

Patent Thickets and the Market for Innovation: Evidence from Settlement of Patent Disputes

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Abstract

We study how fragmentation of patent rights ('patent thickets') and the formation of the Court of Appeal for the Federal Circuit (CAFC) affected the duration of patent disputes, and thus the speed of technology diffusion through licensing. We develop a model of patent litigation which predicts faster settlement agreements when patent rights are fragmented and when there is less uncertainty about court outcomes, as was associated with the 'pro-patent shift' of CAFC. The model also predicts that the impact of fragmentation on settlement duration should be smaller under CAFC. We confirm these predictions empirically using a dataset that covers nearly all patent suits in U.S. federal district courts during the period 1975-2000. Finally, we analyze how fragmentation affects total settlement delay, taking into account both reduction in duration per dispute and the increase in the number of required patent negotiations associated with patent thickets.