

APPENDIX OF FORMS

(See Rule 84)

Introductory Statement

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms. Each form assumes the action to be brought in the Southern District of New York. If the district in which an action is brought has divisions, the division should be indicated in the caption.

2. Except where otherwise indicated each pleading, motion, and other paper should have a caption similar to that of the summons, with the designation of the particular paper substituted for the word "Summons". In the caption of the summons and in the caption of the complaint all parties must be named but in other pleadings and papers, it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4 (b), 7 (b) (2), and 10 (a).

3. In Form 3 and the forms following, the words, "Allegation of jurisdiction", are used to indicate the appropriate allegation in Form 2.

4. Each pleading, motion, and other paper is to be signed in his individual name by at least one attorney of record (Rule 11). The attorney's name is to be followed by his address as indicated in Form 3. In forms following Form 3 the signature and address are not indicated.

5. If a party is not represented by an attorney, the signature and address of the party are required in place of those of the attorney.

Form 1.—SUMMONS

DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN
DISTRICT OF NEW YORK

Civil Action, File Number _____

A. B., Plaintiff	}	<i>Summons</i>
v.		
C. D., Defendant		

To the above-named Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney, whose address is _____, an answer to the complaint which is herewith served upon you, within 20¹ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

_____,
Clerk of Court.

[Seal of the U. S. District Court]

Dated _____

(This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.)

Form 2.—ALLEGATION OF JURISDICTION

(a) Jurisdiction founded on diversity of citizenship and amount.

Plaintiff is a citizen of the State of Connecticut and defendant is a corporation incorporated under the laws of the State of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars.

(b) Jurisdiction founded on the existence of a Federal question and amount in controversy.

The action arises under the Constitution of the United States, Article _____, Section _____; [the _____ Amendment to the Constitution of the United States, Section _____]; [the Act of _____, _____ Stat. _____; U. S. C., Title _____, § _____];

¹ If the United States or an officer or agency thereof is a defendant, the time to be inserted as to it is 60 days.

[the Treaty of the United States with (here describe the treaty)],² as hereinafter more fully appears. The matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars.

(c) Jurisdiction founded on the existence of a question arising under particular statutes.

The action arises under the Act of ----, ---- Stat. ----; U. S. C., Title ----, § ----, as hereinafter more fully appears.

Notes

1. *Diversity of Citizenship.* If the plaintiff is an assignee, he should allege such other facts of citizenship as will show that he is entitled to prosecute his action under U. S. C., Title 28, § 41 (1).

2. *Jurisdiction Founded on Some Fact Other Than Diversity of Citizenship.* The allegation as to the matter in controversy may be omitted in any case where by law no jurisdictional amount is required. See for example, U. S. C., Title 28, § 41 (2)-(28).

3. *Pleading Venue.* Since improper venue is an affirmative dilatory defense, it is not necessary for plaintiff to include allegations showing the venue to be proper.

4. It is sufficient to allege that a corporation is incorporated in a particular state, there being, for jurisdictional purposes, a conclusive presumption that all of its members or stockholders are citizens of that State, *Marshall v. Baltimore and Ohio R. R. Co.*, 16 How. 314 (U. S. 1853); Henderson, *Position of Foreign Corporations in American Constitutional Law* (1918) 54-64. See Form No. 124 and note thereto, and Form No. 125, 1 Sylvester's *Bender's Federal Forms*.

Form 3.—COMPLAINT ON A PROMISSORY NOTE

1. Allegation of jurisdiction.

2. Defendant on or about June 1, 1935, executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant promised to pay to plaintiff or order on June 1, 1936 the sum of ten thousand dollars with interest thereon at the rate of six percent. per annum].

3. Defendant owes to plaintiff the amount of said note and interest.

² Use the appropriate phrase or phrases. The general allegation of the existence of a Federal question is ineffective unless the matters constituting the claim for relief as set forth in the complaint raise a Federal question.

Wherefore plaintiff demands judgment against defendant for the sum of ten thousand dollars, interest, and costs.

Signed: _____,
Attorney for Plaintiff.

Address: _____

Notes

1. The pleader may use the material in one of the three sets of brackets. His choice will depend upon whether he desires to plead the document verbatim, or by exhibit, or according to its legal effect.

2. Under the rules free joinder of claims is permitted. See Rules 8 (e) and 18. Consequently the claims set forth in each and all of the following forms may be joined with this complaint or with each other. Ordinarily each claim should be stated in a separate division of the complaint, and the divisions should be designated as counts successively numbered. In particular the rules permit alternative and inconsistent pleading. See Form 10.

Form 4.—COMPLAINT ON AN ACCOUNT

1. Allegation of jurisdiction.

2. Defendant owes plaintiff ten thousand dollars according to the account hereto annexed as Exhibit A.

Wherefore (etc. as in Form 3).

Form 5.—COMPLAINT FOR GOODS SOLD AND DELIVERED

1. Allegation of jurisdiction.

2. Defendant owes plaintiff ten thousand dollars for goods sold and delivered by plaintiff to defendant between June 1, 1936 and December 1, 1936.

Wherefore (etc. as in Form 3).

Note.

This form may be used where the action is for an agreed price or for the reasonable value of the goods.

Form 6.—COMPLAINT FOR MONEY LENT

1. Allegation of jurisdiction.

2. Defendant owes plaintiff ten thousand dollars for money lent by plaintiff to defendant on June 1, 1936.

Wherefore (etc. as in Form 3).

Form 7.—COMPLAINT FOR MONEY PAID BY MISTAKE

1. Allegation of jurisdiction.
2. Defendant owes plaintiff ten thousand dollars for money paid by plaintiff to defendant by mistake on June 1, 1936, under the following circumstances: [here state the circumstances with particularity—see Rule 9 (b)].

Wherefore (etc. as in Form 3).

Form 8.—COMPLAINT FOR MONEY HAD AND RECEIVED

1. Allegation of jurisdiction.
2. Defendant owes plaintiff ten thousand dollars for money had and received from one G. H. on June 1, 1936, to be paid by defendant to plaintiff.

Wherefore (etc. as in Form 3).

Form 9.—COMPLAINT FOR NEGLIGENCE

1. Allegation of jurisdiction.
2. On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.
3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against defendant in the sum of ten thousand dollars and costs.

Note.

Since contributory negligence is an affirmative defense, the complaint need contain no allegation of due care of plaintiff.

Form 10.—COMPLAINT FOR NEGLIGENCE WHERE PLAINTIFF IS UNABLE TO DETERMINE DEFINITELY WHETHER THE PERSON RESPONSIBLE IS C. D. OR E. F. OR WHETHER BOTH ARE RESPONSIBLE AND WHERE HIS EVIDENCE MAY JUSTIFY A FINDING OF WILFULNESS OR OF RECKLESSNESS OR OF NEGLIGENCE

A. B., Plaintiff

v.

C. D. and E. F., Defendants

Complaint

1. Allegation of jurisdiction.

2. On June 1, 1936, in a public highway called Boylston Street in Boston, Massachusetts, defendant C. D. or defendant E. F., or both defendants C. D. and E. F. wilfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway.

3. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars.

Wherefore plaintiff demands judgment against C. D. or against E. F. or against both in the sum of ten thousand dollars and costs.

Form 11.—COMPLAINT FOR CONVERSION

1. Allegation of jurisdiction.

2. On or about December 1, 1936, defendant converted to his own use ten bonds of the ----- Company (here insert brief identification as by number and issue) of the value of ten thousand dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the sum of ten thousand dollars, interest, and costs.

Form 12.—COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT TO CONVEY LAND

1. Allegation of jurisdiction.

2. On or about December 1, 1936, plaintiff and defendant entered into an agreement in writing a copy of which is hereto annexed as Exhibit A.

3. In accord with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

4. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands (1) that defendant be required specifically to perform said agreement, (2) damages in the sum of one thousand dollars, and (3) that if specific performance is not granted plaintiff have judgment against defendant in the sum of ten thousand dollars.

Note.

Here, as in Form 3, plaintiff may set forth the contract verbatim in the complaint or plead it, as indicated, by exhibit, or plead it according to its legal effect. Furthermore, plaintiff may seek legal or equitable relief or both even though this was impossible under the system in operation before these rules.

Form 13.—COMPLAINT ON CLAIM FOR DEBT AND TO SET ASIDE FRAUDULENT CONVEYANCE UNDER RULE 18 (b)

A. B., Plaintiff	}	<i>Complaint</i>
<i>v.</i>		
C. D. and E. F., Defendants		

1. Allegation of jurisdiction.

2. Defendant C. D. on or about ---- executed and delivered to plaintiff a promissory note [in the following words and figures: (here set out the note verbatim)]; [a copy of which is hereto annexed as Exhibit A]; [whereby defendant C. D. promised to pay to plaintiff or order on ---- the sum of five thousand dollars with interest thereon at the rate of ---- percent. per annum].

3. Defendant C. D. owes to plaintiff the amount of said note and interest.

4. Defendant C. D. on or about ---- conveyed all his property, real and personal [or specify and describe] to defendant E. F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands:

(1) That plaintiff have judgment against defendant C. D. for ten thousand dollars and interest; (2) that the aforesaid conveyance to defendant E. F. be declared void and the judgment herein be declared a lien on said property; (3) that plaintiff have judgment against the defendants for costs.

Form 14.—COMPLAINT FOR NEGLIGENCE UNDER FEDERAL EMPLOYER'S LIABILITY ACT

1. Allegation of jurisdiction.

2. During all the times herein mentioned defendant owned and operated in interstate commerce a railroad which passed through a tunnel located at ---- and known as Tunnel No. -----.

3. On or about June 1, 1936, defendant was repairing and enlarging the tunnel in order to protect interstate trains and passengers and freight from injury and in order to make the tunnel more conveniently usable for interstate commerce.

4. In the course of thus repairing and enlarging the tunnel on said day defendant employed plaintiff as one of its workmen, and negligently put plaintiff to work in a portion of the tunnel which defendant had left unprotected and unsupported.

5. By reason of defendant's negligence in thus putting plaintiff to work in that portion of the tunnel, plaintiff was, while so working pursuant to defendant's orders, struck and crushed by a rock, which fell from the unsupported portion of the tunnel, and was (here describe plaintiff's injuries).

6. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning ---- dollars per day. By these injuries he has been made incapable of any gainful activity, has suffered great physical and mental pain, and has incurred expense in the amount of ---- dollars for medicine, medical attendance, and hospitalization.

Wherefore plaintiff demands judgment against defendant in the sum of ---- dollars and costs.

Form 15.—COMPLAINT FOR DAMAGES UNDER MERCHANT MARINE ACT

1. Allegation of jurisdiction.
2. During all the times herein mentioned defendant was the owner of the steamship ---- and used it in the transportation of freight for hire by water in interstate and foreign commerce.
3. During the first part of (month and year) at ---- plaintiff entered the employ of defendant as an able seaman on said steamship under seaman's articles of customary form for a voyage from ---- ports to the Orient and return at a wage of ---- dollars per month and found, which is equal to a wage of ---- dollars per month as a shore worker.
4. On June 1, 1936, said steamship was about ---- days out of the port of ---- and was being navigated by the master and crew on the return voyage to ---- ports. (Here describe weather conditions and the condition of the ship and state as in an ordinary complaint for personal injuries the negligent conduct of defendant.)
5. By reason of defendant's negligence in thus (brief statement of defendant's negligent conduct) and the unseaworthiness of said steamship, plaintiff was (here describe plaintiff's injuries).
6. Prior to these injuries, plaintiff was a strong, able-bodied man, capable of earning and actually earning ---- dollars per day. By these injuries he has been made incapable of any gainful activity; has suffered great physical and mental pain, and has incurred expense in the amount of ---- dollars for medicine, medical attendance, and hospitalization.
7. Plaintiff elects to maintain this action under the provisions of section 33 of the Act of June 5, 1920, c. 250, 41 Stat. 1007.

Wherefore plaintiff demands judgment against defendant in the sum of ---- dollars and costs.

Form 16.—COMPLAINT FOR INFRINGEMENT OF PATENT

1. Allegation of jurisdiction.
2. On May 16, 1934, United States Letters Patent No. ---- were duly and legally issued to plaintiff for an inven-

tion in an electric motor; and since that date plaintiff has been and still is the owner of those Letters Patent.

3. Defendant has for a long time past been and still is infringing those Letters Patent by making, selling, and using electric motors embodying the patented invention, and will continue to do so unless enjoined by this court.

4. Plaintiff has placed the required statutory notice on all electric motors manufactured and sold by him under said Letters Patent, and has given written notice to defendant of his said infringement.

Wherefore plaintiff demands a preliminary and final injunction against further infringement by defendant and those controlled by defendant, an accounting for profits and damages, and an assessment of costs against defendant.

Form 17.—COMPLAINT FOR INFRINGEMENT OF COPYRIGHT AND UNFAIR COMPETITION

1. Allegation of jurisdiction.

2. Prior to March 2, 1936, plaintiff, who then was and ever since has been a citizen of the United States, created and wrote an original book, entitled ----.

3. This book contains a large amount of material wholly original with plaintiff and is copyrightable subject matter under the laws of the United States.

4. Between March 2, 1936, and March 10, 1936, plaintiff complied in all respects with the Act of (give citation) and all other laws governing copyright, and secured the exclusive rights and privileges in and to the copyright of said book, and received from the Register of Copyrights a certificate of registration, dated and identified as follows: "March 10, 1936, Class ----, No. ----".

5. Since March 10, 1936, said book has been published by plaintiff and all copies of it made by plaintiff or under his authority or license have been printed, bound, and published in strict conformity with the provisions of the Act of ---- and all other laws governing copyright.

6. Since March 10, 1936, plaintiff has been and still is the sole proprietor of all rights, title, and interest in and to the copyright in said book.

7. After March 10, 1936, defendant infringed said copyright by publishing and placing upon the market a book entitled _____, which was copied largely from plaintiff's copyrighted book, entitled _____

8. A copy of plaintiff's copyrighted book is hereto attached as "Exhibit 1"; and a copy of defendant's infringing book is hereto attached as "Exhibit 2".

9. Plaintiff has notified defendant that defendant has infringed the copyright of plaintiff, and defendant has continued to infringe the copyright.

Wherefore plaintiff demands:

(1) That defendant, his agents, and servants be enjoined during the pendency of this action and permanently from infringing said copyright of said plaintiff in any manner.

(2) That defendant be required to pay to plaintiff such damages as plaintiff has sustained in consequence of defendant's infringement of said copyright and to account and pay over to plaintiff all the gains, profits, and advantages derived by defendant from his infringement of plaintiff's copyright or such damages as to the court shall appear proper within the provisions of the copyright statutes, but not less than two hundred and fifty dollars.

(3) That defendant be required to deliver up to be impounded during the pendency of this action all copies in his possession or under his control infringing said copyright and to deliver up for destruction all infringing copies and all plates, molds, and other matter for making such infringing copies.

(4) That defendant pay to plaintiff the costs of this action and reasonable attorney's fees to be allowed to the plaintiff by the court.

(5) That plaintiff have such other and further relief as is just.

Form 18.—COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF

1. Allegation of jurisdiction.

2. On or about June 1, 1935, plaintiff issued to G. H. a policy of life insurance whereby plaintiff promised to pay to K. L. as beneficiary the sum of ten thousand dollars

upon the death of G. H. The policy required the payment by G. H. of a stipulated premium on June 1, 1936, and annually thereafter as a condition precedent to its continuance in force.

3. No part of the premium due June 1, 1936, was ever paid and the policy ceased to have any force or effect on July 1, 1936.

4. Thereafter, on September 1, 1936, G. H. and K. L. died as the result of a collision between a locomotive and the automobile in which G. H. and K. L. were riding.

5. Defendant C. D. is the duly appointed and acting executor of the will of G. H.; defendant E. F. is the duly appointed and acting executor of the will of K. L.; defendant X. Y. claims to have been duly designated as beneficiary of said policy in place of K. L.

6. Each of defendants, C. D., E. F., and X. Y. is claiming that the above-mentioned policy was in full force and effect at the time of the death of G. H.; each of them is claiming to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

7. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G. H.

Wherefore plaintiff demands that the court adjudge:

(1) That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

(2) That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

(3) That, if the court shall determine that said policy was in force at the death of G. H., the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

(4) That plaintiff recover its costs.

Form 19.—MOTION TO DISMISS, PRESENTING DEFENSES OF FAILURE TO STATE A CLAIM, OF LACK OF SERVICE OF PROCESS, OF IMPROPER VENUE, AND OF LACK OF JURISDICTION UNDER RULE 12 (b)

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the Southern District of New York, and (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M. N. and X. Y. hereto annexed as Exhibit A and Exhibit B respectively.

3. To dismiss the action on the ground that it is in the wrong district because (a) the jurisdiction of this court is invoked solely on the ground that the action arises under the Constitution and laws of the United States and (b) the defendant is a corporation incorporated under the laws of the State of Delaware and is an inhabitant thereof.

4. To dismiss the action on the ground that the court lacks jurisdiction because the amount actually in controversy is less than three thousand dollars exclusive of interest and costs.

Signed: _____

Attorney for Defendant.

Address: _____

Notice of Motion

To: _____

Attorney for Plaintiff.

Please take notice, that the undersigned will bring the above motion on for hearing before this Court at Room ----, United States Courts and Post Office Building, Borough

of Manhattan, City of New York, on the ---- day of -----, 193--, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

Signed: -----
Attorney for Defendant.

Address: -----

Note

The above motion and notice of motion may be combined and denominated Notice of Motion. See Rule 7 (b).

Form 20.—ANSWER PRESENTING DEFENSES UNDER RULE 12 (b)

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G. H. G. H. is alive; is a citizen of the State of New York and a resident of this district, is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party without depriving this court of jurisdiction of the present parties, and has not been made a party.

Third Defense

Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

Fourth Defense

The right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint. No statement of the grounds on which the court's jurisdiction depends need be made unless the counterclaim requires independent grounds of jurisdiction.)

Cross-Claim Against Defendant M. N.

(Here set forth the claim constituting a cross-claim against defendant M. N. in the manner in which a claim is pleaded in a complaint. The statement of grounds upon which the court's jurisdiction depends need not be made unless the cross-claim requires independent grounds of jurisdiction.)

Note

The above form contains the various defenses provided for in Rule 12 (b). The first defense raises the legal sufficiency of the complaint. Its effect is equivalent to a general demurrer or a motion to dismiss.

The second defense is equivalent to a plea in abatement.

The third defense is equivalent to an answer on the merits.

The fourth defense is one of the affirmative defenses provided for in Rule 8 (c).

The answer also includes a counterclaim and a cross-claim.

**Form 21.—ANSWER TO COMPLAINT SET FORTH IN FORM 8,
WITH COUNTERCLAIM FOR INTERPLEADER**

Defense

Defendant admits the allegations stated in paragraph 1 of the complaint; and denies the allegations stated in paragraph 2 to the extent set forth in the counterclaim herein.

Counterclaim for Interpleader

1. Defendant received the sum of ten thousand dollars as a deposit from E. F.
2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E. F.

3. E. F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:

(1) That the court order E. F. to be made a party defendant to respond to the complaint and to this counterclaim.³

(2) That the court order the plaintiff and E. F. to interplead their respective claims.

(3) That the court adjudge whether the plaintiff or E. F. is entitled to the sum of money.

(4) That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.

(5) That the court award to the defendant its costs and attorney's fees.

Form 22.—MOTION TO BRING IN THIRD-PARTY DEFENDANT

Defendant moves for leave to make E. F. a party to this action and that there be served upon him summons and third-party complaint as set forth in Exhibit A hereto attached.

Signed: -----,
Attorney for Defendant C. D.

Address: -----

Notice of Motion

(Contents the same as in Form 19. No notice is necessary if the motion is made before the moving defendant has served his answer.)

³ Rule 13 (h) provides for the court ordering parties to a counterclaim, but who are not parties to the original action, to be brought in as defendants.

Exhibit A

District Court of the United States for the Southern District of New York

CIVIL ACTION, FILE NUMBER ----

A. B., PLAINTIFF

v.

C. D., DEFENDANT AND THIRD-PARTY
PLAINTIFF

v.

E. F., THIRD-PARTY DEFENDANT

Summons

To the above-named Third-Party Defendant:

You are hereby summoned and required to serve upon _____, plaintiff's attorney whose address is _____, and upon _____, who is attorney for C. D., defendant and third-party plaintiff, and whose address is _____, an answer to the third-party complaint which is herewith served upon you and an answer to the complaint of the plaintiff, a copy of which is herewith served upon you, within 20 days after the service of this summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the third-party complaint.

_____,
Clerk of Court.

[Seal of District Court]

Dated _____

United States District Court for the Southern District of
New York

CIVIL ACTION, FILE NUMBER ----

A. B., PLAINTIFF	} <i>Third-Party complaint</i>
<i>v.</i>	
C. D., DEFENDANT AND THIRD-PARTY PLAINTIFF	
<i>v.</i>	
E. F., THIRD-PARTY DEFENDANT	

1. Plaintiff A. B. has filed against defendant C. D. a complaint, a copy of which is hereto attached as "Exhibit C".

2. (Here state the grounds upon which C. D. is entitled to recover from E. F., all or part of what A. B. may recover from C. D., or upon which A. B. is entitled to recover from E. F. and not from C. D. The statement should be framed as in an original complaint.)

Wherefore C. D. demands judgment against third-party defendant E. F. for all sums that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: -----,

Attorney for C. D., Third-Party Plaintiff.

Address: -----

**Form 23.—MOTION TO INTERVENE AS A DEFENDANT UNDER
RULE 24**

(Based upon the complaint, Form 16)

District Court of the United States for the Southern Dis-
trict of New York

CIVIL ACTION, FILE NUMBER ----

A. B., PLAINTIFF

v.

C. D., DEFENDANT

E. F., APPLICANT FOR INTERVENTION

} *Motion to intervene as
a defendant*

E. F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the ground that he is the manufacturer and vendor to the defendant, as well as to others, of the articles alleged in the complaint to be an infringement of plaintiff's patent, and as such has a defense to plaintiff's claim presenting both questions of law and of fact which are common to the main action.⁴

Signed: _____,
Attorney for E. F., Applicant for Intervention.
Address: _____.

Notice of Motion

(Contents the same as in Form 19)

⁴ For other grounds of intervention, either of right or in the discretion of the court, see Rule 24 (a) and (b).

District Court of the United States for the Southern District of New York

CIVIL ACTION, FILE NUMBER ----

A. B., PLAINTIFF
v.
 C. D., DEFENDANT
 E. F., INTERVENER

Intervener's answer

First Defense

Intervener admits the allegations stated in paragraphs 1 and 4 of the complaint; denies the allegations in paragraph 3, and denies the allegations in paragraph 2 in so far as they assert the legality of the issuance of the Letters Patent to plaintiff.

Second Defense

Plaintiff is not the first inventor of the articles covered by the Letters Patent specified in his complaint, since articles substantially identical in character were previously patented in Letters Patent granted to intervener on January 5, 1920.

Signed: -----,

Attorney for E. F., Intervener.

Address: -----

**Form 24.—MOTION FOR PRODUCTION OF DOCUMENTS ETC.
 UNDER RULE 34**

Plaintiff A. B. moves the court for an order requiring defendant C. D.

(1) To produce and to permit plaintiff to inspect and to copy each of the following documents:

(Here list the documents and describe each of them.)

(2) To produce and permit plaintiff to inspect and to photograph each of the following objects:

(Here list the objects and describe each of them.)

(3) To permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph (here describe the portion of the real property and the objects to be inspected and photographed).

Defendant C. D. has the possession, custody, or control of each of the foregoing documents and objects and of the above mentioned real estate. Each of them constitutes or contains evidence relevant and material to a matter involved in this action, as is more fully shown in Exhibit A hereto attached.

Signed: _____,
Attorney for Plaintiff.

Address: _____

Notice of Motion

(Contents the same as in Form 19)

Exhibit A

STATE OF _____,

County of _____

A. B., being first duly sworn says:

(1) (Here set forth all that plaintiff knows which shows that defendant has the papers or objects in his possession or control.)

(2) (Here set forth all that plaintiff knows which shows that each of the above mentioned items is relevant to some issue in the action.)

Signed: A. B.

[Jurat]

Form 25.—REQUEST FOR ADMISSION UNDER RULE 36

Plaintiff A. B. requests defendant C. D. to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, exhibited with this request, is genuine.

(Here list the documents and describe each document.)

2. That each of the following statements is true.
(Here list the statements.)

Signed: -----,
Attorney for Plaintiff.

Address: -----

Form 26.—ALLEGATION OF REASON FOR OMITTING PARTY

When it is necessary, under Rule 19 (c), for the pleader to set forth in his pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

John Doe named in this complaint is not made a party to this action [because he is not subject to the jurisdiction of this court]; [because he cannot be made a party to this action without depriving this court of jurisdiction].

**Form 27.—NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS
UNDER RULE 73 (b)**

Notice is hereby given that C. D. and E. F., defendants above named, hereby appeal to the Circuit Court of Appeals for the Second Circuit [from the order (describing it)] [from the final judgment] entered in this action on -----, 19--.

Signed: -----,
Attorney for Appellants C. D. and E. F.
Address: -----

Note

Use either the material in the first set of brackets or that in the second, as the case requires. If the appeal is from a part only of an order or judgment that part must be specified.

Rule 73 (b) does not require the appellee to be named. It does require the clerk to notify all other parties than appellant.