In the last seven years, courts have been struggling to figure out when to enjoin an adjudged infringer from further acts of infringement and when to limit relief available to monetary damages only. The question has been debated in courts and in academic journals with a variety of proposed tests for the appropriateness of injunction. What these debates omit, however, is the moral status of the patentee. Such omission is not surprising given that as a general matter, the U.S. law does not recognize “moral rights” in intellectual property in general and patent in particular. Nonetheless, I argue that such blindness to the nature of the patentee is error. In my view, the nature of the patentee should factor into the injunction analysis where the courts should be more willing to issue injunctions to the inventor and less willing to do so to a patent aggregator.

In *eBay v. MercExchange* the Supreme Court held that though patents do “have the attributes of personal property,” a patentee is not automatically entitled to enjoin an adjudged infringer from further acts of infringement. Rather, a patentee can obtain such relief only if he demonstrates “(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” The question, however, is what factors should influence the first, second, and the fourth prongs of the analysis.

A number of scholars observed that intellectual property regimes provide more than just mere monetary incentives to create and invent. In addition to monetary incentives, patent law provides social incentives such as “official recognition” as an inventor, as well as buttresses personhood interests inventors have in the fruits of their labor. It is these interests that are most likely to suffer irreparable harm from infringement and least likely to be fully compensated with monetary damages alone. An inventor who continues to hold the rights to his patent is more “morally invested” in the patent than a patent aggregator who merely seeks commercial profit from such aggregation and courts ought to recognize and protect that investment.

Additionally, the courts should apply the proposed rule broadly enough so as not to make it a dead letter. It is well known that an “independent inventor” is a dying breed, and that inventors are often contractually bound to assign their inventions to their employers. Thus, it is the employers who are the most likely to bring a patent infringement action and to seek the injunction. In order to properly honor the inventor’s moral interest in the invention, such employer-patentee should be able to assert the rights of the employee-inventor, provided the inventor is still employed by the company. This latter requirement would
ensure that the inventor is still morally invested in the invention and the particular avenues and fruits of the specific research. It will also incentivize employers to retain and properly compensate their valuable inventors and creators, for the employers would know that absent a continuing relationship, the odds of obtaining an injunction would diminish.

Properly compensating inventors for the violation of their patent rights should be a paramount goal of a patent trial. But this goal can be accomplished only if the courts take due account of the entirety of the rights held by the inventors, rather than just focusing on potential financial gain.