

Is Patent Enforcement for Online Marketplaces Good for Business?

by Timothy Nichols

Basically, online marketplaces are sites (e.g., Amazon.com, Alibaba.com, eBay.com, iOS app store, and dhgate.com) that collect product information from multiple sellers, so buyers can compare and purchase products online. Online marketplaces typically have formal or informal processes through which patent owners can submit complaints of patent infringement, requesting the marketplace's voluntary takedown of the infringing item or items. Online marketplaces have historically honored these requests.

Over the last couple of years, however, at least two federal district courts found online marketplaces not liable for patent infringing sales by third-party sellers.¹ The decisions themselves are unsurprising in view of the facts. But, it is interesting to see how different online marketplaces have responded in view of the current state of the law.

eBay.com, for instance, has decided that it will only take down items infringing a U.S. patent (utility or design) if the patent owner provides eBay a copy of a relevant court order. In practice, the requirement of a court order precludes most patent owners from successfully taking down infringing items due to the expense and frequently large numbers of infringers on online marketplaces. eBay.com also has chosen not to provide seller contact information to patent owners.

Amazon.com, on the other hand, has maintained a more proactive approach to takedown procedures for patent owners. Amazon.com continues to consider patent infringement complaints on a case-by-case basis (without the requirement of a court order) and shares seller contact information with patent owners so the parties can resolve the dispute directly.

The rationale behind both approaches is understandable. One is based on liability and the other is based on the integrity of the marketplace. Time will tell which approach is the better business decision.

1. See *Blazer v. eBay, Inc.*, 2017 WL 1047572 (N.D. Ala. March 20, 2017); *Milo & Gabby, LLC v. Amazon.com, Inc.*, 2015 WL 4394673 (W.D. Wash. July 16, 2015) and affirmed

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by Milo & Gabby, LLC v. Amazon.com, Inc., 2017 WL 2258605 (Fed. Cir. May 23, 2017).

