The Federal Circuit and the Limits of Expertise

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ABSTRACT

The creation of the Federal Circuit in 1982 marked a significant departure from the system of generalist courts that many believe is a defining feature of the American judiciary. Thirty-one years later, both academics and members of the judiciary are calling for an end to the Federal Circuit's exclusive jurisdiction. To its critics, lack of inter-circuit competition renders patent law too rigid and insular. In contrast, proponents of specialization extoll the virtues of uniformity, predictability, and efficiency of a specialized judiciary. This article offers a way out of this impasse by reframing the specialization debate as a dispute about the role, meaning, and limitations of expert decision-making.

The article argues that analogizing Federal Circuit behavior to that of a community of experts yields novel insights about the effects of judicial specialization. Drawing and expanding upon studies from the sociology of the professions and the sociology of expertise, it introduces a typology of six features that are closely associated with communities that self-identify as experts in a particular subject matter: (1) typecasting; (2) epistemological monopoly; (3) epistemological autonomy; (4) codification; (5) maintenance and policing of jurisdictional legitimacy; and (6) inability to self-coordinate. The article then argues that these six features help explain certain puzzling aspects of Federal Circuit jurisprudence, such as a preference for rules over standards, defiance of Supreme Court precedent, and lack of deference to findings of fact from District courts. Moreover at least two of these features—typecasting and inability to self-coordinate—are often normatively undesirable. The article then offers prescriptions for minimizing the costs of judicial expertise. It concludes by illustrating how this analytical framework can yield insights on judicial behavior in other bodies with subject-matter specialization.

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