

# Publications

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## APEX – An Alternative Patent Resolution Procedure on Amazon

### APEX – Amazon’s Solution to Patent Dispute Resolution

With the traffic Amazon generates, the e-commerce giant has become an essential, and perhaps even mandatory, marketplace for many companies to sell their products. Yet, companies selling on the platform can face several challenges, including dealing with third-party sellers who provide knockoff and copycat products. Even when a company is selling a product backed with patent protection, third-party sellers providing unlawful knockoff, copycat, or otherwise infringing products can persist and cut into a company’s profits.

Patent protection can be a useful tool for guarding against such unlawful products on Amazon. However, traditional ways of enforcing this protection can be difficult and costly to implement. One traditional way can involve sending a cease-and-desist letter to a third-party seller, and while this letter may ward off some third-parties from selling infringing products, others may dig in their heels and choose to remain on Amazon. A patent holder can escalate by filing a lawsuit, but such an action can cost hundreds of thousands of dollars and take years before any meaningful resolution is reached.

To help those seeking a meaningful resolution in a timely and affordable manner, Amazon developed an alternative patent dispute resolution procedure, known as the APEX Procedure. This procedure aims to provide patent owners with a fast and relatively inexpensive way to assert their utility patent rights against infringing products listed on Amazon.

### What is APEX and Why Choose it as a Patent Holder?

An APEX proceeding is a patent dispute resolution that concerns products sold on the Amazon marketplace. To initiate a proceeding, a patent holder submits an APEX request with Amazon, which, if approved, will lead to an evaluation that takes place between the patent holder and one or more sellers of the alleged infringing products. The proceeding is overseen by a neutral evaluator selected by Amazon who will decide if the patent holder is likely to prove infringement by the seller’s product.<sup>1</sup> If the evaluator finds for the patent holder, the accused product will be removed from the Amazon marketplace. A final decision is typically issued 15 weeks from initiating an APEX proceeding.

### Related People

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### Related Capabilities

- Solare Brand Protection Program
- Intellectual Property
- Patent Preparation & Prosecution
- Intellectual Property Litigation
- Post-Grant Proceedings

APEX can be an enticing alternative to traditional patent enforcement options, such as litigation. These traditional enforcement options can require years of contested litigation before any meaningful resolution is reached and accrue extensive costs over this time. In contrast, APEX proceedings can be resolved within a few weeks and have greatly reduced costs as a result.

APEX is also formatted such that any accused seller cannot ignore a proceeding without facing consequences. Once an APEX request is approved by Amazon, Amazon will notify the relevant sellers and provide those sellers with a limited time to respond. Sellers who fail to respond in time, or decline to participate, will have their accused products removed from the marketplace. Thus, sellers cannot ignore an APEX request without facing repercussions.

## **The Limitations of APEX**

While APEX provides significant benefits in time and cost, there are many other considerations to weigh before bringing an action. For instance, APEX does not provide damages to a patent owner for infringement, nor is the accused seller barred from selling their products through other channels – APEX simply provides removal of the infringing products from Amazon. Additionally, APEX can open the door to federal court patent litigation, as an accused infringer can pause APEX by filing a declaratory judgment action in a Federal District Court of their choosing.<sup>2</sup> Thus, APEX may not be the best approach in certain scenarios and should be explored in the context of numerous enforcement procedures available to patent owners.

## **Looking Beyond APEX and Broader Brand Protection Strategies**

Amazon's introduction of the APEX program speaks to the challenges of brand protection many companies face as a result of increased consumer interaction with brands online. These challenges extend beyond just patent enforcement and can include other complex threats, such as trademark infringement, copyright infringement, brand imitation, counterfeiting, and domain misuse. To help clients navigate these complex threats to their brand, Polsinelli offers its Solare Program, which provides clients with a comprehensive protection strategy that is specifically tailored to your needs. This program can help clients efficiently identify and combat threats across many channels, including in the online space.

[1] APEX provides a more lenient standard of proof for patent infringement than traditional federal court patent litigation. APEX requires that a patent owner prove that infringement is likely, while traditional patent litigation requires that the patent owner prove actual infringement by a preponderance of the evidence (i.e., infringement is more likely than not).

[2] *SnapRays v. Lighting Defense Group*, No. 2023-1184 (Fed. Cir. 2024).