

## ADDITIONAL DEVELOPMENTS—PATENT

### *MERCExchange, LLC v. EBAY, INC.*

*401 F.3d 1323 (Fed. Cir. 2005), cert. granted, 126 S. Ct. 733 (2005)*

The Federal Circuit held that absent extraordinary circumstances, a successful patent plaintiff is entitled to a permanent injunction against future infringement. The Supreme Court has granted certiorari to consider this decision in light of its precedents regarding the appropriateness of a permanent injunction against a patent infringer.

MercExchange, the owner of a series of business method patents for conducting online sales, sued eBay and two affiliates alleging infringement of three of its patents. At trial, the jury found that two patents were valid and that the defendants infringed. The court held the third patent invalid on a motion for summary judgment. Despite finding the defendants liable for infringing some of the claims in plaintiff's patents, the district court refused to issue a permanent injunction against future infringement, citing a general concern with the issuance of business method patents, and noting that if the injunction were issued it would lead to further litigation in contempt hearings as eBay tried to design around the patents. It also found that MercExchange's stated willingness to license its technology and its failure to seek a preliminary injunction weighed against a presumption that it would suffer any irreparable harm if an injunction was not granted.

On appeal, the Federal Circuit affirmed the finding of infringement of the first patent, found the second invalid, and found that an issue of material fact existed with regard to whether the third patent was valid, making summary judgment inappropriate. The court also reversed the denial of a permanent injunction. The court noted that permanent injunctions should issue to prevailing patent plaintiffs as a general rule. Although there are occasional exceptions to protect the public interest, such as where there is a demonstrated "need to use an invention to protect public health," the Federal Circuit found the lower court's reasoning here to be unpersuasive, holding that the case was not sufficiently exceptional to justify the denial of the injunction.

The Supreme Court granted certiorari to consider the appropriate circumstances for issuance of a permanent injunction where there has been a finding of patent infringement. A significant number of groups have filed amicus briefs in support of each party.