

**S. 440, PACED Act**

As reported by the Senate Committee on the Judiciary on June 28, 2019

By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	0
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

S. 440 would prohibit patent owners from asserting that they have tribal sovereign immunity during a variety of proceedings held by the Patent and Trademark Office’s (PTO) Patent Trial and Appeal Board (PTAB), including inter partes review (IPR). IPRs are procedures for challenging the validity of a patent. The bill also would prohibit patent owners from asserting tribal sovereign immunity as a defense in any International Trade Commission (ITC) proceedings and certain patent infringement proceedings.

CBO expects that enacting S. 440 would not affect the federal budget. On April 15, 2019, the Supreme Court left in place a ruling by the Court of Appeals for the Federal Circuit, which affirmed that tribal sovereign immunity does not prevent PTAB from carrying out IPR proceedings to decide the validity of patents. CBO anticipates that the legal rationale underlying that decision would apply to other types of patent review proceedings and patent cases heard by the ITC as well. Because tribal sovereign immunity is not a valid defense under current law, CBO expects that enacting S. 440 would not affect drug prices, federal spending on patented drugs, or the administrative costs of the PTO or the ITC.

The CBO staff contact for this estimate is David Hughes. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.