

Injunctive Remedies in Patent Law

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In the 2006 decision in *eBay v. MercExchange*, Chief Justice John Roberts stated in his concurring opinion that “[f]rom at least the early 19th century, courts have granted injunctive relief upon a finding of infringement in the vast majority of patent cases.” This is an oft-repeated claim by judges, scholars, and lawyers, but is it true? Surprisingly, there is no empirical study of nineteenth-century patent decisions and the remedies that issued on a finding of infringement that either confirms or contradicts this widely believed claim in patent law.

This article fills this gap in both the law and the literature by reviewing the equitable remedies analyses in the nineteenth-century patent cases in the Federal Cases reporter. It identifies how often injunctions issued on requests by patent owners for injunctions, and the nature of the courts’ analyses in issuing this equitable remedy for willful or ongoing violations of property rights. There is an increasingly significant policy and legal debate over the validity of the eBay four-factor test for issuing injunctions in patent cases; two bills recently introduced in Congress, for instance, propose to abrogate the eBay four-factor test. This article contributes to this debate by providing evidence from primary historical sources on how often and under what legal conditions injunctive remedies issued to patent owners following a finding of infringement of their legal rights.