



RESTORE ACT

Congress Should Restore The Right To Injunctions To Stop IP Theft

A patent grants its owner a constitutionally recognized right for a limited time period to exclude others from making, using, selling, or importing their invention. For more than two centuries, a patent owner whose rights had been infringed could obtain a “permanent injunction” court order to stop an infringer from making, using, selling, or importing their invention. In 2006, the Supreme Court undermined this right in *eBay v. MercExchange*, holding that money damages are almost always sufficient to protect against infringement.

As a result of the *eBay* decision and lower courts’ interpretation of the ruling, inventors whose patents are found valid and infringed no longer have an effective tool to stop competitors from stealing their inventions. Many large companies find it more efficient to steal patented inventions and possibly pay damages later rather than pay for a license to use the patented technology up front. This has serious consequences for individual inventors, start-ups, and the U.S. innovation economy.

Sens. Chris Coons (D-DE) and Tom Cotton (R-AR) and Reps. Nathaniel Moran (R-TX), Madeleine Dean (D-PA), Chip Roy (R-TX), Hank Johnson (D-GA) and Deborah Ross (D-NC) introduced the bipartisan, bicameral RESTORE Patent Rights Act to stop IP theft, revive inventors’ right to prevent others from using their inventions without a license, and encourage investments in innovation that support U.S. global technology leadership.

eBay Has Weakened U.S. Inventors’ Ability To Enforce Their Rights and Incentives To Invest in Innovation

- Before *eBay*, injunctions were granted in almost all (approximately 94%) cases where patents were found valid and infringed.
- After *eBay*, injunction rates for patent owners that license their patents plummeted by more than 90%.
- In contrast, courts in China continue to grant injunctions in 95% of patent infringement cases. Inventors in the United States deserve rights at least as strong as inventors in China.
- When inventors cannot enforce their patent rights, investors are reluctant to fund the risky and long-term R&D needed for continued U.S. leadership in foundational and emerging technologies.

Inventors Need Injunctive Relief To Combat Predatory Infringement and Incentivize Innovation

- The rapid decline in injunctive relief has allowed Big Tech and other large companies to practice predatory infringement. Without injunctions, it is cheaper for megacorporations to steal patented technologies from small inventors and pay a court-ordered royalty after months or years of expensive litigation for the inventor than it is to follow the law and pay for a license up front.
- Money damages are not sufficient to protect inventors’ rights. Injunctions are necessary to vindicate inventors’ constitutional right to determine who can make, use, sell, or import their invention.
- Congress should pass the RESTORE Patent Rights Act to protect inventors’ right to obtain an injunction to stop theft of their IP.