

**PERMANENT INJUNCTIONS: A DISCRETIONARY REMEDY
FOR PATENT INFRINGEMENT IN THE AFTERMATH OF
THE EBAY DECISION**

GARRETT BARTEN*

I.	INTRODUCTION	2
II.	THE EBAY DECISION	2
	A. <i>The Background and Procedural History of the Litigation</i>	2
	B. <i>A Unanimous Supreme Court Reverses the Federal Circuit</i> ..	3
III.	THE COURT'S DECISION IN EBAY SHIFTS PATENT LAW TOWARDS LIABILITY RULE	5
	A. <i>The Traditional Views of Property and How They Apply to Intellectual Property</i>	5
IV.	EMERGING COMBINATORY TECHNOLOGIES FORCE A SHIFT FROM PROPERTY RULE TO LIABILITY RULE	7
	A. <i>There are Too Many Patents for Gene Sequences with No Apparent Utility</i>	8
	B. <i>Companies Must Now Stack Multiple Licenses To Be Able to Produce a Single Commercial Product</i>	9
	C. <i>The Proliferation of "Patent Trolls" May Have Caused the Court to Revisit the Property Rule in the Patent Rights Context</i>	10
V.	THE EQUITABLE DISCRETION TEST GIVES COURTS THE POWER TO LIMIT THE IMPACT THAT PATENT TROLLS HAVE ON THE PATENT SYSTEM	13
VI.	APPLICATION OF THE EBAY DISCRETIONARY TEST IN THE DISTRICT COURTS REVEALS DIFFERENT DECISIONS FOR DIFFERENT INDUSTRIES	15
	A. <i>Mechanical Tools</i> (KEG Technologies, Inc. v. Laimer) ..	15
	B. <i>Software</i> (z4 Technologies, Inc. v. Microsoft)	16
	C. <i>Biomedical Devices</i> (Voda v. Cordis Corp.)	17
	D. <i>Digital Media</i> (TiVo, Inc. v. Echostar Communication) .	18
VII.	THE PUBLIC INTEREST FACTOR ALLOWS TRIAL COURTS TO ISSUE INJUNCTIONS TO PROMOTE THE PHARMACEUTICAL INDUSTRY	19
VIII.	CONCLUSION	22

* Licensed to practice before the United States Patent and Trademark Office. J.D. Candidate 2008, University of Miami School of Law. I want to give special thanks to Professor Ben Depoorter for his invaluable contribution to this article, and to the law firm of Christopher & Weisberg for teaching me the realities and complexities of patent law.