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A Decade of *eBay*: An Analysis of the Irreparable Harm Factor

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### Pre-eBay: Injunctions Were Generally Granted



Reporter

On 1-24 122: 2008 U.S. App. LEXIS 4300; 74 U.S.P.O. 20 (BINA) 1225

MERCEXCHANGE. L.L.C. Planniff-Cross dealer, retail bay, consignment Appellant v. 6BAY, INC. and HALF-COM. INC. transferred. Purper, triused. Defendation—Appellants.

Subsequent History: Robering dented by Robering, on banc, dented by Merceschange, of L.C. willy: he 2005 US Ago LEXIS 10230 US G. Ago LEXIS 10230 US Supreme Count certocan granted by <u>ellery lest.</u>

Ct. 733. Jo. L. Ed. 2d 567. Nots U.S. LEXIS 8572 (U.S. 2005) Vacando by. Remanded by gliav lin. v. Mori Fichance L. L. C. M7 U.S. 888. 128. S. Cx. 1837 1641. Ed. 2d 641. 2006 U.S. LEXIS 8872 U.S.

States District Court for the Eastern District of Virginia. Judge Jerome B. Friedman. MoreExtrample L.L.C. v. office. Inc., 278 F. Supe. 24 of 50 S.U.S. Dist. EXIS. 1842, 0.D. Va., 2003.

Disposition: Afficined in part reversed in part vacated in part and remanded

Core Terms

patent, ellay, district court, seller s, infringement, electronic, invalidity, processor, com, network induce, asserted claim, ownership, specification, permanent injunction, digital, transfer ownership,

Because the "right to exclude recognized in a patent is but the essence of the concept of property," the general rule is that a permanent injunction will issue once infringement and validity have been adjudged.

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MercExchange LLC v. eBay, Inc., 401 F.3d 1323, 1339 (Fed. Cir. 2005)

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#### eBay: "Well-Established" Four-Factor Test



According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable [\*\*\*646] injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

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eBay v. MercExchange, 547 U.S. 388, 391 (2006)

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#### eBay: No "Broad Classifications" Permitted



Although the District Court recited the traditional four-factor test, 275 F. Supp. 2d, at 711, it appeared to adopt certain expansive principles suggesting that injunctive relief could not issue in a broad swath of cases. Most notably, it concluded that a "plaintiff's willingness to license its patents" and "its lack of commercial activity in practicing the patents" would be sufficient to establish that the patent holder would not suffer irreparable harm if an injunction did not issue. *Id.*, at 712. But traditional equitable principles do not permit such broad classifications.

eBay v. MercExchange, 547 U.S. 388, 393 (2006)

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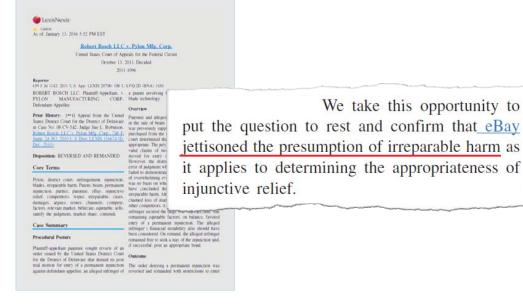
# Federal Circuit: eBay (2006) — Apple I (2012)

Case	Decision	Holding
2008	2008	2008
Innogenetics, v. Abbot Labs.	Vacated grant of injunction	Cannot claim irreparable harm and damages for future sales
Voda v. Cordis Corp.	Affirmed denial of injunction	Cannot claim harm to licensee
Broadcom v. Qualcomm	Affirmed grant of injunction	Can receive an injunction even without practicing invention
Acumed v. Stryker	Affirmed grant of injunction	Can receive an injunction even with existing licenses
2010	2010	2010
• i4i v. Microsoft	Affirmed grant of injunction	Lost market share supports finding of irreparable harm
2011	2011	2011
Robert Bosch v. Pylon Mfg.	Reversed denial of injunction	Circumstantial evidence that infringement caused at least some portion of lost market share is sufficient

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## Bosch: eBay Ended Presumption of Irreparable Harm



Robert Bosch LLC v. Pylon Mfg. Corp., 659 F.3d 1142, 1149 (Fed. Cir. 2011)

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