Proskauer

Amazon Patent Evaluation Express (APEX): Personal Jurisdiction Considerations

The Patent Playbook on **April 30, 2025**

The Supreme Court recently declined to review a Federal Circuit decision that could have significant implications for patent owners that rely on the Amazon Patent Evaluation Express ("APEX") program.

The APEX program offers a streamlined way for utility patent owners to request removal of allegedly infringing product listings on Amazon.com, without filing a suit in district court. To initiate the process, the patent owner identifies up to 20 product listings that allegedly infringe one claim of a patent. Amazon then notifies the sellers, who may (1) agree to an independent infringement analysis by a neutral third party, (2) engage with the patent owner directly to resolve the dispute, (3) file a declaratory judgment action in U.S. district court, or (4) do nothing—at which point Amazon removes the product listings.

Since Amazon introduced the APEX program in 2022, sellers have filed more than 70 declaratory judgement actions. These cases typically require personal jurisdiction over the patent owner, which often limits the venue to the patent owner's home court. But the 2024 Federal Circuit decision *SnapRays v. Lighting Defense Group*, however, added another location where sellers can seek a declaratory judgment of noninfringement: the seller's home forum.

SnapRays, d/b/a SnapPower ("SnapPower"), a Utah-based lighting company, filed a declaratory judgment action in Utah after Arizona-based Lighting Defense Group ("LDG") submitted an APEX request targeting SnapPower's listings. The Utah District Court granted LDG's motion to dismiss for lack of personal jurisdiction. The Federal Circuit reversed, holding that LDG "purposefully directed enforcement activities at Utah when it initiated the APEX program" against SnapPower.

The *SnapRays* Court reached this decision because "LDG intentionally submitted the APEX Agreement to Amazon. The APEX Agreement identified SnapPower listings as allegedly infringing. LDG knew, by the terms of APEX, Amazon would notify SnapPower of the APEX Agreement and inform SnapPower of the options available to it under APEX…If SnapPower took no action, its listings would be removed, which would necessarily affect sales and activities in Utah." According to the Court, using APEX is more than sending a cease-and-desist letter because "LDG initiated a process that, if SnapPower took no action, would result in SnapPower's listings being removed from Amazon.com, necessarily affecting sales activities in Utah." Because LDG knew that Amazon would notify SnapPower and that inaction would result in listing removal, the court held that LDG had sufficient contacts with the forum state.

The Supreme Court's refusal to hear the case leaves the Federal Circuit's ruling intact. As a result, patent owners relying on APEX could find themselves defending against declaratory judgment claims in a court far from home, where the patent owner may be at a strategic disadvantage.

Takeaway

While initially intended to be a low-cost dispute resolution platform, the APEX program can turn into a costly and inconvenient endeavor for patent owners forced to defend their patents in an unfriendly court. Before initiating a takedown, patent owners should investigate the seller's location and consider the potential for being haled into a less favorable jurisdiction. In some cases, a traditional cease-and-desist letter—or filing suit in a favorable venue instead of initiating an APEX takedown request—may be the better strategic move.

View original.

Related Professionals

- **Alan S. Teran, Ph.D.**
  Associate
- **Erik Milch**
  Partner