PATENT LAW FEDERALISM

Paul R. Gugliuzza*

Most lawsuits grounded in federal law can be filed in either state or federal court. Patent suits, however, may be filed only in federal court. Why do patent cases receive exceptional treatment? The usual answer is that federal courts, unlike state courts, provide uniformity and expertise in patent law. Surprisingly, however, no one has analyzed whether exclusive jurisdiction actually serves those policy aims. This Article provides that analysis and concludes that the uniformity-expertise rationale is overstated. If exclusive federal jurisdiction is to be justified, attention must also be given to pragmatic considerations, such as the respective quality of state and federal trial courts and the preclusive effects of state court judgments. By reconstructing the theoretical framework for exclusive federal patent jurisdiction, the Article yields normative insights for institutional policy more broadly. Most importantly, it suggests that legislative repeals of exclusive jurisdiction will likely be ineffective because litigants, even if given a choice, will prefer the federal courts over inexperienced and unfamiliar state courts. Thus, the Article concludes, exclusive jurisdiction is a policy option that should be used very carefully.

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