Amazon APEX Patent Enforcement and Defense

Protect your patented products and respond decisively to threats against your Amazon listings

Infringing products can erode the value of your innovation with every sale. Amazon Patent Evaluation Express (APEX) gives U.S. utility patent owners a streamlined way to seek removal of infringing third-party listings on Amazon.com. For businesses facing an APEX complaint, the same process can put an important sales channel at risk on a short timetable.

Marshall Gerstein represents patent owners pursuing APEX evaluations and sellers defending against them. We combine patent claim analysis, technical understanding, and litigation strategy to build a focused case around your business objectives—from evaluating whether to file to preparing persuasive submissions and addressing the outcome.

A practical enforcement tool for patent owners

APEX can make patent enforcement commercially practical when the immediate priority is stopping infringing sales on Amazon. Its focused format offers several advantages.

Faster resolution. The standard briefing and decision schedule spans approximately seven weeks after briefing begins, with additional time for intake, seller participation, and payment. This can provide a much faster path to a marketplace decision than a fully litigated patent case.

Lower procedural costs. APEX uses written submissions without discovery, depositions, a hearing, or trial. The evaluator's fee is $4,000 per evaluation, separate from attorney fees and other preparation costs. The patent owner's deposit is returned if all accused products are found likely to infringe.

A direct marketplace remedy. When the evaluator finds likely infringement, Amazon removes the accused product, generally within 10 business days after receiving the decision. That response can help protect sales opportunities and the commercial value of patented product features.

Review by a patent professional. Amazon selects a neutral attorney experienced in U.S. patent disputes to evaluate the claim and product evidence. A carefully prepared submission can put the decisive technical and legal issues directly before that evaluator.

Focused enforcement across listings. One evaluation may identify up to 10 Amazon Standard Identification Numbers (ASINs), subject to product-identity and seller-participation rules. This can help address multiple listings within a defined proceeding.

APEX also creates an opportunity to discuss a business resolution, including a license or settlement, while preserving the parties' ability to pursue relief in court. The right approach depends on the patent, the evidence, and the value of the affected market.

How the Amazon APEX procedure works

1. Assess the patent and accused products. An evaluation is limited to one claim of one unexpired U.S. utility patent and products sold solely by third-party sellers on Amazon.com. Design patents, foreign patents, and expired patents are not eligible. We assess claim coverage, review the prosecution history, and examine the product evidence before recommending a filing.

2. Submit the APEX agreement. The patent owner identifies the asserted claim and accused ASINs in Amazon's agreement. Amazon notifies the sellers, who generally have three weeks to return the agreement and participate. Amazon intends to remove the accused listings, including materially identical variants, if a seller does not participate or comply.

3. Fund the evaluation. After Amazon selects the evaluator, the patent owner and each participating seller must generally deposit $4,000 within one week. More than four participating sellers may require separate evaluations and additional patent-owner deposits.

4. Present written arguments. The usual schedule gives the patent owner 14 days for its opening submission, sellers 14 days to respond, and the patent owner seven days to reply. The patent owner has 20 double-spaced pages across its two briefs; each seller has 15 pages. Claim charts and exhibits do not count toward those limits. There is no discovery or hearing.

5. Receive the decision and address the result. The evaluator decides within 14 days after the reply date whether the patent owner is likely to prove infringement. Amazon implements a favorable infringement decision by removing the accused product. If the patent owner does not prevail, Amazon has no obligation to act because of that evaluation.

Building the patent owner's case

A short procedure still requires rigorous preparation. We help patent owners select the claim that best fits the accused products and develop an evidentiary record that shows how the products meet its limitations. Our work includes:

- Assessing patent eligibility for APEX, claim scope, prosecution history, and potential defenses.
- Identifying accused ASINs and preserving product listings, images, manuals, and other supporting evidence.
- Preparing the APEX agreement, detailed claim charts, opening arguments, and reply submissions.
- Addressing claim construction and, where appropriate, presenting doctrine-of-equivalents arguments in the opening brief as the procedure requires.
- Coordinating settlement discussions, monitoring implementation of the decision, and assessing further enforcement options.

Our aim is to connect each legal argument to clear product evidence and the commercial outcome you want to achieve.

Defending sellers and protecting marketplace access

If you receive an APEX notice, early action matters. Missing the participation, payment, or briefing deadline can lead to removal of the accused listings without a full evaluation of your position. We help sellers assess the allegations promptly and choose a response based on the merits, the available defenses, and the importance of continued Amazon sales.

We analyze whether the product satisfies every limitation of the asserted claim, challenge overbroad interpretations, and prepare the response brief and supporting exhibits. We also assess whether the accused ASINs belong in the same evaluation and identify any qualifying prior decision or independently verifiable sales evidence.

APEX's defenses are narrower than those available in court. In addition to noninfringement, the evaluator may consider an existing court, USPTO, or International Trade Commission finding that the asserted claim is invalid or unenforceable. A seller may also present independently verifiable evidence that the accused product, or a physically identical product, was on sale at least one year before the patent's earliest effective filing date. General prior-art invalidity arguments are not considered.

Where appropriate, we advise on settlement, federal court litigation, and USPTO proceedings as part of the broader defense strategy. Pending patent litigation may cause Amazon to decline or suspend an evaluation; Amazon makes that decision under its procedure. We assess the available options before recommending a course of action.

Patent expertise supported by marketplace experience

Marshall Gerstein is devoted to intellectual property law. Our patent litigation, prosecution, and post-grant capabilities allow us to evaluate an Amazon dispute in the context of the patent's scope, its prosecution history, and the options available beyond APEX. Our attorneys' scientific, engineering, and industry backgrounds help us translate product details into clear, persuasive arguments.

Our experience includes navigating Amazon's neutral patent evaluation process to obtain successful results for clients. Our team has served as counsel for clients pursuing and defending APEX submissions in various cases across many different product fields. That experience complements the firm's work enforcing and defending patents in courts and administrative proceedings.

We focus on the issues most likely to affect the outcome, with an early assessment of the merits, expected costs, and business priorities. Whether your goal is removing infringing listings or defending continued marketplace access, we help you make informed decisions throughout the dispute.

Discuss your Amazon patent dispute with us

If you believe products on Amazon infringe your patent—or have received an APEX complaint—contact Marshall Gerstein to discuss your options. We can help assess the patent, the products, and the next steps.

Frequently asked questions

Does APEX award damages? No. APEX addresses removal of accused products from Amazon.com. It does not award damages, attorney fees, or costs, and its determination is not a court judgment.

Who ultimately pays the evaluator? In a single-seller evaluation decided on the merits, the prevailing side receives its deposit back and the losing side's deposit pays the $4,000 evaluator fee. Multiple-seller cases, mixed outcomes, settlements, and withdrawals have different allocation rules. Attorney fees remain separate and are not recoverable through APEX.

Can an APEX decision be challenged? There is no reconsideration by the evaluator. A party may provide Amazon with a conflicting court order, and qualifying later orders or judgments may affect removal or reinstatement under Amazon's policies. We can assess whether further proceedings are appropriate.

Is APEX confidential? The procedure is described as confidential, subject to its terms. Amazon reserves rights to use and disclose evaluation results in connection with other evaluations, takedown requests, and its business.