Supplies under Scrutiny:

Why Third-Party Supplies Vendors Face So Many Lawsuits and How You Can Avoid Them

Remanufacturers and third-party supplies distributors have always competed in tough markets, but in the past few years conditions have become downright brutal. In addition to the problems associated with a mature industry, prices are being driven lower by a flood of infringing compatible cartridges, which are copied directly from OEM designs without regard for patents and intellectual property (IP). These IP-infringing "clones," which are also known as "new build" or "new plastic" cartridges, are cheap to manufacture and can be sold at a fraction of the price of legitimately remanufactured products.

Like third-party supplies vendors, hardware manufacturers are feeling the adverse effects of clones. Since the Great Recession, OEMs have watched their revenues shrink and profits wither. The persistently troubled economy has led to higher unemployment in the West and slowed the development of many emerging markets. Fewer jobs—especially fewer white-collar jobs—combined with anemic business activity have lowered print volumes in many markets and reduced demand for hardware and consumables. With clones threatening the OEMs' remaining supplies business, hardware vendors are coming down hard on any firm that peddles infringing cartridges. More than ever before, OEMs are closely monitoring remanufacturers, third-party supplies dealers, and empties brokers in an attempt to keep the market free of products that violate their IP.

Clones Don't Fight Fair

It is impossible for legitimate remanufacturers to compete profitably with cloned compatible cartridges. Clones cost significantly less to produce than what a remanufacturer must pay to bring products to market. As print volumes have dropped, fewer OEM cartridges have been sold, meaning that fewer empty cores have been generated. As empty cores have grown scarcer, the price of this precious raw material has climbed. More efficient empties-collections programs run by OEMs and large remanufacturers have further limited the supply of empties, pushing prices for cores even higher and making it that much harder to find reliable sources for cores.

While OEM cores are scarce and valuable, spent clones, unfortunately, are plentiful, and empty cloned cartridges are entering the empties market and becoming a tremendous problem for empties brokers. In the past, hardware manufacturers paid little attention to firms that collected and sold cores, but that is no longer the case. Today, core brokers are increasingly at risk of trafficking in infringing empty cartridges, so OEMs scrutinize them closely. If caught selling empty clones, brokers face enormous legal costs and huge fines. Empties brokers nabbed with cores that violate OEM IP also put their clients at risk. Once it has been proven that a broker has sold infringing cores, OEMs have subpoenaed the broker's client lists and brought legal action against those clients for using infringing cores.

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Unfortunately, the problems associated with clones are not going away. Customers who base

their purchase decisions exclusively on price are naturally drawn to clones, and online these bogus cartridges are everywhere. Legitimate remanufacturers and their channel partners are all-too-familiar with the refrain, "I can buy that for a quarter of the price on the Internet," when they try to market their non-infringing remanufactured products at a fair price. Of course, price-sensitive consumers ignore the common sense captured in the old saying: "If it sounds too good to be true, it is!" And they get what they pay for: cartridges that perform poorly and violate dozens of patents.

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Fighting for Survival

It is easy to understand why OEMs have embraced a zero-tolerance attitude toward clones. OEM stock prices have taken a beating over the past few years. Many hardware firms have lost billions of dollars in market capitalization since 2008. To get back in the black and regain investor confidence, hardware vendors have taken drastic measures to lower their cost base and grow revenue. For many OEMs, maximizing the revenue and profits that the consumables annuity stream provides is essential to their very survival.

Printing patterns are working against the OEMs, however. End users are actively looking for ways to print less and reduce output costs. Hardware vendors now market a host of ancillary products such as document-management tools and managed-print solutions to control printing costs. While software and services may temporarily help make up for some of the OEMs' revenue shortfalls, in the long run they will further erode hardware sales and drive down print volumes, making consumables sales even more critical. And print-management tools are not the only technologies lowering the need for hardcopy. Electronic media is now a viable replacement for traditional printed materials. The rising popularity of tablets has reduced the need to print, as has the availability of cheap, reliable digital storage devices.

Although demand for hardware is down and print volumes are declining, tens of millions of machines remain in the field printing every day. OEMs see the world's enormous hardware population as a bright spot in an otherwise gloomy market. These machines continue to churn out billions of documents, and OEMs are taking steps to maximize the profits they can glean from these pages. Most firms, for example, have raised their consumables prices several times over the past few years. In particular, OEMs have increased prices for the legacy supplies employed by older machines in hopes of motivating customers to purchase new hardware, which can be cheaper to operate.

OEMs have also become more aggressive in the way they market their supplies. To deter consumers from jettisoning costly OEM supplies in favor of less-expensive non-OEM consumables, hardware vendors rely on marketing campaigns that detail the benefits of their supplies in terms of performance and print quality. They often position third-party supplies as inferior and prone to failure. Many claim that non-OEM supplies perform so poorly that it is more cost-effective to use genuine OEM supplies exclusively. Some vendors go so far as to suggest that using non-OEM supplies may ruin hardware.

Claims related to the inferiority of non-OEM supplies gain credence as clones flood the market.

Claims related to the inferiority of non-OEM supplies gain credence as clones flood the market, much to the chagrin of legitimate remanufacturers. Although improving, the quality and performance of new builds have been notoriously shabby. Frequently, clones do not print the number of pages for which they are rated, and poor image quality is common. New-build cartridges may also leak or cause other problems that can damage hardware.

In the end, legitimate remanufacturers and their dealers take a double hit: clones artificially force prices down while tarnishing the overall reputation of the remanufacturing industry.

No More Mr. Nice Guy

Although they are no strangers to the courthouse, OEMs formerly demonstrated a degree of restraint in pursuing lawsuits. Firms with a large share of the market avoided filing

complaints because they did not want to risk engaging in anticompetitive practices or violating antitrust laws. Firms with less market share avoided the courts because lawsuits are costly and can provide a low return on investment. Also, third-party supplies vendors typically target machines with the largest populations, so the threat from third-party supplies is minimal to companies with a small installed base. Of course, OEMs did file plenty of lawsuits, but typically the litigation targeted a handful of key firms that posed the biggest threats.

Today, hardware manufacturers rely heavily on the courts to protect their patented supplies technologies. Since 2010, the industry has seen a number of high-stakes cases filed in courts around the world, and this trend will undoubtedly continue. Printer and copier makers hold some of the largest patent portfolios in the high-tech space, and many of these patents cover innovations found in consumables. Everything from a physical protrusion or recess on the outside of a cartridge to the inks and toners inside may be patented. OEMs are now quick to leverage the investments these patents represent and protect their IP—as well as the market—from infringing products.

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OEMs have developed effective tactics that allow them to maximize the bang they get from their legal buck. For instance, in the United States, OEMs now commonly file complaints in federal courts as well as with the U.S. International Trade Commission (ITC). If the two-pronged suit is successful, the ITC can issue orders barring the importation of infringing products into the United States, while the federal court case can provide the OEM with punitive damages. Another tactic OEMs are employing is to file suit against dozens of companies at once and include offending manufacturers along with distributors and other channel partners. Likewise, OEMs are also monitoring empties brokers to ensure they are not selling infringing cores.

Third-party supplies vendors in the United States should expect to see more of these two-pronged lawsuits involving the federal courts and the ITC as the number of clones skyrockets. Companies that market finished cartridges priced artificially low risk legal action because their obviously bogus products send up red flags that today's ever-vigilant OEMs are quick to spot. Let's face it—something is seriously wrong if the price of a finished cartridge is less than that of an empty core. Various OEMs have found the two-pronged attack an effective strategy to rid the market of offending products, and dozens of firms, large and small, have been caught in these pincers over the past few years.

The Canon Case

As the number of clones entering the United States became epidemic, Canon decided it could no longer sit idle. The company and two of its U.S. subsidiaries initiated a legal action that offers an example of how well the two-pronged attack works. On January 23, 2012, Canon filed individual complaints in the U.S. District Court for the Southern District of New York against dozens of third-party supplies vendors. Canon also filed a grievance with the ITC requesting that the commission initiate a so-called 337 investigation into the infringement of its intellectual property. The OEM requested that the ITC grant a general exclusion order (GEO) that would prohibit the importation of infringing drums and cartridges containing them.

At the center of the case were U.S. patents 5,903,803 ('803) and 6,128,454 ('454). They cover the design of a drive component that mounts on the end of a shaft and rotates the imaging drum in many of the toner cartridges manufactured by Canon, including those used in HP LaserJet machines, which are sourced from the Japanese firm.

Within six weeks of its filings, Canon announced that it had reached a deal with El Segundo, CA-based Atman, Inc., which operates of the website pcRUSH.com. Atman may have been the first to settle, but it was not the last. By June of 2012, 16 companies indicated they were willing to settle and were terminated from the litigation in federal court, with some of them defaulting in the ITC complaint. Many of the firms that quickly settled and agreed to consent judgments and permanent injunctions had been

selling products online at suspiciously low prices indicating that they were trafficking clones. Other companies never responded to the Canon suit. The so-called Orink respondents, including their U.S. distributors, also defaulted in the ITC complaint, growing the roster of defaulting firms to 16. The ITC's administrative law judge found these 16 companies in default in August 2012.

Some companies vowed to fight, including one of the industry's largest firms, Clover Technologies. The so-called Clover respondents (Clover Holdings, Clover Technologies, Clover Vietnam, Dataproducts USA, Dataproducts Imaging Solutions S.A., and CAU Acquisition Company) initially filed legal papers denying that they imported infringing products into the United States and asserted that Canon's '802 and '454 patents were invalid. Clover's attorneys also represented a number of Clover's distributors, so it appeared as if a number of firms that Canon was suing would put up a fight. By the end of July 2012, however, Canon and Clover informed the ITC that they had reached an agreement-in-principle. On October 9, 2012, Clover announced that a final settlement had been reached, effectively ending the ITC investigation for all but one firm. On October 24, that last active company, Green Project, announced that it, too, had settled with Canon and would agree to a consent order from the ITC and a consent judgment and permanent injunction from the district court.

Canon was quick to seize its advantage as settlements and consent orders were signed. In September 2012, the OEM filed a motion asking the ITC for a summary determination that it satisfied some of the conditions necessary for a GEO to be granted, and then in November Canon asked for a summary determination that the defaulting respondents had infringed its IP. These summary determinations would allow Canon to see the ITC grant remedial orders quickly. The judge found that the defaulting defendants had infringed Canon's patents and recommended that the ITC issue a GEO in February 2013. In June 2013, the ITC issued the GEO, which is currently in place. The impact of the GEO has been significant, as we will discuss later.

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Heads in the Sand

As is often the case with remanufacturers and their channel partners, the firms named in the landmark 2012 case may have elected to ignore potential legal problems until it was too late and then settled quickly because they knew fighting Canon was futile. The OEM had successfully defended the IP on its gears in the past. Back in 2010, Canon had sued the Chinese firm Ninestar along with some of its affiliates for infringing the '803 and '454 patents. Many of the aftermarket firms in the 2010 case had been on the losing end of past IP lawsuits and ultimately settled with Canon. Prior to the Ninestar suit, Canon had sued the GCC Group along with GCC distributor TallyGenicom, alleging they infringed U.S. patent number 6,336,018 (the '018 patent), which also relates to the design of the coupling used in Canon or HP all-in-one cartridges. Canon won that suit as well, winning an injunction against the two defendants.

Third-party supplies vendors have a history of simply dis-regarding the outcomes of previous cases.

While it is conceivable that some of the firms named as defendants in the 2012 suit had not heard of the prior cases, it is far more likely they were well aware of Canon's past successes in the courtroom but elected to ignore them. Third-party supplies vendors have a history of simply disregarding the outcomes of previous cases, often to the vendors' detriment.

There are many examples of this type of selective memory. Epson's famous 2006 case, as outlined below, comes to mind. The OEM hauled a number of third-party supplies vendors into court and before the ITC, claiming they were ignoring the OEM's patents and flooding the market with clones. These firms had apparently ignored Epson's signal that it intended to protect the patents it held on various ink tanks. In the end, however, the aftermarket industry got the message loud and clear—at least as far as Epson's consumables were concerned.

The Epson Case

Epson's epic lawsuit offers a case study of what happens when an OEM sets out to rid a market of clones. During the 1990s, Epson remained relatively silent while companies around the world flooded markets with clones. These knockoffs ignored virtually all of the OEM's patents on ink tanks for its desktop printers. In April 2001, Epson began its battle to win back some of the U.S. market. Epson America, Epson Portland, and Seiko Epson Corporation filed a patent-infringement lawsuit in federal court against the third-party supplies vendor Multi Union Trading Company, a Hong Kong-based affiliate of Print-Rite Holdings. After a protracted legal battle, Epson prevailed in 2005, and Multi Union ultimately agreed to exit the U.S. market.

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While the Multi Union case grabbed headlines, the outcome had little impact on the overall market. Most third-party supplies vendors continued to sell Epson compatible clones that infringed most of the OEM's patents. This decision proved to be a major mistake for a number of firms.

After the Multi Union case, Epson became much more aggressive in its pursuit of clones. In 2006, the OEM named 24 companies from around the world in complaints filed with the ITC and in U.S. federal court. The OEM accused 11 third-party supplies manufacturers and 13 distributors of ignoring the patents on virtually all of its ink tanks for desktop inkjet printers. The defendants ranged from tiny mom-and-pop operations to huge firms, including some of the world's largest producers such as Ninestar. Like the later Canon suit, Epson's ITC complaint sought a GEO to stop the importation of clones and their sale in the United States. The federal court complaint sought punitive cash awards and to further restrict the U.S. sale of infringing compatibles via permanent injunctions.

Most of the 24 companies either quickly settled or defaulted, similar to what later occurred in the Canon suits. Apparently, most of the firms realized they were selling clones. Several firms, however, fought Epson's allegations. In October 2007, the ITC sided with the OEM and granted Epson a GEO barring imports of infringing compatibles into the U.S. market. While certain companies such as those affiliated with Ninestar continued to fight Epson, ultimately their efforts proved unsuccessful.

Before filing suit in the United States, Epson had lost significant share of the domestic market to third-party supplies—up to 50 percent or more for certain SKUs. After the ITC's orders, Epson was able to regain most of the U.S. market for its tanks, and its consumables sales soared.

Epson's lawsuit not only allowed it to win back market share, it also seriously damaged many of the companies named as defendants in the complaints. For example, French third-party supplies vendor the Armor Group and its German manufacturing subsidiary Artech were growing their share of the U.S. market prior to the lawsuit. They had become a key supplier to the office superstore Staples as well as others in the channel. After settling with Epson, Armor and Artech exited the U.S. market and have not returned.

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The firm most adversely affected by the Epson lawsuit was Ninestar. The Chinese third-party supplies giant fought a pitched legal battle with the OEM that in the end was unsuccessful and very costly. Siding with Epson, the ITC found against Ninestar and the other respondents and issued a GEO. Ninestar appealed the findings and continued importing infringing Epson cartridges into the United States despite the ITC order. The commission then fined Ninestar $11.1 million for ignoring the GEO. Ninestar appealed the ITC's fine but lost. Ninestar's defense team also suffered a series of setbacks in its federal court case, and the remanufacturing firm settled with Epson in January 2012. Terms of the deal were not disclosed, but presumably Ninestar had to shell out a tidy sum.

In addition to whatever the settlement cost Ninestar in punitive damages and attorneys' fees, the Epson suit also forced Ninestar's wholly-owned U.S. distribution firm, Town Sky, to file for bankruptcy protection and go out of business. Town Sky is not the only firm to fold in the aftermath of the Epson suit. Within a year of Epson's filings, MMC Consumables filed for Chapter 7 bankruptcy protection. Another defendant in the case, Rhinotek Computer Products, which owned one of the most recognized brands in the industry, also went out of business in the wake of the suit.

Where Did You Get That Core?

An issue that has become front-of-mind for most U.S. remanufacturers recently is where their empties are originating. Remanufacturers have been concerned that they might unwittingly remanufacture an empty clone or recharge cartridges that were first sold outside of the United States, which could land them in hot water with an OEM. Both concerns have proven to be well founded.

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Under U.S. law, a patent holder's rights are exhausted when a product is first sold within the United States. Because these rights largely end after the first sale, consumers are free to repair these goods and resell them without the risk of infringing any IP. This so-called "right to repair" is the legal cornerstone that allows companies to refurbish and resell toner cartridges. According to the U.S. Court of Appeals for the Federal Circuit's ruling in *Jazz Photo Corp. v. United States International Trade Commission*, however, sales of products outside the United States do not exhaust U.S. patent rights and the patent holder retains certain patent protections; thus, the right to repair does not exist.

Lexmark leveraged this quirk in U.S. patent law and forced companies that marketed remanufactured cartridges based on cores first sold outside of the United States to pay it royalties. The case started in 2010 when Lexmark sued the Chinese remanufacturers Ninestar and Print-Rite and the South Korean firm Jahwa along with their affiliates and U.S. distributors and retailers. Lexmark alleged the Asian companies had violated dozens of Lexmark patents when producing clones and remanufactured cartridges. In the end, the firms either settled or were found in default and the ITC sided with Lexmark and issued a GEO. Most of the defendants signed consent judgments and permanent injunctions, which should have closed the case—but did not.

Lexmark's attorneys contacted an unspecified number of U.S.-based remanufacturers in the spring of 2012 alleging that the OEM's patents had been infringed.

In its original federal court filing, Lexmark took the unusual step of indicating that it might name so-called "John Doe" defendants to the case at a later date. When we first read this, it was not clear what the OEM intended to do. The reason for the unorthodox maneuver became crystal clear, however, when Lexmark's attorneys contacted an unspecified number of U.S.-based remanufacturers in the spring of 2012 alleging that the OEM's patents had been infringed.

Lexmark's Letters

Working with the Ontario Superior Court of Justice, Lexmark successfully collected the names of U.S. remanufacturers that had purchased Lexmark cores from the Ontario-based empties broker Greentec International. The Canadian court ordered Greentec to provide the OEM with information related to Greentec's U.S. sales, including a list of companies that had purchased Lexmark empties between January 1, 2007, and December 31, 2011. Greentec also had to detail the approximate percentage of empty Lexmark cartridges that came from outside the United States as well as the volume of cartridges purchased that it had shipped to U.S. customers.

Rather than immediately suing the firms identified as Greentec customers, Lexmark's attorneys contacted them directly. An undisclosed number of warning letters went out

to numerous U.S. remanufacturers indicating that the firms had used empty cores sourced from outside the United States to produce monochrome cartridges for a long list of Lexmark printers and MFPs. The OEM asserted that because the cartridges were first sold outside of the United States, it retained patents rights on the cores, and those patents had been violated. The OEM then offered the firms an opportunity to settle the matter. Terms of the one-time settlement required defendants to sign a permanent injunction swearing that in the future they would only sell remanufactured cartridges for which Lexmark had already exhausted its patent rights. The remanufacturer also had to agree to document for the OEM all Lexmark remanufactured cartridges that it sold, with Lexmark reserving the right to audit that documentation.

In addition to promising they would infringe no more Lexmark products, remanufacturers had to pay a royalty on past cartridge sales. The fees were set on a sliding scale that ranged from 20 percent of gross sales of the accused cartridges to 40 percent, depending on how quickly the remanufacturer agreed to settle. Remanufacturers were given 90 days to pay the fee or Lexmark would demand full repayment of all lost profits on the sale of the infringing cartridges. The fees appeared to be based on retail list pricing of the OEM cartridges, so, even if remanufacturers settled quickly, Lexmark stood to earn significantly more than the price of the remanufactured cartridge. The remanufacturer also had to either destroy any infringing cartridges or pay a royalty on those SKUs as well.

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Lexmark informed remanufacturers receiving its letter that if they did not agree to the settlement terms, they would be added to the list of so-called John Doe defendants in the original 2010 patent-infringement suit. Companies that did not settle ran the risk of paying treble damages as well as incurring their own and potentially Lexmark's attorneys' fees and court costs. Dozens of firms swiftly took Lexmark up on its offer and settled.

Lexmark embarked on an aggressive campaign to identify more John Doe firms.

After issuing its letters in the spring of 2012, Lexmark embarked on an aggressive campaign to identify more John Doe firms during the second half of the year and throughout 2013. The OEM subpoenaed records from remanufacturers, distributors, and other third-party supplies vendors including many mom-and-pop shops. Just about a year after the original Lexmark letters went out, the OEM filed its first amended complaint and identified 31 companies as infringers in late April 2013. The firm added some well-known U.S.-based players to its defendant list including the empties broker Blue Trading; Green Product, which markets the Cartridges for Dummies line of supplies at various retailers; and LD Products, one of the region's largest online distributors. In addition to the U.S.-based firms, Lexmark filed suit against several Asian companies including Eco Service China and Shanghai Orink Infotech International. Numerous small enterprises were also included in the suit.

Although they were not named as defendants in the amended complaint, in the months after the letters were mailed, Lexmark subpoenaed information from some of the largest vendors of third-party supplies in the United States such as Cartridge World North America, Micro Solutions Enterprises (MSE), and Printer Essentials. Many small companies including retail refill shops, individual Cartridge World franchises, and regional remanufacturers also received subpoenas. We understand Lexmark's lawyers demanded highly sensitive competitive information from the subpoenaed firms including client lists, supplier lists, sales-volume documentation, and more.

Presumably, the OEM continues to hunt for companies that may have sold refilled Lexmark toner cartridges made from cores supplied by Greentec. While it remains unclear how many firms have received subpoenas or opted to settle quietly with Lexmark out of court, the OEM is intent on involving any company that sold

third-party Lexmark toner cartridges based on the Greentec cores.

What's Next?

The three cases detailed above paint a clear picture of how intolerant OEMs are of infringing products and how they are working to rid the markets of consumables and components that violate their IP. Certain firms like Canon and HP had demonstrated a live-and-let-live approach to the aftermarket as long as everyone played by the rules. With the influx of clones, however, these OEMs have decided to police the market with a heavier hand. The companies learned by the example Epson set, and in many ways followed the course Epson blazed to eliminate clones from the U.S. market. Lexmark, on the other hand, has consistently been aggressive in its attempts to prevent remanufacturers from penetrating its supplies market. Armed with the cudgel the *Jazz Photo* decision provides, the OEM is able to pursue firms of virtually any size, even those that may sell just a few dozen remanufactured Lexmark cartridges annually.

With the influx of clones, OEMs have decided to police the market with a heavier hand.

The successes that Canon, Epson, and Lexmark have enjoyed in the courts did not come easily. These cases underscore the fact that hardware manufacturers are investing to monitor the channel closely. And if the market deteriorates further, the scrutiny will only grow more intense. In the current business climate, it is only a matter of time before an OEM will react if it suspects the rules are not being followed. Clones will no longer be tolerated as OEMs fight for their survival.

To remain successful, remanufacturers, their dealers, and empties brokers must be certain that they have done everything possible to avoid the next lawsuit. And one thing is for certain: there will be more lawsuits.

Of course, the best course to long-term success is to avoid court altogether, but that is easier said than done. There is IP wrapped around virtually every component in a cartridge, so selling non-OEM supplies is fraught with risk. All of the companies involved in the production and marketing of non-OEM consumables must be hyper-vigilant—and hyper-respectful—of all OEM IP. If any company in the supply chain ignores one patent, it is likely that there will be legal repercussions, and any company purchasing the infringing products upstream is at risk.

To minimize such risk, vendors must be sure that every component and the ink or toner contained in the remanufactured cartridges they market are free of all OEM patent claims. The Canon and Lexmark cases prove the point. Regardless if the component is an empty core or a small gear, it is probably covered by one or more patents and violating such patents is incredibly risky. No part is too small or too insignificant to escape OEM scrutiny. Thus, remanufacturers must demand that all of their suppliers respect OEM patents, and their suppliers must be able to prove that the empties, components, and materials they use are non-infringing. Remanufacturers looking to sell products in the United States have the added burden of knowing where their cores originated and being certain that they are genuine OEM empties first sold within the United States.

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The various aftermarket lawsuits over the past couple of decades have proven that not only manufacturers but also dealers, distributors, and other third-party supplies vendors are exposed to risk if they sell infringing products. Dealers must know their suppliers and be confident that they are not being fooled into selling clones. The savvy channel partner has a relationship with its cartridge supplier and evaluates products in terms of IP. Dealers should demand to know where the cores are sourced from for the cartridges they are selling and that each part used during the remanufacturing process does not violate any OEM patent. If even one patent is violated, dealers are at risk of being sued for millions of dollars, so dealers must educate themselves about what is in the cartridges they are selling.

Today, empties brokers have as much at risk as remanufacturers and dealers. In order to protect its clients, the broker must scrutinize

each empty. Clones are polluting the empties stream and it is only a matter of time before brokers are hauled into court. In addition, brokers must know where their cores were first sold. Brokers that operate in more than one region are at a higher risk of selling infringing cores in the United States if they do not monitor their sources and ensure that cores sold in the United States were first sold there.

Today's litigious environment means firms must ask a lot of questions of their suppliers and be knowledgeable enough or retain someone knowledgeable enough to understand and interpret the responses they get. If responses are unsatisfactory, firms must be willing to look for more reputable suppliers, even if it means passing by some products with tempting low prices. Because the "bargain basement" core, gear, chip, drum, or other component you purchase from a dubious source will quickly seem less of a bargain when faced with an OEM lawsuit that can cost you millions.

5 Key Questions

What are your suppliers doing to make sure your company is not named in the next round of OEM lawsuits? Ask yourself these five key questions:

1. What is in the remanufactured cartridges I'm selling and where did the components come from?
2. What systems do my suppliers use to ensure they are not violating OEM IP and can they verify that their due diligence is effective?
3. What are your suppliers' track records in regard to patent-infringement lawsuits, and will my suppliers stand by me if there is a problem?
4. From empties collection to inspecting my packaging, what more can I do on my own to make sure my firm is not at risk of being sued?
5. How confident am I in the answers I am getting to the above questions?

In order to avoid being a defendant, you must be able to accurately answer all five of these questions and be comfortable with those answers. Ignorance can cost you dearly. It is imperative that third-party supplies vendors know every link in their supply chain.

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