

EBAY INC
Form 8-K
March 17, 2005

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported):

March 16, 2005

eBay Inc.

(Exact name of registrant as specified in its charter)

Delaware

000-24821

77-0430924

(State or other jurisdiction
of incorporation)

(Commission
File Number)

(I.R.S. Employer
Identification No.)

2145 Hamilton Avenue, San Jose, California

95125

(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code:

(408) 376-7400

Not Applicable

Former name or former address, if changed since last report

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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Item 8.01. Other Events.

On March 16, 2005, the U.S. Court of Appeals for the Federal Circuit issued a ruling in the appeal of a patent litigation suit brought by MercExchange, LLC against eBay Inc. and eBay's Half.com subsidiary.

The litigation began in September 2001, when MercExchange filed a complaint against us, our Half.com subsidiary and ReturnBuy, Inc. in the U.S. District Court for the Eastern District of Virginia (No. 2:01-CV-736) alleging infringement of three patents (relating to online auction technology, multiple database searching, and electronic consignment systems) and seeking a permanent injunction and damages (including treble damages for willful infringement). In October 2002, the court granted in part our summary judgment motion, effectively invalidating the patent related to online auction technology and rendering it unenforceable. This ruling left only two patents in the case. Trial of the matter began in April 2003. In May 2003, the jury returned a verdict finding that eBay had willfully infringed one and Half.com had willfully infringed both of the patents in the suit, awarding \$35.0 million in compensatory damages. Both parties filed post-trial motions, and in August 2003, the court entered judgment for MercExchange in the amount of \$29.5 million, plus pre-judgment interest and post-judgment interest in an amount to be determined, while denying MercExchange's request for an injunction and attorneys' fees. We appealed the verdict and judgment in favor of MercExchange and MercExchange filed a cross-appeal of the granting in part of our summary judgment motion and the denial of its request for an injunction and attorneys' fees.

On March 16, 2005, the U.S. Court of Appeals for the Federal Circuit issued its ruling which, among other things (1) invalidated all claims asserted against eBay and Half.com arising out of the multiple database search patent and reduced the verdict amount by \$4.5 million; (2) upheld the electronic consignment system patent; (3) affirmed the district court's refusal to award attorneys' fees or enhanced damages against us; (4) reversed the district court's order granting summary judgment in our favor regarding the auction patent; and (5) reversed the district court's refusal to grant an injunction and remanded that issue to the district court for further proceedings. In parallel with the federal court proceedings, at our request, the U.S. Patent and Trademark Office is actively reexamining each of the patents in suit, having found that substantial questions exist regarding the validity of the claims contained therein. On January 26, 2005, the Patent and Trademark Office issued an initial ruling rejecting all of the claims contained in the patent that related to online auctions.

We are considering our litigation options at this point and intend to continue to defend ourselves vigorously. However, even if successful, our litigation of these matters will continue to be costly. In addition, as a precautionary measure, we have modified certain functionality of our websites and business practices in a manner which we believe would avoid any further infringement. For this reason, we believe that any injunction that might be issued by the district court will not have any impact on our business. Nonetheless, if we are not successful in appealing or modifying the court's ruling, and if the modifications to the functionality of our websites and business practices are not sufficient to make them non-infringing, we would likely be forced to pay significant additional damages and licensing fees or modify our business practices in an adverse manner.

We recorded an operating charge in the amount of \$30.0 million, reflecting the \$29.5 million judgment, together with our estimate for pre-judgment interest of \$0.5 million in 2003. The charge and the related estimated tax benefit of \$12.1 million were reflected in our consolidated statement of income as patent litigation expense in the year ended December 31, 2003.

This filing contains forward-looking statements relating to the expected impact of the MercExchange litigation on eBay's business practices and financial performance. Those statements involve risks and uncertainties, and actual results could differ materially from those discussed. More information about potential factors which could affect eBay's business and financial results is included in eBay's recently filed Annual Report on Form 10-K. All forward-looking statements are based on information available to eBay on the date hereof, and eBay assumes no obligation to update such statements.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

March 16, 2005

eBay Inc.

By: *Michael R. Jacobson*

Name: Michael R. Jacobson

*Title: Senior Vice President, Legal Affairs, General Counsel
& Secretary*