclusive rights in designs under chapter 13 of title 17, to the same extent as such subsections apply to copyrights.

Appendix O • Notes

1. In 2018, the Orrin G. Hatch–Bob Goodlatte Music Modernization Act amended section 137 by adding “(a) IN GENERAL. — The business” to the first paragraph and by adding subsection (b), “RANDOM ASSIGNMENT OF RATE COURT PROCEEDINGS” to the end of the section. Pub. L. No. 115-264, 132 Stat. 3676, 3726.

2. In 1948, section 1338, entitled “Patents, copyrights, trademarks, and unfair competition,” was added to Title 28 of the *United States Code*. Pub. L. No. 773, 62 Stat. 869, 931. In 1970, the title of section 1338 and the text of subsection (b) were amended to insert “plant variety protection” after “patent.” Pub. L. No. 91-577, 84 Stat. 1542, 1559. In 1988, the Judicial Improvements and Access to Justice Act amended section 1338 by adding “mask works” to the title and by adding subsection (c). Pub. L. No. 100-702, 102 Stat. 4642, 4671. In 1998, the Digital Millennium Copyright Act (DMCA) amended the title by inserting “designs,” after “mask works.” Pub. L. No. 105-304, 112 Stat. 2860, 2917. The DMCA also amended subsection (c) by inserting “; and to exclusive rights in designs under chapter 13 of title 17,” after

“chapter 9 of title 17.” *Id.* In 1999, the Anticybersquatting Consumer Protection Act amended section 1338 throughout to change “trade-mark” and “trade-marks” to “trademark” and “trademarks,” respectively. Pub. L. No. 106-113, 113 Stat. 1501, 1501A-551, app. I. In 2011, section 19(a) of the Leahy-Smith America Invents Act amended the second sentence of subsection 1338(a) in its entirety and added a third sentence. Pub. L. No. 112-29, 125 Stat. 284, 331.

3. In 1948, section 1400, entitled “Patents and copyrights,” was added to Title 28 of the *United States Code*. Pub. L. No. 773, 62 Stat. 869, 936. In 1988, the Judicial Improvements and Access to Justice Act amended subsection (a) by inserting “or exclusive rights in mask works” after “copyrights.” Pub. L. No. 100-702, 102 Stat. 4642, 4671. In 1998, the Digital Millennium Copyright Act (DMCA) amended subsection (a) to insert “or designs” after “mask works.” Pub. L. No. 105-304, 112 Stat. 2860, 2917. The DMCA also amended the section heading to “Patents and copyrights, mask works, and designs.” This amendment included a period at the end, after “designs.” In 1999, a technical amendment deleted the period. Pub. L. No. 106-44, 113 Stat. 221, 223.

4. In 1960, section 1498 of Title 28 of the *United States Code* was amended to add subsections (b) and (c). Pub. L. No. 86-726, 74 Stat. 855. The Copyright Act of 1976 amended section 1498(b) to insert “section 504(c) of title 17” in lieu of “section 101(b) of title 17.” Pub. L. No. 94-553, 90 Stat. 2541, 2599. The Federal Courts Improvement Act of 1982 amended section 1498(a) to insert “United States Claims Court” in lieu of “Court of Claims” and, in subsections (b) and (d), to insert “Claims Court” in lieu of “Court of Claims,” wherever it appeared. Pub. L. No. 97-164, 96 Stat. 25, 40. In 1988, the Judicial Improvements and Access to Justice Act amended section 1498 by adding subsection (e). Pub. L. No. 100-702, 102 Stat. 4642, 4671. The Federal Courts Administration Act of 1992 amended section 1498 by inserting “United States Court of Federal Claims” in lieu of “United States Claims Court,” wherever it appeared, and by inserting “Court of Federal Claims” in lieu of “Claims Court,” wherever it appeared. Pub. L. No. 102-572, 106 Stat. 4506, 4516. In 1997, the No Electronic Theft (NET) Act amended section 1498(b) to insert “action which may be brought for such infringement shall be an action by the copyright owner” in lieu of “remedy of the owner of such copyright shall be by action.” Pub. L. No. 105-147, 111 Stat. 2678, 2680. In 1998, the Digital Millennium Copyright Act amended subsection (e) by inserting, “, and to exclusive rights in designs under chapter 13 of title 17,” after “chapter 9 of title 17.” Pub. L. No. 105-304, 112 Stat. 2860, 2917.

