

Documentation on Bessen and Meurer Fee shifting data (gathered by research assistant Debra Koker)

In *Patent Failure* (2008), Bessen and Meurer report on the legal costs of litigation as reported in those cases where one party was ordered to pay the other party's attorney fees (see Table 6.1). The data we collected provide information on those published decisions where fee-shifting was requested. Please cite Bessen and Meurer (below) if you use these data.

The data set contains information about 352 federal district court cases with reported opinions containing a discussion of the issue of fee-shifting. Our research assistant, Debra Koker, used Westlaw to identify all district court fee-shifting cases from 1995 through the fall of 2004 (one case with an opinion late in 1994 was also included). Some of the cases were identified by tracing back from information in appellate opinions. She derived information in the database mostly from these district courts opinions. Some of the information on the amount of fee awards and the method of calculation comes from PACER records.

Each record corresponds to a federal district court case. Column A lists the parties. Column B lists the date of the opinion with main discussion of fee-shifting. Column C lists the location of the district court. Column D indicates whether the suit was filed by the patent owner, or instead was a declaratory judgment suit. Column E indicates the stage of the litigation when the opinion was issued: summary judgment, JMOL/JNOV, jury verdict, bench verdict, or appeal. Column F indicates whether the plaintiff or defendant seeks a fee award. Column G indicates the motion was denied or granted (cases marked 1.00). Column H lists the fee award for cases in which we could find it. Column I explains how a fee award was calculated. Column J lists the amount of expenses awarded. Column K lists the grounds for shifting fees (when applicable and available). Column L contains comments.

Bessen, James E. and Michael J. Meurer, (2008). *Patent Failure: How Judges, Bureaucrats, and Lawyers Put Innovators at Risk*, Princeton: Princeton University Press.