
INTELLECTUAL PROPERTY

LOCAL PATENT RULES—CERTAINTY AND EFFICIENCY OR A CRAZY QUILT OF SUBSTANTIVE LAW?

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More than a decade ago, the United States District Court for the Northern District of California broke new ground by adopting the first local patent rules. Since 2001, at least twenty other district courts have adopted local patent rules, including some of the most prominent districts for litigating patent cases—the Eastern District of Texas, the Northern District of Illinois, and the District of New Jersey. Notably, however, the two well-known patent litigation “rocket dockets” have not adopted such rules—the Eastern District of Virginia and the Western District of Wisconsin.

Districts adopting local patent rules expect those rules to bring predictability and efficiency to patent cases. At the same time, however, federal district courts have interpreted their respective local patent rules in different ways leading to substantive differences in how patent cases are handled across the federal courts.

Statistical and anecdotal evidence suggest that local patent rules achieve their stated goals of providing predictability and efficiency. Predictable case schedules help in-house and outside attorneys develop and stick to case budgets. Defined due dates for exchanging infringement and invalidity contentions avoid gamesmanship and motion practice surrounding contention interrogatories on the same topics. Rules also regulate and bring predictability to expert discovery and disclosing attorney opinions. Finally, rules typically provide standard procedures for claim construction.

These benefits, however, have a price. The Constitution grants Congress exclusive authority over patents. Consistent with that grant, Congress enacted the Patent Act of 1952 and its predecessors, establishing a uniform body of patent law to be applied exclusively in the federal courts. Congress also gave the Supreme Court authority to enact a uniform set of civil procedure rules for the federal courts. Today, however, courts are interpreting their local patent rules in ways that are not uniform and ways that dictate case outcomes. That is, cases filed in San Francisco are taking a very different path and reaching different outcomes than cases filed in east Texas or even Chicago or New York, contrary to constitutional and congressional goals of having a uniform body of patent law and a uniform code of civil procedure.

I. A Uniform Body of Patent Law

The United States Constitution expressly dedicates patent law to the federal government.¹ To that end, the federal government enacted its first patent act in 1790. Since that time,

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the federal government has maintained its exclusive authority over patent law, enacting the current patent laws in 1952 and subsequent amendments, including the recently-enacted America Invents Act. To ensure that federal patent law was uniformly interpreted, in 1982, Congress also established the United States Court of Appeals for the Federal Circuit so that a single appellate court would hear patent cases and issue a single body of controlling precedents.²

II. The Rules Enabling Act, a Uniform Code of Civil Procedure, and Local Rules

In 1934, the federal government empowered the Supreme Court to prepare a uniform code of civil procedure for the federal courts. In the Rules Enabling Act, Congress granted the Supreme Court authority “to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts and courts of appeals.”³ Congress believed it was limiting the Court’s rule-making power to issues that did not affect substantive rights by providing that “such rules shall not abridge, enlarge or modify any substantive right.”⁴

Opponents of the Rules Enabling Act warned that Congress was improperly delegating authority to the courts that ultimately would usurp Congress’s legislative power.⁵ In response to these concerns, the Senate Judiciary Committee emphasized that the Rules Enabling Act would not grant the judiciary the power to affect substantive rights.⁶

Pursuant to the Rules Enabling Act, the Supreme Court approved Rule 83, which allows district courts to adopt local rules.⁷ Rule 83, however, limits the district courts’ rule-making authority consistent with the Rules Enabling Act’s prohibition against rules that affect substantive rights. “A local rule must be consistent with—but not duplicate—federal statutes and rules adopted under 28 U.S.C. §§ 2072 and 2075.”⁸ In 1995, Rule 83 was amended to clarify that local rules must be consistent with Acts of Congress.⁹

The Chairman of the Advisory Committee on the Federal Rules of Civil Procedure at the time of their enactment, William Mitchell, warned against district courts overusing Rule 83. Mr. Mitchell stated that if the district courts use Rule 83 “to address meticulous details that they think improve the Supreme Court rules, simplicity and flexibility will be impaired, and uniformity will be destroyed”¹⁰ The Supreme Court also appointed a committee to study then-existing local rules, the Knox Committee, and it concluded that the district courts are best served with few local rules. The Knox Committee believed that superfluous local rules should be avoided as they are inimical to the goals of uniformity and flexibility built into the new Federal Rules of Civil Procedure.¹¹

Nevertheless, within thirty years, the federal district courts had adopted more than two thousand local rules, leading one commentator to refer to them as a procedural Tower of Babel.¹²

By 2002, there were more than 5575 local rules across the country.¹³ In 2004, the Judicial Conference issued a report on local rules that repeated many of the Knox Committee's findings sixty-four years earlier. The Judicial Conference stated that district courts should not enact local rules that (i) conflict with national law, (ii) duplicate national law, (iii) are outmoded or no longer needed, or (iv) do not conform to the uniform number system.¹⁴

Judicial guidance regarding the permissible scope of local rules is limited. In *Miner v. Atlas*,¹⁵ the Supreme Court struck down local rules in the Northern District of Illinois that provided for depositions in admiralty cases contrary to the federal rules. In *Colgrove v. Battin*,¹⁶ however, the Court upheld a District of Montana local rule providing for six-person juries in contrast with the federal rule requiring twelve-person juries.

The Federal Circuit has held that its precedents govern appellate review of local patent rules.¹⁷ The Federal Circuit acknowledged that, to be valid, local rules must be consistent with both acts of Congress and the Federal Rules of Civil Procedure.¹⁸ Moreover, the court held that a local rule does not need to be directly contradictory to a federal rule to be invalid; a local rule that is inconsistent with the purposes of a federal rule is also invalid.¹⁹

III. Local Patent Rules

The districts adopting local patent rules have based those rules on the district courts' authority to adopt local rules under Federal Rule of Civil Procedure 83.²⁰ Since 2001, at least twenty district courts have used Rule 83 to adopt local patent rules, including some of the districts with the heaviest patent case dockets such as Chicago, New Jersey, San Francisco, and East Texas. At present, however, there are no local patent rules in two other big cities— New York City, i.e., the Southern District of New York, and Los Angeles, i.e., the Central District of California.

Those responsible for enacting the local patent rules believe that the rules enhance uniformity in patent cases. For example, the Preamble to the Northern District of Illinois's local patent rules states:

These Local Patent Rules provide a standard structure for patent cases that will permit greater predictability and planning for the court and the litigants. These Rules also anticipate and address many of the procedural issues that commonly arise in patent cases. The Court's intention is to eliminate the need for litigants and judges to address separately in each case procedural issues that tend to recur in the vast majority of patent cases.²¹

Likewise, the District of New Jersey stated, "The consensus of the Committee was that a recommended standard protocol for patent cases would likely be helpful to the Court and the parties."²²

In support of adopting local rules in Los Angeles, Judge Andrew Guilford stated, "Patent local rules would provide a level of standardization so that each judge would administer patent cases in the same way and would help litigants know what to expect."²³ Judge Guilford, however, also recognized that the rules should be outcome-neutral. "I don't want rules that are favoring one side or the other."²⁴

Statistical research suggests that districts with local patent rules process patent cases faster than districts lacking such rules. According to LegalMetric, in districts adopting local patent rules, the average time patent cases were pending decreased by 2 ½ months when compared to the average time pending prior to adopting the rules.²⁵ Moreover, at the time of adoption, local lawyers seemed to agree that the rules would streamline patent cases by increasing the courts' efficiency and certainty in handling patent cases.²⁶

Other evidence, however, suggests that local patent rules are not the sole way to achieve an efficient district court docket. The two most notable patent "rocket-dockets," the Eastern District of Virginia and the Western District of Wisconsin, have not adopted local patent rules.²⁷ Indeed, the Western District of Wisconsin remains true to the Knox Committee's vision, with just five local rules of any kind.²⁸

IV. Regardless of Efficiency, Do the Local Patent Rules Conform to Rule 83 and the Rules Enabling Act?

In discussing pleading standards in patent cases, one district court judge recently observed that "using local patent rules to alter a defendant's pleading obligations, while perhaps practical given the very unique nature of federal patent litigation, offends the trans-substantive nature of federal procedure."²⁹ Indeed, Judge Roberno questioned the entire notion that district courts may enact procedural rules concerning a specific subject matter as the Rules Enabling Act only authorizes general, uniform rules of practice and local rules must be consistent with the national rules.³⁰

True to Judge Roberno's concern, the local patent rules adopted by at least twenty districts across the country create two categories of substantive differences or conflicts in how different federal courts handle patent cases. First, districts with local rules handle patent cases in a substantively different manner than cases that do not have local rules. Second, even among the districts with local patent rules, those courts' rules give rise to substantive differences in how cases proceed.

In the first category, local patent rules may substantively affect a patent holder's or an alleged infringer's rights when compared to litigating in a district without local patent rules. For instance, most local patent rules require the parties to provide early infringement and invalidity contentions.³¹ Indeed, in some courts, a patent holder must provide infringement contentions within days of the initial case status conference.³² Most of those rules also state that the parties' contentions cannot be modified without demonstrating good cause to the district court.³³ These requirements, however, seem contrary to the spirit of the Federal Rules of Civil Procedure, which allow for notice pleading and liberal discovery.³⁴ Indeed, numerous decisions from courts without local patent rules curtail the use of "contention interrogatories" early in a case, calling them "premature."³⁵

In another example, as Judge Roberno observed, some courts have applied the Supreme Court's recent *Twombly* and *Iqbal* decisions governing minimum pleading and Rule 12(b)(6) leniently in patent cases because those courts have local rules which require early identification of infringement and invalidity contentions anyway.³⁶ As Judge Roberno explained,

the existence of local patent rules should not govern or alter the Federal Rules' basic pleading requirements for all cases.³⁷

Finally, some courts limit the number of claim terms the court will construe.³⁸ Typically, courts with such rules limit the parties to ten disputed terms.³⁹ Therefore, these courts force litigants to make choices about key areas of a dispute before they know how the court will construe any patent claims—including the independent claims. As a result, the parties likely will be forced to select their ten claim terms from the independent claims and forego disputes over terms that only appear in dependent claims even though the court's eventual claim construction could shift the case's focus from the independent claims to those initially-ignored dependent claims.

Turning to the second category, local patent rules that have been adopted around the country are not consistent with each other. For example, in the Northern District of Illinois, the parties are allowed to serve a second or "final" set of contentions after twenty-three weeks of discovery, while other districts require final contentions within days of the initial status conference.⁴⁰ Moreover, even districts with facially-similar requirements for contentions at the outset of the case vary greatly in how they enforce those requirements.

The contrast between the Northern District of California and other districts best exemplifies these issues. The Northern District of California requires parties to provide final infringement and invalidity contentions early in the case. Local Patent Rule 3-1 requires the patent holder to provide infringement contentions within ten days of the initial status conference, and Rule 3-3 requires the accused infringer to provide its corresponding invalidity contentions only forty-five days later.⁴¹ Other districts, however, allow more time or allow the parties to amend their initial contentions.

This rule "dramatically heightens the level of specificity required of a patent claimant asserting infringement (and an accused infringer asserting invalidity), and it does so early in the case."⁴² Indeed, judges in the Northern District of California have interpreted their court's rules strictly. For example, in *Network Caching Tech., LLC v. Novell, Inc.*, the court required the patent holder to provide facts supporting its contentions even though it had not yet received discovery from the accused infringer.⁴³ The court stayed discovery until the patent-holder could provide satisfactory infringement contentions.⁴⁴ In, *Intertrust Tech Corp. v. Microsoft Corp.*, the Northern District of California described its own rules as "nit picky," requiring the patent holder to "crystalize" its case theory shortly after filing and before discovery.⁴⁵ That court has even held that a party must disclose its infringement theories under the doctrine of equivalents even though the court has not yet construed the claims of the patent-in-suit.⁴⁶

The Northern District of California enforces its strict infringement contention requirements even in complex cases where the patent holder may have a difficult time analyzing the accused infringer's product before filing suit. In *Bender v. Maxim Integrated Prods., Inc.*, the court strictly applied its contention requirements in a case relating to semiconductors.⁴⁷ The court derided the patent holder's contentions as "based on assumptions," even though the patent holder argued that any electrical engineer would accept its assumptions.⁴⁸ Therefore,

the court stayed all discovery, effectively ending the patent holder's case if he has no way to obtain needed information from the defendant without formal discovery under the Federal Rules.⁴⁹

In contrast, in the Northern District of Illinois, there appears to be little chance that a party's infringement claims or invalidity counterclaims will be indefinitely stayed or dismissed at the beginning of a case before any discovery as the rules specifically contemplate conducting twenty-three weeks of discovery before "final" contentions are due. Likewise, in the Eastern District of Texas, the judges have been more lenient when judging the sufficiency of the parties' contentions. For example, in *American Video Graphics, L.P. v. Electronic Arts, Inc.*, Judge Ward found that there are times when a patent-holder's preparation is restricted by the defendants' sole possession of needed information.⁵⁰ In particular, software cases present unique challenges.⁵¹ Therefore, the local patent rules recognize the preliminary nature of the patent-holder's infringement contentions.⁵² In addition, Judge Ward adopted a special standing order governing software cases, allowing the patent holder to provide its contentions thirty days after the accused infringer produces its source code.⁵³ Of course, a single judge adopting his own amendment to his district's local patent rules—even when sensible—further balkanizes substantive patent law and procedure contrary to Congress's desire to create a uniform body of national patent law, the Rules Enabling Act, and Rule 83.

These are case-dispositive differences. The Northern District of California rules, as applied, are decidedly pro-defendant. Indeed, any court that requires a patent-holder to provide its final contentions before taking discovery favors the accused infringer without any mandate to do so in the Patent Act or Federal Rules of Civil Procedure. Imagine a party that brings suit, asserting patents relating to semiconductors, in the Northern District of Illinois, Eastern District of Texas, or a court without any patent rules as compared to a party bringing the same suit in the Northern District of California. The patent holder likely needs discovery of the microscopic circuitry or source code relating to the accused's chips to prove its case because reverse engineering such information can cost hundreds of thousands or even millions of dollars. Sometimes reverse engineering is not even possible. Therefore, the patent holder may have satisfied its Rule 11 pre-filing obligations based on limited publicly-available information. In the Northern District of California, the courts may indefinitely stay and eventually dismiss this hypothetical patent holder's case because he is unable to satisfy that court's stringent standards for infringement contentions without discovery from the defendant. On the other hand, in the Northern District of Illinois, the patent holder will be able to conduct discovery before providing final contentions. In the Eastern District of Texas, the patent holder will be able to amend or delay his contentions until he receives discovery of the defendants' circuitry or code. And in districts without rules, the patent holder may not have to provide any contentions via interrogatory answers until late in the fact-discovery process.

These outcome-altering differences are highlighted by the scenario in which a case is transferred from one district to

another pursuant to 28 U.S.C. § 1404, unless the transferee court applies the transferor court's rules (or lack thereof) in line with *Olcott v. Delaware Flood, Co.*⁵⁴ Transfer pursuant to section 1404 is only supposed to move a case to a forum more convenient for the parties; it is not supposed to alter the case's outcome.⁵⁵ District courts transferring patent cases, however, do not abide by or even cite this body of law, apparently assuming that their own local rules are just procedural as such rules are supposed to be.

Therefore, moving a case pursuant to section 1404 can have case-altering consequences when the case is transferred from a district that allows liberal discovery in line with Rule 26 to a district that requires detailed final contentions before taking any discovery. Indeed, accused infringers strategically use section 1404 to transfer cases to defendant-friendly forums that limit pre-infringement contention discovery such as the Northern District of California. The potentially case-dispositive implications of transfer demonstrate that local patent rules are flouting the limitations imposed by the Rules Enabling Act and Rule 83. Winning or losing a transfer motion should not decide the outcome of a case arising out of a supposedly uniform body of federal patent law.

The Northern District of California's desire to save accused infringers from expensive discovery in frivolous cases may be laudable, but that court is fundamentally altering the Patent Act and Federal Rules of Civil Procedure. The Patent Act only requires proof of infringement by a preponderance of the evidence at the end of the case; it leaves the conduct of the case to the Federal Rules of Civil Procedure.⁵⁶ The Federal Rules do not require a patent holder to prove its claims at or shortly after the time it brings suit. Instead, a patent holder only needs to plead a plausible case at the outset.⁵⁷ The patent-holder does not need proof of its claims until it has to respond to a Rule 56 summary judgment motion or trial. Therefore, local rules that alter the basic pleading or proof requirements for patent cases seem inconsistent with Rule 83 and the Rules Enabling Act.

In spite of these concerns, the Federal Circuit has implicitly approved of the Northern District of California rules. In *Genentech, Inc. v. Amgen, Inc.*, the Federal Circuit approved the rule requiring disclosure of infringement theories under the doctrine of equivalents.⁵⁸ The Federal Circuit also stated that it would defer to local attempts to manage patent cases according to prescribed guidelines.⁵⁹ In *SanDisk Corp. v. Memorex Prods, Inc.*, the Federal Circuit affirmed the district court's refusal to consider an untimely claim construction argument.⁶⁰ The Federal Circuit stated that it "gives broad deference to the trial court's application of local procedural rules in view of the trial court's need to control the parties and the flow of litigation before it."⁶¹ In *Safelick, LLC v. Visa Int'l Service Ass'n.*, the court upheld the district court's rejection of an untimely non-infringement theory, stating that it was "very deferential" to the court's application of its local rules.⁶² Finally, in *O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc.*, the Federal Circuit found nothing in the Federal Rules of Civil Procedure inconsistent with requiring early disclosure of contentions and accepted the district court's emphasis on diligence when deciding if there is good cause to amend those contentions.⁶³ The Federal Circuit, however, also cautioned against using local rules to require

final identification of contentions too early in the case and well before the end of discovery. Such rules "might well conflict with the spirit, if not the letter, of the notice pleading and broad discovery regime created by the Federal Rules."⁶⁴

In the end, handling cases efficiently, including disposing of frivolous cases quickly, is a worthwhile goal. But the "rocket docket" courts in Virginia and Wisconsin demonstrate that local rules that alter the Patent Act, alter the Federal Rules of Civil Procedure, or otherwise put their thumb on the scales of justice are not the only way to run an efficient court. The federal courts are supposed to apply a uniform body of patent law and use a uniform code of civil procedure. Local rules that alter either of those uniform, national bodies of law are out of place.

V. Conclusion

With nearly 6000 or more local rules, and the recent spread of local patent rules to at least twenty districts, courts apparently have brushed aside the Knox Committee's concern about proliferating local rules undermining the Federal Rules of Civil Procedure's goal of national uniformity. Instead, in the name of efficiency, even more courts are considering local patent rules, sacrificing the uniform and case-neutral nature of the Federal Rules of Civil Procedure. Indeed, even the Rules Enabling Act's dichotomy between procedural and substantive rules is much less clear in hindsight than at the time of enactment as its opponents feared. In reality, procedural choices and rules inevitably—and often intentionally—impact substantive political choices. Here, local patent rules that are labeled "procedural" appear designed instead to alter the outcome of patent cases, contrary to the constitutionally-mandated uniform body of federal patent law, the Rules Enabling Act, and the Federal Rules of Civil Procedure.

Local patent rules may increase case management efficiency, but courts like the Western District of Wisconsin and the Eastern District of Virginia demonstrate that efficiency is obtainable without such local patent rules. Therefore, district courts should proceed with caution before adopting more non-uniform, substantive, and outcome-determinative local patent rules. In fact, in light of these concerns, courts have several choices—reject local patent rules altogether; interpret those rules more flexibly, consistent with the notice pleading and liberal discovery rules contained in the Federal Rules of Civil Procedure; increase appellate court scrutiny of local patent rules; or seek a national body of patent rules.⁶⁵

Endnotes

1 U.S. CONST. art. I, § 8, cl. 8 (granting Congress the power to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries").

2 See, e.g., *Pfizer, Inc. v. Apotex, Inc.*, 488 F.3d 1377, 1380-81 (Fed. Cir. 2007) (Newman, J., dissenting) (elaborating on the purpose of the Federal Circuit).

3 28 U.S.C. § 2072(a).

4 28 U.S.C. § 2072(b).

5 Stephen B. Burbank, *The Rules Enabling Act of 1934*, 130 U. PA. L. REV. 1015, 1063-65 (1982); Sen. Thomas J. Walsh, Address at Meeting of the

- Tri-State Bar Association: Reform of Federal Procedure (Apr. 23, 1926), in S. Rep. No. 69-1174 at 20, 33 (1926); Martin H. Redish & Uma M. Amuluru, *The Supreme Court, the Rules Enabling Act, and the Politicization of the Federal Rules: Constitutional and Statutory Implications*, 90 MINN. L. REV. 1303, 1311-14 (2006).
- 6 Burbank, *supra* note 5, at 1085-89; Redish & Amuluru, *supra* note 5, at 1312.
- 7 FED. R. CIV. P. 83.
- 8 FED. R. CIV. P. 83(a)(1).
- 9 FED. R. CIV. P. 83 (Notes of Advisory Committee on Rules—1995 Amendment).
- 10 A.B.A., Federal Rules of Civil Procedure, Proceedings of the Institute at Washington and of the Symposium at New York City 28, 232 (1938), *cited in Rule 83 and the Local Federal Rules*, 67 COLUM. L. REV. 1251, 1256 (1967).
- 11 Rule 83 and the Local Federal Rules, 67 COLUM. L. REV. 1251, 1258-59 (1967).
- 12 *Id.* at 1259.
- 13 Nathaniel S. Boyer, *The Tail Wagging the Dog, Local Summary Judgment Rules that Deem Facts Admitted*, 30:5 CARDOZO L. REV. 2223, 2234 (2009).
- 14 Standing Comm. on Rules of Practice and Procedure, Judicial Conference of the U.S., Report on Local Rules (Feb. 1, 2004), *cited in* Nathaniel S. Boyer, *The Tail Wagging the Dog, Local Summary Judgment Rules that Deem Facts Admitted*, 30:5 CARDOZO L. REV. 2223, 2235 (2009).
- 15 363 U.S. 641 (1960).
- 16 413 U.S. 149 (1973).
- 17 O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc., 467 F.3d 1355, 1364 (Fed. Cir. 2006).
- 18 *Id.* at 1365.
- 19 *Id.*
- 20 *See, e.g.*, District of New Jersey Order, *In re* Amendment of Local Civil Rules, Dec. 23, 2008.
- 21 U.S. Dist. Court for the N. Dist. of Ill., Local Patent Rules, Preamble, *available at* <http://www.ilnd.uscourts.gov/home/LocalRules.aspx?rtab=patentrules>.
- 22 U.S. Dist. Court for the Dist. of N.J., Report of the Local Patent Rules Committee, Explanatory Notes to the Proposed Local Patent Rules, *available at* <http://www.njd.uscourts.gov/rules/completeRulesOctober2011.pdf>.
- 23 Erin Coe, *Calif. Judge Sets Sights on Patent Local Rules*, LAW360, Mar. 23, 2011, <http://www.law360.com/articles/226768/calif-judge-sets-sights-on-patent-local-rules>.
- 24 *Id.*
- 25 *Id.*
- 26 Jesse Greenspan, *Ill. District Court Pushes Local Patent Rules*, LAW360, Mar. 27, 2009, <http://www.law360.com/articles/94205/ill-district-court-pushes-local-patent-rules-; Erin Coe, Calif. Judge Sets Sights on Patent Local Rules>, LAW360, Mar. 23, 2011, <http://www.law360.com/articles/226768/calif-judge-sets-sights-on-patent-local-rules>.
- 27 *The Tundra Docket, Western District of Wisconsin*, LAW360, Mar. 12, 2008, <http://www.law360.com/articles/49923/the-tundra-docket-western-district-of-wisconsin>.
- 28 U.S. Dist. Court for the W. Dist. of Wisc., Local Rules, *available at* <http://www.wiwd.uscourts.gov/local-rules>.
- 29 Tyco Fire Prods. LP v. Victaulic Co., 777 F. Supp. 2d 893, 904 (E.D. Pa. 2011).
- 30 *Id.* at 904 n.10 (emphasis in original) (citing Paul D. Carrington, *Making Rules to Dispose of Manifestly Unfounded Assertions: An Exorcism of the Boy of Non-Trans-Substantive Rules of Civil Procedure*, 137 U. PA. L. REV. 2067, 2079 (1989)). *But see* Stephen B. Burbank, *The Transformation of American Civil Procedure: The Example of Rule 11*, 137 U. PA. L. REV. 1925, 1934-35 (1989).
- 31 N.D. of Ill. L.P.R. §§ 2.2, 2.3; N.D. of CA Patent L.R. 3-1, 3-3; E.D. of Tex. P.R. 3-1, 3-3.
- 32 N.D. of CA Patent L.R. 3-1; E.D. of Tex. P.R. 3-1.
- 33 N.D. of CA Patent L.R. 3-6; E.D. of Tex. P.R. 3-6.
- 34 FED. R. CIV. P. 8 & 26; *see also* Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007) (holding that federal notice pleading requires a short plain statement of a plausible claim for relief); Hickman v. Taylor, 329 U.S. 495, 501 (1947) (given federal notice pleading, discovery allows the parties to develop facts in support of their theories and pin down the other side's theory of the case).
- 35 *See, e.g.*, Vishay Dale Elecs., Inc. v. Cynotec Co., No. 07-cv-191, 2008 WL 4868772, at *5-6 (D. Neb. Nov. 6, 2008) (collecting cases deferring answers to premature contention interrogatories); FED. R. CIV. P. 33(a)(2) (stating that a court may allow a party to delay answering a contention interrogatory until needed discovery is completed); O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc., 467 F.3d 1355, 1365 (Fed. Cir. 2006) (observing that answers to contention interrogatories in patent cases are often postponed until discovery closes).
- 36 Tyco Fire Prods. LP v. Victaulic Co., 777 F. Supp. 2d 893, 904 (E.D. Pa. 2011); *see, e.g.*, Pfizer, Inc. v. Apotex, Inc., 726 F. Supp. 2d 921, 937-38 (N.D. Ill. 2010).
- 37 *Tyco Fire Prods.*, 777 F. Supp. 2d at 904.
- 38 N.D. of Ill. L.P.R. § 4.1(b); N.D. of CA Patent L.R. 4-1(b).
- 39 *Id.*
- 40 N.D. of Ill. L.P.R. §§ 3.1, 3.2.
- 41 N.D. of CA Patent L.R. 3-3.
- 42 James Ware & Brian Davy, *The History, Content, Application, and Influence of the Northern District of California's Patent Local Rules*, 25 SANTA CLARA COMPUTER & HIGH TECH. L.J. 965, 984 (2009).
- 43 Network Caching Tech., LLC v. Novell, Inc., 2002 WL 32126128, at *4 (N.D. Cal. Aug. 13, 2002).
- 44 *Id.* at *7.
- 45 Intertrust Tech Corp. v. Microsoft Corp., 2003 WL 23120174, at *3 (N.D. Cal. Dec. 1, 2003).
- 46 Rambus, Inc. v. Hynix Semiconductor Inc., 2008 WL 5411564 (N.D. Cal. Dec. 29, 2008).
- 47 Bender v. Maxim Integrated Prods., Inc., 2010 WL 1135762, at *2 (N.D. Cal. March 22, 2010).
- 48 *Id.*
- 49 *Id.*; *see also* Bender v. Maxim Integrated Prods., Inc., 2010 WL 2991257 (N.D. Cal. July 29, 2010).
- 50 Am. Video Graphics, L.P. v. Elec. Arts, Inc., 359 F. Supp. 2d 558, 560 (E.D. Tex. 2005).
- 51 *Id.*
- 52 *Id.*
- 53 Order Relating to Patent Cases before Judge T. John Ward.
- 54 Olcott v. Delaware Flood, Co., 76 F.3d 1538, 1544-46 (10th Cir. 1996) (agreeing with the Seventh Circuit and holding that the transferor forum law should apply after the transfer of a federal securities case under section 1404. The Second Circuit has reached a contrary conclusion.).
- 55 Van Dusen v. Barrack, 376 U.S. 612, 635-37, 639 (1964).
- 56 35 U.S.C. § 271.
- 57 McZeal v. Sprint Nextel Corp., 501 F.3d 1354, 1357 (Fed. Cir. 2007).
- 58 Genentech, Inc. v. Amgen, Inc., 289 F.3d 761, 773-74 (Fed. Cir. 2002).
- 59 *Id.* at 774.
- 60 SanDisk Corp. v. Memorex Prods, Inc., 415 F.3d 1278, 1292 (Fed. Cir. 2005).
- 61 *Id.* at 1292.

62 Safecluck, LLC v. Visa Int'l Service Ass'n, 208 Fed. Appx. 829, 834 (Fed. Cir. 2006).

63 O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc., 467 F.3d 1355, 1366 (Fed. Cir. 2006).

64 *Id.*

65 The federal courts already follow distinct rules for bankruptcy cases. 28 U.S.C. § 2075. Thus, Congress and the Supreme Court could adopt the Federal Rules of Patent Procedure to ensure nationwide uniformity. However, such rules may still run afoul of the Rules Enabling Act's attempt to delegate only procedural matters to the Supreme Court while leaving substantive law exclusively in the hands of Congress.

