

Apple versus Samsung:

How the Legal War Between the Two Tech Firms Resonates as a Clash of Technological Titans

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Introduction

Technology affects humankind in profound ways, for technological advancement and innovation have led to ineffable change with regard to the ways in which people communicate via voice, images and text. Today, the use of computer-based devices and services, individuals can share thoughts and ideas with others across the world in real time, and in ways previously unimaginable only decades before. Nowhere has this been more apparent than with the progression of smartphone and tablet-based technology, embodied in popular consumer goods such as the iPhone and iPad, conceived by Apple Inc., and competing brands made by companies like Samsung Electronics Company, Inc. A major rival and business partner of Apple, Samsung, through the manufacture and sale of Google Android operating system (OS)-based smartphones and tablets, has developed immense market share, superior to that of Apple, a US tech company credited as an innovator of smartphone and handheld tablet computing devices.

Apple and Samsung both realize that commensurate with the command of the overall smartphone and tablet market is unquestionable dominance of the future development of such consumer gadgets. The competition between the two tech firms has intensified to such an extent that the rivalry extends beyond retail stores; the companies now wage combat through litigation in the courts. Both Apple and Samsung have filed suit against one another across the world, with decisions rendered over the last several months in San Francisco, Tokyo and London courtrooms, to name a few of the legal battlegrounds. To varying degrees, each side has won decisions that serve to shape inexorably the development of consumer technologies.

In framing succinctly the “patent wars” in which the two companies are engaged, this paper will explain how both Apple Inc. and Samsung Electronics Co., Ltd. command the future progress of handheld consumer technologies. The legal decisions to which each side must abide

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will undoubtedly affect shareholders of each company, the future prospects for each firm and consumers across the globe. This presentation will examine the intellectual property-based legal conflict between the two tech firms, particularly concerning the culmination of litigation in the August 2012 United States patent lawsuit, and other recent and potential future cases, which may have consequences for the development of smartphone and tablet computer technologies for years to come.

Background

For at least a generation, Apple Inc., a Cupertino, California firm founded by the late Steve Jobs and Steve Wozniak, and amongst the world's leading tech companies, has served as a symbol of technological innovation and consumer desire. Apple-created Macintosh computers including the iMac; iPod digital music and media players; and smartphones and tablets such as the iPhone and iPad constitute the company's most popular products. Amongst the most beloved of Apple's devices is the iPhone. Considered "revolutionary" upon its introduction in 2007, the original iteration featured, in addition to basic telephone and messaging capability and sleek design, a 3.5-inch touchscreen display, usability similar to the iPod, an internet web browser, and a built-in camera (Turner, 2007), in addition to use of web applications, or "apps," enabling quick access to software and internet-based programs. The sale of millions of iPhones over time spurred competitors to develop similar smartphone devices.

At the forefront of the response to Apple's success is Samsung Electronics Co., Ltd., a South Korean company that sought to develop a competent competing phone as early as June 2008 with the release of the Instinct, a smartphone entry prior to the use of the Google Android operating system (OS), now found on several of Samsung's devices (Segan, 2013). Beginning with the eventual release of the Galaxy S II in May 2011, which featured the Android OS and

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physical features such as rounded edges and a physical ‘Home’ button (2013)—similar to features found on the Apple iPhone, Samsung finally gained a considerable advantage in the smartphone market (2013). Made available on three of four major US wireless carriers (2013), the Galaxy S II and related Galaxy-based tablet products generated \$8 billion in sales (Babcock, 2012). Android-based Samsung products and other firms featuring the Google OS, including Motorola and HTC, soon outpaced iPhone and iPad sales, to the chagrin of Apple Inc.

Determined to protect its place in the market, and believing that Samsung in particular infringed upon trademarks that served to distinguish its products in opposition to competitors, Apple took legal action. The US tech company filed suits against the Korean firm in several nations including Japan, Germany, Great Britain and South Korea, with Samsung responding in kind through the filing of its own lawsuits and countersuits (Ramstad, 2011; Arthur & Sandeman, 2012). In seeking to further protect its interests as an extension of what Apple co-founder Steve Jobs described as “thermonuclear war” against the Google Android OS (Bradshaw, 2012), Apple filed a 38-page federal complaint against Samsung Electronics Co. Ltd. in US District Court on April 15, 2011 (Kane & Sherr, 2011). By engineering global legal gambits for one another to traverse, both Apple and Samsung had set forth a course of action that would affect the companies for the near future, and perhaps beyond.

The Apple US District Court Patent Case of 2011

The lawsuit initiated by Apple in US District Court in particular signified a major development in what legal experts, pundits and consumers had identified as the “patent wars.” The suit Apple filed against Samsung served as a pivotal battle in the legal entanglements between the two tech giants. The outcome of the case in terms of its severity has likely opened the door for further litigation in light of the results.

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Because Samsung is one of the world's two largest smartphone makers (with Apple as the other), Vascellaro (2012b) explained that the South Korean company serves as a proxy target for Apple against Google in the "patent wars." At the time of the case filing in April 2011, Apple was already embroiled in ongoing litigation with Motorola Mobility Holdings Inc., HTC Corp., Nokia Corp., Amazon.com Inc., Eastman Kodak Co. and Microsoft Corp. over myriad concerns surrounding smartphone technology, software, and rights of usage of the term "app" with regard to web application stores/markets (Kane & Sheer, 2011). Apple primarily targeted Samsung because allegedly, the company became a leader in both the smartphone and tablet market due to infringements on Apple's intellectual property (2011).

At the root of the legal patents battle between Apple and Samsung is the litany of accusations Apple has leveled at its competitor with regard to intellectual property infringement, namely device usage elements and the concept of "trade dress." Apple has accused the Korean manufacturer of patent infringement regarding the look, feel and usage of its smartphones and tablets, thus negatively affecting the Apple brand. Harvey, Rothe and Lucas (1998) stress that manufacturers develop branding, including the employment of "trade dress" of a given product—the visual appearance of a good, including size, shape, color, and other considerations, as a means to establish product distinctiveness, customer loyalty, brand equity, and competitive advantage. Concerning "trade dress," Apple alleged that Samsung deceived consumers with regard to competing Samsung, believing that customers purchased the Galaxy S II phone and other devices based on the visual similarity and functionality of Samsung's products, including the appearance and use of web application (app) icons (Arthur & Sandeman, 2012). As evinced particularly by the design, usage and popularity of the Galaxy S II line of smartphones and tablets, Samsung had infringed on numerous elements of the iPhone and iPad, including what

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Apple termed as the “rubber band” bounce-back effect, the “pinch and zoom” function, and the “D’889” iPad patent (2012).

Samsung immediately filed a countersuit, insisting that in particular, Apple had violated company UMTS/3G patents, smartphone e-mail functions, multitasking productivity functions, and the utilization of “bookmarks” in a camera phone’s photo gallery (2012). Moreover, Samsung maintained that years before Apple’s release of the iPhone and iPad, the company had undertaken the development of touchscreen phone and tablet technologies (2012). Thus, Samsung had not violated “trade dress”-related intellectual property considerations.

In the midst of over a year of legal wrangling and procedure, as almost standard practice by litigants as a means to protect sensitive trade secrets and in intellectual property cases, Samsung requested the court to file documents under seal (“Apple vs. samsung,” 2011). US District Judge Lucy Koh agreed, maintaining Samsung trade secrets, including release dates of new products and the number of employees engaged in marketing and design of the Galaxy S II and other products at issue (2011). Maintaining consistency with regard to the earlier sealing of Samsung documents, toward the end 2011, Judge Koh further granted motions to seal the court for both Apple and Samsung (2011). While such actions raised concerns over judicial transparency, Judge Koh’s decisions reflected the sensitive nature of the US court case.

Additionally, Apple sought numerous injunctions to prevent the sale of Google Android-based products manufactured by Samsung and other companies including Motorola and HTC in the before and during the interim before trial (Nuttal, 2012). Samsung smartphone sales alone had outsold Apple in the first quarter of 2012, shipping ten million more units than its US rival (2012). By all appearances, by mid-2012, it seemed that Apple had hoped to settle the case prior to both sides commencing in a full trial phase in US District Court in the summer. In July 2012,

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CEOs of Apple and Samsung, Tim Cook and Choi Gee-Sung, respectively, sought to resolve the impending patent case through a settlement in May of that year (2012), ultimately to no avail.

Failed arbitration attempts between the litigants set the stage for a showdown that would culminate in a verdict for Apple Inc. v. Samsung Electronics Co. Ltd. et al, case No. 11-1846, in U.S. District Court, Northern District of California (2012) toward the end of the summer.

In determining the veracity of its claims regarding at least seven different patents at issue, Apple had to demonstrate that it had established “trade dress” for its smartphones and tablets, and that Samsung’s actions directly infringed on such patents related to Apple’s iPhone and iPad (Nuttal, 2012; Vascellaro, 2012b). Samsung on the other hand, in seeking to prove its countersuit, intended to demonstrate that its patents had been infringed upon, claiming the original introduction of the smartphone as far back as 1999 (Nuttal, 2012) as a denial of trade dress violation allegations. In discussing a trade dress issue national restaurateur Denny’s faced in the late 1990s, Thomas Walker (as cited in Diaz & Rutherford, 1997) asserted that in order for a company to establish “trade dress,” unique elements of the product, good or service of a company must resonate to the customer a distinct impression (in this case, features associated with Denny’s). In addition, according to Abbot and Lanza (as cited in Diaz & Rutherford, 1997), the infringement of trade dress must constitute the probability of consumer confusion with regard to the distinctive appearance of its products and the origin of the goods offered.

Both litigants sought to articulate its intellectual property infringement claims in US District Court trial phase in the summer of 2012. The lead attorney for Apple Inc., Harold McElhinny, informed the jury that Steve Jobs had begun the development of the iPhone in 2003, and produced documentary evidence of the tech firm’s efforts including sketches, drawings, designs and redesigns throughout the trial (Babcock, 2012). McElhinny insisted that Samsung

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was liable for US \$2.75 billion in damages, based on Samsung's sales of 22.7 million smartphones and tablets during the period of infringement Apple alleged (2012). Charles Verhoeven, Samsung's lead attorney, countered, stating that Apple's presentation of infringed-upon products was highly selective, and attacked the US firm's design patent claims (2012). Verhoeven stated that Apple's patent claim arguments were too far-reaching, believing that amongst many concerns, Apple cannot possibly own the rights to the appearance of screen icons and colors, and the right to display and arrange such icons in rows and columns (2012). Verhoeven insisted to the jury that enough differences existed between designs Samsung's products and Apple's iPhone and iPad that did not elicit customer confusion, even challenging Apple witnesses to affirm otherwise, hence not warranting a verdict in favor of Apple (2012).

On August 25, 2012, after twenty-two hours of deliberation, nine jurors unanimously rendered a \$1.05 billion dollar award in damages to Apple in US District Court (Vascellaro, 2012a). The jury found that Samsung had violated six different intellectual property patents held by Apple (2012; Gobble, 2012), which included "trade dress" issues and device functionality in terms of software and communications features (2012).

Elias (2012) explains that the jurors determined the validity of Apple's patents and asserted the right of the company to defend the patents, concluding that Samsung had indeed infringed upon Apple's intellectual property, and that the decision in the eyes of the jury served as a message to Samsung and other interests that such actions were wrong. Although Apple did not win the full amount demanded—over US \$2 billion, as aforementioned, the verdict rendered against Samsung served as a sweeping victory (Elias, 2012) Elias pointed out however, that Apple may have benefitted from the location of the trial, since the proceedings took place just

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ten miles away from Apple's base of operations, Silicon Valley (Elias, 2012). Samsung appealed the verdict.

In March 2013, District Court Judge Lucy Koh declared a sizeable reduction of the judgment rendered by the jury by nearly half, striking US \$450,514,650 from the original US \$1.05 billion award ("US judge slashes," 2013). Moreover, Judge Koh ordered a new trial, stating that the jury did not follow instructions correctly with regard to the calculation of damages Apple was to receive from Samsung (2013). As indicated on the web page of the US District Court, Northern District of California (2013), a resource for journalists and the public dedicated to the ongoing case, the court lists March 31, 2013 as the date of the new jury trial between the two parties.

The Tokyo District Court Decision and Other Cases

While Samsung suffered a considerable loss in the United States, despite the reduction of the award for damages, Apple has not yet emerged as the undisputed winner in the "patent wars." Only days after the original US District Court victory in August 2012, Samsung defeated Apple in Japan. The Tokyo District Court ruled against Apple in a concurrent patent lawsuit, rejecting the tech firm's claim that Samsung had infringed upon patents covering the transfer of music and other data, in addition to denying Apple's request of the court to file an injunction on the sale of Samsung products in Japan (Gobble, 2012; "Apple loses patent," 2012). Although the monetary reward was meager—only \$1.27 million—Samsung hailed the Tokyo court verdict as proof that no infringement upon Apple's intellectual property had occurred ("Apple loses patent," 2012).

The Tokyo decision highlights other litigation that has occurred between the two technology firms globally over the last two years in "the patent wars," amounting to no less than fifty cases in ten different countries (Nuttal, 2012). Both companies filed actions in the midst of

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the US court case, including lawsuits in South Korea, Australia, Germany, the United Kingdom, The Netherlands, Spain and Italy (2012). A verdict delivered in a Dusseldorf court in 2011 ruled in favor of Apple's claims of intellectual rights property violations by Samsung, barring the sale of Galaxy tablets in Germany (2011). Regarding litigation in Australia and South Korea in 2011, each case centered on the protection of standards patents (Ramstad, 2011). A company such as Apple or Samsung can contribute to international bodies and other companies the rights to usage of ideas protected under standards patents—particular product characteristics—for the sake of gadget compatibility, as a means for the firm in question to generate royalties (2011). The South Korean court determined that while Samsung's products did in fact resemble the designs of Apple products, the degree of similarity did not warrant a case for infringement (Gobble, 2012). However, a UK court ruled against Samsung as the result of lawsuit raised against Apple in March 2013, denying the South Korean company's claim that Apple had infringed on patents protecting the means by which phones, via third-generation networks, send and receive information ("Apple wins uk," 2013).

Repercussions, Implications and New Chapters in the "Patent Wars"

Through the end of 2012 and into the current year, and as recently as the first week of June 2013, further decisions on the part of the US District Court and the International Trade Commission (ITC) will affect the course of action both Apple and Samsung will take concerning ongoing litigation. For example, as the result of the original judgment of the US intellectual property case, and shortly after the signing of a licensing agreement between Apple Inc. and HTC Corp., Apple stated that the decision opens the door to renew efforts to pursue Samsung in the courts (Bradshaw, 2012). Moreover, immediately after the August 2012 US court decision,

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the stock share price of Samsung dropped by 7.5%, a loss of US \$12 billion of the firm's overall market share ("Samsung shares drop," 2012).

Wu (2012) explains that the 2012 US District Court case decision serves as a bellwether for future intellectual property cases between Apple and Samsung, and intellectual property rights litigation in general. The nature of how Apple won the case centered on the fact that the company knew how to present its case, not burdening jurors with a litany of technical details, a particularly important point, since it is likely that juries will increasingly determine patent lawsuits in the future (Wu, 2012). Additionally, Wu points out that the "patent wars" have no perceivable end, and that the two parties will continue to appeal verdicts and battle one another in new trials (2012). While some criticized Apple's US court victory against Samsung as innovation trumping consumer choice, Wu believes that ultimately, the marketplace will truly determine the winner between the two tech giants, and moreover, the victor between Apple and Google (2012).

The observations offered by Wu with regard to the continuation of the Apple and Samsung dispute through legal proceedings now seem all too prescient; the "patent wars" have taken more intriguing turns. The Wall Street Journal reported on November 16, 2012, that US Magistrate Judge Paul Grewal allowed Samsung to pursue claims against Apple's latest smartphone entrée, the iPhone 5 as a part of ongoing litigation (Kim, 2012). On behalf of Apple, Judge Grewal also allowed Apple to include in its continuing lawsuit the Samsung Galaxy S III smartphone, the Galaxy Note 10.1 tablet, and the newer iteration of Google's OS, Jelly Bean (Kim, 2012). In addition to the already-named Samsung and Google products added to the new US District Court case, in May 2013, Apple added to its lawsuit the newest version of Samsung's Galaxy smartphone—the S4, alleging that the Samsung gadget, featuring Google Now, infringes

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on the capabilities of Apple's Siri voice-interaction search tool (Zeman, 2013). The revised trial phase, begun at the end of March 2013, is now underway in its early stages.

The renewed proceedings in US District Court do not mark the only new development in the "patent wars." On June 5, 2013, the International Trade Commission (ITC), a US-based trade panel, declared that Apple infringed on a Samsung patent relating to the use of 3G wireless internet technology—namely, the ability for iPhones and iPads to transmit simultaneously multiple services ("Apple loses us trade," 2013). The ITC ruling, itself an overturning of a previous decision rendered by ITC judge James Gildea in September 2012 may result in the permanent banning of the sale of older versions of the iPhone and iPad (2013). As part of the ITC ruling, the panel issued an order halting all US sales and imports of iterations of the iPhone including the 4, 3, and 3GS; and versions of the iPad including the iPad 3G and iPad 2 3G (2013). While US Presidential order within a sixty-day review period may reverse the ITC decision, although such action is rare, Apple nonetheless plans to appeal the decision, despite insisting that the decision will not affect the availability of its products in the United States (2013).

Conclusion

The "patent wars" between Apple Inc., and Samsung Electronics Co. Ltd., represent perhaps the most significant intellectual property rights battle in history. The two tech giants currently engage in an ongoing legal conflict for supremacy, and in the balance, the future of technological development and innovation, consumer choice, shareholder value, and likelihood of organizational success or failure. For not only will the eventual winner of the legal battle command the smartphone and tablet market for years to come, either Apple or Samsung, through Google Android technology, will have a hand in the very nature of how people around the world

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communicate, and therefore, govern the way in which humanity perceives and interprets reality.

Each side has won battles while also sustaining losses. The return to northern California serves as the next theater of litigation war between the two sides, and the companies continue to draw battle lines in regions and continents around the globe. Apple versus Samsung exists as an epic intellectual property rights war that may only end once one company stands above the other in undisputed legal and marketplace triumph. As the world awaits the next round between the two companies to begin, most likely in 2014, one thing remains clear:

The clash of the titans has only just begun.

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