

Invalid but Infringed? An Analysis of Germany's Bifurcated Patent Litigation System

Christian Helmers

Assistant Professor of Economics, Santa Clara University

Santa Clara, CA

We analyze the impact of the strong presumption of patent validity, which is built into the bifurcated German patent litigation system, on outcomes of patent litigation cases in Germany. We show that the bifurcated system, where infringement and validity of a patent are decided independently and rarely at the same time by different courts, creates situations in which a patent is found to be infringed but is subsequently invalidated. Injunctions granted on these 'invalid but infringed' patents are enforceable and may cause irreparable damage to the alleged infringer. We also show that in a bifurcated system, the validity of fewer, allegedly infringed patents is challenged, which reinforces the strong presumption of validity of potentially invalid patents. We find that firms that were found to infringe an invalid patent react by filing more oppositions immediately after the infringed patent is invalidated.

Email: christian.r.helmerts@gmail.com

Helmers