

# ***A Court Like Any Other?: Evidence from the Federal Circuit's Non-Patent Docket***

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The United States Court of Appeals for the Federal Circuit is known, primarily, as the court that hears every patent appeal in the United States. Known as “the Supreme Court of patents,” the Federal Circuit has gained a reputation among some commentators as being an “outlier” court: an appeals court with a unique subject matter docket that causes the court to make patent decisions that are out of step with the general practices of other courts.

Critics point to the court’s dismal reversal rate at the Supreme Court as evidence that the Federal Circuit is mishandling patent law. However, there are flaws with this analysis. Many (although not all) of the Supreme Court’s cases that arise from the Federal Circuit are patent cases. It may well be that something about the Federal Circuit (the court’s specialized judges, the court’s limited docket, etc.) leads the court to decide cases in ways that get reversed on review. However, it may be that patent cases are unusually difficult cases, or that the Supreme Court provides strict oversight of patent law, or the Supreme Court grants certiorari only for those cases that are likely to be reversed, or any number of reasons that have nothing to do with the judges of the Federal Circuit. But because the Federal Circuit hears every patent appeal (and, consequently, other circuits don’t hear any patent appeals), it is impossible to compare the Federal Circuit’s performance in patents cases with that of other courts.

This paper will seek to shed some light on whether the Federal Circuit is frequently reversed because the court has done a poor job with its docket of primarily patent cases, or whether the Federal Circuit is reversed because the court has a docket of primarily patent cases? To do this, this article leverages the fact that the Federal Circuit hears a number of non-patent cases. Many of these cases are also heard by other circuit courts and state appellate courts. By comparing these non-patent cases (takings, copyright, trademark, and tax cases) to similar cases from other courts one can get a sense of the Federal Circuit’s place among the judiciary.