

# How New Rule On Illustrative Aids Is Faring In Federal Courts

By **Aasiya Glover, Prachi Patel and Li Yu** (September 24, 2025)

Effective use of illustrative aids like diagrams, models and, increasingly, computer simulations is critical to explaining complex cases to a jury.

When Rule 107 of the Federal Rules of Evidence took effect in December 2024, it codified for the first time "standards for the use of illustrative aids" in federal trials.[1]

Rule 107 clarifies three key issues.

First, the accompanying committee notes aim to eliminate confusion by drawing clear distinctions between illustrative aids, demonstrative evidence and summaries of voluminous evidence.[2]

Second, Rule 107 specifies a standard on the use of illustrative aids at trial.[3]

Third, the new rule delineates the procedural requisites for providing illustrative to the jury during deliberations.[4]

Since last December, more than a dozen trial and appellate courts have addressed Rule 107 in resolving motions in limine, post-trial motions and appeals in both civil and criminal cases.

Here, we begin with a summary of the changes made by Rule 107. We then assess the impact of this new rule by looking at court decisions in the past 10 months. Finally, we offer some suggestions for utilizing Rule 107 to present one's case more effectively at trial.

## **Rule 107's Categorization of Illustrative Aids, Demonstrative Evidence and Summaries of Voluminous Evidence**

The committee notes accompanying Rule 107 define illustrative aids as "any presentation offered not as evidence but rather to assist the trier of fact in understanding evidence or argument." [5]

An illustrative aid, thus, is a nonevidentiary "pedagogical device" that may help the jury "understand what is being communicated ... by the witness or party presenting evidence or argument." [6]

For example, a chart used in a closing argument to show where to find the amount owed for 74 hours of work each week from the data in ADP payroll and Venmo records is an illustrative aid under Rule 107.[7]

By contrast, the committee notes for Rule 107 explain that demonstrative evidence is "substantive evidence offered to prove, by demonstration, a disputed fact." [8]

BB guns recovered from the scene of an allegedly unlawful arrest, for example, can be



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admitted for demonstrative purposes at a Section 1983 trial subject to proper authentication.[9]

Finally, Rule 107 also draws a distinction between illustrative aids and summaries of voluminous admissible evidence.

For example, charts summarizing "information regarding the number of placements children in [state government] custody" experienced in a six-year span was admitted in *Mary B. v. Kovol*, a case in the U.S. District Court for the District of Alaska, because the underlying data was admissible and could not "be conveniently examined in court." [10]

If a chart or exhibit solely summarizes otherwise admissible data or other records, then Rule 1006, rather than Rule 107, applies to determine its admissibility.

### **Rule 107's Standard for Permitting the Use of Illustrative Aids at Trial**

Before Rule 107, the use of illustrative aids often was analyzed under different standards based on whether illustrations were used as presentation of evidence or used to illustrate a party's arguments.

A single balancing test now governs all uses of illustrative aids at trial in federal cases. Specifically, using similar language as Rule 403, Rule 107 allows a party to present an illustrative aid, if the court finds that the dangers of unfair prejudice, confusion, misleading the jury and undue delay do not substantially outweigh the utility of the aid.[11]

### **Rule 107's Procedural Requirements for Providing Illustrative Aids for Jury Deliberation**

The committee notes accompanying Rule 107 recognize that providing illustrative aids, which are not substantive evidence, for jury deliberations presents a risk of the jury giving undue weight to certain arguments or testimony associated with an illustrative aid, or misunderstanding the aid.[12]

But, instead of categorically barring this, Rule 107 establishes procedural prerequisites for when such aids can be provided to the jury.

Specifically, illustrative aids are permitted to go to the jury room only if either (1) all parties consent or (2) the court, for good cause, orders otherwise.[13]

Further, if the jury is permitted to review an illustrative aid during jury deliberations, Rule 107 also requires the trial judge, upon a party's request, to instruct the jury not to consider the aid as evidence or proof of any fact.[14]

### **How Courts Have Addressed Rule 107**

At least 18 federal court decisions have addressed Rule 107 since it took effect last December.[15] These decisions foreshadow recurring issues that are likely to arise when parties seek to introduce illustrative aids at trial under Rule 107.

First, courts will be asked to decide whether material offered constitutes demonstrative evidence or a summary of voluminous evidence (which are admissible), or constitutes an illustrative aid (which is not admissible as substantive evidence)

For example, on Sept. 5, in *Gardens v. U.S.*, a regulatory taking case, the U.S. Court of Federal Claims denied a motion for reconsideration that argued, among other things, the court had incorrectly prohibited the plaintiff from using certain charts and tables as demonstratives.[16]

Per *Gardens*, the clear statement in Rule 107 that an "illustrative aid is not evidence" underscores the principle that permitting a party to use "demonstrative aids does not mean that the demonstrative itself is admitted as 'substantive evidence.'"[17]

Thus, there is nothing inconsistent with allowing charts and tables to be used for illustration purposes and deciding that such "charts and tables could not be relied upon as evidence." [18]

Similarly, in a trade secrets dispute in the U.S. District Court for the Southern District of New York, *Automated Management Systems Inc. v. Rappaport Hertz Cherson Rosenthal*, the court held that "videos comprised of various screenshots of the two software programs" at issue in the case could be introduced as substantive "evidence comparing the key features of the two software programs, subject to proper introduction and authentication" of the screenshots.[19]

Even absent that authentication, however, the court held that the videos could still be proffered as nonevidentiary illustrative aids.[20] This holding suggests that one key distinguishing factor between Rule 611(a) summary evidence and Rule 107 illustrative aids is the ability to authenticate and admit the sources of the visual representation as evidence.

Second, in closing arguments, attorneys may seek to show the jury summaries of their clients' theory of liability, without giving the summaries to opposing counsel in advance.

In *U.S. v. Agbaje*, a criminal defendant sought a judgment of acquittal on the ground that the prosecution had improperly shown the jury a demonstrative exhibit in its closing argument.[21]

The U.S. District Court District of North Dakota denied the motion on Aug. 6, holding that the prosecution's use of an illustrative aid complied with Rule 107 because it "was helpful to explain the [prosecution's] rebuttal argument and how the evidence fit with its theory." [22]

The court also found there was no obligation to show the illustrative aid to the defendant in advance of showing it to the jury, as the aid "simply summarized the evidence already in trial to support the United States' rebuttal." [23]

*Agbaje* suggests that further disputes can be expected to arise over what illustrative aids counsel may show in closing arguments and when they must be disclosed to the other side.

Finally, courts will be asked to consider the appropriateness of sending illustrative aids to the jury for use during deliberations.

In a recent patent appeal, *Roland Corp. v. inMusic Brands Inc.*, the defendant sought a new trial on the ground that the district court should not have permitted the jury to use the plaintiff's infringement claim chart during deliberations.[24]

On March 27, the U.S. Court of Appeals for the Federal Circuit held that any error in sending the chart back to the jury was harmless because it "did not substantively and materially differ from admitted testimonial and documentary evidence." [25]

Application of this standard to whether good cause exists to send illustrative aids to the jury for use in deliberations may mean that courts will be more willing to send aids to the jury if they rely only upon or organize already-admitted evidence.

## **Practical Suggestions**

Rule 107 reflects a recognition that nonevidentiary pedagogical devices may be needed to enable jurors to understand complex arguments, concepts and facts.[26] The first takeaway for practitioners, therefore, is to be proactive in identifying helpful ways to use illustrative aids to unpack or clarify key arguments, concepts and facts.

Instead of simply telling the jury how two computer programs are similar, showing the jury a video montage of screenshots showing the similarities between the programs — as done in the Automated Management case discussed above — may be both more impactful and more memorable.[27]

Second, practitioners also should be proactive in conferring with opposing parties about the use of illustrative aids, which may include seeking agreement to provide certain illustrative aids used by each side to the jury during deliberation.

By its text, Rule 107 encourages collaboration between opposing parties in a case when it comes to illustrative aids.[28] This reflects an important insight: Notwithstanding the adversarial nature of litigation, all parties may benefit from the use of such aids to clear away conceptual or factual underbrush.

While the prosecution in the Agbaje case did not suffer a post-trial acquittal from using an illustrative aid in rebuttal argument without showing it to the defense, it is better to avoid that risk by discussing aids in advance.

Third, Rule 107 not only expressly directs courts to consider "the danger of unfair prejudice" and confusion in deciding whether to allow illustrative aids to be used during trial,[29] but also warns about prejudice and confusion in the context of giving such aids to the jury during deliberation.[30] Practitioners, therefore, should analyze each potential illustrative aid in terms of how it can be criticized as confusing or unduly prejudicial.

This analysis should consider not only the accuracy of the information presented, but also whether the presentation may create a confusing or prejudicial "net impression." [31] This analysis also should take into account whether the goal is to use an illustrative aid solely during the trial or to seek leave to provide the aid to the jury during deliberation.

In sum, though less than a year has passed since Rule 107 took effect, courts have already begun to clarify its application in different contexts and the rule's boundaries. The early decisions show that to effectively utilize illustrative aids at trial, litigators should follow the practical and proactive approach that drafters of Rule 107 sought to encourage.

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[1] Fed. R. Evid. 107 advisory committee notes (2024).

[2] Id.

[3] See Fed. R. Evid. 107(a).

[4] See Fed. R. Evid. 107(b).

[5] Fed. R. Evid. 107 advisory committee notes (2024).

[6] Id.

[7] See Keefe v. Britt's Bow Wow Boutique Inc., 2025 WL 1483009 at \*13-14 (11th Cir. May 23, 2025).

[8] Fed. R. Evid. 107 advisory committee notes (2024).

[9] Clerkley v. City of Oklahoma City, 2023 U.S. Dist. LEXIS 141309 (W.D. Okla. Aug. 14, 2023).

[10] Mary B. v. Kovol, 2025 WL 2307867 at \*1-2 (D. Alaska Aug. 11, 2025).

[11] See Fed. R. Evid. 107(a).

[12] Fed. R. Evid. 107 advisory committee notes (2024).

[13] Fed. R. Evid. 107(b).

[14] Fed. R. Evid. 107 advisory committee notes (2024).

[15] These decisions illustrate the variety of ways that Rule 107 can arise in different stages of litigation. In one case, for example, the court denied a motion in limine to exclude "computer generated images and video animations created by" an expert witness because these illustrative aids can be used under Rule 107. See Heil v. Batie Cattle Co., 2025 WL 2244617, at \*3 (D. Neb. Aug. 6, 2025). In a less common scenario, the court permitted the jury to conduct site visits of correctional facilities as illustrative aids subject to Rule 107. See Davis v. Hughes, 2025 WL 2418443, at \*2 (S.D. Ill. Aug. 21, 2025).

[16] Gardens v. United States, 2025 U.S. Claims LEXIS 2485, at \*24 (Fed. Cl. Sept. 5, 2025).

[17] Id. at 25.

[18] Id.

[19] Automated Mgmt. Sys., Inc. v. Rappaport Hertz Cherson Rosenthal, P.C., 2024 WL 4987018, at \*7-9 (S.D.N.Y. Dec. 4, 2024).

[20] Id. at \*9.

[21] 2024 WL 3673104, at \*3 (D.N.D. Aug. 6, 2024).

[22] *Id.*

[23] *Id.*

[24] *Roland Corp. v. inMusic Brands, Inc.*, 2025 WL 926703, at \*9 (Fed. Cir. Mar. 27, 2025).

[25] *Id.* at \*10.

[26] Fed. R. Evid. 107 advisory committee notes (2024).

[27] *Automated Mgmt. Sys.*, 2024 WL 4987018, at \*7-9.

[28] Fed. R. Evid. 107(b)(1) (allowing illustrative aids to go to the jury if "all parties consent").

[29] Fed. R. Evid. 107(a).

[30] Fed. R. Evid. 107 advisory committee notes (2024).

[31] See, e.g., *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1200 (9th Cir. 2006); *FTC v. Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 42-43 (D.C. Cir. 1985).