

## District Court Applies Supreme Court Decision to Limit Patent Litigation



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On July 27, a federal district court in Virginia refused to issue a permanent injunction against eBay's "Buy It Now" purchasing system. eBay's system had previously been found to infringe electronic commerce patents held by MercExchange, a patent-holding company. After that earlier decision, the case went up to the Supreme Court on the question of whether an injunction should be granted automatically once patent infringement has been found. In a landmark decision in 2006, the Supreme Court rejected the traditional rule that a successful patent infringement plaintiff was always entitled to an injunction against the infringer. Instead, the Court held, the trial court should apply the same test that is used in non-patent cases, considering:

- (1) whether the patent holder would suffer irreparable harm in the absence of an injunction,
- (2) whether monetary damages would be adequate compensation for the patent holder,
- (3) the balance of hardships between the plaintiff and the defendant, and
- (4) whether an injunction would be in the public interest.

In applying this test to the eBay case, the district court emphasized that, since MercExchange did not practice its patents but earned money by licensing them, an award of damages (\$ 25.5 million) would be adequate compensation. It also found that an injunction would not be in the public interest, in part because "business method patents" such as these are highly suspect.

The new decision represents one of the first applications of the Supreme Court's new test. As the decision suggests, "shut-down" injunctions against infringers are likely to be much harder to get. This will diminish the settlement leverage held by patent-holding companies. Just before the Supreme Court's eBay decision, the owners of the Blackberry system paid \$600 million to settle a very similar claim, all because of the threat of an injunction. That kind of settlement is now unlikely to be repeated.