

I. Introduction

“Inventions, their exploitation, and the related prior art being inherently scientific and technical in nature, have a proclivity for recordation of information directed to their development, particulars of construction, modification, and application in documents.”¹ In fact, documents, tangible items and processes embody the most vital evidence available for proving patent validity and infringement.² As such, document discovery constitutes the evidentiary foundation of most patent infringement actions.³

In United States law, Rule 34 of the Federal Rules of Civil Procedure (Federal Rules or Rules) addresses production of documents, tangible things and inspection of premises.⁴ In French law, the *Saisie-Contrefaçon* (Saisie) secures production of documents, tangible things and inspection of premises, although its procedural approach differs considerably.⁵ This thesis compares and contrasts the objectives, practices, policies and implications of discovery under Federal Rule 34 and the Saisie in the context of patent infringement cases.

First, this thesis explains how litigants in patent infringement actions conduct discovery under the Federal Rules and, specifically, Rule 34.⁶ Second, it outlines the Saisie in the patent infringement context.⁷ Third, it compares and contrasts some basic features of the two procedures.⁸ Fourth, it turns to some more specific aspects of evidence-gathering that tend to assume significance in patent suits by further juxtaposing Rule 34 and the Saisie.⁹ Fifth, this thesis evaluates the two procedures in comparison and judges which aspects of each better support patent policy.¹⁰ Finally, this thesis concludes by opining which features of Rule 34 discovery and the Saisie will best serve patent policy in the future.¹¹

1 Kenneth R. Adamo et al., *Document Discovery in Patent Litigation*, in PATENT LITIGATION STRATEGIES HANDBOOK 2004 CUMULATIVE SUPPLEMENT 79, 79 (Barry L. Grossman & Gary M. Hoffman eds., BNA Books 2004).

2 *See id.*

3 *Id.*

4 *See FED. R. CIV. P. 34.*

5 *See e.g.* Art. L 615-5 *Code de la propriété intellectuelle* (CPI); Art. L 615-5-1 CPI; Art. R 615-1 CPI; Art. R 615-2 CPI; Art. R 615-4 CPI.

6 *See infra* Part II.

7 *See infra* Part III.

8 *See infra* Part IV.

9 *See infra* Part V.

10 *See infra* Part VI.

11 *See infra* Part VII.

