

Post-eBay: Trademark injunctions no longer a sure thing

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The courts have been grappling recently with the question of whether patent and trademark law both require the same test before a judge grants a permanent injunction. Under the eBay ruling, judges in patent infringement cases must apply a four-factor test. Are the rules the same for trademark cases?

Traditionally, requests for permanent injunctions were treated similarly in both patent and trademark infringement cases, generally being granted almost automatically any time a patent or trademark owner proved infringement.

Recent cases, however, have called this parity into question. As reported in the January 2008 KLIP Alert, the Supreme Court removed the presumption of a near-automatic grant of injunction in patent cases, clarifying that trial judges should instead apply the traditional permanent injunction four-factor balancing test in considering whether to enjoin the infringing activity or to, in essence, force a compulsory license. *eBay Inc. v. MercExch., L.L.C.*, 126 S.Ct. 1837 (2006). Prior to eBay, instead of looking to the specific facts of the case and balancing the equitable factors, courts simply presumed irreparable harm anytime patent or trademark infringement was shown (or in the case of a request for a preliminary injunction, when a likelihood of success on the merits was shown).

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