

CREATE ACT Allows Collaborative Patents.

President Bush has signed the Cooperative Research and Technology Enhancement (CREATE) Act (S. 2192), which removes a barrier to collaborative research between universities and multiple organizations or companies. The effect of the law should be to accelerate the commercial availability of new inventions.

The CREATE Act, introduced in June 2003 by Rep. Lamar Smith (R-TX), is intended to promote research among universities, the public sector, and private enterprise by allowing a patent application to be approved though it involves collaborators from more than one organization. The legislation will treat joint inventions as if they had a single owner, as long as the collaborators had signed a written joint research agreement before the inventions were created.

The legislation was proposed in response to the Federal Circuit Court of Appeals decision in the 1997 case, *OddzOn Products, Inc. v. Just Toys, Inc.*, 122 F. 3d 1396 (Fed. Cir. 1997). In that case, the court held that information exchanged between members of a research team representing multiple organizations could be considered “obvious.” Since one requirement for a patentable invention is that it be “non-obvious,” this exchange could invalidate a patent application. According to the ruling, an application can be invalidated even if the information exchanged was confidential, was shared among consenting parties, or was undocumented. Critics had charged that the Federal Circuit case was a potential hazard to collaborative research projects. The CREATE Act should now remove that hazard when the collaborating parties comply with its provisions.