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Proposed patent law rules could steer more trolls to Kansas

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The U.S. District Court in Kansas City, Kan., is considering new rules for handling patent litigation that could be very plaintiff friendly, making the district an attractive place to file lawsuits.

The new rules are similar to rules already established in the Eastern District of Texas, which has become the most popular place in the United States to file patent cases – it handles 44 percent of all such suits. That includes many cases brought forward by “patent trolls.” That’s a common phrase to describe people who buy patents and typically don’t manufacture the products or supply services based on those patents; instead, they look to make money by filing patent infringement lawsuits.

The federal courts in Kansas and Western Missouri have no rules to govern often complicated patent infringement cases. The rules would create a clear road map for what sort of information will be expected from the plaintiffs and the defendants and the time line for various aspects of the case before it goes to trial. Some time frames set in the Eastern District of Texas are compressed compared with other districts, making that venue more attractive to plaintiffs.

“It puts pressure on defendants,” said Cameron Garrison, a patent law attorney and partner at Lathrop & Gage LLP in Kansas City. “The Eastern District of Texas is really known for patent trolls. They file a lot of their cases down there and are typically looking for settlements. They aren’t



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wanting to litigate the full case. The shorter and more compressed the time frame, the more pressure it places on defendants. You’re able to get to that pressure point quicker and leverage settlements quicker.”

The rules are in a public comment period, which is set to expire Nov. 26. After that, the court could implement the rules as proposed, drop them completely or modify the proposal. The court could act right away, but typically it reviews the comments for several weeks before taking any action.

“With the amount of work that has gone into putting these rules together and going through the entire process, I’d be surprised if we don’t get some form of local patent rules in Kansas,” said Dave Barnard, an in-



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tellectual property attorney and partner at Lathrop & Gage. “It’s just a matter of what those rules are.”

Barnard said that if Kansas passes rules similar to those in the Eastern District of Texas, it could start to nab some of those cases.

“Kansas could create a convenience factor for companies who deal with these cases nationally,” Barnard said. “Generally speaking, the Eastern District of Texas is relatively hard to get to. The cities in that area are not Dallas or Houston, so you’ve got to fly into a larger city and then drive a long way to the courthouse. So Kansas City, Kan., would be an appealing option in terms of being relatively low cost and easier to get to.”