

LAWYERS FACE CHALLENGE IN SIMPLIFYING THE COMPLEX



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Having to understand, let alone master, complex technological information, such as that often found in patent cases these days, can be a challenge for the attorneys involved.

What becomes even more of a challenge to those advocates is having a jury or a judge – the last decision maker in their case – also understand that same information in a way that wins them over.

David Pritikin, a partner with Chicago's Sidley & Austin, said in a recent interview there's a "fine line" between lecturing and talking down to a jury on complex technological information and educating them.

"What I try to do is recreate the classroom," Pritikin said. "I want an expert who comes across like a wise high school science teacher, someone who can take things and easily explain them and make them credible. They can do that with teaching techniques that come as second nature."

Lindley Brenza, a partner in the Chicago office of Bartlit, Beck, Herman, Palenchar & Scott, said that in presenting technological information to a jury, lawyers should get away from the traditional blow-ups and diagrams.

Technological issues cannot be presented separately and must be woven into the narrative of the case and it can be helpful to emphasize the personalities behind a patent and the hours they spent working on it rather than concentrating on a large corporation, Brenza said.

"Juries want to have some sense of the overall story," he added. "They want to know who did what to whom and why. It's a very human way to decide things."

If a patent case involves a physical object, it's best to bring that item in to the courtroom to let jurors see it and touch it, attorneys say.

But in those instances where a patent may be on something non-physical, such as algorithms for a computer graphics patent, then, the jury needs to be shown the results of those algorithms on a computer screen.

"You need to show the jury what the problem is if you don't use this method and then how the method solves the problem, and show the effect of the process," Brenza said. "It's harder, and you need to get into the details of the algorithm."

And when picking a jury, it's important for an attorney to realize how jurors take in and process information.

That's most true for younger jurors, who are more visual and have shorter attention spans for text-laden speech and documents and who need to get their information quickly, said Dan D. Kohane, vice chairman of the technology committee of the Chicago-based Defense Research Institute.

"If you have a Generation X jury and don't present Generation X evidence, you might as well not even show up in the courtroom," said Kohane, of the Buffalo, N.Y., law firm of Hurwitz & Fine.

Every litigator, however, needs to keep in mind that judges are often as confused by complicated technology as jurors are, regardless of the nature of the underlying lawsuit.

In patent cases, when there is a dispute over a claim, or a legal description, of the object that was patented, an evidentiary hearing is held before a judge to settle the matter, Pritikin said. And, those hearings can often make or break a case, he added.

"That is the time when you educate the judge on what the technology is," Pritikin added. "From the standpoint of technology, you have someone who is not immersed in it."

In the end, though, each case is handled differently, whether it is with live expert testimony, demonstrative exhibits or computer animation to show a chemical process.

Attorneys agree that whatever is done to breakdown complex information into a form a judge or jury comprehends is always a plus.

"No jury will understand a complex mathematical formula," said DRI's Kohane, "so if you can translate it into something they know and understand, it helps."

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