

Elimination of Rule 84 and Form 18 Could Increase Pleading Standards in Patent Cases

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In an order issued in late April of this year, the **U.S. Supreme Court**, without comment, adopted changes to the **Federal Rules of Civil Procedure** that were approved in September by the Judicial Conference of the United States. The rule changes will take effect December 1, 2015 unless modified by Congress. As part of this order, the Supreme Court approved the elimination of Rule 84, which provides model forms that attorneys often rely on. Abolishing Rule 84 eliminates Form 18, which is a model patent complaint that essentially allows patent plaintiffs to file bare-bones complaints.

According to Form 18, a plaintiff is only required to put the defendant on notice of the claim by including little more than the name and number of the patent and a basic allegation of infringement in the complaint. Although most complaints are subject to the pleading standards established by the Supreme Court in the *Twombly* and *Iqbal* decisions, the Federal Circuit, in 2012, in the case of **R+L Carriers** ruled that with respect to pleading requirements in patent cases, Form 18 controls and *Twombly* and *Iqbal* do not apply. The elimination of Form 18 will likely subject patent complaints to the pleading standards of *Twombly* and *Iqbal*, which would require plaintiffs to demonstrate that their claims are plausible, rather than simply putting the defendant on notice of the claim.

Practice Note: Congress is currently considering bills that would raise patent pleading standards beyond what the new rule requires. The elimination of Rule 84 and potential elevation of the pleading standards may affect the ability of non-practicing entities (NPEs) to file vague complaints against multiple defendants across an industry; the type of litigation tactic that has historically forced defendants to incur asymmetrical discovery costs just to find out what products or activities were accused. As has been noted in congressional hearings, this is a situation that enables NPEs to extract quick settlements and profits as defendants seek to avoid those discovery costs. Competitor-initiated suits, which typically include a more detailed complaint, are unlikely to be impacted as these suits are filed with different strategies in mind.

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