# *Exhibit A*

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**MARSHALL DIVISION**

RADIAN MEMORY SYSTEMS LLC,

*Plaintiff*,

v.

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

*Defendants*.

Civil Action No.: 2:24-cv-1073

**JURY TRIAL DEMANDED**

**PLAINTIFF'S RESPONSE TO STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

## I. INTRODUCTION

The United States of America filed a Statement of Interest ("SOI") expressing its views on Radian Memory Systems LLC's ("Radian") Motion for Preliminary Injunction. Dkt. 52 ("Mot."). The Department of Justice and the Patent and Trademark Office (collectively, "DOJ") discuss how to assess whether a patentee "has demonstrated a likelihood of irreparable harm . . . under Supreme Court and Federal Circuit precedent." SOI at 3.[1] The DOJ notes that preliminary injunctions in patent-infringement cases have become unduly difficult to obtain, particularly in cases involving patent owners, like Radian, who prefer or are only capable of licensing their patents. And this lack of preliminary-injunctive relief undermines a principal purpose of the Patent Act of 1952: to encourage innovators of all stripes to invent, including small companies like Radian. SOI at 3, 12.

Radian appreciates the DOJ's attention to this issue and to this Motion in particular. As explained below, Radian largely concurs with the DOJ but files this response to clarify two significant points: (1) that courts must apply equity as it was applied by Chancery in England in and around 1789, and (2) that the traditional equitable principle that ongoing violations constitute irreparable harm does indeed survive *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006).

## II. RADIAN'S PATENTS ARE UNIQUE ASSETS AND ARE DIFFICULT TO VALUE

Radian agrees with the DOJ that when it comes to assessing irreparable harm, patents are unique assets, making damages difficult and costly to calculate, and that this is so regardless of whether the patentee is a non-practicing entity. SOI at 5, 8–14. It is also true, as the DOJ notes, *id.* at 9–11, that a long-standing principle of equity is that when damages are difficult to calculate,

[1] While the DOJ cites decisions from the Federal Circuit and from other circuits, the DOJ does not take a position on Radian's argument that Fifth Circuit law governs irreparable harm. As Radian has shown, the trans-substantive nature of that factor and the Federal Circuit itself call for regional-circuit precedent to be applied. *See* Mot. at 3–4, 7; Radian Reply, Dkt. 48 at 3 ("Reply").

that renders the remedy at law inadequate. *E.g.*, *Richardsons v. Univs. of Oxford & Cambridge* (H.L. 1804), *printed in* Judgments and Extracts from Pleadings; The Universities of Oxford and Cambridge versus Richardsons 26, 30 (s.l.n. [*c*.1822]); *Hogg v. Kirby*, 8 Ves. Jr. 215, 223, 225 (Ch. 1803) (copyright and trademark injunction). Indeed, this traditional equitable principle—difficulty in calculating damages—is what undergirds and permits courts to conclude that future harms such as loss of reputation or market share are irreparable. *See* Mot. at 17, 16–21; SOI at 11 n.4. In *City of Walla Walla v. Walla Walla Water Co.*, 172 U.S. 1 (1898), the Supreme Court recognized that difficulty in calculating damages constituted irreparable harm, and that it was but one equitable principle that could trigger an injunction. *Id.* at 11–13. Another way of demonstrating irreparable harm, it noted, would be when a plaintiff faced a "recurring grievance." *Id.* at 12; *see also* Mot. at 13–14. That is the ongoing-violations doctrine Radian primarily relies on here. *See Cont'l Paper Bag Co. v. E. Paper Bag Co.*, 210 U.S. 405, 430 (1908) ("continuing wrongs" is one of several "well-recognized grounds of equity jurisdiction, especially in patent cases").

Although the difficulty of calculating damages plagues most patent cases, the DOJ does note an exception—cases where the patentee has, before a defendant's infringement, already established a royalty rate on uniform terms open to all comers. SOI at 15 n.6. Radian agrees that cases involving established royalties—as distinguished from reasonable-royalty or lost-profit measures of damages—typically involve little difficulty in calculating damages. Disputes involving established royalties are relatively rare, however, and, as the DOJ suggests, SOI at 15, this case is not one of them. *See* William C. Rooklidge et al., *Compensatory Damages Issues in Patent Infringement Cases* 8–12 (2d ed. 2017) (Fed. Jud. Ctr.) (describing stringent criteria for established royalties; "[B]ecause the required proof is so exacting, an established royalty is the least common form of patent infringement damages sought or awarded."). For the patents at issue

here, Radian has never offered a standard license with uniform royalty rates to all comers who wish to license the patents. Moreover, Radian intends to pursue reasonable-royalty damages at trial and fully expects that Samsung will contest Radian's methodology and computations vigorously.

## III. *EBAY* DID NOT ABOLISH THE ONGOING-VIOLATIONS PRINCIPLE

The DOJ notes correctly that this Court "should evaluate the possibility of irreparable harm under traditional equitable principles," and that it is proper to draw from trans-substantive principles of irreparable harm, like those that apply to tangible property, SOI at 5, 8. But Radian respectfully disagrees with the DOJ on whether future infringement itself—once a likelihood of it occurring in the absence of an injunction has been sufficiently shown—can constitute irreparable harm as a matter of law. *Id.* at 5 n.2. The DOJ states that such "a categorical rule is inconsistent with *eBay*." *Id.* Because the DOJ does not appear to challenge the notion that an ongoing-violations doctrine existed in equity before *eBay* (nor does Samsung, for that matter), the question boils down to whether this traditional equitable principle survives *eBay*. It must, and it does, per *eBay* itself.

*eBay* is narrower than the DOJ appears to read it. The "categorical rules" prohibited by *eBay* are those that require the automatic grant or denial of injunctive relief, as discussed below. This proper understanding of "categorical rules" allows *eBay* to be read so that it is internally consistent and consistent with earlier and recent Supreme Court case law instructing courts to apply founding-era equitable principles absent legislation directing the contrary.

In *eBay*, the Supreme Court emphasized that district courts were to exercise their discretion in a manner "consistent with traditional principles of equity." *eBay*, 547 U.S. at 394. The term "traditional principles of equity" refers to the system of equitable principles administered by the English Chancery circa 1789. *See Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 318–19 (1999). And those principles, unless altered by an act of Congress, did not permit "categorical rule[s]" or "broad classifications" of factual scenarios that required a trial court to

"automatically" *grant* or *deny* a final injunction. *eBay*, 547 U.S. at 391–92.[2] The Federal Circuit's general rule of largely irrebuttable grants of final injunctions, "unique to patent suits," exemplified the former, *id.* at 393–94, while the district court's narrower rule that non-practicing entities could never show irreparable harm exemplified the latter, *id.* at 393.[3] Neither could be "squared with the principles of equity adopted by Congress." *Id*. The Supreme Court remanded the case so that the district court could apply the "traditional four-factor framework" and "traditional principles of equity." *Id.* at 394. But in doing so, the Supreme Court did not question the ongoing-violations doctrine or how it affected whether legal damages were an adequate remedy.

To hold that ongoing violations—which is itself a traditional equitable principle—does not survive *eBay*—which instructs courts to apply traditional equitable principles—would render the decision in conflict with itself. The ongoing-violations doctrine has a long history in equity, stretching back to the Court of Chancery in the 18th century. *See* Mot. at 9–12. Moreover, the Supreme Court adopted the principle in numerous cases, including in patent-infringement suits, to conclude that the legal remedy of damages was inadequate and thus that equity had jurisdiction to issue injunctive relief. *See id.* at 13–14 (citing cases); *see also* B. Stedman, *Patents* § 250, at 606 (1939) ("When patent rights have been infringed and sound reason exists for believing that the infringement may be resumed in the future, the case is remediable in equity by an injunction . . . ."); 3 A.W. Deller, *Walker on Patents* § 538, at 1817 (1937) ("An adequate remedy at law does

[2] *eBay*, 547 U.S. at 394 ("We hold only that the decision whether to grant or deny injunctive relief rests within the equitable discretion of the district courts, and that such discretion must be exercised consistent with traditional principles of equity . . . .").

[3] *eBay*, 547 U.S. at 393 ("Such patent holders [*i.e.*, non-practicing entities] may be able to satisfy the traditional four-factor test, and we see no basis for categorically denying them the opportunity to do so. To the extent that the District Court adopted such a categorical rule, then, its analysis cannot be squared with the principles of equity adopted by Congress.").

not exist in any case to prevent future infringements . . . .").[4] Radian's discussion in its Motion of pre-*eBay* jurisprudence in England and the United States has not been challenged.

The traditional equitable principle of ongoing violations also does not run afoul of *eBay*'s prohibition on categorical rules. The principle is not a categorical rule that requires a court to "automatically" *grant* or *deny* a preliminary injunction. The principle simply establishes one element of the four-factor test, and only after a showing that a future violation is probable. Additionally, if the ongoing-violations principle runs afoul of *eBay*, then so must other principles that establish irreparable injury as a matter of law, including some the Supreme Court has itself employed after *eBay*. *E.g.*, *Trump v. CASA, Inc.*, -- U.S. --, 2025 WL 1773631, at *15 (2025) (stay) (Executive Branch is always irreparably harmed when an injunction exceeds a federal court's equitable authority); *Mahmoud v. Taylor*, -- U.S. --, 2025 WL 1773627, at *24 (2025) (loss of First Amendment freedoms always constitutes irreparable harm on a request for injunctive relief); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (*per curiam*) (same); *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (stay) (government is always irreparably harmed when a court enjoins enforcement of a statute).

*eBay* must also be read alongside other Supreme Court cases that direct federal courts to employ traditional principles of equity according to the practices of the English Court of Chancery in 1789, unless Congress has subsequently altered, augmented, or rejected those traditional principles. *See* Mot. at 8–9. Stated another way, the "traditional principles of equity" that *eBay*

[4] *See also Clark v. Wooster*, 119 U.S. 322, 325 (1886) (noting that complaints alleging "continued infringement" suffice to show that a damages remedy is inadequate, and thereby invoke equitable jurisdiction, but if a patent expires after the suit is filed, making future violations impossible, some other form of future harm must be shown to support an injunction); *Root v. Ry. Co.*, 105 U.S. 189, 216 (1882) (recognizing that when a patent expires before suit is filed, some other ground has to be alleged in the complaint to show the inadequacy of the remedies available at law).

speaks of are those that Congress adopted in the Judiciary Act of 1789, and which remain in place because no subsequent patent statute has altered them. Neither the DOJ nor Samsung discuss this line of cases, with Samsung stating only that *eBay* "refute[d]" them. Samsung Opp. at 14–16 (relying in large part on the Federal Circuit's non-precedential opinion in *VidStream LLC v. Twitter, Inc.*, No. 2024-2265, 2024 WL 4820802 (Fed. Cir. Nov. 19, 2024), which also failed to address Supreme Court case law directing courts to consider 18th-century equity principles).

But the Supreme Court very recently reaffirmed this line of cases in a decision that was not available to the DOJ when it filed its Statement. In *Trump v. CASA*, decided on June 27, the Court wholeheartedly endorsed its prior decision in *Grupo*, and the many cases that preceded *Grupo*. Among other things, the Court reaffirmed the doctrine that a federal court's equitable jurisdiction and authority come from the Judiciary Act of 1789. *Trump v. CASA*, 2025 WL 1773631, at *5–6. Thus, unless altered by another act of Congress, a federal court's present-day powers and equitable jurisdiction (which is triggered when the remedy at law is inadequate) are governed and limited by the jurisdiction and principles employed by the English Court of Chancery *c.*1789. *Id.* at *5–8, *13–14; *see also* Radian Notice of Supp. Auth. at 1–3; *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024) ("absent a clear command from Congress, courts must adhere" to traditional equitable principles); *eBay*, 547 U.S. at 391–92 (same).[5]

As Radian's Motion notes, the Supreme Court and Fifth Circuit adhered to this separation-of-powers concept by holding that in areas where a remedy at law was inadequate circa 1789, it remains inadequate unless Congress says otherwise, thereby extending the same equitable jurisdiction to federal courts today. *See* Mot. at 9. This is a bedrock principle:

One rule is, that, if originally the jurisdiction has attached in Equity, on account of

[5] The United States had urged the Court in *CASA* to apply *Grupo*. *See* Oral Argument Transcript at 27, 30, No. 24A884, *Trump v. CASA*, *Inc.* (May 15, 2025).

> any supposed defect of remedy at law, the jurisdiction is not changed or obliterated by the Courts of Law . . . . This . . . constitutes . . . the pole-star of its jurisdiction. . . . [Jurisdiction] [b]eing once vested legitimately in the Court [of Equity], it must remain there, until the Legislature shall abolish, or limit it; for without some positive act, the just inference is, that the legislative pleasure is, that the jurisdiction shall remain upon its old foundation.

1 J. Story, *Commentaries on Equity Jurisprudence* § 63, at 80–81 (1836); *accord* 1 J.N. Pomeroy & S.W. Symons, *A Treatise on Equity Jurisprudence* §§ 276–277, at 617–18, § 279, at 620–21 (5th ed. 1941). Notably, the Justices in *Trump v. CASA* cited the Story treatise extensively.

One has to stretch *eBay*, create an internal conflict within the decision, and an external conflict with other Supreme Court decisions, to read *eBay* to exclude the ongoing-violations principle with "a background of several hundred years of history." *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944). This would require the Court to determine that *eBay* has overruled numerous Supreme Court cases *sub silentio*, including many that were only just recently reaffirmed.

## IV. OTHER TRADITIONAL PRINCIPLES OF EQUITY

In light of *Trump v. CASA*, two other traditional principles require mention. 2025 WL 1773631, at *5–8, *13–14. First, the DOJ refers to the Federal Circuit's practice of allowing ongoing royalties in lieu of a final injunction. SOI at 13. The Patent Act does not authorize ongoing royalties, nor does the Judiciary Act of 1789 because the Chancery did not employ them *c.*1789. H.T. Gomez-Arostegui & S. Bottomley, *The Traditional Burdens for Final Injunctions in Patent Cases* c.*1789*, 71 Case W. Rsrv. L. Rev. 403, 441–42 (2020). Second, the Chancery did not recognize a principle that mere delay negates irreparable harm. *E.g.*, *Pickering v. Lord Stamford*, 2 Ves. Jr. 581, 582–83, 585–86 (Ch. 1795) (laches requires prejudice from delay, such as "insuperable" loss of evidence, to bar relief); *Pickering v. Lord Samford,* 2 Ves. Jr. 272, 283 (Ch. 1793) ("I know no rule, that has established, that mere length of time will bar[.]")

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Respectfully submitted,

*/s/ Austin Curry*

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**ATTORNEYS FOR PLAINTIFF RADIAN MEMORY SYSTEMS LLC**

## CERTIFICATE OF SERVICE

I certify that on July 3, 2025 a true and correct copy of the above and foregoing document was served on counsel of record via the Court's CM/ECF system per Local Rule CV-5(a)(3).

*/s/ Austin Curry*
Austin Curry