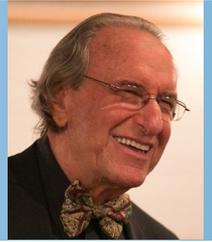


# ROTTEN PATENT RESULT FOR APPLE

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On February 20, Apple suffered a humiliating defeat in one of its latest patent wars with its component supplier Samsung Electronics. The US Court of Appeals for the Federal Circuit handed Samsung a sweet two-pronged victory: killing Apple's damages award of \$120 million for patent infringement, and affirming a jury finding that Apple owes Samsung \$158,000 in damages for infringing Samsung's patent rights covering the manner in which photos and videos are organised in smartphone folders.

Rarely in corporate events does one witness such enormous miscalculations as those made over the past few years by Apple in waging patent wars. The winners in Apple's patent infringement lawsuits against HTC and Samsung have been the lawyers. The attorneys' fees earned in these patent wars surely have exceeded at least \$100 million or multiples of that figure.

Apple began the patent wars in 2011 by suing Samsung, claiming infringement of its patent rights through Samsung's marketing of smartphones and tablet computers. At the time, Apple was already engaged in litigation against Motorola Mobility based on claims of patent infringement. These multiple litigations became known as the 'smartphone patent wars'.

They coincided with fierce global competition for market share. In 2011 alone, there were 19 continuing litigations in nine countries, and by 2012 that number had grown to more than 50 infringement lawsuits. Billions of dollars of damages were claimed in these lawsuits, giving new meaning to the claimed value of patent rights.

More specifically, Apple's formal complaint against Samsung filed with the US District Court for the Northern District of California alleged a combination of causes of action, including specific claims of infringement of its patents, false designation of origin under the Lanham Act, unfair competition, trademark infringement, and violations of California's state laws governing unfair competition, common law trademark infringement and unjust enrichment. These Apple claims were based on Samsung's sales of Android phones and tablets, including the Nexus S, Epic 4G, Galaxy S4G, and the Galaxy Tab.

## Aggression and frustration

Apple's aggressiveness was not without frustration. During the California trial before Judge Lucy Koh, Apple's evidence introduced before the jury included side-by-side comparisons of its iPhone 3GS and Samsung's i9000 Galaxy S in an effort to emphasise alleged similarities in packaging. However, these comparison images were later found to have been tampered with in order to accentuate similar dimensions and features of the two products. Samsung filed US and foreign patent infringement counterclaims against Apple directed to mobile communications technologies.

The Apple lawsuits have been fought in the US International Trade Commission (ITC) as well as US federal courts. After winning rulings in the UK, Japan and South Korea, Samsung obtained a significant victory

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in its case before the ITC, winning a limited ban on Apple's importation of certain accused infringing products after the ITC commission found a Samsung patent was infringed. That victory turned out to be a hollow one, however, when US Trade Representative Michael Froman vetoed the ban and Apple escaped by the skin of its teeth.

The inventions disclosed and claimed in Apple's patents can be traced back to 2007, when Apple filed several US design patent applications covering the appearance of what would be introduced as its iPhone that year. Those design applications were followed by Apple's filing of a 2007 utility patent application covering the graphical user interfaces experienced by the iPhone user.

Convinced that it was entitled to more than this patent protection, Apple went further and registered both overlapping trademark and trade dress rights directed to the iPhone. This was a highly legally sound decision, given that trademark rights will not expire in the way patents will, provided that they are in continuous use. Trade dress rights have their origin in trademark law, and US IP laws provide for, and enable, simultaneous pursuit of design patent and trademark protection.

Samsung's February 20 victory via the federal circuit's overturning of Apple's \$120 million jury infringement verdict will not end all of their wars. However, it does result in the invalidation of two key Apple 'slide-to-unlock' and 'autocorrect' patents. And Samsung's 'quick links' patent is alive and well. ■

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