

Immunity Community

By Craig Anderson
Daily Journal Staff Writer

Government and university research institutions are major players in the patent world, parlaying their inventions into big money in the form of licensing revenue and royalties while doing work they tout as being in the public interest.

But their ability to collect large sums for their inventions may be in jeopardy because of the U.S. Supreme Court's ruling in *eBay Inc. v. MercExchange LLC*, 126 S.Ct. 1837 (2006), which tightened the rules on granting permanent injunctions in patent infringement cases. A powerful collection of large corporations says research organizations do not deserve injunctions any more than other patent holders that do not make products using their inventions.

In the pre-*eBay* world, any organization — whether a government research institution or a for-profit patent-holding company — that proved its patents had been infringed was able to get a permanent injunction against the infringer. An injunction is a powerful tool, because it often forces an infringer to settle



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"We're not in this for financial gain. We're in this for scientific progress. Without the threat of an injunction, there's no incentive to settle. Organizations like research institutions need the leverage just to level the playing field," said Daniel J. Furniss, who represents the Commonwealth Scientific and Industrial Research Organisation.

the case on terms very advantageous to the patent holder.

Post-*eBay*, attorneys on both sides are sorting out how the U.S. Supreme Court's rules will work in practice. Government and university research institutions are worried they will be treated the same as companies that don't manufacture their patented technology, but instead hold patents to sue for in-

fringement, and will be denied lucrative injunctions to protect the value of their inventions. Non-manufacturing entities have a far more difficult time convincing courts to grant them injunctions in patent cases.

The first significant test comes April 11, when the U.S. Court of Appeals for the Federal Circuit considers whether

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