

## Navigating Amazon's New Patent Enforcement System

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June 24, 2019

Businesses and consumers are increasingly purchasing products such as consumer electronics and auto parts online. The dominant online marketplace, of course, is Amazon.com, with nearly 50% of all online sales across all markets.

Enforcing patents against online infringers has always been expensive and slow. To address the infringing imports, patent owners could seek a federal court injunction or, if the product was being imported, an "exclusion order" from the International Trade Commission (ITC). Federal court patent cases typically take at least 2-3 years to get to trial, and even the relatively speedy ITC investigations take 12-14 months. The cost to enforce a patent in either forum typically runs north of \$1.5 million, even for relatively simple cases.

But in the Amazon marketplace, patent enforcement is about to change radically. Amazon has launched a new, fast, super-streamlined and inexpensive procedure for taking down infringing products. Through this Utility Patent Neutral Evaluation Program, a patent owner can pursue up to 50 listings of potentially infringing items against multiple vendors in a single action.

Although vendor participation in the program is voluntary, if an accused vendor declines to participate, Amazon will promptly remove the listed items. If the vendor agrees to participate, Amazon refers the dispute to a "neutral evaluator"—an experienced patent litigator who can assess whether the listings infringe. The entire process takes 8-10 weeks, and the cost is minimal compared to alternative enforcement options because Amazon limits the dispute to one claim from one patent and one legal issue: infringement. In addition, the process excludes discovery and live hearings. After the parties brief the issue, the neutral evaluator rules within two weeks, and the decision may not be appealed.

Miller Canfield attorneys have acted as evaluators in some of Amazon's earliest evaluations, and we are thoroughly familiar with the process and procedures. If you want to enforce your patent against infringing Amazon listings, or you have Amazon listings that have been wrongly accused, please contact your Miller Canfield attorney or the authors of this alert to discuss how we can help.