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

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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**
  
  
  \[
  \text{Filings}_{\text{State},\text{Year}} = \alpha + \gamma \cdot \text{TortReform}_{\text{State},\text{Year}} + \beta \cdot \text{Year} \\
  + \delta \cdot \text{State} + \phi \cdot \text{Demographics}_{\text{State},\text{Year}} \\
  + \epsilon_{\text{State},\text{Year}}
  \]

• **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 ....