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Does Familiarity Breed Contempt Among Judges Deciding Patent Cases?

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Proponents of specialized trial courts for patent cases argue that patent litigation is inherently complex, and involves technical factual background that is especially difficult and specialized. The Federal Circuit's lamented reversal rate may be related to judicial inexperience at the trial level (though there has been much ink spilled on other reasons why the reversal rate might be high, as well). An experienced trial court, it is thought, could dispose of cases more accurately, more efficiently, and without forum shopping.

Others oppose specialized trial courts. Generalist courts, they argue, may be better able to connect specialty law with other doctrines and with broader societal interests. And specialized courts may be susceptible to capture. This concern is frequently voiced about the "de facto" specialized docket in the Eastern District of Texas.

So far, this literature has been based on speculation. It has been unable to tell us what parties care about when they take a case to a trial court: does judicial experience with patent cases affect how the judge rules in the case? The answer may affect both statutory proposals for district court specialization and the focus of the courts and Congress on forum-shopping.

In this paper, we offer the first comprehensive look at how a district judge’s experience affects decisionmaking. We look both at district outcomes and at outcomes by judge. Using both logistic regression and fixed effect analyses, we then look at outcomes compared to each judge’s experience level, measured by the number of patent cases over the observed time period. We look at each district’s experience level, as well. We also use our dataset to update a number of useful descriptive statistics: how many cases are handled by each district and by each judge, letting us see which courts handle the most patent cases; whether the number of patent cases appears to be constant or changing over time either in general or by district; and the like.
We find that there is a statistically significant relationship between a judge’s experience and case outcome: more experienced judges are less likely to rule for the patentee. With regard to districts, the Eastern District of Texas’s role, in particular, has been much debated. Perhaps surprisingly, we found no significant relationship between presence in the Eastern District of Texas and a ruling for or against the patentee, though other large districts, including the Northern District of California and the Central District of California, were less likely to rule for the patentee.

Our results challenge what has been an implicit assumption in the literature and discussion that particular districts are biased in a particular direction, driving forum shopping. They also suggest that some sort of learning effect is going on among district judges across the country, and that patentees benefit from litigating before inexperienced judges. Depending on the reason for this effect, adoption of a specialized patent trial court might help accused infringers but not patentees.