PATENT PRUDENTIAL STANDING

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Abstract: This Article is the first to focus on patent prudential standing. Patent prudential standing, a creation of the Federal Circuit, wastes precious resources and serves no sound policy goal. Under patent prudential standing, after many resources have been expended on the merits of a patent infringement case, parties face a reversal of course by the Federal Circuit’s ruling that the plaintiff, typically the exclusive licensee in a patent transaction, lacked standing to bring the case in the first place. Regardless that the plaintiff satisfies constitutional standing, the Federal Circuit propounds that the plaintiff must still meet patent prudential standing. The inquiry to ascertain whether patent prudential standing exists is confusing, confounding, and costly, as courts must evaluate whether the exclusive licensee possesses all substantial rights to the patent in a commercial transaction.

Moreover, patent prudential standing is completely unnecessary. Indeed, the Supreme Court in 1926 found that there was no need to engage in a determination of whether a patent transaction grants the exclusive licensee sufficient rights to be treated as patent owner in order to bring patent infringement litigation. The Supreme Court declared that a patent owner/licensor is an indispensable party and must be named as a coplaintiff with the exclusive licensee in patent infringement litigation. Indispensable party principle was later incorporated into Rule 19 of the Federal Rules of Civil Procedure. Therefore, to reduce uncertainty and unnecessary costs, the Federal Circuit should follow the Supreme Court’s teachings and Rule 19 in all cases involving exclusive patent licensee’s jurisdiction. By doing so, the Federal Circuit will wisely

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continue to serve as a model for courts domestically and for patent tribunals internationally.