

*If You Can't Beat 'Em, Join 'Em?*  
*How Sitting by Designation Affects Judicial Behavior*

**Shawn Miller**

Lecturer in Law and Teaching Fellow, Stanford Law School  
Stanford, CA

**Co-author:** Mark A. Lemley, Professor, Stanford Law School

Congress enacted the Patent Pilot Program under the theory that with greater experience participating district court judges will do a better job adjudicating patent disputes. In this paper, we investigate the impact of a novel measure of experience - whether a district court judge has sat by designation on a Federal Circuit panel in a claim construction appeal - on the likelihood a district judge's claim constructions are reversed. While this is not the type of experience Patent Pilot judges will obtain, it is statistically effective. Before sitting by designation, judges who later do so are largely indistinguishable from judges who never do. After sitting by designation, the reversal rate of district judges on subsequent appeals decreases by 50 percent. This decrease is not fully explained by other measures of judge experience, the timing of the appeal, the particular judge deciding a case or other characteristics of the patents, the parties and the litigation. However, we find the decreased error rate may be due to increased circuit judge trust in the decisions of district judges that sit by designation rather than learning by designated judges. Regardless of the mechanism, our results suggest an alternate way to increase district judge and Federal Circuit agreement beyond those the Patent Pilot Program facilitates.

**Email:** [smiller@law.stanford.edu](mailto:smiller@law.stanford.edu)

Miller