

Filippo Mezzanotti, Timothy Simcoe, Patent Policy and American Innovation After eBay: An Empirical Examination, May 2018

The 2006 Supreme Court ruling in eBay vs. MercExchange removed the presumption of injunctive relief from infringement and marked a sea change in U.S. patent policy. Subsequent legal and policy changes reduced the costs of challenging patent validity and narrowed the scope of patentable subject matter. Proponents of these changes argue that they have made the U.S. patent system more equitable, particularly for sectors such as information technology, where patent ownership is fragmented and innovation highly cumulative. Opponents suggest the same reforms have weakened intellectual property rights and curtailed innovation. After reviewing the legal background and relevant economic theory, the paper examines patenting, R&D spending, venture capital investment and productivity growth in the wake of the eBay decision. Overall, the papers finds no evidence that changes in patent policy have harmed the American innovation system.