

**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.R. 9  
OFFERED BY MS. LOFGREN OF CALIFORNIA**

Page 2, strike line 10 and all that follows through  
page 5, line 9, and insert the following:

“(a) Pleading Requirements.—In a civil action in which a party asserts a claim for relief arising under any Act of Congress relating to patents, a party alleging infringement shall include in a complaint, counterclaim, or cross-claim for patent infringement, except as provided in subsection (c), the following:

“(1) An identification of each patent allegedly infringed.

“(2) An identification of each claim of each patent identified under paragraph (1) that is allegedly infringed.

“(3) For each claim identified under paragraph (2), an identification of each accused process, machine, manufacture, or composition of matter (referred to in this section as an ‘accused instrumentality’) alleged to infringe the claim.

“(4) For each accused instrumentality identified under paragraph (3), an identification with particularity, if known, of—

“(A) the name or model number (or a representative model number) of each accused instrumentality; or

“(B) if there is no name or model number, a description of each accused instrumentality.

“(5) For each claim identified under paragraph (2), a description of the elements thereof that are alleged to be infringed by the accused instrumentality and how the accused instrumentality is alleged to infringe those elements.

“(6) For each claim of indirect infringement, a description of the acts of the alleged infringer that are alleged to contribute to or induce the direct infringement.

“(b) Dismissal for Failure To Meet Pleading Requirements.—The court shall, on the motion of any party, dismiss any count or counts of the complaint, counterclaim, or cross-claim for patent infringement if the requirements of paragraphs (1) through (6) of subsection (a) are not met with respect to such count or counts. The fact that a party pleads in accordance with subsection (c) shall not be a basis for dismissal if the party nonetheless states a plausible claim for relief sufficient under the Federal Rules of Civil Procedure.

“(c) Information Not Accessible.—If some subset of information required to comply with subsection (a) is not accessible to a party after an inquiry reasonable under the circumstances, consistent with rule 11 of the Federal Rules of Civil Procedure, an allegation requiring that information may be based upon a general description of that information, along with a statement as to why the information is not accessible.

“(d) Amendment of Pleadings.—Nothing in this provision shall be construed to affect a party’s leave to amend pleadings as specified in the Federal Rules of Civil Procedure. Amendments permitted by the court are subject to the pleading requirements set forth in this section.

“(e) Confidential Information.—A party required to disclose information described under subsection (a) may file information believed to be confidential under seal, with a motion setting forth good cause for such sealing. If such motion is denied by the court, the party may seek to file an amended pleading.

“(f) Exemption.—Subsection (a) shall not apply to a civil action that includes a claim for relief arising under section 271(e)(2).