

Choice of Law for Procedural Matters in Patent Cases: A New Article

Ted Field, a Visiting Assistant Professor of Law at Chicago-Kent has recently posted an Article entitled *Improving the Federal Circuit's Approach to Choice of Law for Procedural Matters in Patent Cases* on SSRN. Here is the Abstract:

Because of its virtually exclusive jurisdiction over patent cases from the entire country, the United States Court of Appeals for the Federal Circuit faces a unique situation with respect to choice of law for procedural matters in patent cases. Normally, in a non-patent-related case, a district court applies the procedural-law precedent of the U.S. Court of Appeals for the circuit in which the district court sits. However, because the Federal Circuit's jurisdiction is based on subject matter rather than geography, the court has had to choose whether (1) to develop and apply its own precedent to procedural matters or (2) to apply the precedent of the regional circuit court in which the district court sits. Under its current choice-of-law rules, the Federal Circuit by default is supposed to apply the law of the regional circuit to procedural matters. But where the procedural matter in question sufficiently pertains to patent law, the court is supposed to apply its own law under the current choice-of-law rules.

Problems have arisen in the application of these rules. For one thing, the Federal Circuit has articulated these rules in many different ways over the years. And this inconsistent articulation has led to inconsistent application. As a result, district courts and litigants in patent cases often cannot be sure which law applies to a particular procedural issue. This article evaluates the Federal Circuit's current rules and contrasts these current rules with several other possible rules. To evaluate these different possibilities, this article considers how each of them advances or retards the institutional interests, needs, and goals of the players involved-namely, the Federal Circuit, the district courts, and litigants. Ultimately, this article concludes that the best approach for the Federal Circuit is to develop and apply its own law to all procedural matters in patent cases.