

Initiating an Informal Dispute on Amazon's Platform was Sufficient to Subject a Patentee to Personal Jurisdiction in Accused Infringer's Home State!

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In a bombshell ruling in *SnapRays v. Lighting Defense Group*, case no. 2023-1184 (May 2, 2024), an appellate panel from the U.S. Federal Circuit determined that an accused infringer could haul its accuser – the patentee – into the federal district court of the infringer's home state, despite the patentee not having initiated any contact with the accused or any contacts with that state.

By way of background, the rights holder had reported patent infringement to Amazon.com (in Washington state) in an attempt to take down the accused infringer's product listings on the online sales platform. Amazon's internal alternative dispute resolution mechanism, the Amazon Patent Evaluation Express (APEX) process, limits the rights holder to identify a single patent claim and at most twenty allegedly infringing listings and then invites the parties to agree to neutral third-party evaluation about the likelihood of infringement. The accused seller is notified by Amazon and given the choice to (i) participate in APEX; (ii) resolve the dispute with the patent owner within three weeks; (iii) file a complaint for declaratory judgment of non-infringement in federal district court. Otherwise, the seller will forfeit its listings on Amazon.

Here, the patentee petitioned for APEX but did not otherwise reach out to the seller in Utah state. After the seller was notified by Amazon, it reached out to the patentee, who responded. The patentee did not otherwise send or direct any communications into Utah. Nonetheless, the seller initiated a lawsuit in Utah asking the district court to find its products to be non-infringing. The patentee, having no other contacts with Utah, disputed the district court's exercise of personal jurisdiction over it. Although Utah is located within the 10th Circuit of Appeals, the Federal Circuit applies the law of its own circuit in determining jurisdictional questions in patent cases.

In holding that the district court's exercise of personal jurisdiction over the patentee was proper, the appellate panel reasoned that the patentee had purposefully directed enforcement activities towards Utah by calling upon Amazon to initiate its APEX dispute resolution procedure, the "intend[ed] effects [of] which would be felt in Utah[.]" Critically, if the seller "took no action, its listings would be removed, which would necessarily affect sales and activities in Utah."

In so holding, the panel distinguished its earlier precedent, *Avocent Huntsville Corp. v. Aten Int'l Co., Ltd.*, which held that merely sending cease-and-desist letters into an accused infringer's home forum would not confer personal jurisdiction over the patentee. But unlike the accused infringer in *Avocent*, who could choose to ignore those letters

without immediate repercussions, here if the accused seller ignored the APEX notification and failed to otherwise timely settle with the rights holder, then its products would be automatically delisted by Amazon after three weeks.

TAKEAWAY

A patentee should be aware that resorting to Amazon's neutral evaluation process may qualify as constitutionally sufficient minimum contact with the state of the seller's principal place of business, leading a court there to exercise personal jurisdiction over the parties. In such circumstances, the patentee should expect and be prepared to defend a declaratory judgment action of non-infringement (and/or invalidity) in the district court of seller's home state.

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