A Deepening Patent-Trademark Divide Over Irreparable Harm

By **Jason Hoffman and Robert Hails** (August 18, 2026)

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A patent owner and a trademark owner walk into court with the same request: Stop the infringement before it causes harm that money cannot repair. They do not begin from the same place.

The trademark owner receives a rebuttable presumption of irreparable harm after showing likely infringement. The patent owner receives no such presumption. Two decisions issued by the U.S. Court of Appeals for the Federal Circuit within the past couple of months have brought that difference into sharper focus.

The first confirmed that likely patent validity and infringement do not create a presumption of irreparable harm, even when the patent owner seeks only preliminary relief. The second demonstrated the consequences of that rule, rejecting a claim of irreparable price erosion because the patent owner had not connected the accused conduct to the asserted injury.

At the same time, Congress is considering legislation that would give patent owners a narrower presumption than trademark owners receive. The pending Realizing Engineering, Science, and Technology Opportunities by Restoring Exclusive Patent Rights Act would create a rebuttable presumption favoring a permanent injunction after a final judgment of patent infringement. It would not apply to preliminary injunctions.

These developments sharpen the divide: Trademark owners receive a presumption at both stages, while patent owners currently receive none. In either field, the practical question remains what harm the infringement will cause and whether money can repair it.

Patent Law's Path From Presumption to Proof

The Federal Circuit recently issued two precedential decisions addressing irreparable harm at the preliminary injunction stage.

In Socket Solutions v. Import Global,[1] decided Aug. 4, the court **reaffirmed** that a patent owner may not presume irreparable harm from likely validity and infringement. In Ridge v. Kirk NationaLease,[2] decided July 13, 2026, the court **addressed** the evidence required to prove that harm without a presumption. Together, the decisions move the inquiry from presumption to proof.

In Socket Solutions, the U.S. District Court for the Southern District of Florida entered a preliminary injunction after concluding that Socket was likely to prove infringement of a patent directed to an indoor electrical wall outlet cover.

The Federal Circuit vacated the injunction because the district court had incorrectly construed two claim terms. Although that ruling made it unnecessary to decide whether Socket had established irreparable harm, the court separately rejected the district court's reliance on a presumption arising from likely validity and infringement.

The U.S. Supreme Court's 2006 decision in eBay v. MercExchange eliminated that presumption for permanent injunctions, and the Federal Circuit saw no reason to apply a different rule to preliminary injunctions.

A preliminary injunction requires separate showings of likely success and likely irreparable harm. Allowing likely validity and infringement to establish harm would collapse those inquiries. Socket Solutions confirms that patent owners must prove each independently.

The Ridge decision illustrates what that independent proof requires. The district court had preliminarily enjoined the defendants from manufacturing or selling certain composite trailer panels. The Federal Circuit reversed, finding both substantial questions concerning infringement and an insufficient showing of irreparable harm.

Ridge asserted that the defendants' accused sales would cause irreparable price erosion and pointed to sales that Ridge itself had made at discounted prices or for no charge. But the Federal Circuit found no credible evidence connecting Ridge's reduced-price sales to the defendants' accused conduct or explaining how future sales by the defendants would erode Ridge's prices.

The problem was not that price erosion could never constitute irreparable harm. Ridge had not established the necessary causal connection between the alleged infringement and the anticipated injury.

Together, the decisions define the patent owner's burden. Socket Solutions prevents a court from inferring irreparable harm from likely infringement. Ridge prevents the owner from replacing that inference with an unsupported assertion of injury. The owner must prove that the harm is likely, caused by the infringement and beyond the ability of money to repair.

Partially Restoring the Patent Presumption

The Federal Circuit's recent decisions define the burden patent owners face under current law. Congress is considering a different starting point after infringement has been finally adjudicated.

The RESTORE Patent Rights Act would amend Section 283 of the Patent Act. After a final judgment finding infringement, the patent owner would receive a rebuttable presumption that the court should grant a permanent injunction against the infringing conduct identified in the judgment. The bill would thus presume that the ultimate remedy is warranted, rather than merely presuming irreparable harm under one eBay factor.

The proposed presumption would not extend to preliminary injunctions. Before final judgment, patent owners would continue to prove likely irreparable harm without a presumption under the framework recently reaffirmed by the Federal Circuit. Whether Congress will enact the proposed change remains uncertain.

A Broader View of Patent Harm

Legislation is not the only effort to reshape patent-injunction law. The U.S. Patent and Trademark Office and the U.S. Department of Justice's Antitrust Division are also urging courts to recognize a broader range of injuries under the existing eBay framework.

That effort received an important test in the U.S. District Court for the Eastern District of Texas' May decision in Collision Communications v. Samsung Electronics.[3] After a jury found willful infringement and awarded more than $445 million as a royalty for past infringement, Collision sought a permanent injunction against continued infringement.

In a statement of interest, the government did not ask the court to presume harm or take a position on whether Collision was entitled to an injunction. Instead, it argued that Collision's licensing model should not preclude relief. Because future markets, technologies, competitors and economic conditions can make patents difficult to value, the government explained, those uncertainties may support findings of irreparable harm and inadequate monetary remedies even when the owner does not manufacture a competing product.

U.S. District Judge Rodney Gilstrap agreed that a patent owner's licensing model does not preclude irreparable harm but rejected Collision's argument that ongoing infringement automatically establishes it. He found irreparable harm based in part on Collision's loss of a design-win opportunity.

Collision nevertheless failed to establish entitlement to an injunction. On the balance of hardships and public interest factors, Judge Gilstrap faulted both parties for advancing categorical arguments rather than applying the governing factors to the facts of the case. Because Collision bore the burden and failed to satisfy those factors, the court denied its request for a permanent injunction.

Collision therefore reinforces the rule underlying the patent-trademark divide: Patent cases carry no presumption. Ongoing infringement does not establish irreparable harm, but a licensing-based business model does not defeat it. Each patent owner must establish entitlement to an injunction under all four eBay factors based on the circumstances of the case.

A Broader Presumption in Trademark Law

Trademark law begins from a different statutory rule. After eBay prompted disagreement over whether the traditional trademark presumption survived, Congress enacted the Trademark Modernization Act of 2020. The statute provides a rebuttable presumption of irreparable harm upon likely success for preliminary relief and upon liability for permanent relief. Unlike the pending RESTORE Act, it applies at both stages.

The return of the presumption did not eliminate the need for evidence. It changed who must produce that evidence first.

Several courts of appeals have applied the restored presumption.

The U.S. Court of Appeals for the Ninth Circuit, in AK Futures v. Boyd Street Distro in 2022,[4] and the U.S. Court of Appeals for the Fifth Circuit in Whirlpool v. Shenzhen Sanlida in 2023,[5] upheld preliminary injunctions where the trademark owners established likely success and the defendants did not overcome the presumption. Those decisions confirm that the presumption can carry practical force. But neither explains in depth what evidence is sufficient to rebut it.

The U.S. Court of Appeals for the Third Circuit confronted that question directly in Nichino v. Valent in 2022.[6] After finding that Nichino had narrowly shown likely confusion between the Centaur and Senstar and pesticide marks, the U.S. District Court for the District of Delaware applied the statutory presumption.

Valent rebutted it with evidence that the relevant customers were sophisticated and careful purchasers: The products differed in price and form, buyers relied on expert recommendations, and misuse could destroy crops.

The Third Circuit treated the presumption as a burden-of-production device under Federal Rule of Evidence 301. The defendant need only produce evidence from which a reasonable fact-finder could conclude that the likely confusion will not cause irreparable harm. Once that modest burden is met, the presumption disappears and the trademark owner must prove likely irreparable harm affirmatively. Because Nichino did not, the court affirmed the denial of an injunction.

Nichino therefore identifies both the value and the limit of the trademark presumption. Trademark owners receive an evidentiary head start that patent owners do not. But once the defendant rebuts the presumption, the trademark owner faces the same fundamental task: proving an injury tied to the infringement that money cannot adequately repair.

Different Starting Points, Similar Need for Proof

Patent and trademark law now assign the initial evidentiary burden differently. Trademark owners begin with a rebuttable presumption of irreparable harm. Patent owners do not, although Congress is considering a limited presumption for permanent injunctions after final judgment.

That difference is significant, but it does not answer whether an injunction will issue. A presumption can be rebutted, and the absence of one does not foreclose relief. In both fields, the strength of an injunction request ultimately depends on the record developed around the particular injury, its connection to the infringement and the inadequacy of monetary relief.

The recent developments therefore do not bring patent and trademark remedies together, nor do they resolve how far apart the two regimes will remain. They instead place greater attention on what the presumption actually changes. For litigants, the central questions remain: What harm will the infringement cause? How likely is that harm? And why can money not repair it?

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[1] Socket Solutions, LLC v. Import Global, LLC, No. 2025-1121, 2026 WL 2234259 (Fed. Cir. Aug. 4, 2026).

[2] Ridge Corp. v. Kirk NationaLease Co., 181 F.4th 1224 (Fed. Cir. 2026).

[3] Collision Commc'ns, Inc. v. Samsung Elecs. Co., No. 2:23-CV-00587-JRG, 2026 WL 1391885 (E.D. Tex. May 18, 2026).

[4] AK Futures LLC v. Boyd Street Distro, LLC, 35 F.4th 682 (9th Cir. 2022).

[5] Whirlpool Corp. v. Shenzhen Sanlida Electrical Technology Co., 80 F.4th 536 (5th Cir. 2023).

[6] Nichino America, Inc. v. Valent U.S.A. LLC, 44 F.4th 180 (3d Cir. 2022).