

Mistake of Law Defenses in Patent law

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In the 2015 *Commil* decision, the Supreme Court clarified that a reasonable belief of invalidity cannot negate the requisite knowledge for indirect patent infringement, invoking the principle from criminal law that generally mistake of law is not a defense. Yet at the same time, the Court also clarified that a reasonable belief of non-infringement, based on a reasonable but mistaken reading of the claims, can be a viable defense to indirect infringement, even though claim construction is ultimately a question of law, (albeit one that – like validity – may depend to a degree on underlying facts). Lower courts (including the Federal Circuit) have since allowed reasonable but mistaken beliefs of non-infringement based on mistaken claim constructions to provide a defense to knowledge for indirect infringement, but not mistaken beliefs about invalidity. It appears unclear whether reasonable but mistaken beliefs in other defenses can provide a defense to indirect infringement. For example, what if the defendant has a reasonable but mistaken belief that the asserted claims are exhausted, or that they are licensed to the defendant, or that the patentee is estopped from asserting them against the defendant? Can such mistaken beliefs negate the knowledge required for indirect infringement (like mistaken beliefs in non-infringement) or not (like mistaken beliefs in invalidity)? Moreover, it appears that even a reasonable but mistaken belief in invalidity may provide some measure of defense to willfulness for enhanced damages. In short, this project will explore the currently murky role of reasonable mistakes of law as defenses to reduce or eliminate liability for patent infringement.