

-CITE-

28 USC Sec. 1292

02/01/2010

-EXPCITE-

TITLE 28 - JUDICIARY AND JUDICIAL PROCEDURE

PART IV - JURISDICTION AND VENUE

CHAPTER 83 - COURTS OF APPEALS

-HEAD-

Sec. 1292. Interlocutory decisions

-STATUTE-

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

(2) Interlocutory orders appointing receivers, or refusing orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;

(3) Interlocutory decrees of such district courts or the judges thereof determining the rights and liabilities of the parties to

admiralty cases in which appeals from final decrees are allowed.

(b) When **a** district judge, in making in **a** civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves **a** controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or **a** judge thereof shall so order.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction -

(1) of an appeal from an interlocutory order or decree described in subsection (**a**) or (b) of this section in any case over which the court would have jurisdiction of an appeal under section 1295 of this title; and

(2) of an appeal from **a** judgment in **a** civil action for patent infringement which would otherwise be appealable to the United States Court of Appeals for the Federal Circuit and is final except for an accounting.

(d)(1) When the chief judge of the Court of International Trade issues an order under the provisions of section 256(b) of this title, or when any judge of the Court of International Trade, in issuing any other interlocutory order, includes in the order **a** statement that **a** controlling question of law is involved with respect to which there is **a** substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(2) When the chief judge of the United States Court of Federal Claims issues an order under section 798(b) of this title, or when any judge of the United States Court of Federal Claims, in issuing an interlocutory order, includes in the order **a** statement that **a** controlling question of law is involved with respect to which there is **a** substantial ground for difference of opinion and that an immediate appeal from that order may materially advance the ultimate termination of the litigation, the United States Court of Appeals for the Federal Circuit may, in its discretion, permit an appeal to be taken from such order, if application is made to that Court within ten days after the entry of such order.

(3) Neither the application for nor the granting of an appeal under this subsection shall stay proceedings in the Court of

International Trade or in the Court of Federal Claims, as the case may be, unless a stay is ordered by a judge of the Court of International Trade or of the Court of Federal Claims or by the United States Court of Appeals for the Federal Circuit or a judge of that court.

(4)(A) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction of an appeal from an interlocutory order of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, granting or denying, in whole or in part, a motion to transfer an action to the United States Court of Federal Claims under section 1631 of this title.

(B) When a motion to transfer an action to the Court of Federal Claims is filed in a district court, no further proceedings shall be taken in the district court until 60 days after the court has ruled upon the motion. If an appeal is taken from the district court's grant or denial of the motion, proceedings shall be further stayed until the appeal has been decided by the Court of Appeals for the Federal Circuit. The stay of proceedings in the district court shall not bar the granting of preliminary or injunctive relief, where appropriate and where expedition is reasonably necessary. However, during the period in which proceedings are stayed as provided in this subparagraph, no transfer to the Court of Federal Claims pursuant to the motion shall be carried out.

(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).

-SOURCE-

(June 25, 1948, ch. 646, 62 Stat. 929; Oct. 31, 1951, ch. 655, Sec. 49, 65 Stat. 726; Pub. L. 85-508, Sec. 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 85-919, Sept. 2, 1958, 72 Stat. 1770; Pub. L. 97-164, Sec. 125, Apr. 2, 1982, 96 Stat. 36; Pub. L. 98-620, title IV, Sec. 412, Nov. 8, 1984, 98 Stat. 3362; Pub. L. 100-702, title V, Sec. 501, Nov. 19, 1988, 102 Stat. 4652; Pub. L. 102-572, title I, Sec. 101, title IX, Secs. 902(b), 906(c), Oct. 29, 1992, 106 Stat. 4506, 4516, 4518.)

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HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., Secs. 225(b), 227, 227a, and section 61 of title 7 of the Canal Zone Code (Mar. 3, 1911, ch. 231, Secs. 128, 129, 36 Stat. 1133, 1134; Feb. 13, 1925, ch. 229, Sec. 1, 43 Stat. 937; Feb. 28, 1927, ch. 228, 44 Stat. 1261; Apr. 3, 1926, ch. 102, 44 Stat. 233; May 20, 1926, ch. 347, Sec. 13(a), 44 Stat. 587; Apr. 11, 1928, ch. 354, Sec. 1, 45 Stat. 422; May 17, 1932, ch. 190, 47 Stat. 158).

Section consolidates sections 225(b), 227 and part of 227a of title 28, U.S.C., 1940 ed., with necessary changes in phraseology to effect the consolidation.

The second paragraph of section 225(b) of title 28, U.S.C., 1940 ed., relating to review of decisions of the district courts, under section 9 of the Railway Labor Act (section 159 of title 45), was omitted as covered by section 1291 of this title.

Words in section 227 of title 28, U.S.C., 1940 ed., "or decree," after "interlocutory order," were deleted, in view of Rule 65 of the Federal Rules of Civil Procedure, using only the word "order."

Provisions of sections 227 and 227a of title 28, U.S.C., 1940 ed., relating to stay of proceedings pending appeal were omitted as superseded by Federal Rules of Civil Procedure, Rule 73.

Provisions of section 227 of title 28, U.S.C., 1940 ed., requiring an additional bond by the district court as a condition of appeal were omitted in view of Federal Rules of Civil Procedure, Rule 73.

Words in section 227 of title 28, U.S.C., 1940 ed., "and sections 346 and 347 of this title shall apply to such cases in the circuit courts of appeals as to other cases therein," at the end of the first sentence of section 227 of title 28, U.S.C., 1940 ed., were deleted as fully covered by section 1254 of this title, applicable to any case in a court of appeals. Other procedural provisions of said section 227 were omitted as covered by section 2101 et seq. of this title.

In subsection (4), which is based on section 227a of title 28, U.S.C., 1940 ed., words "civil actions" were substituted for "suits in equity" and word "judgments" was substituted for "decree," in

view of Rules 2 and 54 of the Federal Rules of Civil Procedure.

The provision of sections 227 and 227a of title 28, U.S.C., 1940 ed., that appeal must be taken within thirty days after entry of order, decree or judgment is incorporated in section 2107 of this title.

The provisions of section 227a of title 28, U.S.C., 1940 ed., relating to stay of proceedings pending appeal, were omitted as superseded by Rule 73 of the Federal Rules of Civil Procedure.

The district courts for the districts of Hawaii and Puerto Rico are embraced in the term "district courts of the United States." (See definitive section 451 of this title.) Consequently the specific reference in section 225 of title 28, U.S.C., 1940 ed., to "the United States district courts for Hawaii" was omitted.

The District Court for the District of Puerto Rico is not enumerated in section 225(b) of title 28, U.S.C., 1940 ed., nevertheless subsection (2) of the revised section does not except such court. Thus in conformity with the last sentence of section 864, title 48, U.S.C., 1940 ed. For distribution of said section 864, see Distribution Table.

Section 61 of title 7 of the Canal Zone Code is also incorporated in sections 1291 and 1294 of this title.

#### AMENDMENTS

1992 - Subsec. (d)(2). Pub. L. 102-572, Secs. 902(b)(1), 906(c), substituted "When the chief judge of the United States Court of Federal Claims issues an order under section 798(b) of this title,

or when any judge of the United States Court of Federal Claims" for "When any judge of the United States Claims Court".

Subsec. (d)(3). Pub. L. 102-572, Sec. 902(b)(2), substituted "Court of Federal Claims" for "Claims Court" in two places.

Subsec. (d)(4). Pub. L. 102-572, Sec. 902(b), substituted "United States Court of Federal Claims" for "United States Claims Court" in subpar. (A) and "Court of Federal Claims" for "Claims Court" in two places in subpar. (B).

Subsec. (e). Pub. L. 102-572, Sec. 101, added subsec. (e).

1988 - Subsec. (d)(4). Pub. L. 100-702 added par. (4).

1984 - Subsec. (b). Pub. L. 98-620, Sec. 412(a), inserted "which would have jurisdiction of an appeal of such action" after "The Court of Appeals".

Subsec. (c)(1). Pub. L. 98-620, Sec. 412(b), inserted "or (b)" after "(a)".

1982 - Subsec. (a). Pub. L. 97-164, Sec. 125(a)(1), substituted "Except as provided in subsections (c) and (d) of this section, the courts" for "The courts" in introductory provisions.

Subsec. (a)(4). Pub. L. 97-164, Sec. 125(a)(2), (3), struck out par. (4) which related to judgments in civil actions for patent infringement which were final except for accounting.

Subsecs. (c), (d). Pub. L. 97-164, Sec. 125(b), added subsecs. (c) and (d).

1958 - Pub. L. 85-919 designated existing provisions as subsec. (a) and added subsec. (b).

Par. (1). Pub. L. 85-508 struck out reference to District Court for Territory of Alaska. See section 81A of this title which established **a** United States District Court for the State of Alaska.

1951 - Par. (1). Act Oct. 31, 1951, inserted reference to District Court of Guam.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 101 of Pub. L. 102-572 effective Jan. 1, 1993, see section 1101(**a**) of Pub. L. 102-572, set out as **a** note under section 905 of Title 2, The Congress.

Amendment by sections 902(b) and 906(c) of Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as **a** note under section 171 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Section 502 of title V of Pub. L. 100-702 provided that: "The amendment made by section 501 [amending this section] shall apply to any action commenced in the district court on or after the date of enactment of this title [Nov. 19, 1988]."

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as **a** note under section 171 of this title.

#### EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of

Pub. L. 85-508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

-TRANS-

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE  
CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the "transition period", being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 3831 and 3841 to 3843 of Title 22, Foreign Relations and Intercourse.