

An Experimental Assessment of the Presumption of Validity

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Is the presumption of validity a procedural safeguard or a mechanism for injecting bias? In a patent trial, the presumption of validity is typically mentioned in the jury instructions as a preface to the "clear and convincing" standard for proving invalidity. Accused infringers believe that jurors are overly deferential to the U.S. Patent & Trademark Office (PTO), such that an express instruction on the presumption of validity is perceived to further bias the jury in favor of the patentee. In order to "level the playing field" in front of the jury, some accused infringers have sought to introduce evidence on the operational realities of the PTO (e.g., patent quality issues, the application backlog, etc.). However, trial judges have deemed such information to be irrelevant and potentially prejudicial enough to undermine the presumption of validity. This Article reports the results of a recent survey experiment that endeavored to test the conventional wisdom concerning: (1) the impact of informing the jury about the presumption of validity, and (2) whether the presumption may be undermined by information about the PTO's shortcomings. The results suggest that the presumption plays a more nuanced role in jury decisionmaking than previously assumed.

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