

The Three Year Anniversary of *eBay v. MercExchange*: A Statistical Analysis of Permanent Injunctions

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INTRODUCTION

In May 2006, the Supreme Court dramatically changed the landscape of permanent injunctions in patent cases in *eBay Inc. v. MercExchange L.L.C.*¹ For decades prior to the *eBay* decision, the Federal Circuit had instructed that after a determination of patent infringement there was a general rule a patentee was entitled to a permanent injunction. The Supreme Court rejected such a rule. After the Supreme Court's *eBay* decision, patent holders can no longer rely on a presumptive entitlement to permanent injunctive relief after proving infringement. Instead, the patentee must now meet the traditional four-factor test to obtain a permanent injunction.

Three years have passed since the Supreme Court's decision, and it is an appropriate time to review district court decisions to understand how the district

courts have been handling permanent injunctions. It is also valuable to review relevant Federal Circuit decisions to understand how the court reviews those decisions—especially when the district court decides not to grant a permanent injunction. Unsurprisingly, since the *eBay* decision, district courts have been willing to deny permanent injunctions after a finding of patent infringement—something that was virtually unheard of prior to *eBay*. And the Federal Circuit has generally affirmed the district court decisions, whether they grant a permanent injunction or not. While one important consideration is whether the parties are competitors, that fact alone is not dispositive. Instead, each case must be reviewed using the four-factor test.

BACKGROUND

In the *eBay* case, eBay, the online auction website, was accused of infringing two patents dealing with eBay's "Buy it Now" feature. The owner of the patents, MercExchange, was a non-practicing entity that had failed to secure a license from eBay. MercExchange won on the issue of patent validity and infringement before the district court. But, in a shocking decision, the court denied permanent injunctive relief. The court applied the traditional four-factor test that courts apply to determine whether an injunction is appropriate, but held the case did not merit injunctive relief. On appeal, the Federal Circuit reversed, holding that the "general rule" entitled a patent holder to a permanent injunction absent exceptional circumstances.

In a unanimous decision, the Supreme Court vacated the Federal Circuit's injunction and remanded the case. The Court explained that the traditional four-factor test historically employed by courts of equity continued to apply to determinations of whether patent injunctions should issue, namely that a plaintiff must demonstrate: (1) that it has suffered an irreparable 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 parties, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. While both lower courts ostensibly applied this test, the Court held that they applied it incorrectly. The Court explained that there is no "general rule" requiring injunctive relief in patent infringement cases. In his concurring opinion, Justice Kennedy considered on the issue of "patent trolls," suggesting that monetary damages, rather than injunctive relief, may be sufficient compensation for non-practicing entities.

METHODOLOGY

In an attempt to understand how the district courts have applied *eBay* in the three years since the decision, the authors reviewed the patent cases available on LexisNexis® that cited the *eBay* decision and categorized the decisions that contained a final decision regarding permanent injunctive relief into tables below. (Dates searched: 5/1/06 – 5/1/09.) In addition, the authors searched for unpublished cases in the ten districts with the most patent litigation in 2008 (Eastern District of Texas (with 307 suits in 2008 pursuant to a CourtLink search), Northern District of California (232), Central District of California (201), District of Delaware (168), District of New Jersey (161), Northern District of Illinois (152), Southern District of New York (111), Southern District of California (72), Eastern District of Michigan (68), and Eastern District of Virginia (65)) and their home District of Minnesota (with 47 cases in 2008). These eleven districts underwent a CourtLink word search for "permanent injunction" within the recorded court orders. If there was a final decision in an identified case it was recorded in the tables below. (CourtLink searched: 5/1/06 – 5/1/09.) The authors also reviewed relevant published appellate decisions for any of these cases, were such decisions available. (Dates searched: through 8/1/09.)

DISCUSSION

As set-forth in *eBay*, an injunction does not necessarily follow a determination that a patent has been infringed; instead, whether an injunction should issue is to be determined according to the well-established four-part test. Prior to the Supreme Court's ruling in *eBay*, it was a long-standing pre-

sumption that a patent holder was entitled to permanent injunctive relief after a finding of infringement. Permanent injunctive relief often forces the infringing party to close down its disputed business or agree to a licensing fee from the patent holder. Thus, a patent holder who establishes a right to permanent injunctive relief is often able to extract a high license figure from the infringing party. This enhanced bargaining power, especially for patentees who offer no goods or services but merely license or sue, has resulted in increased attention to the law of permanent injunctions. The Court's decision in *eBay* provides district courts with the power to require patentees to enter into compulsory licenses, arguably decreasing the value of the patents, at least for certain patentees (such as so-called patent trolls) who try to use permanent injunctions to hold infringers hostage.

The Supreme Court's decision opened the door for various applications of the four-factor test. The district courts have focused on a variety of different factors in their determinations, including: the type of competition occurring between the parties; if the patent holder is producing the invention; the amount of money the patent holder has spent on development of the technology; the importance of the patented component to the overall product; the patent holder's willingness to license; the nature of the customers; harm to goodwill or brand name; and public interest.² While the type of competition occurring between the parties is an important factor, it is by no means dispositive.

We have reviewed 67 patent cases resulting in a final decision regarding permanent injunctive relief since the *eBay* decision. Of the cases reviewed, the district courts granted permanent injunctions approximately 72% of the time (48 permanent injunctions granted for 67 cases reviewed). In a large majority of the cases where the court granted a permanent injunction, the parties were direct competitors (41/48 of the cases).

But the parties do not need to be competitors for a permanent injunction to issue. The Federal Circuit has recognized, quoting *eBay*, that "patent owners that license their patents rather than practice them 'may be able to satisfy the traditional four-factor test' for a permanent injunction."³ For example, district courts have found that even if an infringer is not a direct competitor, the patentee can still establish irreparable injury if it demonstrates

it will be harmed in its competition with other research facilities.⁴ In some of the cases where the courts granted permanent injunctions and the parties were not direct competitors, the parties were indirect competitors, or the patentee was a licensor or a research organization.

In 28% of the cases reviewed, the district court denied the request for a permanent injunction. This is a radical departure from past rulings where injunctive relief was almost never denied. As the district courts continue to apply *eBay*, trends in the number of injunctions granted will become visible and could result in a new reason to forum shop for the most favorable court. Surprisingly, the Eastern District of Texas, which is known for its pro-patentee judgments, is following the national statistics closely, denying 3 of 13 permanent injunctions (23%) since the *eBay* decision. However, the Central District of California has granted almost all requests for permanent injunctions in its court (4/5 of the cases), as has the District of Minnesota (3/4 of the cases).

Courts are not just denying injunctions in the case of non-practicing patent owners. In the cases where the district court denied a permanent injunction, the parties were competitors in approximately two-thirds of the cases (12/19 of the cases). Going forward it will be important in all infringement disputes to consider the factors for injunctive relief early and prepare to address them in litigation.

The Federal Circuit reviews the district court's decision to grant or deny a permanent injunction for abuse of discretion, which requires a showing that the court made a clear error of judgment in weighing relevant factors or exercised its discretion based upon an error of law or clearly erroneous factual findings.⁵ After *eBay*, the Federal Circuit has generally affirmed the district court decisions granting permanent injunctions. Of the district court decisions granting permanent injunctions, three were affirmed on appeal to the Federal Circuit and one was vacated and remanded. In that case, the Federal Circuit concluded that the jury's damages award contemplated future sales—pursuant to the patentee's request.⁶ The court explained that "this factor greatly outweighs the other *eBay* factors in this case." While it is appropriate in some circumstances to award an ongoing royalty for patent infringement in lieu of an injunction, the court reasoned that injunctive relief is not punitive and should not act as a form

of "extra damages" to compensate for litigation costs.

The Federal Circuit has also determined that the district courts have abused their discretion in denying permanent injunctions. Of the district court decisions denying permanent injunctions, one was affirmed on appeal and one was vacated and remanded. In that case, the Federal Circuit vacated the district court's decision not to grant a permanent injunction because, it explained, the district court failed to consider any of the *eBay* factors and failed to make any factual findings regarding those factors.⁷

CONCLUSION

In view of *eBay*, there is no longer a general rule that a permanent injunction should enter after a determination of infringement. Instead, each case must be reviewed on its facts, using the traditional four-factor test. District courts have appeared to follow the Supreme Court's directions in *eBay*, applying the four-factor test and denying permanent injunctions in about a quarter of cases. And the Federal Circuit has generally affirmed the district court decisions. If the parties are direct competitors, that obviously leans in favor of granting a permanent injunction, but it is just one of many factors. Permanent injunctions may be granted for parties who are not competitors, or denied for parties who are competitors. **IPT**

ENDNOTES

- 1 547 U.S. 388 (2006).
- 2 See *24 Techs. v. Microsoft Corp.*, 434 F. Supp. 2d 437 (E.D. Tex. 2006); *Paice LLC v. Toyota Motor Corp.*, No. 06-211, 2006 U.S. Dist. LEXIS 61600 (E.D. Tex. Aug. 16, 2006); *Voda v. Cordis Corp.*, No. 03-1512, 2006 U.S. Dist. LEXIS 63623 (W.D. Okla. Sept. 5, 2006); *TiVo Inc. v. EchoStar Commc'ns Corp.*, 446 F. Supp. 2d 664 (E.D. Tex. 2006); *MercExchange, LLC v. eBay, Inc.*, 500 F. Supp. 2d 556 (E.D. Va. 2007); *Commw. Scientific and Indus. Research Org. v. Buffalo Tech. Inc.*, 492 F. Supp. 2d 600 (E.D. Tex. 2007); *Sundance, Inc. v. DeMonte Fabricating Ltd.*, No. 02-73543, 2007 U.S. Dist. LEXIS 77728 (E.D. Mich. Oct. 19, 2007).
- 3 *Voda v. Cordis Corp.*, 536 F.3d 1311 (Fed. Cir. 2008) (quoting *eBay*, 547 U.S. at 393).
- 4 *Commw. Scientific and Indus. Research Org. v. Buffalo Tech. Inc.*, 492 F. Supp. 2d 600 (E.D. Tex. 2007) (finding irreparable harm when infringer was not a direct competitor, but a research organization competed against other research organizations for funding and licensed its technology).
- 5 *Joy Techs., Inc. v. Flakt, Inc.*, 6 F.3d 770 (Fed. Cir. 1993).
- 6 *Innogenetics, N.V. v. Abbott Labs.*, 512 F.3d 1363 (Fed. Cir. 2008).
- 7 *Ecolab, Inc. v. FMC Corp.* 569 F.3d 1335 (Fed. Cir. 2009).

TABLES

The following tables are a collection of patent cases where a final decision regarding permanent injunctive relief was made.

Table 1: Permanent Injunctions Granted By District Courts

Date	Case Name	Court	Patentee
04/17/09	<i>Mass Engineered Design, Inc. v. Ergotron, Inc.</i> , No. 06-272, 2009 U.S. Dist. LEXIS 34173 (E.D. Tex. Apr. 17, 2009).	E.D. Tex.	Competitor
03/30/09	<i>Kowalski v. Mommy Gina Tuna Res.</i> , No. 05-00679, 2009 U.S. Dist. LEXIS 26216 (D. Haw. Mar. 30, 2009).	D. Haw.	Competitor
02/26/09	<i>Joyal Prods. V. Johnson Elec. North Am., Inc.</i> , No. 04-5172, 2009 U.S. Dist. LEXIS 15531 (D.N.J. Feb. 26, 2009).	D.N.J.	Competitor
01/07/09	<i>Ariba Inc. v. Emptoris Inc.</i> , No. 07-90, slip op. (E.D. Tex. Jan. 7, 2009).	E.D. Tex.	Competitor
01/05/09	<i>Funai Elec. Co., LTD. v. Daewoo Elecs. Corp.</i> , 593 F. Supp. 2d 1088 (N.D. Cal. 2009).	N.D. Cal.	Competitor
12/19/08	<i>Sensormatic Elecs. Corp. v. Tag Co. US, LLC</i> , No. 06-81105, 2008 U.S. Dist. LEXIS 102690 (S.D. Fla. Dec. 19, 2008).	S.D. Fla.	Competitor
12/12/08	<i>Power Integrations, Inc. v. Fairchild Semiconductor Int'l, Inc.</i> , No. 04-137, 2008 U.S. Dist. LEXIS 100539 (D. Del. Dec. 12, 2008).	D. Del.	Competitor
11/10/08	<i>Cam Guard Sys. Inc. v. Smart Sys. Tech., Inc.</i> , No. 07-105, slip op. (C.D. Cal. Nov. 10, 2008).	C.D. Cal.	Competitor
11/10/08	<i>Callaway Golf Co. v. Acushnet Co.</i> , 585 F. Supp. 2d 600 (D. Del. 2008).	D. Del.	Competitor
10/29/08	<i>Extreme Networks, Inc. v. Enterasys Networks, Inc.</i> , No. 07-229, 2008 U.S. Dist. LEXIS 88540 (W.D. Wis. Oct. 29, 2008).	W.D. Wis.	Competitor
10/29/08	<i>Becton Dickinson & Co. v. Tyco Healthcare Group LP</i> , No. 02-1694, 2008 U.S. Dist. LEXIS 87623 (D. Del. Oct. 29, 2008).	D. Del.	Competitor
10/02/08	<i>Amgen, Inc. v. F. Hoffmann La Roche Ltd.</i> , No. 05-12237, 2008 U.S. Dist. LEXIS 77343 (D. Mass. Oct. 2, 2008).	D. Mass.	Competitor
08/18/08	<i>Pressure Prods. Med. Supplies, Inc. v. Quan Emerteq, Corp.</i> , No. 06-121, slip op. (E.D. Tex. Aug. 18, 2008).	E.D. Tex.	Competitor
07/31/08	<i>TruePosition Inc. v. Andrew Corp.</i> , No. 05-747, slip op. (D. Del. July 31, 2008).	D. Del.	Competitor
07/24/08	<i>Emory Univ. v. Nova Biogenetics, Inc.</i> , No. 06-0141, slip op. (N.D. Ga. July 24, 2008).	N.D. Ga.	Competitor
07/23/08	<i>Anascape, Ltd. v. Microsoft Corp.</i> , No. 06-158, slip op. (E.D. Tex. July 23, 2008).	E.D. Tex.	No written opinion
07/09/08	<i>Mannatech, Inc. v. Glycoproducts Int'l, Inc.</i> , No. 06-0471, 2008 U.S. Dist. LEXIS 52537 (N.D. Tex. July 9, 2008).	N.D. Tex.	Competitor
04/11/08	<i>Power-One, Inc. v. Artesyn Techs., Inc.</i> , No. 05-463, 2008 U.S. Dist. LEXIS 30338 (E.D. Tex. Apr. 11, 2008).	E.D. Tex.	Competitor
03/01/08	<i>Blackboard Inc. v. Desire2Learn Inc.</i> , No. 06-155, slip op. (E.D. Tex. Mar. 1, 2008).	E.D. Tex.	Competitor
01/17/08	<i>Innogenetics, N.V. v. Abbott Labs.</i> , 512 F.3d 1363 (Fed. Cir. 2008), <i>vacating permanent injunction granted by Innogenetics, N.V. v. Abbott Labs.</i> (W.D. Wi.).	W.D. Wi., vacated by Fed. Cir.	Competitor
12/31/07	<i>Broadcom Corp. v. Qualcomm Inc.</i> , No. 05-467, 2007 U.S. Dist. LEXIS 97647 (C.D. Cal. Dec. 31, 2007), <i>affirmed in regards to 2 of 3 patents in suit by 543 F.3d 683</i> (Fed. Cir. 2008).	C.D. Cal., Fed. Cir.	Not a competitor (patentee is an indirect competitor)
11//07	<i>Acumed, LLC v. Stryker Corp.</i> , No. 04-513, 2007 U.S. Dist. LEXIS 86866 (D. Or. Nov. 20, 2007), <i>affirmed 2008 U.S. App. LEXIS 26519</i> (Fed. Cir. Dec. 30, 2008).	D. Or., Fed. Cir.	Competitor
10/30/07	<i>Martek Biosciences Corp. v. Nutrinova Inc.</i> , No. 03-896, 520 F. Supp. 2d 537 (D. Del. 2007).	D. Del.	Competitor
10/19/07	<i>Sundance, Inc. v. DeMonte Fabricating Ltd.</i> , No. 02-73543, 2007 U.S. Dist. LEXIS 77728 (E.D. Mich. Oct. 19, 2007).	E.D. Mich.	Unclear
10/12/07	<i>Koninklijke Philips Elecs. v. Int'l Disc Mfr.</i> , No. 06-2468, slip op. (C.D. Cal. Oct. 12, 2007).	C.D. Cal.	Competitor
09/26/07	<i>Verizon Servs. Corp. v. Vonage Holdings Corp.</i> , 503 F.3d 1295 (Fed. Cir. 2007), <i>affirming permanent injunction granted by Verizon Servs. Corp. v. Vonage Holdings Corp.</i> (E.D. Va).	E.D. Va, Fed. Cir.	Competitor
09/25/07	<i>Baden Sports, Inc. v. Kabushiki Kaisha Molten</i> , No. 06-210, 2007 U.S. Dist. LEXIS 70776 (W.D. Wash. Sept. 25, 2007).	W.D. Wash.	Competitor
08//07	<i>Allan Block Corp. v. E. Dillon & Co.</i> , 509 F. Supp. 2d 795 (D. Minn. 2007).	D. Minn.	Competitor
07/31/07	<i>Muniauction, Inc. v. Thomson Corp.</i> , 502 F. Supp. 2d 477 (W.D. Pa. 2007).	W.D. Pa.	Competitor

Date	Case Name	Court	Patentee
06/19/07	<i>Sanofi-Synthelabo v. Apotex Inc.</i> , 492 F. Supp. 2d 353 (S.D.N.Y. 2007).	S.D.N.Y.	Competitor
06/15/07	<i>Commw. Scientific and Indus. Research Org. v. Buffalo Tech. Inc.</i> , 492 F. Supp. 2d 600 (E.D. Tex. 2007).	E.D. Tex.	Not a competitor (patentee is a research organization)
06/14/07	<i>Brooktrout, Inc. v. Eicon Networks Corp.</i> , No. 03-59, 2007 U.S. Dist. LEXIS 43107 (E.D. Tex. June 14, 2007).	E.D. Tex.	Competitor
05/25/07	<i>MGM Well Servs., Inc. v. Mega Lift Sys., LLC</i> , 505 F. Supp. 2d 359 (S.D. Tex. 2007).	S.D. Tex.	Competitor
04/26/07	<i>Koninklijke Philips Elecs. v. Poso Media LLC</i> , No. 06-2354, slip op. (C.D. Cal. Apr. 26, 2007).	C.D. Cal.	Competitor
03//07	<i>Ortho-McNeil Pharm., Inc. v. Mylan Labs. Inc.</i> , Nos. 04-1689, 06-757, 06-5166, 2007 U.S. Dist. LEXIS 19494 (D.N.J. Mar. 20, 2007).	D.N.J.	Competitor
02/16/07	<i>Novozymes A/S v. Genencor Int'l, Inc.</i> , 474 F. Supp. 2d 592 (D. Del. 2007).	D. Del.	Not a competitor (patentee is a licensor)
12/27/06	<i>Transocean Offshore Deepwater Drilling, Inc. v. GlobalSantaFe Corp.</i> , No. 03-2910, 2006 U.S. Dist. LEXIS 93408 (S.D. Tex. Dec. 27, 2006).	S.D. Tex.	Not a competitor (patentee is an indirect competitor)
12/19/06	<i>Visto Corp. v. Seven Networks, Inc.</i> , No. 03-333, 2006 U.S. Dist. LEXIS 91453 (E.D. Tex. Dec. 19, 2006).	E.D. Tex.	Competitor
11/29/06	<i>Black and Decker Inc. v. Robert Bosch Tool Corp.</i> , No. 04-7955, slip op. (N.D. Ill. Nov. 29, 2006).	ND. Ill.	Competitor
10/27/06	<i>Smith & Nephew, Inc. v. Sythes (U.S.A.)</i> , 466 F. Supp. 2d 978 (W.D. Tenn. 2006).	W.D. Tenn.	Competitor
09/29/06	<i>Rosco, Inc. v. Mirror Lite Co.</i> , No. 96-5658, 2006 U.S. Dist. LEXIS 73366 (E.D.N.Y. Sept. 29, 2006).	E.D.N.Y.	Competitor
09/25/06	<i>3M Innovative Proprs. Co. v. Avery Dennison Corp.</i> , No. 01-1781, 2006 U.S. Dist. LEXIS 70256 (D. Minn. Sept. 25, 2006).	D. Minn.	Competitor
08/25/06	<i>Litecubes LLC v. N. Lights Prods.</i> , No. 04-00485, 2006 U.S. Dist. LEXIS 60575 (E.D. Mo. Aug. 25, 2006).	E.D. Mo.	Competitor
08/23/06	<i>Floe Int'l, Inc. v. Newmans' Mfg. Inc.</i> , No. 04-5120, 2006 U.S. Dist. LEXIS 59872 (D. Minn. Aug. 23, 2006).	D. Minn.	Competitor
08/22/06	<i>Am. Seating Co. v. USSC Group, Inc.</i> , No. 01-00578, 2006 U.S. Dist. LEXIS 59212 (W.D. Mich. Aug. 22, 2006).	W.D. Mich.	Competitor
08/17/06	<i>TiVo Inc. v. EchoStar Commc'ns Corp.</i> , 446 F. Supp. 2d 664 (E.D. Tex. 2006).	E.D. Tex.	Competitor
08/15/06	<i>Tequip Corp. v. Change Exch.</i> , No. 01-1748, 2006 U.S. Dist. LEXIS 61469 (N.D.N.Y. Aug. 15, 2006).	N.D.N.Y.	Competitor
07/27/06	<i>Wald v. Mudhopper Oilfield Servs.</i> , No. 04-1693, 2006 U.S. Dist. LEXIS 51669 (W.D. Okla. July 27, 2006).	W.D. Okla.	Competitor

Table 2: Permanent Injunctions Denied By District Courts

Date	Case Name	Court	Patentee	Factors Supporting Decision
03/31/09	<i>Bard Peripheral Vascular, Inc. v. W.L. Gore & Assocs.</i> , No. 03-0597, 2009 U.S. Dist. LEXIS 31328 (D. Ariz. Mar. 31, 2009).	D. Ariz.	Competitor	Adequate remedy available and public interest favors not granting injunction
02/23/09	<i>Hynix Semiconductor Inc. v. Rambus Inc.</i> , No. 00-20905, 2009 U.S. Dist. LEXIS 13530 (N.D. Cal. Feb. 23, 2009).	N.D. Cal.	Not a competitor (patentee is a research org.)	Balance of hardship favors not granting injunction
01/06/09	<i>Telcordia Techs. Inc. v. Cisco Sys.</i> , 592 F. Supp. 2d 727 (D. Del. 2009).	D. Del.	Competitor	No irreparable harm
11/18/08	<i>Am. Calcar, Inc. v. Am. Honda Motor Co.</i> , No. 06-2433, 2008 U.S. Dist. LEXIS 106476 (S.D. Cal. Nov. 18, 2008).	S.D. Cal.	Not a competitor	No irreparable harm, adequate remedy available, and balance of hardships favors not granting injunction
09/26/08	<i>Adv. Cardiovascular Sys. v. Medtronic Vascular, Inc.</i> , 579 F. Supp. 554 (D. Del. 2008).	D. Del.	Competitor	No irreparable harm, adequate remedy available, and public interest favors not granting injunction

Date	Case Name	Court	Patentee	Factors Supporting Decision
06/04/08	<i>Chrysler LLC v. Orion IP, LLC</i> , No. 07-158, slip op. (W.D. Wis. June 4, 2008).	W.D. Wis.	Competitor	Adequate remedy available
02/22/08	<i>Ecolab, Inc. v. FMC Corp.</i> , No. 05-831, slip op. (D. Minn. Feb. 22, 2008), <i>denial of injunction vacated and case remanded for further proceedings by 569 F.3d 1335</i> (Fed. Cir. 2009).	D. Minn., <i>vacated by</i> Fed. Cir.	Competitor	No written opinion
02/22/08	<i>Cygnus Telcoms. Tech., LLC v. Worldport Commc'ns, Inc.</i> , No. 02-00144, 2008 U.S. Dist. LEXIS 28207 (N.D. Cal. Feb. 22, 2008).	N.D. Cal.	Competitor	No irreparable harm
02/07/08	<i>Nichia Corp. v. Seoul Semiconductor, Ltd.</i> , No. 06-0162, 2008 U.S. Dist. LEXIS 12183 (N.D. Cal. Feb. 7, 2008).	N.D. Cal.	Competitor	No irreparable harm, adequate remedy available, and public interest favors not granting injunction
02/01/08	<i>ResQNet.com, Inc. v. Lansa, Inc.</i> , 533 F. Supp. 2d 397 (S.D.N.Y. 2008).	S.D.N.Y.	Competitor	No irreparable harm, adequate remedy available, and balance of hardships favors not granting injunction
01/08/08	<i>Respironics, Inc. v. Invacare Corp.</i> , No. 04-0336, 2008 U.S. Dist. LEXIS 1174 (W.D. Pa. Jan. 8, 2008).	W.D. Pa.	Competitor	No irreparable harm, adequate remedy available, balance of hardships and public interest favors not granting injunction
07/27/07	<i>MercExchange, LLC v. eBay, Inc.</i> , 500 F. Supp. 2d 556 (E.D. Va. 2007).	E.D. Va.	Not a competitor	No irreparable harm, adequate remedy available and public interest favors not granting injunction
03/27/07	<i>Praxair, Inc. v. ATMI, Inc.</i> , 479 F. Supp. 2d 440 (D. Del. 2007).	D. Del.	Competitor	No irreparable harm and adequate remedy available – Patents subsequently held invalid for inequitable conduct
03/13/07	<i>Amado v. Microsoft Corp.</i> , No. 03-242, 2007 U.S. Dist. LEXIS 96487 (C.D. Cal. Mar. 13, 2007), <i>aff'd</i> 517 F.3d 1353 (Fed. Cir. 2008).	C.D. Cal., Fed. Cir.	Not a competitor	No irreparable harm, adequate remedy available and public interest favors not granting injunction
01/10/07	<i>IMX, Inc. v. LendingTree, LLC</i> , 469 F. Supp. 2d 203 (D. Del. 2007).	D. Del.	Competitor	Insufficient evidence of all factors
09/05/06	<i>Voda v. Cordis Corp.</i> , No. 03-1512, 2006 U.S. Dist. LEXIS 63623 (W.D. Okla. Sept. 5, 2006), <i>affirmed by Voda v. Cordis Corp.</i> , 536 F.3d 1311 (Fed. Cir. 2008).	W.D. Okla., Fed. Cir.	Not a competitor	No irreparable harm and adequate remedy available
08/16/06	<i>Paice LLC v. Toyota Motor Corp.</i> , No. 06-211, 2006 U.S. Dist. LEXIS 61600 (E.D. Tex. Aug. 16, 2006).	E.D. Tex.	Not a competitor	No irreparable harm, adequate remedy available and balance of hardships favors not granting injunction
07/06/06	<i>Finisar Corp. v. DirecTV Group</i> , No. 05-264 (E.D. Tex. July 6, 2006), <i>discussed at Finisar Corp. v. DirecTV Group, Inc.</i> , No. 05-264, 2006 U.S. Dist. LEXIS 76380 (E.D. Tex. July 7, 2006)).	E.D. Tex.	Competitor	No written opinion
06/14/06	<i>z4 Techs. v. Microsoft Corp.</i> , 434 F. Supp. 2d 437 (E.D. Tex. 2006).	E.D. Tex.	Not a competitor	No irreparable harm, adequate remedy available, balance of hardships and public interest favors not granting injunction

Table 3: Statistical Analysis

Total District Court Cases Granting Injunction:	48 (72%)
Total District Court Cases Denying Injunction:	19 (28%)
Total:	67
Fed. Cir. Cases Affirming Grant of Injunction:	3 (50%)
Fed. Cir. Cases Affirming Grant of No Injunction:	1 (17%)
Fed. Cir. Cases Vacating Grant of Injunction:	1 (17%)
Fed. Cir. Cases Vacating Grant of No Injunction:	1 (17%)
Total:	6

Districts with more than 2 cases:

13 cases – E.D. Tex. (10 granting, 3 denying)
10 cases – D. Del. (6 granting, 4 denying)
5 cases – C.D. Cal. (4 granting, 1 denying)
4 cases – D. Minn. (3 granting, 1 denying)
4 cases – N.D. Cal. (1 granting, 3 denying)