

Jury rules for Apple against Samsung in patent dispute

Kevin Reed
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On August 24, a nine-member jury in a San Jose, California federal district court ruled that Samsung had violated all but one of eight patents held by Apple, Inc. in its core technology and product designs. The dispute, which began with a complaint filed by Apple in April of 2011, went to trial on July 31. It took three weeks of complex and highly technical testimony before closing arguments were delivered and the jury was asked to render a verdict.

After only 22 hours of deliberation, the jury found that 28 Samsung devices violated Apple patents and awarded damages of \$1.05 billion. The jury also found that Samsung had willfully violated Apple's proprietary claims, thus giving Judge Lucy Koh the discretion to triple the damages.

Apple Inc.'s sweeping courtroom victory over Samsung raises questions about the future of the global market for mobile communications devices in particular, and technological advancement under capitalism in general. The objective meaning of the crushing legal win for Apple—whose market value peaked at \$680 billion the day after the verdict—is that the wealthiest corporation on Wall Street has been given a monopoly over its international competitors in the multi-billion-dollar mobile devices markets.

While falling shy of Apple's request for more than \$2.5 billion, the award ranks among the largest ever given in an intellectual property case. In the aftermath of the verdict, legal squabbling and counter motions began on both sides. Samsung has requested, along with an appeal, that the verdict be thrown out on the grounds that the jury was unreasonable. Apple has demanded imposition of an immediate injunction against the sale of Samsung's offending devices in the US. Judge Koh has set a hearing for September 20 to review post-trial motions.

Immediately at stake in the dispute is the expanding and highly profitable worldwide market for mobile devices. According to Credit Suisse, global smartphone sales in 2012 are expected to reach more than \$200 billion, growing 46 percent during the year to 688 million units.

Much of the rise in smartphone purchases is coming from China (26.5 percent), which overtook the US (17.8 percent) this year as the primary market in the world for these devices. Some projections indicate that smartphone sales will surpass one billion units by 2014, with significant increases coming from both India and Brazil. Apple is expected to sell 116 million units this year, and it earns approximately 35 percent profit on each device.

The jury verdict is especially timely for Apple, as it has seen a decline in market share of its iPhone against smartphones driven by the Android operating system developed by technology rival Google. Market research firm IDC reported that in the second quarter of 2012 Android-based phones accounted for 68 percent of the market, while Apple had 17 percent, with the remaining 15 percent split between Symbian, BlackBerry, Bada and Windows.

In an attempt to quash the competition, the Apple lawsuit included charges that Samsung violated property rights on trademarks, user interface and stylistic elements of its products. The infringement claims were grouped into two categories: technical patents and design patterns. The technical claims included the "rubber-band" effect, where a page bounces when a user scrolls to the bottom; and touch screen elements like dragging documents. The design claims included a home button, rounded corners and uniform bezel.

Samsung argued that many of these patents are

invalid and that Apple had, in fact, violated Samsung's patents. The jury rejected all of these counter-claims.

That Samsung was chosen as the target of the Apple lawsuit has dual significance. As a smartphone hardware manufacturer, Samsung is the number one maker of Android devices in the world. Samsung has developed a vast array of mobile systems that compete directly with the Apple iPhone and iPad. Getting the targeted devices banned from the US market would be devastating for Samsung and the Android platform, since every other maker would also likely face the same injunction.

One of the reasons Apple did not file suit directly against Google, which develops Android, is because it could not claim damages when Android is not sold to hardware developers like Samsung and HTC, but given to them free. However, with Google's mobile revenues tied to the Android app marketplace, the future viability of the entire category of competitor is obviously in jeopardy.

The global aspect of the lawsuit is more significant in terms of Apple's choice of litigant. The Apple complaint in the US courts was part of an international campaign against Samsung that began in the spring of 2011. Motions were eventually filed in ten countries, including South Korea, Japan, Germany, France, Italy, Britain and Australia against the South Korean technology giant. Samsung in turn filed counter suits. After losing in Britain, South Korea and Japan, and gaining only a partial victory in Germany, the US decision is a major breakthrough for Apple's legal offensive.

The holding of a jury trial in the District Court in San Jose, California—just 10 miles from Apple headquarters in Cupertino—has political significance given that it would be difficult to find jurors more sympathetic to Samsung than the storied Apple. Coming from Silicon Valley, the jury foreman Velvin Hogan claimed that he had an extensive technical background and grasp of US patent law. Although there were initially differing opinions and misgivings on the jury, these were rapidly overcome by Hogan as he pushed for a judgment that accepted the majority of Apple's claims.

The relatively quick jury decision speaks more to the nature of US intellectual property laws and the way that Apple used the system to craft its patent applications to safeguard its market position. Having learned from an

earlier lawsuit against Microsoft, where Apple was unable to prevail on the proprietary nature of the "look and feel" of the Macintosh desktop, the tables were turned this time. Of course, in the 1990s Microsoft was one of the world's largest corporations and Apple was a much smaller enterprise. But after Congress revised US patent and copyright law to include provisions for the proprietary nature of style and design elements, Apple was able to achieve against Samsung what it was unable to win against Microsoft 20 years earlier.

In the nineteenth century, the patent, trademark and copyright system played an important role in providing an organized infrastructure for the attribution of creative works and was an important lever of industrial progress. Throughout the twentieth century, however, this system has become increasingly outmoded and is an ever-tightening noose around the neck of the technological forces of society. The Patent and Trademark Office of the US government is one of the primary institutions for the stifling of invention and creativity in the service of monopoly control by multinational corporations.

Meanwhile, Apple's global competitors will be forced to seek refuge in those parts of the world where the infringement claims have not been or will not be accepted and from which competition in the growing markets of China, India and Brazil can be conducted. This will further intensify conflicts between the US and its international rivals in Europe and Asia for control of these global markets and fuel the specter of trade war.



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