

Settlement During Patent Litigation Trials
Katrin Cremers
Center for European Economic Research (ZEW)
Cremers@zew.de

Settlement in patent litigation suits is a frequently observed phenomenon. Even though parties have the opportunity of achieving an agreement at any point of time during patent disputes often they reach it only just during trial. Game theoretic models suggest that additional information and/or differently evaluated information would trigger settlement after the first bargaining round. This paper investigates the timing of settlement decisions in patent infringement suits for Germany. Based on a data set of 824 patents involved in patent infringement suits in Germany during 1993 and 1995 I find significant impact of the legal differences between the District Courts on the settlement rates during trial. Using probit models with and without sample selection correction the results also reveal that invalidity suits as mean of defense have a positive impact on the probability of settlement or non-settlement only in later stages of the trial. Prior opposition against the litigated patent, however, has always a negative impact on settlement probability. Both results support the hypothesis that new or newly evaluated information influence the settlement decision of litigants. Economic valuable characteristics of the patents, the parties or the market which are known at the beginning of the dispute seem to play no decisive role regarding the achievement of an agreement once the legal dispute has started.

The most interesting result I found is that the outcome of the first instance court decision (plaintiff prevailed or not) has no significant effect on the settlement probability at the second stage of the trial. This is in contrast to prior results for the US. I could interpret these results in two ways. First, the parties do not adjust their expectations in result of a won or lost first instance trial because a completely new case has been started in which the judges are not influenced by the adjudication of the first instance court. This would imply a completely independent and impartial court at the second stage which is known to the parties, even to the foreigners. Second, the parties do not adjust their settlement behavior in one or the other direction after the adjudication of the first instance District Court because the costs of the case do not matter so much since they are very low.

Regarding the potential introduction of a European patent with a unique enforcement system at a centralized court it is of great importance to have deeper insights in the behavior of the parties under one experienced enforcement system such as the German one. Additionally, I can observe significant differences in the settlement rates between the Mannheim and the Duesseldorf District courts which signals that the implementation of the law and the legal procedural rules which are different among the two courts matter for the settlement decisions.