

## When Smartphones Go to War, Patent Holders Seeking Injunctions against Infringement Win?

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Michael J. Zoller

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Prior to 2006, when a patent holder demonstrated that someone was infringing on its patent, it enjoyed a presumptive entitlement to an injunctive award permanently enjoining the infringement. That all changed though when the Supreme Court handed down its decision in eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388 (2006). In eBay, the Supreme Court held that instead of a general rule presumption in favor of injunction, the same equitable standard that applied for granting injunctions in non-patent cases should also apply to disputes arising under the Patent Act. Consequently, following the decision in eBay, in order to obtain a permanent injunction against patent infringement, a patent holder had to pass a four-factor test by showing:

- (1) that it has suffered an irreparable injury;
- (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury;
- (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and
- (4) that the public interest would not be disserved by a permanent injunction.

Id. at 391.

This change was bad for patent holders because instead of the presumed injunction they used to receive upon a showing of infringement, in addition to proving infringement, the patent holders now had to prove that an injunction was warranted too.

In the wake of the Supreme Court's eBay decision, the "Smartphone Wars" were launched. The Smartphone Wars are a series of litigation between Apple and Samsung regarding Samsung's infringement on some of Apple's patents for cellphone and tablet technology. The first

decision (“[Apple I](#),” 678 F.3d 1314) in the Wars was handed down in 2012 and the fourth and latest was just handed down in September 2015 (“[Apple IV](#),” 801 F.3d 1352).

In [Apple I](#), the Federal Circuit affirmed the District Court’s holding that to show an irreparable harm, a patent holder must make a showing of a “casual nexus” between the infringement and the alleged harm to the patent holder. The [Apple I](#) decision further stated that “[s]ales lost to an infringing product cannot irreparably harm a patentee if consumers buy that product for reasons other than the patented feature.” [Apple I](#), 678 F.3d at 1324. The decision in [Apple I](#) was another blow to patent holders. To be able to obtain an injunction they now had to show that the technology being infringed on was the cause of their sales in the first place. This can be very difficult to show when the actual item being sold, like a smartphone, contains many different features and pieces of technology.

Recently though, the Federal Circuit’s decision in [Apple IV](#) has swung the power back to the patent holders. In [Apple IV](#), the Federal Circuit took a closer look at the requirements of a casual nexus. In its review, the Federal Circuit determined that the proper approach for finding a casual nexus was not a determination that the infringing features were the reason for consumers purchasing the smartphone, but rather a determination that the infringing features were important to consumers when making their purchasing decision. When there are many reasons why a consumer chooses to purchase a particular smartphone, having to show that the features being infringed on are important to consumers versus having to show that they are the specific reason the consumer chose the smartphone is a much lower standard to meet. Consequently, in [Apple IV](#), the Federal Circuit ended up granting Apple its injunction.

The decision in [Apple IV](#) is a positive turn for patent holders after their rights had been limited in the earlier litigations. That said, while patent holders may have won this battle, the war is not yet over. Samsung has petitioned the Federal Circuit to rehear the case en banc. Should the Federal Circuit grant the petition and reverse then patent holders may be telling a different story. As they say, history is written by the victors...