

The Local Rules of Patent Procedure

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Three decades ago, Congress established the United States Court of Appeals for the Federal Circuit to restore uniformity to the patent laws and reduce forum shopping. The idea was that litigants would no longer forum shop because Federal Circuit law would apply to all patent cases, and any patent appeals would be heard by the centralized court. By specializing in patents, moreover, the Federal Circuit would develop expertise in this complicated, yet critically important, area of the law.

From the start of this experiment, it was clear that Congress intended for Federal Circuit law to govern substantive issues of patent law, such as claim construction, infringement, and obviousness. The question Congress apparently failed to anticipate, however, was how to treat procedural issues that arise in patent cases. Should regional circuit law control as in non-patent cases, or should the Federal Circuit develop its own patent-specific procedural rules for uniformity's sake? As other scholars have discussed, the Federal Circuit has taken a middle ground, applying regional circuit law to some procedural issues, but often applying its own law to create special procedures for patent cases.

Yet, the Federal Circuit is not the only federal court to single out patent cases for special treatment. With the surge of patent litigation in recent years, district courts around the country have crafted unique procedural rules for patent suits. Some courts have adopted patent rules that require early disclosure of infringement and validity contentions. Other courts have severely limited patent litigants' rights to obtain discovery. And still others have implemented mandatory procedures to promote early resolution of these cases through settlement or summary judgment. On the rare occasion when these special patent rules have been challenged, the Federal Circuit has consistently upheld them as a proper exercise of the trial court's case-management discretion.

This Article considers the evolution and impact of these Local Rules of Patent Procedure at the trial court level. While many have lauded the efforts of district courts and individual judges to manage "patent litigation abuse" through procedural reform, the consequence is highly divergent patent practice from one federal district court to the next. I argue that these specialized patent rules not only work against the underlying objectives of the Federal Circuit – to promote uniformity and reduce forum shopping – but also undermine the transsubstantive and unified nature of the Federal Rules of Civil Procedure. At a time when most patent disputes are adjudicated in specialized tribunals (Federal Circuit, PTO, ITC), it is particularly important that federal district courts maintain a generalist approach to patent cases.