

# **The California Central District Court: the New Hot Spot for International Intellectual Property Disputes**

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## **INTRODUCTION**

The United States District Court for the Central District of California (CACD) has emerged over the past decade as a major hot spot for intellectual property (IP) litigation, with courthouses located in Los Angeles, Orange County and Riverside, California.

The CACD may in fact be one of the best places in the world for international companies to handle their intellectual property disputes. A recent study by Stanford Law Professor Mark A. Lemley found that CACD experienced the greatest number of litigated patent cases in the country from 2000 to 2010, at 2,289 cases.<sup>3</sup>

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<sup>3</sup> Mark A. Lemley, *Where to File Your Patent Case*, 38:4 AIPLA Q.J. (Fall 2010, available at <http://ssrn.com/abstract=1597919> [Lemley's survey utilizes the Stanford Intellectual Property Litigation Clearinghouse ("IPLC"), a comprehensive set of data on every patent lawsuit filed since 2000. The study here analyzes all of the 21,667 cases in the IPLC database that were resolved at the district court level between 2000 & 2010.]

Copyright and Trademark filings in the CACD Courts have also sustained significant levels over the past decade. Between January 1, 2004 and April 17, 2014, the CACD has had 4,814 copyright case filings<sup>4</sup> and 4,609 trademark case filings.<sup>5</sup>

Over the past decade, the CACD has come to be known in the United States as the “perennial leader of IP Litigation.”<sup>6</sup> There must be a good reason. This article endeavors to outline these reasons, and particularly point out the benefits of pursuing litigation in the CACD to companies domiciled outside the United States.

Several geographical and procedural advantages are thought to account for the rise in popularity of the CACD, including a speedy average time to trial resolution, a flexible Alternative Dispute Resolution system, and the absence of local rules for patent cases. In addition, the expanding popularity of the CACD derives, in part, from the initiation of its Patent Pilot Program in 2011.

The following article charts the growth of patent, copyright, and trademark filings in the CACD, and outlines the most important considerations for international companies pursuing their intellectual property disputes in the CACD. It is the opinion of these authors that the CACD offers perhaps the most attractive venue for such entities.

On balance, traditional considerations of time to disposition, a jurisdiction’s tendency to permit jury trials, and the general word-of-mouth reputation of a given venue fail to account for the increasing popularity among IP litigants for courts in the CACD. Here, we offer an explanation for this growth by exploring eight potential causative factors, incorporating both traditional arguments, and those more difficult to quantify, like the value of the CACD’s diverse jury pool, the vast experience and diversity of its judges, and even the incomparable favorable weather of the locality.

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<sup>4</sup> Justia Dockets & Filings, *Case Search: All Copyright Case Filings in the California Central District Court between January 1, 2004 and April 17, 2014*, 04/17/2014. available at: <http://dockets.justia.com/search?court=cacdce&nos=820&cases=between&after=2004-1-1&before=2014-4-17>

<sup>5</sup> Justia Dockets & Filings, *Case Search: All Trademark Case Filings in the California Central District Court between January 1, 2004 and April 17, 2014*, 04/17/2014. available at: <http://dockets.justia.com/search?court=cacdce&nos=840&cases=between&after=2004-1-1&before=2014-4-17>

<sup>6</sup> Leychkis, Yan (2007) “Of Fire Ants and Claim Construction...” *Yale Journal of Law and Technology*: Vol. 9: Iss. 1, Article 6.

## **1) Largest Total Number of Intellectual Property Dispute Filings in the U.S., if Not the World**

As discussed, the CACD experienced the greatest number of litigated patent cases in the U.S. from 2000 to 2010, at 2,289 cases.<sup>7</sup> From 2011-2013, the stream of patent case filings in the CACD has maintained a breakneck pace, averaging 285 patent filings per year.<sup>8</sup> Every year CACD is the leader in the most IP cases filed in the U.S. This trend is also apparent for copyright and trademark filings which are as varied in subject matter in the CACD as patent cases. Because of the enormous number of intellectual property cases heard in the CACD, its judges have gained a reputation for skill and efficiency in the area of intellectual property law. In particular, the CACD has evolved into a hotbed for patent litigation. A historic leader in IP litigation, Los Angeles County took the national lead in patent, trademark and copyright filings for the past several decades<sup>9</sup> due to the experience and impartiality of its judges, its speedy trial dispositions, and its diverse jury pools. Home to sunny coastlines, a temperate climate, and bustling creative industries, the Los Angeles area may have even sustained itself as a hub of IP litigation activity because of its unique natural beauty, rich economy, and wealth of cultural attractions.

## **2) Time to Resolution**

The percentage of patent cases that resulted in trial in the CACD averaged only 1.5% in 2010.<sup>10</sup> While some parties are prepared to withstand lengthy court battles and prefer to reach the trial stage, a greater percentage prefer to settle their disputes out of court and save the expense and risk of protracted litigation. For this latter group, the rapid average time to resolution and the flexible alternative dispute resolution system of the CACD are preferable to many other jurisdictions in the country.

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<sup>7</sup> Mark A. Lemley, *Where to File Your Patent Case*, 38:4 AIPLA Q.J. (Fall 2010, available at <http://ssrn.com/abstract=1597919>)

<sup>8</sup> Justia Dockets & Filings, *Case Search: All Patent Case Filings in the California Central District Court between January 1, 2011 and Jan 1, 05/05/2014*, available at <http://dockets.justia.com/search?court=cacdce&nos=830&cases=between&after=2011-1-1&before=2013-1-1>

<sup>9</sup> Leychkis, Yan (2007) "Of Fire Ants and Claim Construction..." *Yale Journal of Law and Technology*: Vol. 9: Iss. 1, Article 6.

<sup>10</sup> Mark A. Lemley, *Where to File Your Patent Case*, 38:4 AIPLA Q.J. (Fall 2010, available at <http://ssrn.com/abstract=1597919>)

Indeed, litigants on both ends of a dispute are generally interested in administrative efficiency. The speedy resolution of a lawsuit ensures the conservation of limited judicial resources while lessening the burden on the pocketbooks of litigants. Because intellectual property rights can have a limited lifespan, an expedient system also maximizes the commercial value of those limited rights by eliminating uncertainties and minimizing the threat of future litigation.

Luckily, the CACD boasts one of the most rapid average times to resolution in the country, at .89 years.<sup>11</sup> This figure, for example, represents a ~40% decrease in disposition time relative to the Eastern District of Texas (1.24 years), which has had a IP-favorable reputation in the past.<sup>12</sup>

For other jurisdictions throughout the United States with less exposure to patent, trademark and copyright cases, courts find it difficult to strike the right balance between deciding cases quickly and deciding them equitably. Because the CACD sees more IP filings than any other district in the country, even cases that are resolved quickly are more likely to be resolved accurately.

### **3) A Diverse Jury Pool**

When an owner of intellectual property files suit involving a product sold nationwide, they typically have wide latitude to pursue their case in most, if not all of the 94 United States Federal Courts where acts of infringement occur.<sup>13</sup> Despite this fact, IP plaintiffs continue to flock to the CACD in droves. The continued popularity of the CACD derives, in part, from the diversity of its jury pool and the sense of fairness from such a diverse pool of jurors, especially to non-U.S. litigants.

Indeed, the CACD is the single largest federal judicial district by population in the country, serving over 25 million inhabitants.<sup>14</sup> This is a population on par with the population of Australia.<sup>15</sup> Without a doubt, juries selected from this vast population base are culturally, ethnically and experientially diverse.

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<sup>11</sup> Mark A. Lemley, *Where to File Your Patent Case*, 38:4 AIPLA Q.J. (Fall 2010, available at <http://ssrn.com/abstract=1597919>)

<sup>12</sup> *Id.*

<sup>13</sup> 28 U.S.C. § 1400(b) (2006)

<sup>14</sup> Hans Johnson, "California's Population", Public Policy Institute of California: Just the Facts. available at: [www.ppic.org](http://www.ppic.org)

<sup>15</sup> Australian Bureau of Statistics (31 October 2012). "2011 Community Profiles." *2011 Census of Population and Housing*.

Most litigants are entitled to trial by jury when it comes to IP disputes, unless the dispute is a pure question of law or there are no facts in dispute. Juries are selected at random from a fair cross-section of the community. Randomization is also ensured by selection from local lists of registered voters in those divisions. The result is a jury pool of socially concerned citizens who are multicultural, as well as diverse.

In a study analyzing the performance of diverse juries, Adriana Gardella found that diverse juries raise a broader range of issues during deliberation and are more willing to discuss and debate complex issues in an adversarial forum.<sup>16</sup> As a consequence, individuals serving on diverse juries are exposed to more information in their jury rooms and, on average, make more accurate decisions. Homogeneous groups tend to exhibit more of a pack mentality, and are prone to making difficult decisions on autopilot.<sup>17</sup>

Thus, perhaps one of the reasons so many IP litigants want to pursue their case in the CACD is the perception that its diverse population base will produce juries well-equipped to arrive at accurate, balanced decisions. That is, a party's nationality or ethnicity will not be held against them.

#### **4) A Diverse Judicial Bench and Intellectual Property-Seasoned Judges**

An accommodating federal patent venue statute has long afforded international plaintiffs flexibility to file suit virtually anywhere in the country where infringement occurs.<sup>18</sup> As a consequence, “venue shopping” has become a regular feature of litigation preparation, particularly with patent litigation. Generally, litigants at both ends of a dispute are attracted to jurisdictions with a reputation for impartiality, fairness, competence, and broad experience.

Southern California is home to many businesses in many different fields, as well as to the aerospace, entertainment, software, and videogame industries, thus giving rise to many patent, trademark and copyright cases in the CACD. Because of this, the judges in the CACD also have substantial experience presiding over a diverse range of intellectual property cases. CACD judges tend to better

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<sup>16</sup> Adriana Gardella, *Rating the Performance of Diverse Juries: A Scientific Perspective*. Carlton Fields Jordan Burt, 2014.

<sup>17</sup> *Id.*

<sup>18</sup> 28 U.S.C. § 1400(b) (2006)

understand the unique issues raised in IP cases, and recognize the nuances of intellectual property law.

In the CACD, the scale and cultural heterogeneity of California's population base has engendered one of the most diverse groups of judges in the country. The judges in the CACD hail from a wide variety of backgrounds. The composition of the court is varied in nationality, gender, race, and previous occupation (including former defense lawyers, prosecutors, and intellectual property experts alike).

In total, 38 district court judges are currently assigned to the CACD.<sup>19</sup> These judges include: eleven women, the first LGBT person to be appointed to the federal bench in California, four African Americans, four Mexican and Spanish Americans, four Asian Americans, three individuals born to immigrant parents, and one foreign-born individual. In fact, the current Chief Judge of the CACD, Hon. Judge George King, one of the most respected in the CACD and was actually born in another country. Chief Judge King was born in Shanghai, China, Judge King assumed his new position in September, 2012.<sup>20</sup>

As in the case of juries, a more varied assortment of individuals comprising the bench often leads to better informed, more accurate opinions. In May, 2009, United States Supreme Court Justice Sonya Sotomayor reiterated this viewpoint. She articulated, on the record, her view that judges are the product of their background and experiences, and that they bring those experiences to their views of and perspectives in a case.<sup>21</sup> In the judge's words, "Our gender and national origins may and will make a difference in our judging."<sup>22</sup>

Although most judges strive greatly to overcome personal biases in formulating their opinions, the application of facts to the law is inevitably colored by personal experiences. Importantly, these personal experiences help judges to understand the views of litigants, resulting in more informed, thorough decisions.

Thus, the fact that the CACD is comprised of a highly diverse population of IP-seasoned judges undoubtedly contributes to its reputation as an excellent venue for IP disputes. International

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<sup>19</sup> Howard J. Bashman, "Senate Confirms John B. Owens to Seat on Ninth

<sup>20</sup> *Gavel Passes to New Chief Judge in the Central District of California*, Third Branch News, October 04, 2012. available at: <http://news.uscourts.gov/gavel-passes-new-chief-judge-central-district-california>

<sup>21</sup> Charlie Savage, *A Judge's View of Judging Is on the Record*. New York Times, May 14, 2009. Accessible at [http://www.nytimes.com/2009/05/15/us/15judge.html?\\_r=0](http://www.nytimes.com/2009/05/15/us/15judge.html?_r=0)

<sup>22</sup> *Id.*

litigants are therefore well-served by bringing their IP disputes to the CACD, where they are likely to encounter judges with a wide array of personal and professional experiences.

## **5) A Randomly-Selected Judicial Bench and Powerful Constitutional Protections Provide for Unbiased Adjudications**

### *a) Random Assignment to Cases*

In the CACD, judges are randomly assigned to each case. This institutional commitment to impartiality serves as an attractant for both domestic and international litigants seeking fair, accurate and expeditious judgments.

Random case assignment effects the dual purpose of maintaining fairness at trial and protecting the due process rights of litigants. By imposing a lottery-based system, CACD courts guarantee that each judge will be selected randomly, without regard to gender, race, age, or political or personal affiliation from the large pool of 38 judges and 25 Magistrate Judges. In addition, random selection of judges maintains the expectation of objectivity in the eye of the public, both domestic and international. If citizens, inventors and industries cannot trust the courts to rule with impartiality, they are less likely to risk development and commercialization of their most valuable ideas.

Today, the lottery procedure in the CACD ensures that judge-shopping is nearly impossible. This feature is of particular importance to international litigants, as they do not have to fear that a case can be steered to a preferred judge.

### *b) Immense Powers Granted to Federal Judges by the U.S. Constitution*

The Framers of the U.S. Constitution explicitly granted federal judges lifetime tenure so that they would be able maintain impartiality and protect the Constitution against "legislative encroachments."<sup>23</sup> The absence of term limits was of particular importance to the Founding Fathers of the Constitution. As Alexander Hamilton stated in Federalist No. 78, "nothing will contribute so much as [lifetime tenure] to that independent spirit in

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<sup>23</sup> Dennis Shea, "We Hold These Truths." Hoover Institution, Stanford University. May 1, 1997.

the judges which must be essential to the faithful performance of so arduous a duty."<sup>24</sup>

The Framers intended that the grant of lifetime tenure would be reserved for only the most respected, highly educated, and honorable legal experts in the country. For this reason, the Constitution maintains that only the President of the United States may appoint a federal judge. Once appointed, a federal judge may only be removed by an exceedingly rare impeachment process carried out by the House of Representatives, followed by a conviction in the Senate. This is the very same process that is available to the Congress to expel a U.S. President.

As a result, federal judges hold one the most powerful and influential offices in the United States and are almost impossible to remove. This judicial power extends to and checks the other governmental branches in a manner unparalleled by many judicial systems in the world. For example, a federal judge not only maintains his or her judicial position for life, but he or she is able to find that acts of Congress are unconstitutional, and strike them down. With this type of independence, federal judges can rule impartially and fairly without regard to political pressure or public sentiment.

Thus, parties considering litigation in the CACD may expect both the local guarantees of judicial neutrality intrinsic to a lottery-based system *and* the vast Constitutional protections afforded federal judges. What's more, unlike other jurisdictions, the geographical scope of the CACD, the hugely diverse background of its residents, and the random selection processes culminate in a judicial bench devoid of local favoritism.

#### **6) The CACD Has a Patent Pilot Program Allowing Judges to Specialize in Patent Cases**

In 2011, the CACD was selected by the Administrative Office of the U.S. to be one of 14 district courts to participate in the U.S.'s Patent Pilot Program.

At its core, the Patent Pilot Program is intended to, "steer patent cases to judges that have the desire and aptitude to hear patent cases while preserving the principle of random assignment to help avoid forum shopping."<sup>25</sup> Under the program, established pursuant to Pub. L. No. 111-349, judges who do not opt-in to the program have the option of keeping a patent case or transferring it to one of the

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<sup>24</sup> Id.

<sup>25</sup> See Erik Larson, *"Rocket Docket" Bill Introduced in Congress*, IP LAW360, May 19, 2006.



specialized patent judges.<sup>26</sup> This means that every judge in the CACD who is assigned a patent case has decided to hear that case and is likely to be highly interested in the subject matter of the dispute.

All judges may volunteer to take part in the program, but ultimately the Chief Judge of the district designates the specialized patent judges who will hear the patent cases in the Patent Pilot Program. Of note, in the CACD many federal judges elect to keep their patent cases instead of sending them to the Patent Pilot Program because of the high degree of interest in intellectual property cases.

Given the experience of judges in the CACD, in addition to their selection for this unique platform, international litigants can be assured that a fair and expeditious handling of their case(s) will be carried out by a federal judge who is highly interested in patent cases.

### **7) The Absence of Patent Local Rules in the CACD Actually Favors Litigants**

With the exception of a number of judges in the Patent Pilot Program who impose their own procedural patent rules from other jurisdictions, CACD does not have Patent Local Rules as part of its Local Rules. That is, there are no specialized CACD rules for handling patent cases. This allows a great number of judges to handle the technical nuances of patent cases in the manner of their choice. Litigants can propose those patent procedures that best address their case which the judge can reject, accept, or modify as appropriate. The same applies to other types of IP cases.

Many other U.S. jurisdictions impose these standardized norms which regulate the timing by which parties must file their infringement, invalidity, and claim constructions arguments, along with other milestones in the trial process.

Other jurisdictions' Patent Local Rules are often applied stringently, and attorneys have little maneuverability to depart from them. According to one local attorney, Patent Local Rules, "put lawyers involved in a case in a straitjacket, and they govern no matter what kind of a case."<sup>27</sup>

The other jurisdictions' Patent Local Rules can also be troublesome for parties, who are often granted insufficient time to understand the technology, the prior art, and thus develop their case.

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<sup>26</sup> See *id.* § 1(a)(1).

<sup>27</sup> Erin Coe, *Calif. Judge Sets Sights On Patent Local Rules*, Law 360. Available at: <http://www.law360.com/articles/226768/calif-judge-sets-sights-on-patent-local-rules>

Such rules can also limit the parties' ability to amend and supplement their arguments, and may prevent consideration of claim construction issues until briefing is exhausted on preliminary issues. In addition, in some courts, separate Markman hearings are imposed by Patent Local Rules in every case, despite the fact that they are often unnecessary.

Thus, Patent Local Rules can serve to impose homogeneity on complex cases where homogeneity is unwarranted. International plaintiffs contemplating litigation in the United States are often much better off in a flexible setting where judges can tailor court procedures to each particular case depending upon what the litigants suggest or the Judge finds appropriate. The flexibility afforded judges in the CACD by the absence of Patent Local Rules, in particular, not only permits plaintiffs and defendants the opportunity to develop their cases, but, in fact, both parties usually benefit from the efficiencies and consequent cost savings engendered by such flexible rules.

#### **8) The CACD Has One of the Most Convenient and Flexible Mandatory Alternative Dispute Resolution Systems in the Country**

The CACD boasts one of the most flexible forms of Alternative Dispute Resolution (ADR) in the country with a significant emphasis on early resolution of disputes. First adopted in 1993, the Mandatory Settlement Procedures program established a variety of processes to facilitate settlement. This is perhaps why so many cases settle, and settle early in the CACD.

In brief, the program requires litigants in civil cases to meet with the trial judge, a magistrate judge, another district judge, an attorney settlement officer, or a private mediator to pursue settlement at least forty-five days before the final pretrial conference, and oftentimes much earlier.<sup>28</sup> Early in the case the parties must agree on one of courts settlement options, or the assigned district or magistrate judge is authorized to conduct an appropriate settlement process.<sup>29</sup> The CACD offers three settlement options: 1) a settlement conference with the district or magistrate judge assigned the case; 2) a mediation with a neutral party selected from the Court Mediation Panel; and 3) private mediation.<sup>30</sup>

The process of selecting a neutral mediator in the CACD is one of the most convenient in the country. Each party simply reviews

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<sup>28</sup> Civil L.R. 16-15.4; General Order 11-10

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

a list of mediators available on the Court website and, when each side has determined their preferences, they confer and select a mediator amenable to both parties. If both parties are in agreement, private mediation organizations such as JAMS or ARC are also available options, but at greater costs as there is no charge for the CACD Magistrate Judges or CACD mediators. The flexibility of this system enables a tailored, cost-effective means of approaching dispute resolution.

## **9) Securing Personal Jurisdiction and the Use of Declaratory Judgment Actions in the CACD to Resolve IP Disputes**

As already mentioned, international companies can typically sue for infringement of their IP where infringement takes place. But, what if a U.S. company is threatening a company outside the U.S. with infringement claims? The Declaratory Judgment (DJ) is a form of legally binding preventive adjudication<sup>31</sup> which is availed in such a scenario.

The DJ action allows an accused party to petition the court to conclusively rule on the rights and duties of the parties to the case.<sup>32</sup> Alleged infringers often pursue DJ actions when they seek to "clear the air," believing they have the right to engage in an accused activity because there is no infringement or the IP rights are invalid.

Assuming an "actual case or controversy" exists between two parties, a DJ suit can be brought if the local federal district court can properly obtain personal jurisdiction over the defendant in the DJ action.<sup>33</sup> Fortunately, the sheer size, population density, and economic activity of Southern California results in a high likelihood that those threatened with litigation can obtain personal jurisdiction in the CACD.

A court of one forum can assert personal jurisdiction over a defendant residing in another state if that defendant has certain "minimum contacts" with that forum. Minimum contacts are typically established by a non-resident defendant if they: 1) have direct contact with the state; 2) have placed their product into the

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<sup>31</sup> Bray, Samuel (2010). "Preventive Adjudication". *University of Chicago Law Review* 77: 1275.

<sup>32</sup> 28 U.S.C.S. § 2201 ("Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.")

<sup>33</sup> *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007).

stream of commerce such that it reaches the forum state;<sup>34</sup> 3) have formed a contract with a resident of the state;<sup>35</sup> 4) have a non-passive website viewed within the forum state; or 5) seek to serve residents of the forum state.<sup>36</sup>

Those familiar with the scale of Southern California's economy, consumer base, and export market understand that satisfaction of the above factors typically come easily for many potential defendants in the CACD. The CACD has jurisdiction over a heavily populated expanse of California, stretching from San Luis Obispo in Central California south along the coast to Orange County. This region encompasses over 25 million residents, a figure greater than the total population of Australia.<sup>37</sup> Los Angeles County alone contains a population of over 12 million people.

As a consequence, goods and services almost inevitably make their way into Southern California's stream of commerce, are marketed to Southern California residents, and are bought and sold by Southern California residents. Thus, those who wish to have a determination that their accused activities are not infringing have unique prospects for securing personal jurisdiction and pursuing their case in CACD courts. Given a state GDP of \$2.0 trillion and an export share of 11-15% of America's total exports,<sup>38</sup> there are few venues in the world where one is more likely to establish sufficient commercial contacts to support personal jurisdiction than the CACD.

## CONCLUSION

The CACD is the one of best venues for non-U.S. companies to litigate their IP cases in the U.S. A speedy average time to trial resolution, a diverse and randomly-selected judicial bench, a flexible Alternative Dispute Resolution system, and the absence of Patent Local Rules for patent cases, all contribute to the growing popularity of the CACD. Both domestic and international IP litigants are drawn to a large diverse judicial bench comprised of IP-seasoned judges, and the CACD's Patent Pilot Program.

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<sup>34</sup> *Gray v. American Radiator & Standard Sanitary Corp.*, N.E. 2d 176: 761. 1961.

<sup>35</sup> *McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957).

<sup>36</sup> *Helicopteros Nacionales De Colombia v. Hall*, 466 U.S. 408 (1984).

<sup>37</sup> Australian Bureau of Statistics (31 October 2012). "2011 Community Profiles." *2011 Census of Population and Housing*.

<sup>38</sup> "Origin of Movement of U.S. Exports of Goods by State by NAICS-Based Product" (PDF). US Census Bureau. February 9, 2009.