

10-290 MICROSOFT CORP. V. I4I LIMITED PARTNERSHIP

DECISION BELOW: 598 F.3d 831

LOWER COURT CASE NUMBER: 2009-1504

QUESTION PRESENTED:

The Patent Act provides that "[a] patent shall be presumed valid" and that "[t]he burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity." 35 U.S.C. § 282. The Federal Circuit held below that Microsoft was required to prove its defense of invalidity under 35 U.S.C. § 102(b) by "clear and convincing evidence," even though the prior art on which the invalidity defense rests was not considered by the Patent and Trademark Office prior to the issuance of the asserted patent. The question presented is: Whether the court of appeals erred in holding that Microsoft's invalidity defense must be proved by clear and convincing evidence.

CHIEF JUSTICE ROBERTS TOOK NO PART.

CERT. GRANTED 11/29/2010