

An Empirical Study of the Judge-Dependency of Reversal Rates in the Federal Circuit

Ted L. Field
South Texas College of Law

ABSTRACT

This study is an empirical investigation into whether reversal rates of the U.S. Court of Appeals for the Federal Circuit are judge-dependent. This study is a follow-up to an earlier study done by the author that investigated whether the overall reversal rates of the Federal Circuit are greater than the corresponding reversal rates of other circuits. Ted L. Field, “*Judicial Hyperactivity*” in *the Federal Circuit: An Empirical Study*, 46 U.S.F. L. REV. (forthcoming 2012), available at <http://ssrn.com/abstract=1990014>. The earlier study was undertaken to determine whether the Federal Circuit engages in what William C. Rooklidge and Matthew F. Weil call “judicial hyperactivity.” According to Rooklidge and Weil, an appellate court engages in “judicial hyperactivity” when it “lose[s] track of the important distinction between trial and appellate roles and engages in . . . a form of decision-making at odds with traditional notions of appellate review.” The earlier study supported the hypothesis that the Federal Circuit engages in “judicial hyperactivity,” particularly in patent cases. It revealed that the Federal Circuit’s overall reversal rate of lower tribunals was statistically significantly greater than the overall reversal rates of several representative regional circuits treated as an aggregate. Additionally, examining particular standards of review, the Federal Circuit’s reversal rate for all standards of review was statistically significantly greater than the corresponding reversal rates of the representative regional circuits treated as an aggregate. Moreover, the earlier study showed that the Federal Circuit’s reversal rates in patent cases were statistically significantly greater than the Federal Circuit’s reversal rates in non-patent cases. This follow-up study examines the reversal rates of the individual Federal Circuit judges, rather than those of the court as a whole. This study considers each judge’s overall reversal rates, as well as each judge’s reversal rates for particular standards of review. The study seeks to determine whether the Federal Circuit’s apparent “judicial hyperactivity” is the result of the decisions of just a few of the court’s judges, or whether instead the court’s judges as a whole tend to be more “judicially hyperactive” than judges in other circuits.