

**§ 1338. Patents, plant variety protection, copy-
rights, mask works, designs, trademarks, and
unfair competition**

(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.

(June 25, 1948, ch. 646, 62 Stat. 931; Pub. L. 91-577, title III, §143(b), Dec. 24, 1970, 84 Stat. 1559; Pub. L. 100-702, title X, §1020(a)(4), Nov. 19, 1988, 102 Stat. 4671; Pub. L. 105-304, title V, §503(b)(1), (2)(A), Oct. 28, 1998, 112 Stat. 2917; Pub. L. 106-113, div. B, §1000(a)(9) [title III, §3009(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A-551; Pub. L. 112-29, §19(a), Sept. 16, 2011, 125 Stat. 331.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§41(7) and 371(5) (Mar. 3, 1911, ch. 231, §24, par. 7, 256, par. 5, 36 Stat. 1092, 1160).

Section consolidates section 41(7) with section 371 (5) of title 28, U.S.C., 1940 ed., with necessary changes in phraseology.

Words “of any civil action” were substituted for “all suits at law or in equity” and “cases” to conform section to Rule 2 of the Federal Rules of Civil Procedure.

Word “patents” was substituted for “patent-right” in said section 371 (Fifth) of title 28, U.S.C., 1940 ed.

Similar provisions respecting suits cognizable in district courts, including those of territories and possessions. (See section 34 of title 17, U.S.C., 1940 ed., Copyrights.)

Subsection (b) is added and is intended to avoid “piecemeal” litigation to enforce common-law and statutory copyright, patent, and trade-mark rights by specifically permitting such enforcement in a single civil action in the district court. While this is the rule under Federal decisions, this section would enact it as statutory authority. The problem is discussed at length in *Hurn v. Oursler* (1933, 53 S.Ct. 586, 289 U.S. 238, 77 L.Ed. 1148) and in *Musher Foundation v. Alba Trading Co.* (C.C.A. 1942, 127 F.2d 9) (majority and dissenting opinions).

AMENDMENTS

2011—Subsec. (a). Pub. L. 112-29 substituted “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.” for “Such jurisdiction shall be exclusive

of the courts of the states in patent, plant variety protection and copyright cases.”

1999—Pub. L. 106-113 substituted “trademarks” for “trade-marks” in section catchline and subsec. (a) and substituted “trademark” for “trade-mark” in subsec. (b).

1998—Pub. L. 105-304, §503(b)(2)(A), inserted “designs,” after “mask works,” in section catchline.

Subsec. (c). Pub. L. 105-304, §503(b)(1), inserted “, and to exclusive rights in designs under chapter 13 of title 17,” after “title 17”.

1988—Pub. L. 100-702, §1020(a)(4)(B), amended section catchline generally, inserting “mask works,” after “copyrights.”

Subsec. (c). Pub. L. 100-702, §1020(a)(4)(A), added subsec. (c).

1970—Pub. L. 91-577 inserted references to “plant variety protection” in section catchline and in subsecs. (a) and (b).

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by Pub. L. 112-29 applicable to any civil action commenced on or after Sept. 16, 2011, see section 19(e) of Pub. L. 112-29, set out as a note under section 1295 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-577 effective Dec. 24, 1970, see section 141 of Pub. L. 91-577, set out as an Effective Date note under section 2321 of Title 7, Agriculture.

§ 1339. Postal matters

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to the postal service.

(June 25, 1948, ch. 646, 62 Stat. 932.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §41(6) (Mar. 3, 1911, ch. 231, §24, par. 6, 36 Stat. 1092).

Changes were made in phraseology.

§ 1340. Internal revenue; customs duties

The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Court of International Trade.

(June 25, 1948, ch. 646, 62 Stat. 932; Pub. L. 96-417, title V, §501(21), Oct. 10, 1980, 94 Stat. 1742.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §41(5) (Mar. 3, 1911, ch. 231, §24, par. 5, 36 Stat. 1092; Mar. 2, 1929, ch. 488, §1, 45 Stat. 1475).

Words “Customs Court” were substituted for “Court of Customs and Patent Appeals.” Section 41(5) of title 28, U.S.C., 1940 ed., is based on the Judicial Code of 1911. At that time the only court, other than the district courts, having jurisdiction of customs cases, was the Court of Customs Appeals which became the Court of Customs and Patent Appeals in 1929. The Customs Court was created in 1926 as a court of original jurisdiction over customs cases. (See reviser’s note preceding section 251 of this title.)

Words “any civil action” were substituted for “all cases” in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

AMENDMENTS

1980—Pub. L. 96-417 redesignated the Customs Court as the Court of International Trade.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-417 effective Nov. 1, 1980, and applicable with respect to civil actions pending on