



Inside Counsel



The secret to winning over a jury in IP trials

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What's the difference between winning and losing a highstakes intellectual property trial? Simple: the jury. Making a jury understand the key issues at hand in any kind of case can be tough, but when it comes to IP trials litigators face a particularly fierce challenge.



How can trial attorneys convey the crucial details in, say, a medical device patent case, to a diverse group of people who have likely never before considered what a patent is or does, much less the mechanics of how the invention in question works? Add in the sophistication of jurors' daily multimedia diet, and it becomes critical to come up with accessible ways to make them understand complex and highly technical IP ideas. A few simple charts and illustrations won't come close to cutting it.

Law firms who intend on winning hire expert visual communications strategists like Nancy Geenen of trial consultancy Suann Ingle Associates. Geenen is a former Big Law trial attorney and has seen more than 500 cases through to verdict, including dozens of IP cases in recent years. She recently sat down with Inside Counsel to share with us how to win over a jury in IP trials.

Making a jury understand the core issues in any kind of case is tough in IP trials. According to Geenen, attorneys increase a jury's comprehension of core issues in an IP trial by helping the jury understand the "why" of the technology, rather than just the "what."

"Translating the technical innovation to the human mission helps juries care about the inventor, the company, and the commercialization process," she said.

Trial attorneys must convey the crucial details to a diverse group of people who have likely never considered what a patent is. "Juries love to understand how things work and how things are built. Tutorials told from the inventor point of view are the starting point," she





explained. “Jurors love the ultimate success story of innovation based on a mission to improve the world.”

So, how should lawyers come up with ways to make the jury understand complex IP ideas? Lawyers who teach rather than tell are successful in creating persuasive presentations. So, according to Geenen, using an integrated approach with timelines, charts, and models or animation that are consistent with the facts and the legal argument help juries learn the technology and the importance of the patent process and protections.

One of Geenen’s favorite jury stories involves a San Francisco jury in a design patent case filed by a Japanese company against a Korean company. Few of the witnesses spoke English as a first language and the design patent involved the electrodes on an LED unit that backlights cell phones. The damages at issue were less than \$200,000. Greenen and her team used a microscope purchased for \$159 from Toys R Us to demonstrate the design of the electrode from the adverse parties’ evidence bag.

“The jury did not care about the companies or the dispute; the jury did care about the outcome because we created a decision-making process in which the jury could rely on its own observations to arrive at a verdict,” she explained.

Because Greenen and her colleagues at Suann Ingle Associates are in trial three to five times a year just in IP cases, they provide relief to the trial teams. Attorneys hire visual communications experts because they are experts at integrating principles of design, software tools, and presentation techniques in the adversarial setting.

“We produce a ‘trial experience’ for the jurors that enables the attorneys to teach, rather than sell or tell,” she said. “We work with the witnesses to achieve messaging consistent with the overall trial themes and strategies. We produce the presentations in conjunction with the team because we also integrate with the trial team itself. We don’t change the content; we do improve the process of teaching the message.”



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