

(1) by designating the first paragraph as subsection (a);

(2) by designating the second paragraph as subsection (c); and

(3) by inserting after the first paragraph the following:

“(b)(1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—

“(A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and

“(B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.

“(2) A patent issued on a process under paragraph (1)—

“(A) shall also contain the claims to the composition of matter used in or made by that process, or

“(B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.

“(3) For purposes of paragraph (1), the term ‘biotechnological process’ means—

“(A) a process of genetically altering or otherwise inducing a single- or multi-celled organism to—

“(i) express an exogenous nucleotide sequence,

“(ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or

“(iii) express a specific physiological characteristic not naturally associated with said organism;

“(B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and

“(C) a method of using a product produced by a process defined by (A) or (B), or a combination of (A) and (B).”.

### SEC. 2. PRESUMPTION OF VALIDITY; DEFENSES.

Section 282 of title 35, United States Code, is amended by inserting after the second sentence of the first paragraph the following: “Notwithstanding the preceding sentence, if a claim to a composition of matter is held invalid and that claim was the basis of a determination of nonobviousness under section 103(b)(1), the process shall no longer be considered nonobvious solely on the basis of section 103(b)(1).”.

### SEC. 3. EFFECTIVE DATE.

The amendments made by section 1 shall apply to any application for patent filed on or after the date of enactment of this Act and to any application for patent pending on such date of enactment, including (in either case) an application for the reissuance of a patent.

### CIRCUIT JUDGE AUTHORIZATION

Mr. GRAMM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 133, S. 531.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 531) to authorize a circuit judge who has taken part in an en banc hearing of a case to continue to participate in that case after taking senior status, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment; as follows:

(The parts of the bill intended to be struck through are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 531

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. AMENDMENT.

[The last sentence of section 46(c) of title 28, United States Code, is amended by striking “as a member” and all that follows through the period and inserting the following: “as a member of an in banc court—

[“(1) reviewing a decision of a panel of which such judge was a member; or

[“(2) continuing to participate in the decision of a case or controversy that was heard or reheard by the court in banc at a time when such judge was in regular active service.”.]

*The last sentence of section 46(c) of title 28, United States Code, is amended by inserting “(1)” after “eligible” and by inserting before the period at the end of the sentence “; or (2) to continue to participate in the decision of a case or controversy that was heard or reheard by the court in banc at a time when such judge was in regular active service”.*

Mr. GRAMM. Mr. President, I ask unanimous consent that the committee amendment be agreed to, that the bill then be deemed read a third time, passed, that the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 531), as amended, was passed, as follows:

S. 531

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. AMENDMENT.

The last sentence of section 46(c) of title 28, United States Code, is amended by inserting “(1)” after “eligible” and by inserting before the period at the end of the sentence “; or (2) to continue to participate in the decision of a case or controversy that was heard or reheard by the court in banc at a time when such judge was in regular active service”.

### DEFENSE PRODUCTION ACT AMENDMENTS OF 1995

Mr. GRAMM. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 178, S. 1147.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will state the bill by title. The assistant legislative clerk read as follows:

A bill (S. 1147) to extend and reauthorize the Defense Production Act of 1950, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. GRAMM. Mr. President, I ask unanimous consent that the bill be deemed read the third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 1147) was deemed read the third time, and passed, as follows:

S. 1147

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Defense Production Act Amendments of 1995”.

### SEC. 2. EXTENSION OF PROGRAMS.

Section 717(a) of the Defense Production Act of 1950 (50 U.S.C. App. 2166(a)) is amended in the first sentence, by striking “Title I (except section 104), title III, and title VII (except sections 708, 714, 719 and 721) of this Act, and all authority conferred thereunder, shall terminate at the close of September 30, 1995” and inserting “Title I (except section 104), title III, and title VII (except sections 708 and 721) of this Act, and all authority conferred thereunder, shall terminate at the close of September 30, 1998”.

### SEC. 3. AUTHORIZING APPROPRIATIONS FOR TITLE III PROJECTS.

Section 711 of the Defense Production Act of 1950 (50 U.S.C. App. 2161) is amended—

(1) in subsection (a), by striking “(a) AUTHORIZATION.—” and all that follows through “subsection (c),” and inserting the following: “(a) AUTHORIZATION.—Except as provided in subsection (b),”;

(2) by striking subsections (b) through (d) and inserting the following:

“(b) TITLE III AUTHORIZATION.—There are authorized to be appropriated for each of fiscal years 1996, 1997, and 1998, such sums as may be necessary to carry out title III.”.

### DEPARTMENT OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1996

The Senate continued with the consideration of the bill.

Mr. GRAMM. Mr. President, I ask unanimous consent to continue the consideration of H.R. 2076 in order to reconsider and table the vote by which the managers’ amendment was agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

### ORDERS FOR FRIDAY, SEPTEMBER 29, 1995

Mr. GRAMM. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9 a.m.