Empirical Study of Identical Invention in Federal Circuit Cases

The incidence of contemporaneous and sequential invention is well-known in patent literature. Little if any work has been done, however, attempting to quantify the incidence of contemporaneous and sequential invention by industry, technology type, inventor type, or geographic region. This study seeks to begin to quantify such instances by examining every Federal Circuit interference and anticipation case. By looking at cases in which the Federal Circuit dealt with the same invention invented separately by two or more people we can examine the characteristics of these separate inventions, as well as the disclosure system. The study looks at separate invention by industry, technology, and inventor type, as well as at different time periods, to identify differences and similarities in inventions due to these variables. Prominent differences and similarities are discussed, and some implications of the data are explored.