



## **Fact Sheet:**

# **Realizing Engineering, Science, and Technology Opportunities by Restoring Exclusive (RESTORE) Patent Rights Act of 2025**

By Kristen Jakobsen Osenga

- On February 26, Senators Coons (D-DE) and Cotton (R-AR) and Representatives Moran (R-TX) and Dean (D-PA) introduced the Realizing Engineering, Science, and Technology Opportunities by Restoring Exclusive Patent Rights Act of 2025 in their respective houses of Congress. The bill is a reintroduction of legislation introduced in the 118<sup>th</sup> Congress.
- The bill addresses the aftermath of the Supreme Court’s 2006 *eBay v. MercExchange* opinion, a case that—over the last two decades—has been used to deny injunctive relief, even where a valid patent has been found infringed.
  - The *eBay* decision imposed a four-factor test, which courts have used to deny injunctions, requiring a patent owner to show a) irreparable injury, that b) cannot be made right by money damages, and that c) the balance of hardships favors the patent owner and d) the public’s interest is not harmed by grant of an injunction.
  - Certain types of patent owners are denied injunctive relief in nearly every instance in which it is sought.
    - Innovators who aren’t currently selling a product covered by the patent are regularly denied injunctions because courts assume that money damages will always be sufficient to make these patent owners whole and that they are not irreparably harmed if they have a practice of licensing their patents.
    - Owners of patents that are essential to technology standards like 5G are also often denied injunctive relief because standard development organizations impose a FRAND obligation on these companies who submit technology to the standard. Based on this, again, courts assume that money damages are sufficient.<sup>1</sup>

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<sup>1</sup> See generally, Kristen Jakobsen Osenga, “Efficient Infringement” and Other Lies, 52 SETON HALL L.REV. 1085 (2022).

- The RESTORE Patent Right Act addresses *eBay* by stating that if a court enters a final judgment of patent infringement, the patent owner has a rebuttable presumption in favor of obtaining a permanent injunction against that infringement.
  - In one simple sentence, the RESTORE Patent Rights Act returns patent law to pre-*eBay* times, when injunctions would generally be granted unless there was a good reason not to—such as public health or national security.<sup>2</sup>
- Lack of injunctive relief has had a negative effect on the innovation economy; the RESTORE Patent Rights Act, by returning a presumption in favor of injunctive relief, should return certainty to patent law and value to patent holders.
  - Empirical studies have shown that, not just are courts denying injunctive relief in more cases than they did prior to *eBay*, but also that patent owners are not even requesting injunctive relief.<sup>3</sup>
  - Infringers who do not fear being enjoined are more likely to engage in predatory infringement, opting to not negotiate a license prior to infringing but rather waiting to be sued by the patent owner, knowing the worst outcome will simply require them to pay licensing fees for past and future infringement.<sup>4</sup>
  - Because patents only offer the patent holder an exclusive right, denial of injunctive relief essentially eviscerates a patent's value.
    - Further, lack of injunctive relief decreases a licensee's willingness to take an exclusive license—non-exclusive licenses are less valuable than exclusive licenses.<sup>5</sup>

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<sup>2</sup> See *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 395 (2006) (Roberts, J., concurring) (“From at least the early 19<sup>th</sup> century, courts have granted injunctive relief upon a finding of infringement in the vast majority of patent cases.”); see also Osenga, *supra* note 1, at 1093.

<sup>3</sup> See Kristina M.L. Aciri *nee* Lybecker, *Injunctive Relief in Patent Cases: The Impact of eBay*, 38 HARVARD J. L. & TECH. 735, 739 (2024) (reporting data that showed a decrease in requests for permanent injunctions, post-*eBay*).

<sup>4</sup> See Osenga, *supra* note 1.

<sup>5</sup> See Kristen J. Osenga, *The Loss of Injunctions under eBay: Evidence of the Negative Impact on the Innovation Economy*, HUDSON INSTITUTE (Feb. 28, 2024), available at <https://www.hudson.org/regulation/loss-injunctions-under-ebay-evidence-negative-impact-innovation-economy>.