VII. Conclusion

In the wake of harmonization of procedural laws[366] and increasing international pressure to enforce intellectual property rights,[367] it is worth comparing, contrasting and evaluating the efficiencies of established pre-trial evidence-gathering procedures.[368] Both the French *Saisie-Contrefaçon* and United States' Federal Rule of Civil Procedure 34 are extensively employed proof-procuring mechanisms in their respective home jurisdictions and in cross-border patent litigation. A closer look at the procedures themselves and the juridical concepts underlying their paternal legal systems shows that both mechanisms have responded, more or less effectively and efficiently, to particular needs of patent infringement cases. The Saisie, for example, is narrowly tailored to help seize proof of infringement. It yields limited, fast, directly relevant proof at a relatively low cost to both parties and does not unilaterally impose itself outside of France. Concurrently, it is extremely invasive; it offers little trade secret protection and fails to consider the need for openness between patentees or rightholders and their legal representatives. Rule 34, on the other hand, is broad, protracted, expensive, and extraterritorially applicable so as to make it internationally disfavored. As the same time, it properly puts the parties in charge of collecting evidence, and fosters open communication regarding rightholders' sensitive, patent-related information.

As countries pass procedural laws in order to meet their international obligations to enforce patents,[369] they should beware of some key pre-trial features concerning patent litigation considered in this thesis.[370] As the discussion above demonstrates, *ex parte* measures present an efficient way of extracting evidence that, otherwise, runs risk of destruction. Tailoring searchable and seizable evidence narrowly also reduces financial and timing burdens, which, otherwise could lead to abuses of pre-trial mechanisms. Further, protecting trade secrets and certain juridical information relating to patents on the litigation end, fosters experimentation and openness on the innovation and prosecution front. Lastly, because patents and the quarrels over them grow increasingly international, evidence-gathering procedures which respect both international norms and domestic procedures are apt to acquire cross-national acceptance.

366 *See e.g.* Baumgartner, *supra* note 323, at 1298 – 1307; Kevin M. Clermont, *Integrating Transnational Perspectives into Civil Law Procedure: What Not to Teach*, 56 J. LEGAL EDUC. 524, 526 (2006) ("The subject of civil procedure is much bigger than its curricular pigeonhole."); Richard L. Marcus, *Modes of Procedural Reform*, 31 HASTINGS INT'L & COMP. L. REV. 157 (2008).

367 *See e.g.* Enforcement Directive, *supra* note 308; TRIPS, *supra* note 341, at art. 41 – 43.

368 *See* Richard L. Marcus, *Putting American Procedural Exceptionalism into a Globalized Context*, AM. J. COMP. L. 709 (2005); Ronald J. Allen et al., *The German Advantage in Civil Procedure: A Plea for More Details and Fewer generalities in Comparative Scholarship*, 82 NW. U. L. REV. 705, 706 – 736 (1988).

369 *See* TRIPS, *supra* note 341, at art. 41 – 43.

370 For a similar endeavor outside of the patent context *see* Jan W. Bolt & Joseph K. Wheatley, *Private Rules for International Discovery in U.S. District Court: The U.S.-German Example*, 11 UCLA J. INT'L L. AND FOREIGN AFF. 1 (2006).

As business, trade, research and development as well as the provision of legal services and adjudication of patent disputes go international, it becomes increasingly important for countries to provide effective procedural laws for enforcing substantive patent rights. Guaranteeing adequate patent enforcement by way of effective pre-trial evidence gathering procedures presents a key way in which nations can attract honest businesses, thereby stimulating domestic trade, innovation, jobs-creation, and making use of of local tribunals and legal service providers.[371] This allows a country to stay on the cutting edge of developing technologies and stimulate its economy. The employment of local courts, moreover, allows a country to help shape the development of international patent laws and cross-border patent enforcement. Thus, pre-trial measures providing well-defined, party-driven, *ex parte* searches while, concurrently, shielding trade secrets and sensitive patent-related information from disclosure and respecting extraterritorial limits best serve both international patent policy and domestic economics.

371 *See* David Perkins & Gary Mills, *Patent Infringement and Forum Shopping in the European Union*, 20 FORDHAM INT'L L.J. 549 (1996).