

아마존 Amazon의 자율적 특허침해판단 시스템 Neutral Patent Evaluation Process 기본

내용 소개



지난해 2019년부터 아마존에서 시행하고 있는 Neutral Patent Evaluation Process 기본내용을 소개하고 실제로 미국변호사가 시도해본 실무경험을 소개한 블로그 내용입니다. 기본적으로 양 당사자가 자율적으로 동의한 경우 중립적 전문가로 하여금 특허침해여부를 판단하고, 그 판단에 따라 아마존 온라인 쇼핑몰에서 해당 상품의 노출 리스팅을 삭제할지 아니면 그대로 유지할지 여부를 결정하는 것입니다. 법원에서 특허소송에 어떤 영향을 미치는 것은 아닙니다. 블로그 포스팅 링크: [Navigating Amazon's Neutral Patent Evaluation in Real Life: Part I](#)

Neutral Patent Evaluation Process 절차 및 기본내용

1. The patent owner requests to participate in Amazon's Neutral Patent Evaluation Process.

2. The patent owner also submits a statement identifying the accused infringing products by their Amazon Standard Identification Number (or ASIN) and explains how the products infringe the patent. The number of products a patent owner may accuse is limited to 50 products.

3. Upon receipt of the patent owner's request and the list of accused products, Amazon sends a neutral patent evaluation agreement to the patent owner and the infringing seller(s). Both must complete and execute this agreement in its entirety. The infringing seller has a three-week period of time to consider the agreement and to notify Amazon whether it agrees to participate in the Neutral Patent Evaluation Process. (1) If the seller agrees to the evaluation, its listings remain active until the conclusion of the neutral evaluation. (2) **If, however, the seller does not comply with the agreement, or if the seller does not agree to participate in the evaluation process, the listings for the seller's accused products are removed from Amazon's marketplace.**

4. If both parties agree to participate in the neutral evaluation, Amazon selects a neutral

third-party patent lawyer and requires **each party to pay the evaluator a \$4,000 deposit.**

5. After both parties pay the deposit the evaluator, the evaluator establishes a schedule for the submission of written arguments by both parties. Generally, the patent owner has 21 days to submit its initial arguments, the seller has 14 days to respond, and the patent owner has 7 days to optionally reply. No modifications to the schedule are permitted. The evaluator must announce his or her decision within 14 days of the patent owner's reply deadline. The evaluator determines that the patent owner is or is not likely to prove that the accused product infringes the asserted claim. The evaluator only provides an explanation for the decision if he or she decides in favor of the seller. Some reasons the evaluator may cite for deciding in favor of the seller include: (1) the accused product does not infringe (i.e., it does not include all elements of the asserted claim); (2) a court has found the patent invalid or unenforceable; or (3) the accused products (or physically identical products) were on sale more than one year before the earliest effective filing date of the patent.

6. If the evaluator determines that the accused product infringes the patent, [Amazon will take down the listings for the accused products.](#)

7. If the evaluator's conclusion is in favor of the seller, the accused products will remain

listed on Amazon.

8. The prevailing party in the Patent Neutral Evaluation Process is refunded the \$4,000 deposit. The \$4,000 deposit from the losing party is retained by the evaluator. If there are multiple sellers who paid the \$4,000 deposit but did not prevail, a total of \$4,000 is retained by the evaluator. The remaining amount in excess of the \$4,000 deposit is donated to an Amazon Smile charity of the patent owner's choice. Amazon does not retain any portion of the deposit.

9. The losing party may not file an appeal or request reconsideration. However, the patent owner may commence a federal court action for patent infringement or the seller may file a federal declaratory judgment action as to infringement or validity of the patent.

변리사25년/변호사17년, 특허심판소송, 민형사소송, 손해배상, One-Stop Service

T. 02-591-0657 E. kkh@kasanlaw.com H. www.kasanlaw.com