

Do Rules of Procedure Matter? An Empirical Examination of Local Patent Rules and Case Settlement

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This project is at the intersection of empirical IP and empirical civil procedure and seeks to examine the effect of local patent rules on the rate and timing of case settlement, among other outcome variables. While standard regression techniques can be informative in examining the relationship between local rule adoption and the relevant outcome variables, they may suffer from bias resulting from excluded unobserved variables that are correlated with the outcome variable and one or more observed explanatory variables. To overcome this potential endogeneity, this project will use difference-in-difference estimation to examine the effect of local patent rules on the rate and timing of case settlement. The estimation is made feasible by heterogeneity in the timing of federal districts' adoption of local patent rules. In January 1, 2001, the Northern District of California became the first judicial district to adopt local patent rules and at various times since, over twenty-five other judicial districts have followed suit and adopted substantially similar rules of procedure. The project will exploit the heterogeneity in the timing of districts' adoption of local patent rules in order to construct difference-in-difference estimators capable of examining the effect of local patent rules on the rate and timing of case settlement and other outcome variables of interest.

In particular, the project will select a date band $[T1, T2]$ and will use as the treatment group all judicial districts that adopted local patent rules in the $[T1, T2]$ period and as the control group all judicial districts that had not adopted local patent rules by or with an effective date prior to some fixed date $t2 > T2$. The difference-in-difference estimators will be based on four samples: (i) the pre-treatment treated: all $N1$ utility patent cases filed in any treatment district in the date range $[t1, T1)$, for some fixed date $t1 < T1$; (ii) the post-treatment treated: all $N2$ utility patent cases filed in any treatment district in the date range $(T2, t2]$; (iii) the pre-treatment control: all $N3$ utility patent cases filed in any control district in the date range $[t1, T1)$; and (iv) the post-treatment control: all $N4$ utility patent cases in any control district in the date range $(T2, t2]$. Once the dockets for these $N1+N2+N3+N4$ cases have been reviewed and coded, difference-in-difference estimation can be performed to examine the effect of local patent rules on the various outcome variables.

The project is at the very early stage, and a number of interesting methodological points remain open. These points include: (i) identifying the set of outcome variables that may be of interest; (ii) constructing robustness checks that can be used to verify the accuracy of the results; (iii) determining whether and how heterogeneity in the substance of districts' local patent rules could affect the results; (iv) determining whether and how selection effects could affect the results, and how to control for any accompanying bias; and (v) identifying which covariates should be included to ensure that the identical slope assumption underlying the difference-in-difference methodology is satisfied.

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