Understanding the Federal Circuit: A Model of Expert Decision-making

Laura Pedraza-Farina
Assistant Professor of Law, Northwestern University School of Law
Chicago, IL

The Federal Circuit - the appeals court in charge of virtually all patent cases - has been fraught with controversy since its creation. To its critics, the Federal Circuit engages in puzzling behaviors, out of step with its role as an Article III appellate court. The Federal Circuit shows little deference to District Courts on questions of fact and to the Patent and Trademark Office on technical issues. It surprisingly resorts to formalistic rules in an area of the law that requires flexibility to adapt to changing technological landscapes. These criticisms have become increasingly salient, leading to calls for an end to the Federal Circuit's exclusive jurisdiction over patent law. Its supporters, while acknowledging the Federal Circuit's distinctive behavior, defend its exclusive jurisdiction as ensuring efficient, accurate, and uniform decisions in a technically complex area. Several explanations have been put forth to account for these puzzling behaviors. Yet, none can fully explain the range of unique Federal Circuit conduct. Without a full explanation for Federal Circuit behavior, however, the debate over Federal Circuit jurisdiction will remain gridlocked. Drawing upon studies from the sociology of expertise, this Article is the first to provide a model of Federal Circuit decision-making that unifies these fragmented critiques by explaining Federal Circuit behavior as a product of predictable expert community dynamics. The Article unpacks the behavior of the Federal Circuit into five distinct features not previously identified: (1) epistemological monopoly; (2) epistemological autonomy; (3) codification; (4) typecasting; and (5) inability to self-coordinate. Expert communities' drive for epistemological control and autonomy means they are less likely to defer to solutions proposed by other expert communities, such as the PTO, than would be expected of generalist courts. It also implies that expert communities are more likely to defy non-expert superior generalists, such as the Supreme Court, than predicted by traditional accounts of judicial behavior. The model also explains the Federal Circuit's resort to rule formalism as a function of an expert community's drive to codify its knowledge base to control subordinate communities and build legitimacy with relevant audiences. Normatively, this model offers a path out of the gridlock by revealing a framework to evaluate and design proposals for Federal Circuit reform. Two features of decision - making by expert communities-typecasting and inability to self-coordinate - are likely to lead to lower-quality decisions. To minimize these distortive effects, this Article proposes the use of advisory panels to house technological and economic expertise, a strategy that is widely used to optimize medical decision-making.

Email: laura.pedraza-farina@law.northwestern.edu