



APPLE VERSUS SAMSUNG: A PATENT WAR OF TITANIC PROPORTIONS

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In a context where patent litigation often gives the impression of trench warfare, the legal saga pitting Apple against Samsung looks like a global conflict.

The two companies have been fighting for some time in patent litigation across several continents, notably in Australia, South Korea, Japan, Germany, France, Italy, the Netherlands, Great Britain and the United States. In some cases, Apple filed the original lawsuit for patent infringement, while on other occasions Samsung commenced proceedings. However, in most cases, the accused company retaliated with its own lawsuit to invalidate the cited patents and further alleging infringement of some of its own patents. Litigation with Apple in Europe, Australia and the United States has lead, in some cases, to the issuance of temporary injunctions preventing Samsung from importing certain models of its smartphones and tablets in those jurisdictions.

Although many of these orders were subsequently overturned or rendered obsolete by the development of modified devices to circumvent the allegedly infringed features, it still remains that Apple benefited from a temporary competitive advantage in some target markets. Damages were also awarded to both sides at the conclusion of certain of the disputes.

Among the many disputes, the most interesting battle is probably the one occurring in the United States, which particularly merits our attention. Indeed, it is south of the border that the hostilities between the parties started with a lawsuit filed by Apple in April 2011 with the Federal Court District of California. Apple alleged that some units sold by Samsung infringed some of its patents, in addition to violating its trademarks rights, the user interface and the look and feel of the iPhones™ and the iPad™.

The first round of this confrontation was won by Apple which, in a decision dated August 24, 2012, was awarded damages of more than one billion U.S. dollars for the violation of almost all claimed patents and industrial designs. The jury rejected all the allegations of infringement made by Samsung in its counterclaim.

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This decision has now been brought to the Federal Court of Appeals of the United States, Samsung citing, among other things, irregularities related to the impartiality of jurors who rendered the decision and challenging the validity of certain cited patents. At this stage, it is too early to judge the impact of the decision, as the Court of Appeal or the trial judge could still overturn the jury's verdict. In addition, some post-verdict motions must also be resolved, including the determination of whether Samsung infringed certain patents deliberately, which could inflate the damages over 700 million additional dollars.

A second action brought forth by Apple is also underway between these parties in the United States. This particular case led to a temporary ban on imports of Galaxy Nexus™ phone in the United States earlier this year, a ban that has now been canceled. It will be interesting to follow the developments in this case, as a trial is scheduled for March 2014, and is likely to provide its share of surprises along the way.

A third dispute between the parties could also emerge shortly in the United States concerning fourteen patents Apple and Samsung set aside in the first case, in order to facilitate a quick decision. Unlike patents cited in the first trial that were primarily focused on visual aspects or auxiliary functions of the devices, these fourteen patents relate to technologies lying at the heart of the devices. Thus, most analysts agree that the outcome of a trial revolving around these patents may significantly alter the balance of power between Apple and Samsung, well beyond the previous monetary award, regardless of the amount.

In conclusion, although this saga has already seen a great deal of spilt ink, it is likely that the hostilities are far from over. In fact, rarely does a day go by on the planet without the emergence of a new development in one of the many disputes between these two competitors, whether it is a judicial decision on a patent infringement issue, a decision on the validity of a cited patent, or the like. As an example, we can cite the recent decision of a court in The Hague stating that the range of Galaxy™ products from Samsung did not violate Apple patents concerning multitasking. In this context, one can believe that these battles will be just as important as those that were already fought.



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