

No. 23-1184

---

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

---

SNAPRAYS, LLC, D/B/A SNAPPOWER,  
*Plaintiff – Appellant,*

v.

LIGHTNING DEFENSE GROUP LLC,  
*Defendant – Appellee.*

---

Appeal from the United States District Court for the District of  
Utah (Central), Case No. 2:22-cv-00403-DAK Judge Dale A.  
Kimball

---

**BRIEF OF LOVEVERY, INC. AS *AMICUS CURIAE* IN  
SUPPORT OF LIGHTNING DEFENSE GROUP LLC'S  
PETITION FOR PANEL REHEARING AND REHEARING  
EN BANC**

---

David M. Hoffman  
FISH & RICHARDSON P.C.  
111 Congress Avenue  
Suite 810  
Austin, Texas 78701  
512-472-5070  
Hoffman@fr.com

*Counsel for Amicus Lovevery, Inc.*

**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

**CERTIFICATE OF INTEREST**

**Case Number** 23-1184

**Short Case Caption** SnapRays v. Lightning Defense Group

**Filing Party/Entity** Lovevery, Inc.

**Instructions:**

1. Complete each section of the form and select none or N/A if appropriate.
2. Please enter only one item per box; attach additional pages as needed, and check the box to indicate such pages are attached.
3. In answering Sections 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance.
4. Please do not duplicate entries within Section 5.
5. Counsel must file an amended Certificate of Interest within seven days after any information on this form changes. Fed. Cir. R. 47.4(c).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 07/16/2024

Signature: /s/ David M. Hoffman

Name: David M. Hoffman

<p><b>1. Represented Entities.</b> Fed. Cir. R. 47.4(a)(1).</p>	<p><b>2. Real Party in Interest.</b> Fed. Cir. R. 47.4(a)(2).</p>	<p><b>3. Parent Corporations and Stockholders.</b> Fed. Cir. R. 47.4(a)(3).</p>
<p>Provide the full names of all entities represented by undersigned counsel in this case.</p>	<p>Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p>	<p>Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p>
<p>Lovevery, Inc.</p>		

Additional pages attached

**4. Legal Representatives.** List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None/Not Applicable                       Additional pages attached


**5. Related Cases.** Other than the originating case(s) for this case, are there related or prior cases that meet the criteria under Fed. Cir. R. 47.5(a)?

Yes (file separate notice; see below)     No     N/A (amicus/movant)

If yes, concurrently file a separate Notice of Related Case Information that complies with Fed. Cir. R. 47.5(b). **Please do not duplicate information.** This separate Notice must only be filed with the first Certificate of Interest or, subsequently, if information changes during the pendency of the appeal. Fed. Cir. R. 47.5(b).

**6. Organizational Victims and Bankruptcy Cases.** Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None/Not Applicable                       Additional pages attached


## Table of Contents

INTEREST OF <i>AMICUS CURIAE</i> .....	1
ARGUMENT .....	2
I. The New “Extrajudicial Enforcement” Personal Jurisdiction Standard Poses A Significant Risk To The APEX Program And Other Low-Cost Patent Infringement Notification Programs.....	2
A. The Importance of E-commerce and the Prevalence of Knockoffs in this Channel Cannot be Overstated .....	2
B. The Panel Decision Will Undermine Efforts by Large e-commerce Marketplaces to Police Their Platforms, Ultimately Harming Sellers and Consumers.....	3
II. The APEX Program Provides Alleged Infringers With Fair Process Before A Listing Is Taken Down .....	6
A. The APEX Program was Designed to Replace a Previous Policy of Automatic Takedown.....	6
B. Accused Sellers Have a Fair Opportunity to Present their Side to an Amazon Decision Maker Before Takedown .....	7
III. The Panel Decision Departs from Longstanding Personal Jurisdiction Principles .....	8
A. The Supreme Court’s Decision in <i>Walden v. Fiore</i> , 571 U.S. 277 (2014), is Controlling in this Case.....	8
B. The Panel Decision will Subject Parties to Litigation Anywhere in the Country .....	10
CONCLUSION.....	11

## Table of Authorities

### Cases

<i>Walden v. Fiore</i> , 571 U.S. 277 (2014).....	9, 10
<i>Avocent Huntsville Corp. v. Aten Int’l Co.</i> , 552 F.3d 1324 (Fed. Cir. 2008) .....	9
<i>Bluestar Genomics v. Song</i> , 2023 WL 4843994 (N.D. Cal. 2023) .....	10
<i>Calder v. Jones</i> , 465 U.S. 783 (1984).....	9
<i>Int’l Shoe Co. v. Washington</i> , 326 U.S. 310 (1945).....	10
<i>Maxchief Investments, Ltd. v. Wok &amp; Pan Indus., Inc.</i> , 909 F.3d 1134 (Fed. Cir. 2018) .....	9
<i>New Angle LLC v. IQAir N. Am., Inc.</i> , 2022 WL 4386661 (D.N.H. 2022).....	10
<i>Radio Sys. Corp.v. Accession, Inc.</i> , 638 F.3d 785 (Fed. Cir. 2011) .....	9
<i>Red Wing Shoe v. Hockerson-Halberstadt</i> , 148 F.3d 1355 (Fed. Cir. 1998) .....	11
<i>Snaprays, LLC v. Lighting Def. Group LLC</i> , No. 23-1184, at 5 (Fed. Cir. 2024) .....	passim

### Other Authorities

Alexi Chidbachian, <i>Unsafe baby toys shipped from China seized at LA port</i> , FOX11 LOS ANGELES (Apr. 29, 2024), <i>Unsafe baby toys shipped from China seized at LA port</i> (foxla.com) .....	6
<i>APEX: Amazon's Innovative Approach to Patent Disputes</i> , ECOMENGINE, <a href="https://www.ecomengine.com/blog/apex-program">https://www.ecomengine.com/blog/apex-program</a> .....	7
Arriana McLymore, <i>TikTok can detect fake merch in livestream shopping but other tech may struggle</i> , Reuters (May 7, 2024),	

<a href="https://www.fastcompany.com/91119859/tiktok-can-detect-fake-merch-livestream-shopping-other-tech-may-struggle">https://www.fastcompany.com/91119859/tiktok-can-detect-fake-merch-livestream-shopping-other-tech-may-struggle</a> .....	4
Chris McCabe, <i>Warning: Notice of Intellectual Property Rights Infringement –Is the alleged infringement a false claim?</i> , ECOMMERCECHRIS (Dec. 21, 2018), <a href="https://www.ecommercechris.com/warning-notice-of-intellectual-property-rights-infringement/">https://www.ecommercechris.com/warning-notice-of-intellectual-property-rights-infringement/</a> .....	6
Greg Geiser, Amazon APEX: What is the Process, and How it all Works, GUTWEIN LAW, <a href="https://info.gutweinlaw.com/blog/amazon-apex#:~:text=The%20APEX%20program%2C%20at%20its,to%20infringe%20the%20asserted%20patent">https://info.gutweinlaw.com/blog/amazon-apex#:~:text=The%20APEX%20program%2C%20at%20its,to%20infringe%20the%20asserted%20patent</a> .....	4
<i>How Chinese Sellers are Manipulating Amazon in 2024</i> , ECOMCREW (July 2, 2024), <a href="https://www.ecomcrew.com/chinese-sellers-manipulating-amazon/">https://www.ecomcrew.com/chinese-sellers-manipulating-amazon/</a> .....	5
Jennifer King, <i>Amazon Shoppers Concerned About Counterfeits</i> , EMARKETER (Mar. 26, 2018), <a href="https://www.emarketer.com/content/amazon-shoppers-concerned-about-counterfeits">https://www.emarketer.com/content/amazon-shoppers-concerned-about-counterfeits</a> .....	6
Kiri Masters, <i>Amazon’s New ‘Utility Patent Neutral Evaluation’ Process Stops Bogus IP Claims</i> , FORBES (Sept. 30, 2019), <a href="https://www.forbes.com/sites/kirimasters/2019/09/30/amazons-new-utility-patent-neutral-evaluation-process-stops-bogus-ip-claims/">https://www.forbes.com/sites/kirimasters/2019/09/30/amazons-new-utility-patent-neutral-evaluation-process-stops-bogus-ip-claims/</a> .....	7
PATENTTRADEMARKBLOG, <a href="https://www.patenttrademarkblog.com/amazon-apex-patent-program/">https://www.patenttrademarkblog.com/amazon-apex-patent-program/</a> .....	7
Rich Goldstein, <i>A Guide to Amazon’s Patent Evaluation Express (Apex)</i> , GOLDSTEIN PAT. L., <a href="https://www.goldsteinpatentlaw.com/amazon-patent-evaluation-express-apex/">https://www.goldsteinpatentlaw.com/amazon-patent-evaluation-express-apex/</a> .....	7

## **INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

Amicus Lovevery, Inc. (“Lovevery”) is an American corporation that specializes in high-quality educational toys for children. Lovevery’s toys are designed to meet the developmental needs and brain development of toddlers and babies. Each toy is produced in consultation with child development experts, physical therapists, and cognitive developmental psychologists.

Lovevery is concerned about the opinion’s new personal jurisdiction standard for sellers that notify e-commerce retailers about infringing listings through programs such as Amazon’s APEX. If Lovevery cannot use these programs without facing declaratory judgment suits anywhere in the country, it will be significantly harder to inform e-commerce retailers of knockoff listings. This may result in harm to Lovevery’s customers and potential harm to American consumers from purchasing unsafe knockoff baby and child toys.

---

<sup>1</sup> This brief is filed attached to a motion for leave to file an amicus brief. See Fed. R. App. P. 29(b)(2). No parties’ counsel authored this brief in whole or in part; neither party nor party counsel contributed money that was intended to fund preparing or submitting the brief; no person other than the amicus curiae or its counsel contributed money that was intended to fund preparing or submitting the brief. See Fed. R. App. P. 29(a)(4).



## ARGUMENT

### **I. The New “Extrajudicial Enforcement” Personal Jurisdiction Standard Poses A Significant Risk To The APEX Program And Other Low-Cost Patent Infringement Notification Programs**

The panel opinion’s new “extra-judicial enforcement”<sup>2</sup> personal jurisdiction standard will severely disrupt the efficacy of the Amazon Patent Evaluation Express (“APEX”) and other similar affordable patent infringement notification programs. These programs, which many e-commerce retailers rely on as their primary tool to prevent patent infringement on their platforms, only work when sellers are reporting infringing listings. Under the extra-judicial enforcement standard, however, small and mid-sized sellers, who rely so critically on APEX, will have to think twice before participating in the program. Now, anytime a seller reports an infringing product, they risk being dragged into costly district court litigation anywhere in the country. This is a risk that many sellers simply cannot afford. Given the panel opinion’s significant implications for e-commerce retailers’ ability to maintain market integrity and honor the patent rights of small businesses, this Court should grant rehearing *en banc* of the panel decision.

#### **A. The Importance of E-commerce and the Prevalence of Knockoffs in this Channel Cannot be Overstated**

The robust growth of the e-commerce market has provided small businesses with an opportunity to flourish like never before, with access to consumers all over the

---

<sup>2</sup> *Snaprays, LLC v. Lighting Def. Group LLC*, No. 23-1184, at 5 (Fed. Cir. 2024). Hereinafter, the panel opinion will be referred to as “Op.”

world. But it has also resulted in a minefield of patent infringement. On Amazon, for example, 60% of all sales are now made by third-party sellers. Mickey Toogood, *Amazon selling stats*, <https://sell.amazon.com/blog/amazon-stats>. This translates to roughly 4.5 billion items sold a year, or 8,600 items a minute. *Id.* Unfortunately, the sheer volume of transactions on these marketplaces means that even a small percentage of infringing products can raise significant challenges.

The judicial system cannot deal with these levels of infringement. Nor can patentees afford to bring litigation against every bad actor—hence, why thousands of brands already participate in APEX and similar programs such as eBay VeRo. Put simply, marketplaces must be given latitude to receive and act on reports of infringement without subjecting reporting companies to the nationwide threat of suit.

Thus, the panel decision should be reheard to preserve patent rights for small and mid-sized businesses in the era of e-commerce.

**B. The Panel Decision Will Undermine Efforts by Large e-commerce Marketplaces to Police Their Platforms, Ultimately Harming Sellers and Consumers**

The panel decision will significantly impede the ability of retailers to prevent infringing listings on their platforms by discouraging sellers from submitting complaints. Under the panel’s new personal jurisdiction jurisprudence for extra-judicial enforcement, once an e-commerce seller files an APEX complaint, they are immediately subject to personal jurisdiction in the accused sellers’ home state. *See Op.* at 10. This means in one APEX complaint, which may identify up to twenty infringing

products<sup>3</sup>, a seller could be subject to personal jurisdiction in multiple states. This is an unfair cost to impose.

Indeed, most sellers are small and mid-sized businesses that cannot afford the prospects of expensive district court litigation. *See Toogood, supra*. Moreover, even for sellers that can afford litigation, the prospect of traveling to a distant forum will likely deter them from filing a complaint. As a result, Amazon will no longer receive the volume of complaints necessary to effectively identify and remove infringing products from its platform.

The significance of the likely decrease in APEX complaints is further amplified by the fact that Amazon and other e-commerce retailers lack any comparable alternatives to the complaint-based system. E-commerce retailers are not equipped to effectively identify and remove infringing products on their own. This would require them to (1) identify and learn all their sellers' patents, and (2) make infringement assessments. The retailers neither have the resources or the expertise to make these types of determinations.<sup>4</sup> Allowing sellers—who uniquely have knowledge, time, and incentive—to perform this due diligence is what makes programs like APEX

---

<sup>3</sup> See Greg Geiser, *Amazon APEX: What is the Process, and How it all Works*, GUTWEIN LAW, <https://info.gutweinlaw.com/blog/amazon-apex#:~:text=The%20APEX%20program%2C%20at%20its,to%20infringe%20the%20asserted%20patent> (last visited July 3, 2024).

<sup>4</sup> Unlike copyright and trademark infringement, which e-commerce retailers can effectively address to some extent using proactive software, patent infringement is far more complex. *See* Arriana McLymore, *TikTok can detect fake merch in livestream shopping but other tech may struggle*, REUTERS, <https://www.fastcompany.com/91119859/tiktok-can-detect-fake-merch-livestream-shopping-other-tech-may-struggle>.

affordable and efficient.

The panel's new personal jurisdiction standard is also harmful because it unduly interferes with the ability of e-commerce retailers to control what is sold on their platforms. Amazon is a private company with the right to determine what third-parties it wants to associate with. It has absolute discretion to remove sellers from its platform. Despite the panel's characterization of APEX as "extra-judicial [patent] enforcement," Amazon is not a court, and it has no power "enforce" patents. But, it does have the power to decide the criteria that it uses to decide whether or not to list a product. Indeed, one could hardly argue that a seller has the right to sue Amazon anywhere in the US if Amazon chooses to delist a product. It is no more proper to allow that seller essentially nationwide jurisdiction to sue a person that merely reports an infringing product to Amazon.

Finally, the panel decision will result in indirect harm to e-commerce consumers. Without an effective patent infringement prevention program such as APEX, Amazon and other retailers will inevitably end up with more cheaply made knockoffs on their platforms—an already serious issue. Counterfeiters have taken several steps to make it easier to dupe consumers such as using fake Universal Patent Codes ("UPCs") and creating "stealth accounts."<sup>5</sup> This is why consumers have

---

<sup>5</sup> See *How Chinese Sellers are Manipulating Amazon in 2024*, ECOMCREW (July 2, 2024), <https://www.ecomcrew.com/chinese-sellers-manipulating-amazon>.

consistently flagged counterfeits as one of their biggest concerns with e-commerce.<sup>6</sup> Now, consumers face even higher risks from knockoffs, particularly in industries like children's toys, where the knockoff manufacturers often ignore crucial safety standards such as small parts regulations or the Federal Hazardous Substances Act.<sup>7</sup>

Accordingly, it is in the best interest of e-commerce retailers, sellers, and consumers for this Court to rehear the panel opinion *en banc*.

## **II. The APEX Program Provides Alleged Infringers With Fair Process Before A Listing Is Taken Down**

The panel opinion should be reheard *en banc* because it rested on a flawed characterization of APEX as an “automatic takedown” policy. Op. at 7.

### **A. The APEX Program was Designed to Replace a Previous Policy of Automatic Takedown**

Contrary to the panel’s assertions, the entire purpose of APEX was to replace a previous policy of automatic takedown. Under Amazon’s previous policy, once it received a patent infringement complaint from a seller, it would immediately take down the listings.<sup>8</sup> It was then incumbent upon the alleged infringer to resolve with the patent holder before their products could be relisted. *Id.*

In response to fair criticism of the previous policy as overtly biased toward

---

<sup>6</sup> See Jennifer King, *Amazon Shoppers Concerned About Counterfeits*, <https://www.emarketer.com/content/amazon-shoppers-concerned-about-counterfeits>.

<sup>7</sup> See Alexi Chidbachian, *Unsafe baby toys shipped from China seized at LA port*, FOX11 LOS ANGELES (Apr. 29, 2024), *Unsafe baby toys shipped from China seized at LA port* (foxla.com).

<sup>8</sup> See Chris McCabe, *Warning: Notice of Intellectual Property Rights Infringement –Is the alleged infringement a false claim?*, ECOMMERCECHRIS (Dec. 21, 2018), <https://www.ecommercechris.com/warning-notice-of-intellectual-property-rights-infringement>.

patent holders, Amazon launched the Neutral Patent Evaluation Process (“NPEP”) in 2019, which ultimately became APEX.<sup>9</sup> NPEP was the first of its kind program that allowed accused sellers to keep their listings on the website until the dispute was resolved. Amazon explained that the program was designed with “small and medium-sized rights owners in mind.”

Since its initial rollout, NPEP, and now APEX, has received widespread critical acclaim as the most equitable patent infringement dispute resolution program provided by any e-commerce retailer.<sup>10</sup>

**B. Accused Sellers Have a Fair Opportunity to Present their Side to an Amazon Decision Maker Before Takedown**

APEX offers a streamlined patent infringement notification process, balancing efficiency with fairness for both patent holders and accused sellers. Any patent holder who is a member of the Amazon Brand Registry can submit a complaint that identifies up to twenty infringing products.<sup>11</sup> Meanwhile, accused sellers can opt into the APEX process, allowing their listings to remain active during the dispute period. *Id.* This ensures continuous sales for the accused seller while the dispute is resolved, which

---

<sup>9</sup> See Kiri Masters, *Amazon’s New ‘Utility Patent Neutral Evaluation’ Process Stops Bogus IP Claims*, FORBES (Sept. 30, 2019), <https://www.forbes.com/sites/kirimasters/2019/09/30/amazons-new-utility-patent-neutral-evaluation-process-stops-bogus-ip-claims>.

<sup>10</sup> See, e.g., *APEX: Amazon’s Innovative Approach to Patent*, ECOMENGINE, <https://www.ecomengine.com/blog/apex-program>.

<sup>11</sup> See Rich Goldstein, *A Guide to Amazon’s Patent Evaluation Express (Apex)*, GOLDSTEIN PAT. L., <https://www.goldsteinpatentlaw.com/amazon-patent-evaluation-express-apex> (last visited July 7, 2024).

typically takes about seven weeks—significantly faster than traditional legal processes that can last months or years. *Id.*

At the end of the APEX process, the Amazon decision maker makes a final binary decision of whether the accused products are either "likely to infringe" or "not likely to infringe." *Id.* Only in cases of likely infringement are the listings removed. *Id.* Unless the accused seller opts out of the APEX process at any point, in which case their listings are immediately taken down. *Id.* This structure incentivizes participation in APEX while providing a quick and cost-effective alternative to traditional patent litigation.

### **III. The Panel Decision Departs from Longstanding Personal Jurisdiction Principles**

When the panel decided to issue its new sweeping personal jurisdiction law for e-commerce extra-judicial enforcement, it departed from binding precedent of both the Supreme Court and this Court. As a result, personal jurisdiction in patent law is no longer congruent with fundamental principles of personal jurisdiction such as “minimum contacts” and “directed activity.” For defendants in e-commerce-related declaratory judgment suits, this means they will have personal jurisdiction anywhere in the country. Therefore, to remedy this untenable legal position, this Court should rehear the panel opinion *en banc*.

#### **A. The Supreme Court’s Decision in *Walden v. Fiore*, 571 U.S. 277 (2014), is Controlling in this Case**

The Supreme Court, in *Walden v. Fiore*, made clear that mere injury to a forum

resident and knowledge of a plaintiff's location is not enough to establish personal jurisdiction. 571 U.S. 277, 285–86 (2014). In doing so, the Court explicitly rejected the panel's blank shot theory of personal jurisdiction based exclusively on the foreseeable effects of defendant's conduct in plaintiff's forum state. *Walden* is the law; this Court is obligated to follow.

But if the language of *Walden* is not convincing enough, this Court, as the district court did, should follow the guidance of its own decisions. *See Radio Sys. Corp. v. Accession, Inc.*, 638 F.3d 785, 792 (Fed. Cir. 2011) (“[E]nforcement activities taking place outside the forum state do not give rise to personal jurisdiction in the forum.”); *Avocent Huntsville Corp. v. Aten Int’l Co.*, 552 F.3d 1324, 1329–30 (Fed. Cir. 2008) (“[F]oreseeability of causing injury in another State . . . is not a sufficient benchmark for exercising personal jurisdiction.” (internal quotations omitted)); *Maxchief Investments, Ltd. v. Wok & Pan Indus., Inc.*, 909 F.3d 1134, 1138–39 (Fed. Cir. 2018) (applying *Walden*).

The panel instead relied on *Calder v. Jones*, 465 U.S. 783 (1984), a libel-based personal jurisdiction case with no similarities to this matter, and two outlier opinions from other circuits, *Dudnikov* and *Bancroft*, to conclude that LDG's actions were “expressly aimed” at Utah. This was clear legal error. *See Walden*, 571 U.S. at 287–88 (overturning a Ninth Circuit decision that relied on *Calder*, *Bancroft*, and *Dudnikov*, and emphasizing that *Calder* was a limited holding based largely on the nature of the libel tort at issue); *Bluestar Genomics v. Song*, 2023 WL 4843994, at \*21 (N.D. Cal.



2023) (explaining that *Dudnikov* has very limited legal application).

**B. The Panel Decision will Subject Parties to Litigation Anywhere in the Country**

The panel opinion is a sweeping decision that could subject APEX complainants to personal jurisdiction anywhere in the country. It held that an APEX complainant is subject to personal jurisdiction where the identified listings, “if removed, [would] affect the marketing, sales, or other activities in that state.” Op. at 10. The panel could have clearly limited this holding to plaintiff’s home state. It did not.

Given that Amazon listings are available nationwide, and a successful APEX complaint would result in removal of listings across all states, a reasonable interpretation of the opinion suggests that APEX complainants could be subject to personal jurisdiction nationwide. This is incongruent with basic principles of due process and personal jurisdiction law. *See Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (explaining that due process requires “minimum contacts” with the forum state); *Walden*, 571 U.S. at 285 (“[Personal jurisdiction] looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.”).

The panel’s holding, even if limited to plaintiff’s home state, is still exceptionally broad. When a seller initiates an APEX complaint, their conduct is directed towards Washington state, where Amazon’s headquarters is located. Under

*Red Wing Shoe v. Hockerson-Halberstadt*, this conduct would not give rise to specific jurisdiction in plaintiff's home state, or even Washington state for the matter. *See* 148 F.3d 1355, 1360–61 (Fed. Cir. 1998). The panel, however, attempts to distinguish *Red Wing Shoe* by creating an illusory distinction between an APEX complaint and a demand letter, labeling the former as "extra-judicial enforcement." Op. at 5, 11. This is merely a nonce phrase. To the extent that a small business informing a multi-national e-commerce giant about allegedly infringing activity is extra-judicial enforcement, so is a large corporation asserting its patents in a demand letter.

The panel has now created two personal jurisdiction standards in patent law: one for e-commerce sellers, and one for everyone else.

## CONCLUSION

For these reasons, the panel opinion should be reheard or reheard by the *en banc* Court.

Respectfully submitted,

By: /s/ David M. Hoffman  
Fish & Richardson P.C.  
Hoffman@fr.com  
111 Congress Avenue  
Suite 810  
Austin, Texas 78701  
512-472-5070  
Hoffman@fr.com

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPEFACE REQUIREMENTS,  
AND TYPE STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Fed. Cir. R. 35(g)(3). It contains **2,509** words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Fed. Cir. R. 32(b)(2).

2. This amicus brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2021 in Times New Roman 14-point font.

*/s/ David M. Hoffman*

\_\_\_\_\_  
David M. Hoffman