

## The Accession Insight and Patent Infringement Remedies

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How should property rights be allocated when one party, without authorization, substantially improves the property of another? According to the doctrine of accession, a good-faith improver may take title to such improved property, subject to compensating the original owner for the value of the source materials. While shifting title to a converter seems like a remarkable remedy, this merely highlights the equitable nature of accession, which aims for fair allocation of property rights and compensation between two parties who both have plausible claims to an improved asset.

This Article draws on accession—a physical property doctrine with roots in Roman civil law—to enhance patent law’s treatment of technological improvement. While patents and property exhibit significant differences, this Article argues that accession can provide helpful guidance for allocating rights and obligations when an infringer substantially improves upon another party’s patented technology. Drawing on the Supreme Court’s decision in *eBay v. MercExchange*, it proposes that courts apply accession in equitable determinations to deny injunctive relief and compel “substantially improving” infringers to compensate patentees through reasonable royalties. Accession would thus shift meaningful ownership of enhanced technologies to improvers based in part on their substantial contributions to them. Such liability rule protection would ameliorate holdup in “blocking patents” scenarios, provide a viable alternative to the rarely-used reverse doctrine of equivalents, and encourage the dissemination of improved technologies. While this proposal seems radical, this Article shows that elements of the “accession insight” already appear in *eBay* and its progeny. The Article concludes by exploring the theoretical implications of accession for the intersection of patents and property.