

Increasing Technical Expertise in U.S. Patent Litigation

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In the United States, the judicial system relies upon legally specialized judges to promote uniformity and certainty. Judges who serve on the U.S. Court of Appeals for the Federal Circuit (“Federal Circuit”), as well as some district court judges, develop legal expertise from hearing a high volume of patent cases. However, though a few judges possess scientific backgrounds, technical expertise is generally lacking. This forces judges to heavily rely on party-hired experts, and may contribute to the high claim construction reversal rate. By contrast, several European patent courts utilize technically-qualified judges (TQJs). These judges often lack law degrees, but work side-by-side with legally-trained judges to decide patent cases. This Article examines the role of technical expertise in the U.S. system, and discusses limitations on district courts using independent experts. It then looks at the use of TQJs in the German and Swiss federal patent court systems, as well as in the proposed Unified Patent Court, and discusses advantages and disadvantages to their use. The Article then considers how greater technical expertise could be integrated into the U.S. system, such as through the use of technically-trained magistrate judges.