

108TH CONGRESS  
1ST SESSION

# H. R. 2391

To amend title 35, United States Code, to promote research among universities, the public sector, and private enterprise.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2003

Mr. SMITH of Texas (for himself, Mr. BERMAN, Mr. CONYERS, Mr. COBLE, Mr. GOODLATTE, Mr. GREEN of Wisconsin, Ms. HART, Mr. BOUCHER, Ms. LOFGREN, Mr. WEXLER, and Ms. BALDWIN) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 35, United States Code, to promote research among universities, the public sector, and private enterprise.

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 “Cooperative Research  
5 and Technology Enhancement (CREATE) Act of 2003”.

6 **SEC. 2. LIMITATION ON NONPUBLIC INFORMATION IN OB-**  
7 **VIOUSNESS DETERMINATIONS.**

8 (a) CONDITIONS FOR PATENTABILITY; NOVELTY.—  
9 Section 102(f) of title 35, United States Code, is amended

1 by inserting after “patented,” the following: “except that  
2 subject matter under this subsection shall not be consid-  
3 ered prior art or as evidence of obviousness under section  
4 103 of this title,”.

5 (b) CONDITIONS FOR PATENTABILITY; NONOBVIOUS-  
6 NESS.—Section 103(c) of title 35, United States Code, is  
7 amended to read as follows:

8 “(c) Subject matter developed by another person,  
9 which qualifies as prior art only under one or both of sub-  
10 sections (e) and (g) of section 102 of this title, shall not  
11 preclude patentability under this section where the subject  
12 matter and the claimed invention were, at the time of the  
13 earliest filing date for which a benefit is sought under this  
14 title, owned by the same person or subject to an obligation  
15 of assignment to the same person.”.

16 **SEC. 3. EFFECTIVE DATE.**

17 (a) IN GENERAL.—The amendments made by this  
18 Act shall apply to any patent granted before, on, or after  
19 the date of the enactment of this Act.

20 (b) SPECIAL RULE.—The amendments made by this  
21 Act shall not affect any final decision of a court or the  
22 United States Patent and Trademark Office rendered be-  
23 fore the date of the enactment of this Act, and shall not  
24 affect the right of any party in any action pending before  
25 the United States Patent and Trademark Office or a court

1 on the date of the enactment of this Act to have that par-  
2 ty's rights determined on the basis of the provisions of  
3 title 35, United States Code, in effect on the day before  
4 the date of the enactment of this Act.

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