

BEGINNINGS OF A FEDERAL COURT LITIGATION

A. GOVERNING LAW AND RULES

1. Jurisdiction and Venue – 28 U.S.C. <https://www.law.cornell.edu/us-code/text/28>¹
2. FED. R. CIV. P. <https://www.law.cornell.edu/rules/frcp>
3. Local Rules <https://www.cacd.uscourts.gov/court-procedures/local-rules> (for C.D. Cal.)
4. Local-Local Rules – Each judge has his or her own procedures.
 - a. Courtesy copies
 - b. Date and time of hearings.
 - c. Courtroom deputy clerk
5. Time: FED. R. CIV. P. 6(a)
 - a. Don't count the day when the other side or the court files or serves.
 - b. Count all days including weekends and legal holidays.
 - c. Include the last day unless it falls on a weekend or legal holiday.

B. FILINGS

1. Files court documents including motions and response through the CM/ECF (Case Management/Electronic Case Filing) system.
 - a. Need a CM/ECF login and password to file.
 - b. Some documents such as discovery requests and responses usually are not filed.
2. Format
 - a. The Central District of California requires line-numbered paper and 14 pt. type, which can be spaced 24 pt. apart.
 - i. No single spacing even for indented quotes.
 - ii. Add an abbreviated title of paper (e.g., “Summary Judgment Memo. of Points and Auth.”) and shortened name and case number in the footer.
 - iii. Review other courts' format rules or check with local counsel.
 - (1) Delaware, for example, requires 12 pt. double-spaced type.

¹ Most underlined and blue text are hyperlinks to public domain copies of the statute or case.

b. Citations:

- i.* If case is reported, cite to U.S., F.2, F.3, Fed. Supp., Cal. 4th, Cal. App. 3d. etc.
- ii.* Italicize not underline the case name.
- iii.* Add the court name for most cites and the year date.
- iv.* If unpublished, start with the case number, then the Westlaw cite, and add the month (abbreviated), day, year and court.
 - (1) Many federal judges prefer Westlaw over Lexis.

C. PLEADING**1. Plaintiff starts a lawsuit by filing a complaint. Under FED. R. CIV. P. 8:**

- a.** A short and plain statement of the grounds for the court's jurisdiction. Without jurisdiction, no federal case.
 - i.* Patent, trademark and copyright cases all have federal jurisdiction.
 - (1) A state court must dismiss patent or copyright case brought in state court.
 - (2) State courts can hear federal trademark cases, but the rules allow the defendant to remove the case to federal court.
 - ii.* Some other federal laws give jurisdiction.
 - iii.* Suits between citizens of other states. >\$75,000
- b.** Plead personal jurisdiction and venue.
 - i.* Rules complex.
 - ii.* A defendant can seek dismissal if it lacks "minimum contacts" with the state (see [Int'l Shoe Co. v. Wash.](#), 326 U.S. 310 (1945)).
- c.** A short and plain statement of the claim showing that the pleader is entitled to relief.
 - i.* [Bell Atlantic v. Twombly](#), 550 U.S. 544 (2007) and [Ashcroft v. Iqbal](#), 556 U.S. 662 (2009), requires more complete facts with plausible factual allegations.
 - ii.* Courts now will consider if a patent may be dismissed because of 35 U.S.C. § 101 issue. See *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1373-74 (Fed. Cir. 2016)
- d.** A demand for the relief sought (money, injunction, seizure, etc.).

2. Must also:

- a.** Pay \$400 filing fee.
- b.** Corporate disclosure form.
 - i.* Forms are available on each federal court's website. Central District of California at <https://www.cacd.uscourts.gov/court-procedures/forms>.
- c.** Civil Cover Sheet
 - i.* For the Central District of California, the cover sheet should have the proper division.
 - (1) Most including Los Angeles and Ventura Counties are in the Western Division.
 - (2) Orange County is the Southern Division.
 - (3) Riverside and San Bernardino are in the Eastern Division.
- d.** For patent, trademark and copyright cases, a form identifying the IP.

3. Attorney filing the complaint must be admitted to the bar of that court.

- a.** Many in the firm are members of all four California federal courts.
 - i.* Northern District (Bay Area), Eastern District (Sacramento and Fresno), Southern District (San Diego).
- b.** For out-of-California cases, local counsel is usually required.
 - i.* Attorneys in plaintiff's firm can file a pro hac vice motion in the out-of-state court to be admitted for a particular case.

D. SERVING PROCESS**1. Ways**

- a.** Personal service
- b.** Service on a corporation's agent for service
- c.** Often can serve out-of-state defendants through certified mail.
- d.** Cooperative defendants may waive service.
- e.** Some attorneys will accept service for their clients.
- f.** If a defendant may challenge service, the process server can help with getting evidence of the service (e.g., photographs).
- g.** FED. R. CIV. P. 4 contains the rules for service, but proper service under state (e.g., California) law also is effective service.

statute of limitations, patent invalid, laches, release, etc.

- ii.* A defendant that fails to plead lack of personal jurisdiction, improper venue, insufficient service of process, normally waives the defenses.
- c.** Counterclaim against plaintiff or cross-claim against a third party.
 - i.* Plaintiff must respond to counterclaim within 21 days. See FED. R. CIV. P. 12(a)(1)(B).
 - ii.* Some counterclaims are compulsory; waived unless including them.
 - (1) E.g., if a plaintiff sues for declaratory judgment to have defendant's patent held invalid, the defendant's counterclaim for patent infringement is compulsory.

F. MOTIONS FILED BEFORE ANSWERING

1. Motions to dismiss. [FED. R. CIV. P. 12\(b\)\(6\)](#).
 - a.** If the motion is denied, the defendant must file an answer within 14 days. FED. R. CIV. P. 12(a)(4)(A).
2. Motions to strike "redundant, immaterial, impertinent, or scandalous matter." Rule 12(f).
3. Motions for a more definite statement because the pleading is "so vague or ambiguous that the party cannot reasonably prepare a response." Rule 12(e).
4. As with most motions, at least in the Central District of California, the moving party must meet and confer seven days before filing the motion.

G. STARTING DISCOVERY

1. No discovery before the [FED. R. CIV. P. 26\(f\)](#) conference to map out the lawsuit.
 - a.** Many plaintiffs want to have the conference early so they can begin discovery.