

EBAY RX

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From a remedial perspective, the decision of the U.S. Supreme Court in *eBay Inc. v. MercExchange, L.L.C.* reopened the age-old question of what it means to award equitable relief.¹ In *eBay*, the Court rejected a permanent injunction issued by the U.S. Court of Appeals for the Federal Circuit to protect a business-method patent that defendant eBay had infringed on its successful auction website.² This essay diagnoses the remedial problem in *eBay* as the improper use of presumptions for equitable relief that effectively prioritizes selected legal rights. It offers a prescriptive cure for the problem in the traditional balancing of the equities standard that emphasizes the respective equities of the private parties, including their economic motivations and inequitable conduct. This signifies a return to the historical notion of equity as a legal accommodation of private and public interests in pursuit of justice.³

REMEDIAL DIAGNOSIS

The crux of the remedial problem in *eBay* was the lower courts' use of presumptions to determine injunctive remedies. As the Court previously held, an injunction "is not a remedy which issues as of course," but "only where the intervention of a court of equity is essential in order effectually to protect property rights against injuries otherwise irremediable."⁴ Rather than using this traditional, case-by-case approach of determining the appropriateness of injunctive relief, the patent courts had adopted categorical rules for granting injunctions. The district court applied a categorical rule against injunctive relief, finding that damages

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1. *eBay Inc. v. MercExchange, L.L.C.*, 126 S.Ct. 1837 (2006).
2. *Id.*
3. *Hecht Co. v. Bowles*, 321 U.S. 321, 329-30 (1944).
4. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-12 (1982) (cited as authority in *eBay*) (quoting *Cavanaugh v. Looney* 248 U.S. 453, 456 (1919)).