

IP REMEDIES AFTER *EBAY*: ASSESSING THE IMPACT ON TRADEMARK LAW

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The Supreme Court's decision in *eBay Inc. v. MercExchange, L.L.C.*¹ changed the law regarding remedies in patent cases – specifically the “general rule... that a permanent injunction will issue once infringement and validity have been adjudged.”² Prior to *eBay*, the Federal Circuit held that injunctive relief was an inappropriate remedy for patent infringement only in a narrow category of cases in which enjoining an infringer would frustrate an important public interest.³ The Supreme Court rejected that assumption, holding instead that plaintiffs seeking this form of remedy for patent infringement were required to satisfy the traditional, four-factor test for injunctive relief.⁴ Plaintiffs in such cases must now prove that (1) they have suffered an irreparable injury; (2) legal remedies, such as monetary damages, are inadequate to compensate for the injury; (3) the balance of hardships weighs in their

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1. 126 S.Ct. 1837 (2006).

2. *MercExchange, L.L.C. v. eBay, Inc.*, 401 F.3d 1323, 1338 (Fed. Cir. 2005), *overruled by* 126 S.Ct. 1837 (2006).

3. *See, e.g., Rite-Hite Corp. v. Kelley, Inc.*, 56 F.3d 1538, 1547 (Fed. Cir. 1995); *Roche Products, Inc. v. Bolar Pharm. Co.*, 733 F.2d 858, 865-66 (Fed. Cir. 1984) (citing cases).

4. *eBay*, 126 S.Ct. at 1839. For a thorough summary and analysis of the *eBay* opinion, see Sue Ann Mota, *eBay v. MercExchange: Traditional Four-Factor Test for Injunctive Relief Applies to Patent Cases, According to the Supreme Court*, 40 AKRON L. REV. 529 (2007); *see also* Todd Klein, Comment, *eBay v. MercExchange and KSR Int'l Co. v. Teleflex, Inc.: The Supreme Court Wages War Against Patent Trolls*, 112 PENN ST. L. REV. 295, 302-09 (2007); Miranda Jones, Casenote, *Permanent Injunction, A Remedy by Any Other Name is Patently Not the Same: How eBay v. MercExchange Affects the Patent Rights of Non-Practicing Entities*, 14 GEO. MASON L. REV. 1035, 1054-59 (2007).