

NO. 2026-1893

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

COLLISION COMMUNICATIONS, INC.,

Plaintiff-Appellant,

v.

**SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA, INC.,**

Defendants-Appellees.

Appeal From The United States District Court for the
Eastern District Of Texas In No. 2:23-CV-00587-JRG,
Honorable J. Rodney Gilstrap, Judge

**BRIEF OF FAIR STANDARDS ALLIANCE A.S.B.L. AS *AMICUS CURIAE*
IN SUPPORT OF APPELLEES AND IN SUPPORT OF AFFIRMANCE**

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CERTIFICATE OF INTEREST

Counsel for *Amicus Curiae* Fair Standards Alliance A.S.B.L. certifies the following:

1. Represented Entities. Fed. Cir. R. 47.4(a)(1). Provide the full names of all entities represented by undersigned counsel in this case.

Fair Standards Alliance A.S.B.L.

2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2). Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.

The party named above in (1) is the real party in interest.

3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3). Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.

The Fair Standards Alliance does not have a parent corporation, and no publicly held corporation owns 10% or more of the Fair Standards Alliance.

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

Stephen S. Korniczky, Martin R. Bader, Matthew W. Holder, and Timothy P. Cremen.

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

Counsel is not aware of any case pending in this or any other court or agency that will directly affect or be directly affected by this Court's decision in the pending appeal.

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

Counsel is not aware of any such information.

Dated: September 21, 2026

Respectfully submitted,

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I. INTERESTS OF THE *AMICUS CURIAE*

Amicus curiae Fair Standards Alliance A.S.B.L. (the “FSA”) is a non-profit association of over 40 companies from a diverse range of industries dedicated to promoting a transparent and sustainable licensing framework for standard-essential patents (“SEPs”). The FSA submits this brief in support of Defendants-Appellees, Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc. (“Samsung”).¹ While the FSA has no personal interest in the outcome of the current case, it has a strong interest in the continuing proper application of the *eBay* four-part test governing motions for permanent injunctions. That is because the FSA’s members regularly participate in standard-setting activities and hold hundreds of thousands of patents, including many thousands of SEPs, all in connection with creating many of today’s most popular and innovative products across numerous industries.²

¹ All Parties to this action consented to the filing of this brief, and thus no motion for leave is required. *See* F.R.A.P. 29(a). No Party to this action or its counsel participated in authoring any part of this brief, and no person other than *amicus curiae* or its counsel contributed money intended to fund the preparation and submission of this brief. *See* F.R.A.P. 29(a)(4)(E).

² *See* <https://fair-standards.org/about-us-2/>. The FSA’s current members include Amazon, Apple, Aumovio, BMW, Bury, Cisco, Dell, Ford, Google, Harman, Hitachi, Honda, HP, Hyundai, Intel, Juniper, Lenovo, Mercedes, Microsoft, Netflix, Nordic, Telit, T-Mobile, Tesla, Thales, Toyota, u-blox, Valeo, Volkswagen, and Volvo, among others. *See* <https://fair-standards.org/members/>. The positions in this brief are those of the FSA and do not necessarily reflect the detailed individual corporate positions of each member.

II. INTRODUCTION

Plaintiff-Appellant Collision Communications, Inc. (“Collision”) seeks to upend *eBay* in favor of a regime where permanent injunctions are the “ordinary” relief for infringement. Collision and its supporting *amici* seek this change because, in their view, Non-Practicing Entities (“NPEs”) are being categorically denied permanent injunctions and this is an existential threat to the U.S. patent system and U.S. innovation. But, as set forth below, application of the *eBay* four-part analysis has worked well for 20 years. There is no evidence NPEs are being denied injunctions just because they are NPEs. Nor is there evidence of any negative impact on U.S. patent filings or technological investment caused by *eBay*.

To the extent there is any measurable difference post-*eBay* on permanent injunction grant rates between NPEs and operating companies, there are good explanations for why this might be so which are unrelated to any plaintiff’s business form. For example, a study cited by the *amici* supporting Collision shows that injunction grant rates under *eBay* are most closely correlated with: (i) whether the parties are competitors such that traditional irreparable injuries like loss of market share and goodwill and/or price erosion can be shown; and (ii) whether the asserted patents are directed to minor components of a product such that an injunction would be contrary to traditional public policy concepts. Because NPEs are not market competitors and often assert patents directed to minor components,

they should be expected to obtain fewer permanent injunctions under traditional equitable analyses—regardless of their form as NPEs.

There are also strong public policy considerations supporting the continued application of *eBay* in this manner and against making permanent injunctions the “ordinary” relief for infringement—particularly when the asserted patent is directed only to a minor component. These considerations include preventing plaintiffs from using the threat of an injunction to extract coercive license agreements which require the payment of sums far higher than a patent’s incremental value, preventing serious impacts on third-party customers (*e.g.*, by shutdown of purchased features) and suppliers (*e.g.*, by shutdown of supply chains for unrelated components), emphasizing the proportionality of remedies as recently instructed by the Supreme Court in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025), and reducing incentives for opportunistic assertion strategies based on weaker patents.

Finally, there is no reason for the U.S. to jettison or alter the well-reasoned *eBay* test just because foreign jurisdictions may issue permanent injunctions more often. Such an approach is incompatible with the traditional equitable principles set forth in *eBay*, and the injunction regimes in these other jurisdictions cause the very same negative public policy impacts addressed herein.

III. BACKGROUND

A. The Supreme Court's *eBay* Decision

eBay held that a plaintiff seeking a permanent injunction in a patent infringement case must satisfy the traditional four-factor test for injunctions:

(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.

eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006). In refocusing courts on this traditional test, the Court rejected categorical rule application. It explicitly rejected the Federal Circuit's "general rule" that permanent injunctions should issue against patent infringers absent exceptional circumstances. *Id.* at 393-394. The Court also criticized the district court's broad categorization of patentees that do not practice their patents as having no irreparable harm (*id.* at 393), positing that "*some* patent holders, such as university researchers or self-made inventors ... *may* be able to satisfy the traditional four-factor test." *Id.* (emphasis added).

The *eBay* decision included two oft-cited concurring opinions. The first, by Chief Justice Roberts (joined by Justices Scalia and Ginsburg), noted that courts have historically granted injunctions on adjudicated infringers "in the vast majority of patent cases" and that courts should be cognizant of this history rather than starting from "an entirely clean slate." *Id.* at 394-395. Justice Kennedy's

concurrence (joined by Justices Stevens, Souter, and Breyer) explained that such history must be considered “in the contexts then prevalent” and “is most helpful and instructive when the circumstances of a case bear substantial parallels to litigation the courts have confronted before.” *eBay* at 396.

But Justice Kennedy pointed out that the modern “nature of the patent being enforced and the economic function of the patent holder present considerations quite unlike earlier cases.” *Id.* at 396. For example, Justice Kennedy stated that injunctions may be inappropriate when a plaintiff—such as a modern Patent Assertion Entity (“PAE”)³—is using its patent “not as a basis for producing and selling goods but, instead, primarily for obtaining licensing fees,” with an injunction threat used “as a bargaining tool to charge exorbitant [licensing] fees.” *Id.* at 396. Justice Kennedy also observed that, when a patent covers “but a small component of the [accused] product ... and the threat of an injunction is employed simply for undue leverage in negotiations, legal damages may well be sufficient ... and an injunction may not serve the public interest.” *Id.* at 396-397. In Justice Kennedy’s view, the *eBay* test is “well suited to allow courts to adapt to ... rapid

³ A PAE is a particular type of NPE that exists only to acquire, assert, and monetize patents. The term NPE also includes any entity asserting patents it does not practice, such as universities, start-ups, and operating companies that elected not to enter the relevant market, in addition to PAEs.

technological and legal developments.” *Id.* at 397.⁴

B. Collision’s Patents Cover Minor Components.

Collision is an NPE that accused a wide range of Samsung’s mobile device, computer, white good, and wireless products of infringement. D.Ct.Dkt.76 (First Amended Complaint), ¶¶ 31-38. The asserted patents are not, however, directed to those products, or to any fundamental or consumer-facing feature thereof. Rather, Collision’s patents allegedly cover incremental improvements in the products’ communication components that reduce “noise.” *Id.*, ¶¶ 19-20.⁵

Such minor component assertions have become increasingly common. As computer technology has come to the forefront of U.S. industry and innovation speed has increased, utility patents are rarely directed to products as a whole. Rather, patents now typically cover small, incremental improvements to minor features or minor components of products. This development has been recognized by courts and is reflected in cases regarding damages apportionment. *See Ericsson, Inc. v. D-Link Sys.*, 773 F.3d 1201, 1232 (Fed. Cir. 2014) (citations omitted) (“We

⁴ The Federal Circuit has subsequently confirmed that: (i) there are no presumptions of irreparable harm based on an infringement finding under *eBay* (*Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1148-1150 (Fed. Cir. 2011)); and (ii) when a permanent injunction is denied and the parties cannot agree on an on-going royalty, the court may step in and award an ongoing royalty (*Paice LLC v. Toyota Motor Corp.*, 504 F.3d 1293, 1313-1316 (Fed. Cir. 2007)).

⁵ The FSA takes no position on any infringement and validity issues related to the Collision patents asserted in this matter.

know that patents often claim only small portions of multi-component products and we have precedent which covers apportionment of damages in those situations”); *Willis Elec. Co., Ltd. v. Polygroup Ltd.*, 166 F.4th 1363, 1371-1372 (Fed. Cir. 2026) (citations omitted) (“In assessing a reasonable royalty, recoverable damages must be apportioned to reflect the value of the patented feature, rather than the value of the accused product as a whole” , ... “Proof of damages must be ‘carefully tie[d] . . . to the claimed invention’s footprint in the market place.’”).

C. Minor Components Are Often Covered by Standards.

Standards define the design, function, and performance characteristics of products so that different manufacturers’ products can work together. A common example is the IEEE’s 802.11 family of protocols for wireless networking technology (WiFi). By their nature, the various standards enabling the functionality of products like Samsung’s in this case often apply to minor components of a product, such as, in the context of the 802.11 standard, the minor portion of the software and hardware of a smartphone or PC related to WiFi.

As technology advances and products become more complicated and multi-functional, it is easy to understand that more and more minor components with more and more related standards must all be pieced together, assembled, and managed to bring an end product to market. This reflects a labor-intensive and joint process of discussion, review, adoption, and implementation by

manufacturers and developers. Just in the context of SEPs, products can embody thousands of patented contributions. Indeed, one study indicates that the number of declared SEPs increased from 82,000 in 2010 to 305,000 in 2021. *See* Tim Pohlmann, *The Rise of Standard Essential Patents*, IPLytics Report (2021).⁶

IV. THERE IS NO EVIDENCE OF WIDESPREAD MISAPPLICATION OF *EBAY*, OR THAT IT HAS NEGATIVELY IMPACTED PATENT ASSERTION OR INNOVATION.

A. There Is No Evidence of Wide Misapplication of *eBay*.

eBay's four-factor test provides courts an effective tool to consider motions for a permanent injunction in a case-by-case manner in modern patent litigation. It allows courts to consider, *inter alia*, the scope of the asserted patent (*e.g.*, is it to the accused product as a whole or just a minor component?), as well as the patent owner's business injury (*e.g.*, is it a market competitor subject to lost profits and market share injury, an NPE that might be subject to an articulatable harm, or simply a PAE seeking investment return?), when balancing the equities of an injunction.

eBay's holding has not been seriously challenged, and neither Collision nor its supporting *amici* provide evidence that it is being widely misapplied or criticized by district courts. For example, while InterDigital argues that NPEs are

⁶ <https://www.lexisnexisip.com/wp-content/uploads/2023/07/IPLYtics-2021-The-Rise-of-Standard-Essential-Patents.pdf>.

being treated as a disfavored class (InterDigital Br. (Dkt. 33) at 13, 19-22), it fails to cite examples of district courts applying such class distinction or otherwise applying categorical rules. There is no evidence that district courts are denying permanent injunction motions filed by NPEs simply because they are NPEs.

B. The Studies Cited by *Amici* Supporting Collision Do Not Demonstrate a Direct *eBay* Effect on Injunctions.

The *amici* supporting Collision cite several studies which they assert show that fewer permanent injunctions were sought and granted after *eBay* as compared to the 2000-2006 timeframe before *eBay*, and posit that this decline is directly attributable to *eBay*. *See, e.g.*, InterDigital Br. (Dkt. 33) at 21-29; USIJ Br. (Dkt. 29) at 14-16. But the cited studies fail to demonstrate there has been a reduction in the number of injunctions sought and granted in a proper historical context, or that any post-*eBay* reduction is directly attributable to *eBay*, for at least three reasons.

First, the studies are of limited evidentiary value because they rely solely on 2000-2006 data as representative of the “before *eBay*” world, but do not explain how that limited time frame is representative of historical injunction patterns, particularly in view of the rapid recent changes in patent law and technology.

Second, even in the study data presented, the number of permanent injunctions sought in district courts was declining before *eBay* was decided in 2006, then remaining relatively steady for almost ten years post-*eBay*, and only then declining after 2015.

See Kristina M.L. Acri née

Lybecker, *Injunctive Relief in Patent Cases: The Impact of eBay*, 38 Harv. J.L. & Tech. 735, 753 (Fig. 1; reproduced here) (2024). See also Kirti Gupta et al., *Studying the Impact of eBay on Injunctive Relief in Patent Cases*, University of Illinois College of Law Legal Studies Research Paper 17-03 (2016). This data is inconsistent with any direct post-*eBay* effect on injunctions.

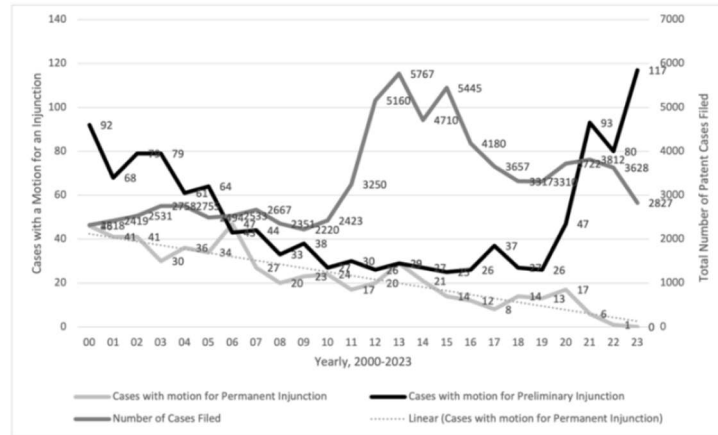


Figure 1: Total Number of Patent Cases Filed, Total Number of Preliminary and Permanent Injunctions Sought, 2000–2023

Third, a large majority of permanent injunction motions are still granted, and the grant rate has remained steady for years. *See* Acri at 754 (Fig. 3, reproduced

here), Gupta (2016) at 15 (Fig. 3), and Christopher B. Seaman, *Permanent Injunctions in Patent Litigation After eBay: An Empirical Study*, 101 Iowa L. Rev. 1949, 1984 (Fig. 2) (2016).

Thus, any decreased numbers of

injunctions sought must relate to parties *electing* not to pursue injunctive relief in more cases. Such decisions can be due to many interrelated factors in modern patent law, not just *eBay*.

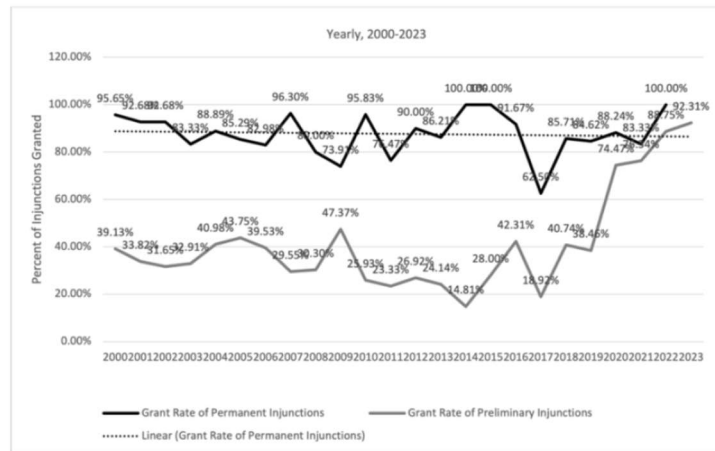


Figure 3: Rate of Injunctions Granted pre-*eBay* and post-*eBay*, as a Percentage of Those Sought

C. The Studies Purportedly Showing a Disparity in Injunction Grant Rate Between Operating Companies and NPEs Are Flawed.

The *amici* supporting Collision argue that their cited studies demonstrate a grant rate disparity for permanent injunction motions between “operating companies” and NPEs. *See, e.g.*, InterDigital Br. (Dkt. 33) at 21-22, 25; USIJ Br. (Dkt. 29) at 14-16; Acri at 749-750 (Table 2); and Seaman at 1988 (Fig. 3). But these analyses are not well-developed or supported by data because they do not properly categorize NPEs and operating companies. The entities identified as “operating companies” in these studies do not always practice their patents, and are

therefore *themselves* NPEs in some instances. Christopher S. Storm, *The Patent Industry Versus eBay*, 130 Penn State L. Rev. 73, 129 (2025) (criticizing studies for categorizing non-practicing plaintiffs as operating companies, using IBM’s patent monetization strategy as an example). To properly analyze injunction grant rates for plaintiffs that do not practice their inventions, non-practicing operating companies should be coded as NPEs, or separately tracked.

Indeed, even small changes in such categorization would have enormous impacts on the overall numbers. For example, Seaman finds a 16% grant rate for PAE-requested permanent injunctions from 2006-2016 based on 4 of 25 requests being granted and an 80% grant rate for “other patentees” based on 154 of 193 requests being granted. Seaman at 1987-1988, Figure 3. But if even 15% of the “other patentees” are miscoded such that they should be in the “PAE” category, that would likely change the PAE grant rate to over 50%.

D. There Is No Evidence That *eBay* Has Slowed Patent Suits.

There is no evidence that *eBay* has slowed patent assertion, including by NPEs. Patent litigation peaked in 2012-2015, well after *eBay*, driven largely by a rise in NPE assertions, and has moderately decreased since. *See e.g.*, Kirti Gupta et al., *Intellectual Property Litigation: U.S. Trends in Global Perspective* 5, 7 (Cornerstone Research, June 2026). *See also* Unified Patent’s Annual Litigation

Reports⁷ and the Stanford NPE Litigation Database.⁸ There is also no downward trend in the percentage of suits that are brought by NPEs, which account for ~50% of all assertions. *Id.* NPEs and PAEs also obtained more damages than operating companies in 2019-2024. *See e.g.*, Gupta (2026) at 10. This suggests that patent holders, including NPEs, are being adequately compensated post-*eBay*.

E. There Is No Evidence That *eBay* Has Stifled Innovation.

There is no evidence that *eBay* has slowed innovation. To the contrary, U.S. patent investments have grown, as application numbers rose from 445,613 in 2006 to 678,108 in 2025. *See* USPTO Workload Tables, Table 2.⁹ Issued patents also rose from 183,187 in 2006 to 380,773 in 2025. *Id.* at Table 6. USPTO data also shows that smaller companies continue to invest in patents as, since 2007, utility patents issued to small entities held steady at about 20% and, since 2013, the number issued to micro entities runs at about 2%. *Id.* at Table 11.

Beyond patent filings, R&D budgets are increasing. *See, e.g.*, Elisabeth Nindl et al., *2025 EU Industrial R&D Investment Scoreboard*, European Commission (2025), FIGS. 1 and 3,¹⁰ and National Science Board, *Research and*

⁷ <https://portal.unifiedpatents.com/litigation/annual-report>.

⁸ <https://npe.law.stanford.edu/>.

⁹ <https://www.uspto.gov/about-us/performance-and-planning/uspto-annual-reports>.

¹⁰ <https://iri.jrc.ec.europa.eu/scoreboard/2025-eu-industrial-rd-investment-scoreboard>.

Development: U.S. Trends and International Comparisons, (2024) at 9 (Fig. RD-1).¹¹ Intangible assets, including IP, now consist of up to 90% of the S&P 500 market value. Gupta (2026) at 1. And a fulsome study of post-*eBay* innovation finds that *eBay* has had no dramatic impact—positive or negative. *See, e.g.*, Filippo Mezzanotti et al., *Patent Policy and American Innovation After eBay: An Empirical Examination*, Research Policy 48.5 (2019) at 31. *See also id.* at 17 (U.S. patent applications increased faster than foreign applications); 20-21 (R&D time-series data provide no evidence that *eBay* led to any dramatic R&D spending changes); 25-26 (VC funding is still increasing); 29-30 (no evidence of any change in TFP growth rates for patent versus non-patent intensive industries post-*eBay*).¹²

F. There Are Better Explanations For Any Decreased Grant Rate Success For NPEs Than Simply Their Status As NPEs.

To the extent there is any disparity in permanent injunction grant rates between, for example, manufacturers and NPEs, the Seaman study cited above provides several good explanations for why this might be so—beyond simply a plaintiff’s status as an NPE.

First, the study shows that injunction grant rate is most closely correlated to

¹¹ <https://ncses.nsf.gov/pubs/nsb20246/>.

¹² *Amici* USIJ argues that “some have stopped investing time and resources in enterprises whose value depends on patents,” but offers no evidence this is so other than anecdote. USIJ Br. (Dkt. 29) at 18.

competitor suits where loss of market share and goodwill and/or price erosion are the paramount irreparable injuries—the very type of traditional cases identified in Chief Justice Robert’s concurrence. *eBay* at 394-395; *see also* Seaman at 1970-1971; 1990 (Fig. 4, showing an 84% grant rate for competitors and 21% for non-competitors); 1993 (Fig. 5, showing most common irreparable harm findings are loss of market share (80%) and loss of goodwill (43%)); 1996 (Table 3, showing a regression analysis indicating competitor status as being the most important factor); 1998 (“whether the patentee and infringer were competitors is the single most significant factor related to injunctive relief in all three models”). In other words, injunction grant rates are more closely correlated with how a plaintiff is *using* its patents (*e.g.*, to protect its competitive market share as opposed to monetization) rather than the form of the plaintiff’s business as an NPE or operating company.¹³

Second, the study shows that injunction grant rate is also closely correlated to whether the asserted patent covers a minor component of the accused products, where courts may be far less likely to issue injunctions due to the effects on third

¹³ This serves to demonstrate why injunctions are especially inappropriate in the context of SEPs, where the express intent is for manufacturers to design to a specific standard, and the patent holder has committed to license its SEPs on FRAND terms, thereby acknowledging that monetary compensation is expected and adequate.

parties. *See, e.g.*, Seaman at 1972; 1996 (Table 3, showing “small component” status as being the second most important factor); 1998 (“whether a patent claims a ‘small component’ of an infringing product is statistically significant for injunctive relief. When a patent is found to cover a small component, district courts rarely grant an injunction.”).

Third, the patents asserted by NPEs typically relate to such things as consumer electronics and software. These are technologies more likely to involve minor components or implicate public interest factors and therefore will have lower grant rates. *See, e.g.*, Seaman at 1985 (Table 1, showing grant rate falls to 67% for electronics and 53% for software).

Because NPEs are not market competitors and often advance component-centric patents against consumer electronics and software products, one would naturally expect their success rate in obtaining permanent injunctions to be lower, completely independent of their form as NPEs. Just because the universal application of traditional equitable relief analyses may result in fewer injunctions being granted to NPEs does not mean they are being denied those injunctions *because they are NPEs*.

V. PUBLIC POLICY SUPPORTS EBAY’S HOLDING.

A. eBay Reduces Instances of Disproportionate Bargaining Leverage.

A common critique of NPEs, and particularly PAEs, is that they wait to file

suit until a manufacturer's product features are "locked-in" (*e.g.*, adopted in released products) or, in the context of patents covering minor components, until those components are adopted across an entire industry and/or company's product line (as Collision did here against Samsung). This is because changing a product or component's design, direction, features, or sourcing is at its most expensive and technically difficult at this point and has the highest impact on a manufacturer's customers and partners. Indeed, it is often impossible to make such a change when an SEP is involved, given the nature of standards. Licensing demands at this time—particularly when accompanied by a threatened injunction—are known as "patent holdup."

While the threat of large damages awards in conjunction with this strategy is a difficult problem for manufacturers, re-introducing the threat of permanent injunctions as the "ordinary" relief after an infringement finding—particularly where the allegedly infringing technology is only a minor component of the defendant's product (as is the case here)—would cripple modern industry. PAEs asserting patents directed to a small feature or component of a manufacturer's products, implemented throughout its product line (as is the case here) and as the result of extensive sourcing and SEP licensing processes, could routinely extract coercive license agreements valued far beyond the patent's incremental contribution to the relevant art by strategically waiting for widespread adoption of

the (allegedly) infringing component and then threatening to shut down a manufacturer's entire product line. *See, e.g.,* Mezzanotti at 4-5 (“When it is costly to ‘undo’ such infringement after the fact, injunctions provide a patent holder with considerable bargaining leverage, because the alternative to a costly design-around is to abandon an entire product or line of business”). In other words, even where the asserted claim is feature- or component-based, patentees could advance unwarranted product-based threats.¹⁴

The dynamic would result in many negative effects. It would drive settlements based on injunction avoidance, not the technology's true value. It would transfer wealth from operating companies to PAEs without corresponding innovation gains. And it would encourage “pay to clear the threat” settlements even for weak patents. All of this results in an increased “patent tax” on development and commercialization, which can distort licensing markets, raise consumer prices, and result in reduced features or feature investment.

Such impacts are not theoretical. As explained in Mezzanotti at 5-6, in the

¹⁴ *Amici* cast these delayed assertions as a result of defendants' “efficient infringement.” *See* InterDigital Br. (Dkt. 33) at 29 and USIJ Br. (Dkt. 29) at 11-12. But, to the extent bad-faith infringement occurs, *amici* never explain why such cases could not result in injunctions under *eBay* or why damages—including treble damages for willful infringement—would be insufficient. Moreover, these cases are vanishingly rare in the first place, as infringement suits are often filed without notice, and generally involve good faith disagreements over claim scope and other merits.

2001 lawsuit filed by PAE NTP against Research in Motion (“RIM”), RIM was found liable for infringing NTP’s patents, which covered only a small fraction of the BlackBerry system’s technologies. The jury awarded NTP \$54 million in past damages, and the district court issued a permanent injunction against the entire BlackBerry system (stayed pending appeal). While this Court returned the case to the district court for further consideration of some claims in view of a revised claim construction, it affirmed the finding of infringement as to others, and the threat of a crippling shutdown injunction thus remained. *See NTP, Inc. v. Research In Motion, Ltd.*, 418 F.3d 1282, 1326 (Fed. Cir. 2005). Accordingly, even while the PTO was finding NTP’s patents invalid in reexamination, RIM was ultimately forced into a \$612.5 million settlement—almost half of RIM’s annual revenue—to avoid shuttering its operations. This amount clearly exceeded the reasonable value of NTP’s technology, and RIM was heavily damaged long-term. Dispensing with *eBay*’s balancing test and employing Collision’s view that permanent injunctions should be the “ordinary” relief for an infringement finding raises the specter of this fact pattern being commonly repeated against many U.S. technology companies.

B. *eBay* Protects Consumers and Other Third Parties.

In the past, where patents were more often related to discrete products (*e.g.*, a tool) and infringement suits were more often between market competitors, injunctions were more likely to impact only the infringing party, because the

injunction was aligned to a product directly covered by the patent and because the patent owner could readily step in to supply alternatives to the enjoined product.

But those days are largely in the past. In the modern world, where patents often cover only a small improvement or component of a larger device, and where many consumer products are assemblies of a multitude of minor components complying with multiple international standards and delivered by a worldwide network of suppliers, injunctions can have wide-ranging impacts beyond the adjudged infringer.

First, injunctions may unfairly impact customers. Injunctions obviously reduce customer's marketplace choices, as demonstrated in this case where Collision seeks to remove Samsung's products from large swathes of market segments. Injunctions can also affect consumers by causing manufacturers to remove functionality from customer devices. For example, in a case involving an email application or web browser, a manufacturer might be forced to remove those applications from a mobile device or disable them from providing services. This would, of course, be quite detrimental to the consumer experience. Should injunctions become the "ordinary" relief for infringement, consumer uncertainty as to whether they will actually be able to retain use of the complete functionality of a purchased device will affect consumer willingness to purchase new devices. This will impact device sales, which will in turn reduce revenue that can be reinvested

for future development and slow the pace of innovation.

Injunctions can also unfairly impact manufacturers where the allegedly infringing technology is but a minor component or functionality of the accused product (as is the case here) and/or is utilized to provide functionality related to a standard. Enjoining an end product in such cases causes unwarranted reputational harm to the manufacturer and can again result in lost sales and reduced revenue available for innovation investment.

Injunctions can also impact supply chains in an unfair manner. Many modern products, like those at issue here, are built through global, just-in-time supply chains. An injunction on an end product has a direct impact on the component suppliers, including the suppliers of components completely unrelated to the allegedly infringing technology. For example, in this case, screen suppliers for Samsung's devices would be impacted even though their components are unrelated to Collision's patents. Injunctions can also strand components (such as the exemplary screens) procured for specific designs, and force write downs of finished goods and spare parts. This will all result in higher component costs such that suppliers can be protected from harm, which will be passed along to customers and result in fewer sales and less reinvestment in innovation.

Injunctions can also unfairly impact downstream relationships. They can cause contractual breaches (*e.g.*, in corporate or government procurement) when

products can no longer be delivered. They can also impact critical infrastructure where the products are for government use of government-managed spaces.

eBay's four-part test requires courts to explicitly consider the foregoing impacts as part of its public interest and hardships analyses. Proper application of those prongs reduces the risk of unfair impacts such as the above, and helps prevent the enforcement of a single patent directed to a minor component producing outsized market disruptions, product withdrawals, or service interruptions that are unrelated to the merits of compensating the patentee. Making injunctions the "ordinary" relief for infringement would make the foregoing unfair results common.

C. *eBay* Emphasizes Proportionality of Remedies.

As shown in the studies above, *eBay* does not operate as a bar on injunctions for certain categories of plaintiffs. Rather, proper application of its four-part test results in injunctions being awarded to plaintiffs in cases where public policy most strongly supports exclusion, such as those involving direct competitors and lost market share or goodwill that cannot be addressed by damages. This preserves strong remedies for cases where exclusion most directly supports innovation incentives.

Public policy generally favors remedies that are proportional and tailored. *eBay* encourages courts to carefully consider whether exclusion is really necessary

to prevent a harm that money cannot remedy. If not, damages (and in practice, ongoing royalties) may better match plaintiff’s injury. Such an approach particularly encourages proportionality in NPE cases, where injury is often monetizable. Most NPE cases are fundamentally about licensing value, particularly those brought by investment-based PAEs. That type of injury is frequently compensable through damages, both past and ongoing under *Paice*.¹⁵

This proportionality concept is reinforced by the Supreme Court’s recent holding in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025). While *Collision* and *InterDigital* both cite this case for the (correct) proposition that injunctive relief is based on traditional equitable principles, they largely ignore the decision’s central holding—that district courts *cannot issue overbroad “universal injunctions,”* *id.* at 841, 843 (“we consistently rebuffed requests for relief that extended beyond the parties”) and 847 (“Because the universal injunction lacks a historical pedigree, it falls outside the bounds of a federal court’s equitable authority under the Judiciary Act.”) —as well as the Court’s supporting analysis that equitable relief is bound by the complete-relief principle.

Under this principle, the question is not whether an injunction offers complete relief to everyone potentially affected by an allegedly

¹⁵ Of course, *eBay*, as applied in the studies discussed above also allows injunctions to NPEs where warranted. For example, as set forth in *eBay*, small inventors or university NPEs may prevail under the *eBay* four-part test. *eBay* at 393. This is fully appropriate in the context of the public policies set forth herein.

unlawful act; it is whether an injunction will offer complete relief to the plaintiffs before the court. *See Califano v. Yamasaki*, 442 U. S. 682, 702, 99 S. Ct. 2545, 61 L. Ed. 2d 176 (1979) (“[I]njunctive relief should be no more burdensome to the defendant than necessary to provide complete relief *to the plaintiffs*” (emphasis added)).

CASA at 852, 854 (“Complete relief is not a guarantee—it is the maximum a court can provide”). *See also* 862 (“As the Court recognizes, the complete-relief principle operates as a ceiling: In no circumstance can a court award relief beyond that necessary to redress the plaintiffs’ injuries.”) (Thomas, J. concurring).

The concept of “complete relief” is directly applicable to an *eBay* analysis inasmuch as the Court’s instructed ceiling for relief is only what is *necessary* for redress to the plaintiff. It should be rare to find an injunction *necessary* for minor component infringement situations and/or situations where plaintiffs have no competitive injury. Such instances should almost always be addressable by money damages without the need to resort to a crippling and coercive injunction.

D. *eBay* Reduces Incentives For Opportunistic Assertion Strategies.

As discussed above, the payoff to asserting patents late in a product’s lifecycle after firms are “locked in” (and redesign is costly, if not impossible) is high. It would be even higher if injunctions were the “ordinary” remedy for infringement as Collision wishes. Maintaining *eBay* thus helps ameliorate these late assertions.

Maintaining *eBay* also helps lessen the incentives for patent owners to assert

end products to be infringing even where the asserted patents relate to minor components or functions. While this strategy is problem enough in current NPE cases, it would be even worse if injunctions were an “ordinary” remedy. The injunction-threat leverage NPEs could create in such situations against high volume electronics would often be discordant with the asserted patent’s value.

Maintaining *eBay* also helps lessen the incentives for patent owners to advance weak patents and cases. Injunctions as an “ordinary” remedy would make it more attractive to assert patents with questionable validity or infringement, or bring cases that have other substantive weaknesses, because the threat of an injunction changes the risk/reward analysis. *See, e.g.,* Mezzanotti at 4-5 (“nearly-automatic injunctions were encouraging frivolous patent litigation by offering patent holders the prospect of outsized rewards for patents of limited value”).

Reducing these incentives via correct application of *eBay*’s four-part test focuses suits on the correct parties and products, promotes cases being resolved on the merits rather than economic coercion, and reduces frivolous assertions.

E. *eBay* Encourages Innovation in Cumulative, Iterative Technology Markets with Rapid Product Cycles.

Many modern technology sectors, like consumer electronics and software, depend heavily on rapid iteration and cumulative innovation. If injunctions become an “ordinary” relief for infringement as Collision asks, manufacturers will spend less on innovation and more on extensive processes of clearance, defensive

patenting, and litigation avoidance. This will have the natural effect of higher prices, slower product cycles, and higher barriers to entry for smaller companies.

In particular, more common injunctions would result in fewer product features or delayed feature introduction as companies will avoid releasing features without extensive clearance. Rather than innovation, engineering resources would be focused on “defensive engineering” (*e.g.*, design arounds). Companies would also be more likely to avoid introducing new features to the U.S. market. All of this actively redirects resources from innovation, and also reduces customer satisfaction which can result in less revenue and funding of innovation.

More common injunctions would also result in increased product development costs. For example, costs would increase due to more detailed clearance and freedom-to-operate analyses. Higher costs would also be incurred due to litigation infrastructure investment, scaling, defensive patent aggregation, and cross-licensing buildup. Companies would also build-in increased contingency costs for redesign and supply-chain disruptions due to late-cycle injunction threats.

More common injunctions would also raise the cost of capital. Companies would undertake higher levels of due diligence for investment or M&A, and investment in hardware-heavy or supply-chain-dependent businesses may be deterred—particularly for U.S.-based manufacturing and commercialization.

More common injunctions can also undermine standard adoptions in

standards-heavy industries (such as in the electronics at issue here) because implementers would fear injunctions after the standard was adopted in product lines. Relatedly, more common injunctions would reduce compatibility and increase fragmentation (*e.g.*, proprietary alternatives, feature disabling) if companies must rapidly redesign around asserted claims.

By lowering the probability of injunctions where damages are adequate, the *eBay* four-factor test reduces the above “taxes” on product launches and iterative improvements, supporting faster innovation cycles and less cost for consumers.

F. While Damages Should Be Sufficient for NPEs in Most Cases, *eBay* Provides Room for Injunctions When Warranted.

In most cases, for NPEs with business models of monetization through licensing, and in particular PAEs, money damages is the natural remedy. If the NPE is not competing and has no concrete plans to practice the patent, the classic irreparable harms (lost sales, market share, price erosion) that lead to injunctions are usually absent. The harms to NPEs in such instances often look like foregone licensing value, which courts frequently treat as compensable with money. But, while the *amici* supporting Collision complain about the success rate, the studies they cite confirm that NPEs are still granted injunctions when warranted. Indeed, *eBay* expressly contemplates injunctions for NPEs when there is a real equitable need, including where the NPE is a university or research institution with a credible exclusivity-based transfer program, concrete evidence that infringement is

destroying a selective licensing strategy, or cases where ongoing royalties are unworkable. This is a rational balance.

VI. THE AVAILABILITY OF INJUNCTIONS IN OTHER JURISDICTIONS PROVIDES NO JUSTIFICATION TO HARM THE U.S. ECONOMY BY MAKING INJUNCTIONS AN “ORDINARY” RELIEF.

The *amici* supporting Collision argue that some plaintiffs are now proceeding in other jurisdictions, such as Germany, Brazil, and the Unified Patent Court (“UPC”), to enforce their patents, which they view as *eBay*-related and a negative outcome for the primacy of U.S. courts. InterDigital Br. (Dkt. 33) at 23-27 and USIJ Br. (Dkt. 29) at 19-20.

But *amici* do not argue that patent owners are foregoing U.S. litigation, and such a position would be discordant with the number of patent litigations advanced in U.S. courts over the past 20 years. Nor do *amici* show that the availability or popularity of these foreign forums are somehow directly tied to *eBay*, or that the trend to more foreign litigation is in any way negative for U.S. industry.

It should not be surprising that, as the world has become more connected, patent owners have developed more multinational portfolios. To the extent the popularity of the foreign forums identified by *amici* is growing, it is likely a result of this multinational growth, or extreme policies in other jurisdictions, and not any defect in U.S. policy. Further, just because these forums may be perceived (at least currently) as more plaintiff-friendly than the U.S. due to a natural cultural

inclination to side with patentees, a quicker resolution path, or more automatic permanent injunctions, that is no reason in and of itself to change the careful balances developed in U.S. law over decades of experience. The fact the U.S. approach under *eBay* may be different does not make it deficient.

Moreover, foreign jurisdictions with more punitive permanent injunction schemes (*e.g.*, Germany, Brazil) have repeatedly been recognized as being incredibly coercive on defendants, with all of the negative public policy impacts discussed above. *See, e.g., Panasonic Holdings Corp. v. Xiaomi Corp.*, [2024] EWHC 1733 (Pat), ¶ 82 (“put bluntly, Panasonic wishes to use the exclusionary power of injunctions granted by the German courts and/or the UPC to try to force Xiaomi to pay more than the English courts would order”). As a recent example, two major laptop manufacturers, Acer and Asus, were enjoined earlier this year from selling their products in Germany based on an infringement finding related to Nokia patents covering minor video processing features.¹⁶ With little recourse, Asus and Acer were only allowed back into the German market months later after a settlement with Nokia at a cost that was likely much higher than the minor value of the asserted video processing patents. There is no reason to introduce these negative policy effects on manufacturers, customers, and suppliers in the U.S., for

¹⁶ <https://timesofindia.indiatimes.com/technology/laptops-pc/german-court-bans-acer-and-asus-pc-sales-over-nokia-patent/articleshow/128420822.cms>.

at least the public policy reasons discussed above.

VII. CONCLUSION

For the foregoing reasons, the FSA respectfully submits that the Court should reject Collision and *amici*'s invitation to revisit any aspect of the *eBay* decision, including by making the issuance of permanent injunctions an "ordinary" relief for an infringement finding.

Dated: September 21, 2026

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CERTIFICATE OF COMPLIANCE

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