

**Studying the Impact of eBay
on Injunctive Relief in Patent Cases**
by Kirti Gupta and Jay P. Kesan

Comment by Christian Helmers

January 12, 2017

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- **Do we see what we really see?**

- **Why does it matter?**
 - *We find significantly reduced use of an injunction as a remedy, with systematic declines for both PEs and NPEs after eBay. Given the non-substitutable nature of injunctions as a remedy in patent disputes, this result has **important consequences for patent policy**.*
 - *Has the risk of potential “**patent hold-up**” under the threat of an injunction been **mitigated**?*
 - *Do “**non-manufacturing**” patent holders have lower bargaining power in litigation and hence are being being **penalized**?*

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- What is the role of injunctions in patent litigation?

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 - **Uncertainty about boundaries/existence and validity of the patent:** Hold-up and hold-out (Shapiro, 2016)

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- BTW **SEPs** may require some discussion

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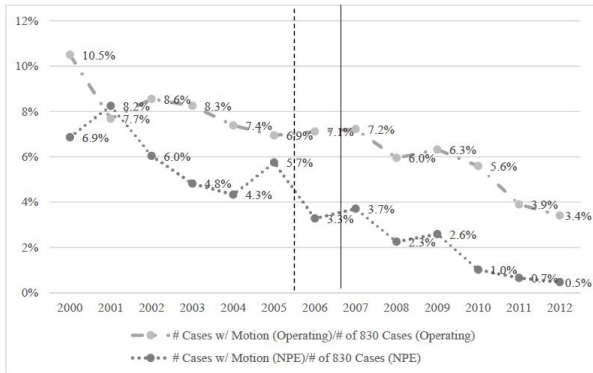
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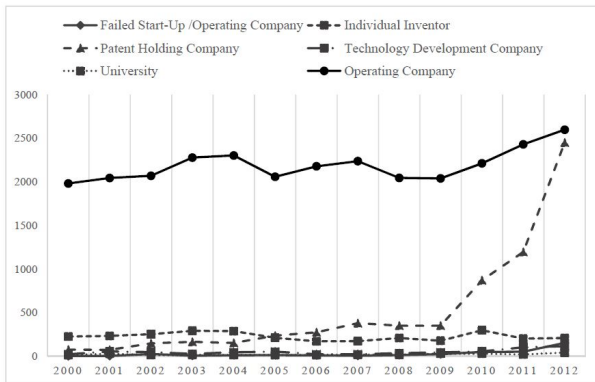
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 - How does it change post-eBay?

References

- Lanjouw Jean O. and Josh Lerner (2001): Tilting the Table? The Use of Preliminary Injunctions, *The Journal of Law & Economics*, 44(2): 573-603
- Shapiro Carl (2016): Patent Remedies, *AER P&P*, 106(5): 198-202