

Injunctive Relief in U.S. Courts

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Injunctions: Key Issues

1. What is the role, if any, of the statutory right to exclude in evaluating injunctive relief?
 - That is: after *ebay* do nature of patent rights warrant any unique treatment for injunctive relief?
2. What is the role of the presumption of validity/clear and convincing burden of proof on a motion for a preliminary injunction?

A patentee's right to exclude

- *A patent holder has “the right to exclude others from making, using, offering for sale, or selling the invention.”* 35 U.S.C. § 154(a)(1)
- District courts *“may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent.”* 35 U.S.C. § 283

Supreme Court *eBay* Decision

**Ebay Inc. v. MercExchange, L.L.C., 547 U.S. 388 (2006)*

- For a valid and infringed patent, does nature of patent right support unique approach to issue of injunctive relief?
- No.
 - patent cases no different than other cases
 - statutory right to exclude does not justify presumption in favor of injunctive relief
 - “the creation of a right is distinct from the provision of remedies for violations of that right”

Presumption of Harm? No.

- “We take this opportunity to put the question to rest and confirm that *eBay jettisoned the presumption of irreparable harm* as it applies to determining the appropriateness of injunctive relief [in patent cases].”

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

Post *ebay* consideration of right to exclude...

- “Although the Supreme Court disapproved of this court’s absolute reliance on the patentee’s right to exclude as a basis for our prior rule favoring injunctions, *that does not mean that the nature of patent rights has no place in the appropriate equitable analysis.*”

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

- Post *ebay*, what “place” does “the unique nature of patent rights” play in the injunction analysis? Are patent rights different?

Preliminary Injunctive Relief

- Four factors:
 - Likelihood of success on merits
 - Irreparable harm
 - Balance of equities
 - Public Interest

Presumption of Validity

- A patent shall be presumed valid. ... The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.” 35 U.S.C. § 282
- An alleged infringer has the burden to prove invalidity by clear and convincing evidence

Likelihood of success on validity?

- “[T]he ‘*clear and convincing*’ standard regarding the challenger’s evidence applies only at trial on the merits, not at the preliminary injunction stage.”

Titan Tire Corp. v. Case New Holland, Inc., 566 F.3d 1372, 1379-1380 (Fed. Cir. 2009)

- “[V]ulnerability [on validity] is the issue at the preliminary injunction stage.”
- No preliminary injunction if alleged infringer “raises a substantial question” as to validity that the patentee has not shown lacks *substantial merit*.”

Kimberly-Clark Worldwide, Inc. v. First Quality Baby Products, LLC, 421 Fed. Appx. 884 (Fed. Cir. 2011 (nonprecedential) (Dyk, Friedman, Prost, per curium)

Altana Pharma v. Teva, 566 F.3d 999 (Fed. Cir. 2009)

Amazon.com, Inc. v. Barnesandnoble.com, Inc., 239 F.3d 1343 (Fed. Cir. 2001)

Dissenting views...

- The *standard* must consider “*the presumptions and burdens that will inhere at trial.*” Such burdens exist at every stage of the litigation.
- “No other circuit denies a preliminary injunction merely because the nonmovant has raised an argument worthy of consideration.”
- Preliminary injunctive relief “is of particular relevance for patent property, for the patent term continues to run during litigation, and a loss of patent-supported exclusivity during the years of litigation may exhaust not only the life of the patent, but also the value of the invention to its creator.”

E.g., Kimberly-Clark Worldwide, Inc. v. First Quality Baby Products, LLC, 660 F.3d 1293 (Fed. Cir. 2011)
(dissent from denial of rehearing en banc) (Newman, joined by O’Malley and Reyna)

Open Questions

- Is “substantial question” standard consistent with statutory presumption of validity?
- What is a “substantial question” as to validity?
- Does clear and convincing burden apply at every stage of litigation, including on a motion for a preliminary injunction? Should it?
- What if patent claims overcame reexamination?

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