Update on *Rush to Judgment? Trial Length & Outcomes in Patent Cases*

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Patent Jury Trial Roundtable
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Results from 1st Paper

- Short trials do not benefit patentees
  - No length effect on outcome at all
- Predictors of Success
  - Juries more pro-patentee than judges
  - Juries in some "suspect" districts modestly more pro-patentee than juries in the average district

Updated Study

- Data:
  - Old: 624 trials and 679 judgments (1/1/2000 – 6/30/2011)
  - New: 972 trials and 1,031 judgments (1/1/2000 – 12/31/2015)
- Additional variables in new study:
  - Patent technology (based on 3-digit PTO class)
  - Patentee type (from Stanford NPE Lit Dataset)

National Trial Outcomes

	N	% of Total	Mean Time	S.D.	p value
Total Bench	262	27.0%	5.9	4.7	0.000***
Total Jury	710	73.0%	8.3	4.4	
Bench – C Win	140	53.4%	5.8	4.0	0.268
Bench – CD Win	104	39.7%	5.3	3.8	
Bench – C;CD Win	18	6.9%	10.3	9.7	
Jury – C Win	441	62.1%	8.2	4.5	0.956
Jury – CD Win	228	32.1%	8.2	4.1	
Jury – C;CD Win	41	5.8%	9.9	4.3	

Eastern District of Texas Trial Outcomes

	N	% of Total	Mean Time	S.D.	p value
Total Bench	9	6.7%	3.6	1.5	0.001***
Total Jury	126	93.3%	5.9	2.2	
Bench – C Win	5	55.6%	3.4	1.1	0.745
Bench – CD Win	3	33.3%	3.0	1.7	
Bench – C;CD Win	1	11.1%	6.0	--	
Jury – C Win	83	65.9%	5.9	1.9	0.726
Jury – CD Win	40	31.7%	5.8	2.7	
Jury – C;CD Win	3	2.4%	7.3	2.5	

Northern District of California Trial Outcomes

	N	% of Total	Mean Time	S.D.	p value
Total Bench	8	12.9%	5.5	2.9	0.000***
Total Jury	54	87.1%	12.0	4.9	
Bench – C Win	4	50.0%	6.3	4.2	0.430
Bench – CD Win	3	37.5%	4.3	0.6	
Bench – C;CD Win	1	12.5%	6.0	--	
Jury – C Win	26	48.1%	**13.3**	6.2	**0.054***
Jury – CD Win	23	42.6%	**10.6**	2.9	
Jury – C;CD Win	5	9.3%	11.2	3.1	

Central District of California Trial Outcomes

	N	% of Total	Mean Time	S.D.	p value
Total Bench	10	22.2%	2.7	1.6	0.000***
Total Jury	35	77.8%	7.4	4.3	
Bench – C Win	5	50.0%	2.6	1.1	0.855
Bench – CD Win	5	50.0%	2.8	2.0	
Bench – C;CD Win	0	0.0%	--	--	
Jury – C Win	21	60.0%	6.6	3.0	0.502
Jury – CD Win	13	37.1%	7.5	3.8	
Jury – C;CD Win	1	2.9	24.0	--	

District of Delaware Trial Outcomes

	N	% of Total	Mean Time	S.D.	p value
Total Bench	77	43.3%	4.9	2.1	0.000
Total Jury	100	56.7%	7.9	3.0	
Bench – C Win	49	63.6%	5.1	2.2	0.137
Bench – CD Win	23	29.9%	4.3	1.7	
Bench – C;CD Win	5	6.5%	6.0	2.5	
Jury – C Win	55	55.0%	7.7	2.7	0.937
Jury – CD Win	27	27.0%	7.7	2.7	
Jury – C;CD Win	18	18.0%	8.7	4.0	

District of New Jersey Trial Outcomes

	N	% of Total	Mean Time	S.D.	p value
Total Bench	37	75.5%	8.2	3.9	0.111
Total Jury	12	24.5%	10.5	4.3	
Bench – C Win	20	54.1%	8.5	4.0	0.373
Bench – CD Win	14	37.8%	7.3	3.7	
Bench – C;CD Win	3	8.1%	10.0	4.4	
Jury – C Win	7	58.3%	9.1	4.1	0.215
Jury – CD Win	5	41.7%	12.4	4.2	
Jury – C;CD Win	0	0.0	--	--	

Nat'l Trial Outcomes (minus Top-5 Dists)

	N	% of Total	Mean Time	S.D.	p value
Total Bench	121	24.0%	6.3	5.9	0.000***
Total Jury	383	76.0%	8.7	4.7	
Bench – C Win	57	**50.4%**	6.0	4.8	0.584
Bench – CD Win	56	**49.6%**	5.6	4.5	
Jury – C Win	249	67.5%	8.7	4.7	0.930
Jury – CD Win	120	32.5%	8.6	4.6	

National Trial Outcomes By Patent Tech

	Chemistry		Computer & Comm		Drugs & Med	
	% (N)	Time	% (N)	Time	% (N)	Time
Total Bench	39% (31)	6.8	6% (18)	6.6	56%(151)	6.7
Total Jury	61% (48)	8.7	94%(266)	8.7	44%(117)	9.2
		p=0.05**		p=0.14		p=0.0***
Bench – C Win	64% (18)	6.4	15%(2)	4.5	63%(89)	6.9
Bench – CD Win	36% (10)	6.1	85%(11)	6.7	37%(54)	5.5
		p=0.87		p=0.32		p=0.01**
Jury – C Win	72% (34)	8.0	61%(151)	9.0	73%(83)	8.9
Jury – CD Win	28% (13)	10.4	39%(98)	7.9	27%(30)	9.9
		p=0.04**		p=0.05*		p=0.42

National Trial Outcomes By Patent Tech

	Electrical		Mechanical		Other	
	% (N)	Time	% (N)	Time	% (N)	Time
Total Bench	17% (16)	5.9	18% (17)	3.7	25% (37)	3.8
Total Jury	83% (78)	8.1	82% (75)	7.9	75%(109)	7.2
		p=0.18		p=0.00***		p=0.0***
Bench – C Win	62% (8)	3.8	62% (10)	4.1	57% (20)	3.1
Bench – CD Win	38% (5)	9.2	38% (6)	3.2	17%(15)	3.9
		p=0.29		p=0.31		p=0.43
Jury – C Win	71% (52)	7.8	62%(43)	7.7	66%(65)	6.9
Jury – CD Win	29% (21)	8.5	38%(26)	8.1	34%(34)	7.3
		p=0.47		p=0.72		p=0.60

National Trial Outcomes By Patentee Type

	Practicing Entity		PAEs Only		Individuals Only	
	% (N)	Time	% (N)	Time	% (N)	Time
Total Bench	34% (207)	6.1	8% (9)	3.3	13% (6)	2.3
Total Jury	66% (403)	8.6	92% (110)	7.8	87%(39)	6.1
		p=0.00***		p=0.00***		p=0.0***
Bench – C Win	61% (118)	6.1	29% (2)	1.5	83% (5)	2.6
Bench – CD Win	39% (77)	5.3	71% (5)	3.6	17%(1)	1.0
		p=0.12		p=0.05*		p=1.00
Jury – C Win	69% (264)	4.2	56% (59)	7.9	74%(29)	6.1
Jury – CD Win	31% (117)	4.6	44% (46)	7.2	26%(10)	6.0
		p=0.49		p=0.42		p=0.96

OLS Regressions of Trial Length

	Beta	S.E.	Beta	S.E.	Beta	S.E.
Patentee Win?	0.14	0.29	0.31	0.28	0.28	0.29
Jury Trial?	2.6***	0.3	3.1***	0.4	3.1***	0.4
TXED?			-3.2***	0.3	-3.1***	0.4
DED?			-1.2***	0.3	-1.3***	0.3
CAND?			2.6***	0.7	2.5***	0.7
CACD?			-2.0***	0.5	-2.0***	0.5
NJD?			1.7**	0.7	1.7**	0.7
Chemical?			-0.05	0.38	-0.08	0.38
Comp/Comm?			0.90***	0.30	1.0***	0.3
Drugs/Med?			0.73**	0.32	0.66**	0.32
Electrical?			-0.23	0.36	-0.28	0.36
Mechanical?			-1.3***	0.4	-1.2***	0.4
Pract. Entity?					0.42*	0.25
PAE Only?					-0.30	0.25
Individual?					-0.11	0.15
Constant	5.5***	0.3	5.2***	0.4	5.0***	0.4

Probit Regressions of Patentee Win Rate

	Beta	S.E.	Beta	S.E.	Beta	S.E.
Jury Trial?	0.08**	0.04	0.15***	0.04	0.15***	0.05
Trial Length	0.00	0.00	0.00	0.00	0.00	0.00
TXED?			0.07	0.05	0.08	0.05
DED?			0.06	0.05	0.05	0.05
CAND?			-0.12*	0.07	-0.13*	0.07
CACD?			-0.03	0.08	-0.04	0.08
NJD?			-0.04	0.08	-0.05	0.08
Chemical?			0.06	0.05	0.06	0.05
Comp/Comm?			-0.10***	0.03	-0.08**	0.03
Drugs/Med?			0.08**	0.04	0.06*	0.04
Electrical?			0.03	0.05	0.02	0.05
Mechanical?			-0.03	0.05	-0.03	0.05
Pract. Entity?					0.04	0.03
PAE Only?					-0.06**	0.03
Individual?					0.02	0.02

Conclusions

- Generally trial length doesn't impact outcome
  - But in CAND <u>longer</u> trials may benefit patentees
- Juries somewhat more pro-patentee nationally and in CACD and TXED
  - But judges more pro-patentee in CAND and DED!
  - And nearly identical win rates in NJD.

  PAEs and individuals do worse than practicing entities, but not by much

Further Research

- Separating ANDA effects
- Qualitative study – why do lawyers choose bench trials?

National Trial Outcomes (minus E.D. Tex.)

	N	% of Total	Mean Time	S.D.	p value
Total Bench	253	30.2%	6.0	4.7	0.000***
Total Jury	584	69.8%	8.9	4.5	
Bench – C Win	135	57.2%	5.9	4.0	0.261
Bench – CD Win	101	42.8%	5.3	3.8	
Jury – C Win	358	65.6%	8.8	4.7	0.971
Jury – CD Win	188	34.4%	8.8	4.2	