

IMPROVING THE FEDERAL CIRCUIT'S CHOICE-OF-LAW APPROACH TO PROCEDURAL MATTERS IN PATENT CASES

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ABSTRACT

Because of its jurisdiction over patent cases from the entire country, the United States Court of Appeals for the Federal Circuit faces a unique choice-of-law situation with respect to procedural matters. Normally, in a non-patent-related case, a district court applies precedent on procedural law created by the U.S. Court of Appeals for the circuit in which the district court sits. However, because the Federal Circuit has exclusive jurisdiction over cases in which a patent-related claim was raised in the well-pleaded complaint, the Federal Circuit must choose whether to develop and apply its own precedent to procedural matters, or to apply the precedent of the regional circuit court in which the district court sits.

By default, for procedural matters, the Federal Circuit purportedly applies the law of the regional circuit of the district court where the case was heard. However, where the procedural matter in question sufficiently pertains to patent law, the court supposedly applies its own law. This article will consider the standard that the Federal Circuit applies to determine whether to apply the regional circuit's precedent or its own precedent. The court has articulated the standard differently over the years, and the court's application of the existing standard often leads to unpredictable results. This article will consider several potentially better ways to solve this choice-of-law problem, including (1) always applying regional circuit law to procedural matters, (2) always applying Federal Circuit law to procedural matters, and (3) applying Federal Circuit law to all procedural matters except for those that the district court judge must rule on during trial "on the fly."