

***From PI to IP:
Yet Another Unexpected Effect of Tort Reform***

Ronen Avraham & John M. Golden
University of Texas School of Law
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Introduction

- **Tort Reform & Tort-Reform Studies**
- **Patent-Litigation & Tort-Litigation Parallels?**
 - Concerns about over-enforcement, abuse & discouragement of desirable activity or restraint
 - Increasing use of contingency fees
- **Causal Connection?**
 - Widespread tales of movement of lawyers from tort to IP in Texas

Basic Questions

- Is there a correlation between state tort reform and in-state IP filings?
- Do different forms of IP behave differently?
- What might explain any observed correlations?

Initial Datasets & Study Period

- **Database of State Law Tort Reforms**
 - Coverage of 50 states plus DC from 1980
- **Lex Machina**
 - Coverage of IP cases, patent cases in particular, in federal district courts from 2000
 - Somewhat spottier as closer to present
- **Initial Study Period = 2000 through 2008**

Regression Approach

- **Basic Model**

- $\text{Filings}_{\text{State,Year}} =$
 $\alpha + \gamma * \text{TortReform}_{\text{State,Year}} + \beta * \text{Year}$
 $+ \delta * \text{State} + \phi * \text{Demographics}_{\text{State,Year}}$
 $+ \varepsilon_{\text{State,Year}}$

- **Alternative enhancement with state-specific time trends**
- **Differences-in-Differences Analysis**

Initial Results

- **Patent & Copyright Filings**
 - Significant correlations between reforms and patent & copyright filings
 - Relatively substantial apparent effect
 - Increase in filings of about 10% for patent and 30% or more for copyright
- **Trademark & Trade-Secret Filings**
 - No significant correlations

Some Potential Explanations

- **Lawyers as “Market Drivers” Switching Efforts from PI to IP?**
 - Copyright = easier target for influx?
- **“Nature Abhors a Docket Vacuum”?**
 - IP flows to fill relatively depopulated dockets?
 - Judge-oriented dynamics?
- **Better Opportunities in Pat. & Copyrt.?**
 - Alternative: Tort-reform effects on TM & TS filings concentrate in state courts.

Future Plans

- **Data on State IP Filings**
- **New Dataset with Attorney Data?**
 - DocketX
- **Lead or Lag Effects?**
- **State Specificity?**
 - Is Texas Special?

Summary

- Substantial anecdotal evidence of attorney movement from tort to IP
- Surprisingly strong correlations between state tort reforms and increases in in-state patent/copyright filings
- Meaning? Stay tuned