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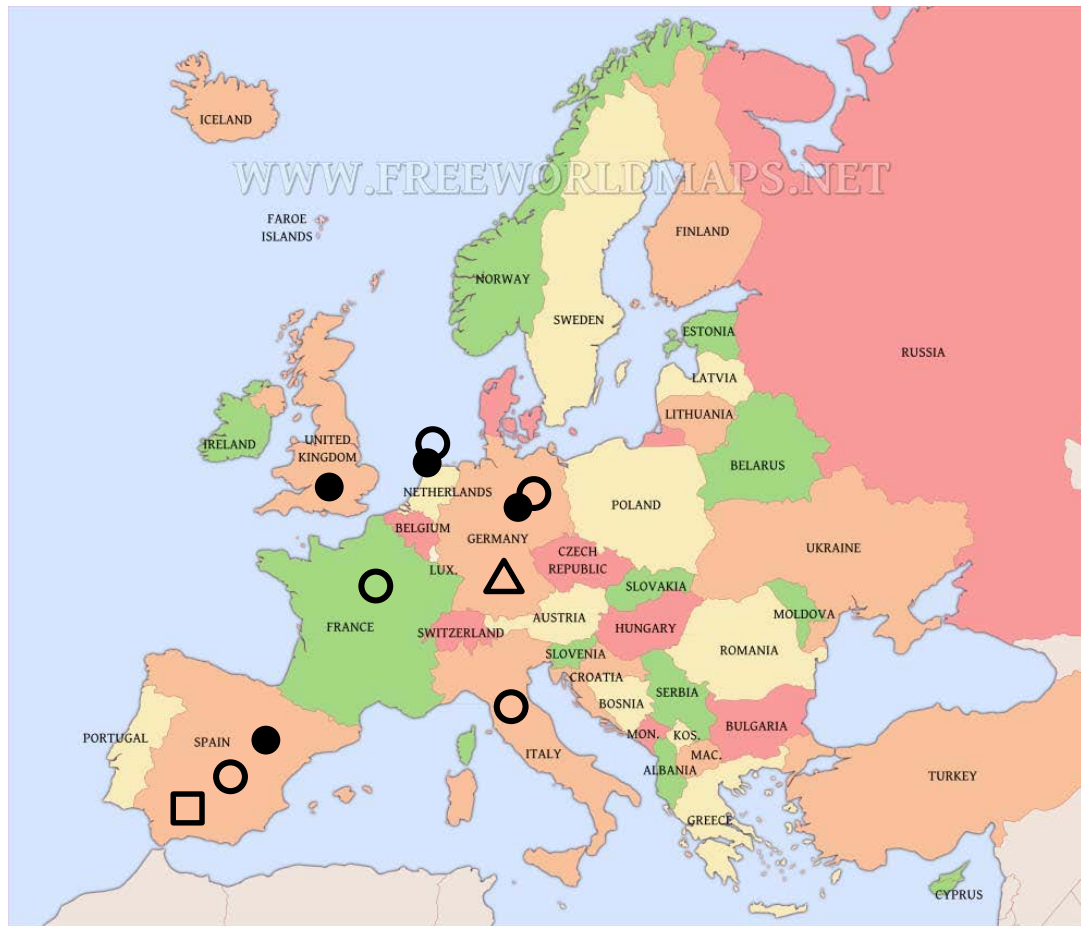
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# Apple vs. Samsung

## The Design War in the EU

Dr. Thomas Schlieff  
St. Petersburg, October 2016

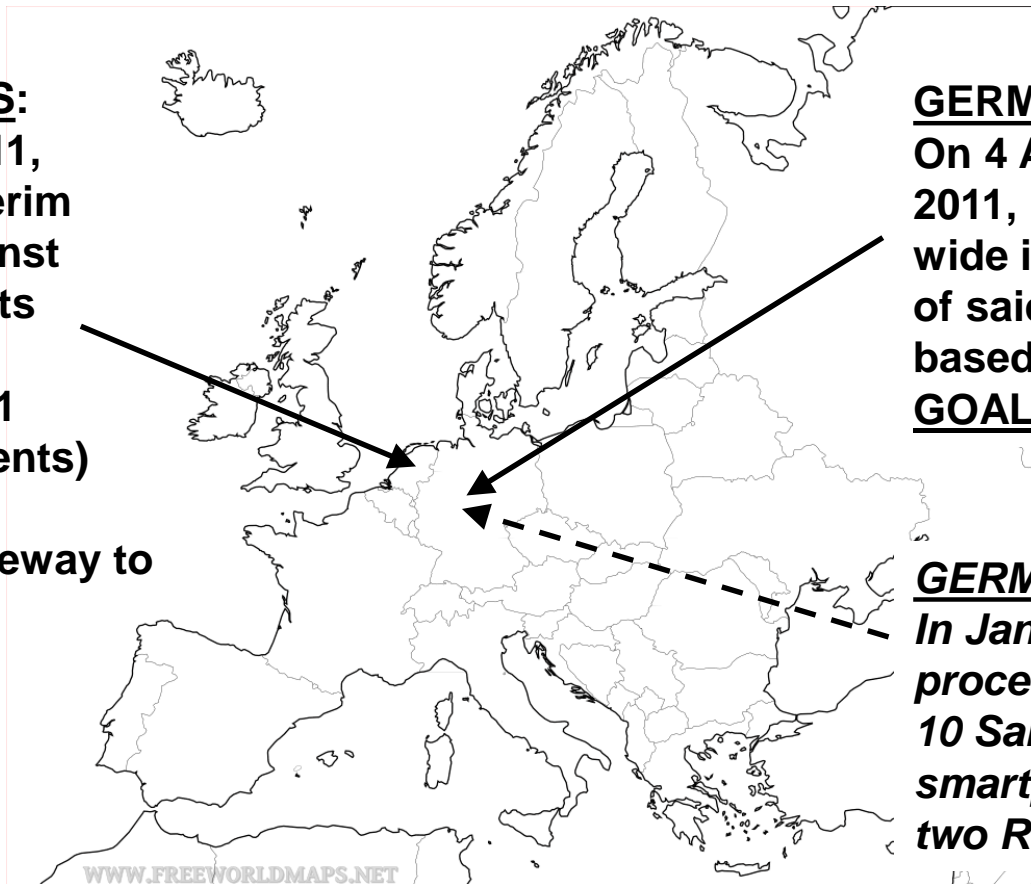


- △ Design infringement proceedings against Samsung smartphones
- Design (non-)infringement proceedings re Samsung tablets
- Patent infringement proceedings
- Invalidation proceedings before EUIPO

## Focus here: Apple's attacks on the design of Samsung's Galaxy Tabs 10.1, 8.9, 7.7

### NETHERLANDS:

On 27 June 2011,  
request for interim  
injunction against  
Samsung tablets  
based on RCD  
000181607-0001  
(and utility patents)  
GOAL: closing  
Samsung's gateway to  
Europe



### GERMANY:

On 4 Aug, 1 & 2 Sept  
2011, request for EU-  
wide interim injunctions  
of said Galaxy Tabs  
based on RCD '607  
GOAL: EU-wide ban

### GERMANY:

*In January 2012, main  
proceedings against  
10 Samsung  
smartphones based on  
two RCDs*

## Samsung's Defenses

**UK (ENGLAND, WALES),  
NETHERLANDS, SPAIN:**

On 8 Sept 2011, request in main proceedings for a declaration of non-infringement of Apple's RCD '067 regarding the tablets;  
**GOAL:** EU-wide decision on non-infringement

**EUIPO (Alicante/ES):**

On 9 Aug 2011, request for invalidation of RCD '607 (*and three RCDs re iPhone*);  
later: invalidation requests for several other RCDs of Apple  
**GOAL:** destroying Apple's basis of attack



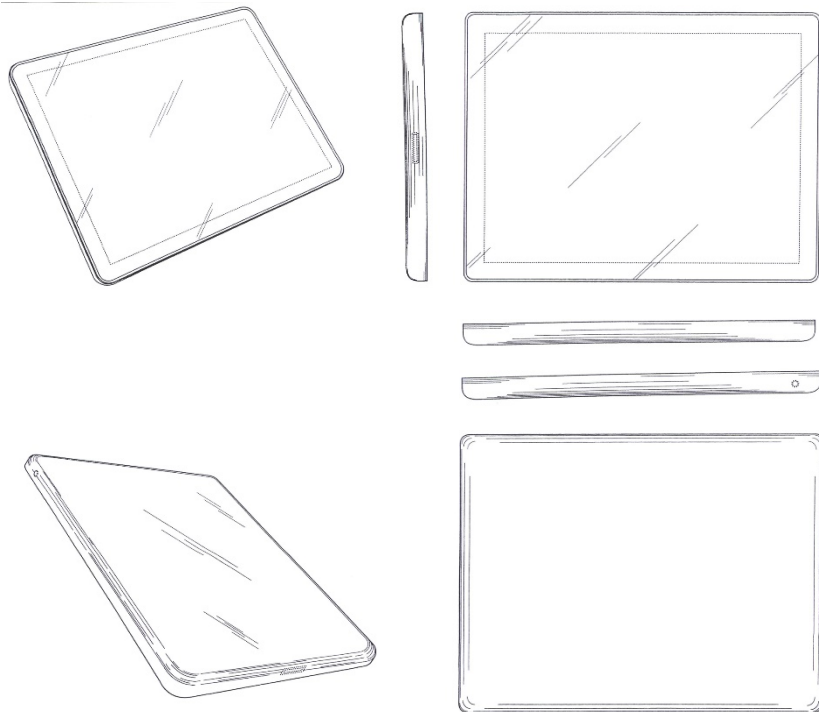
## **EUIPO**

**Samsung was able to invalidate only a few of Apple's RCDs based on:**

- **Existing design corpus**
- **Priority claims not valid**
- **Mock-ups published on fan websites**

**But none of the infringement proceedings before the various national courts were stayed**

# Apple's main RCD and the Galaxy Tab 10.1



**Apple's  
RCD 000181607-0001  
of May 2004**



**Samsung Galaxy Tab 10.1**

## Germany - Galaxy Tab 10.1

**LG Düsseldorf (1<sup>st</sup> instance) in September 2011:**

- Interim injunction granted based on infringement of RCD '607, overall impression on the informed user would be the same
- At first: EU-wide (except for The Netherlands: separate proceedings)
- Then: narrowed to Germany as injunction was declared valid only for Samsung Germany, not considered a subsidiary of Samsung KR
- Thus: no cross-border injunction granted for Apple
- Decision declared later as valid also for the Tab 8.9 (it's just smaller)

(Cont'd: Germany - Galaxy Tab 10.1)

**OLG Düsseldorf (2<sup>nd</sup> instance) in January 2012:**

- **No infringement of RCD '607 because bezel would be too different**
- **But interim injunction confirmed! However, now based on German law on unfair competition**
- **The average consumer (unfair competition) knows less than the informed user (design rights)**
- **Supplementary protection based on the competitive originality of the iPads, i.e., the real products, being different from the RCDs; Samsung exploits their reputation → “Tab 10.1 is an imitation”**
- **Thus: again no cross-border injunction for Apple**
- **Later: The main action subsequently filed by Apple was withdrawn**



(Cont'd: Germany - Galaxy Tab 10.1)

**Samsung's reaction? The Galaxy Tab 10.1N !!  
(testing the limits of the court decision)**



**Apple's request for an interim injunction FAILED because:**

- Rim too different
- Speakers now at the front
- „Samsung“ on the front brighter

## Germany – Galaxy Tab 7.7

shown at the IFA trade show in Berlin

LG Düsseldorf (1<sup>st</sup> inst.) on 24 October 2011  
and OLG Düsseldorf (2<sup>nd</sup> inst.) on 24 July 2012:



- Tab 7.7 infringes RCD ‘607 !!
- EU-wide interim injunction granted !!
- Tab 7.7 has the same harmonious and simple elegance, exemplified by the minimalistic front and the consequential pure design of the casing; differences re back side are just technical
- Later: Main action withdrawn by Apple due to conflicting decision in main proceedings by UK court (see below)

## The Netherlands

### District Court of The Hague (1<sup>st</sup> inst.) in August 2011

- No infringement of RCD '607 by Galaxy Tab 10.1, different overall impression
- Apple raised no claims based on unfair competition
- But infringement of one Apple patent: cross-border injunction granted based on a software patent (but easily to get around)

### Dutch Appeal Proceedings (2<sup>nd</sup> inst.)

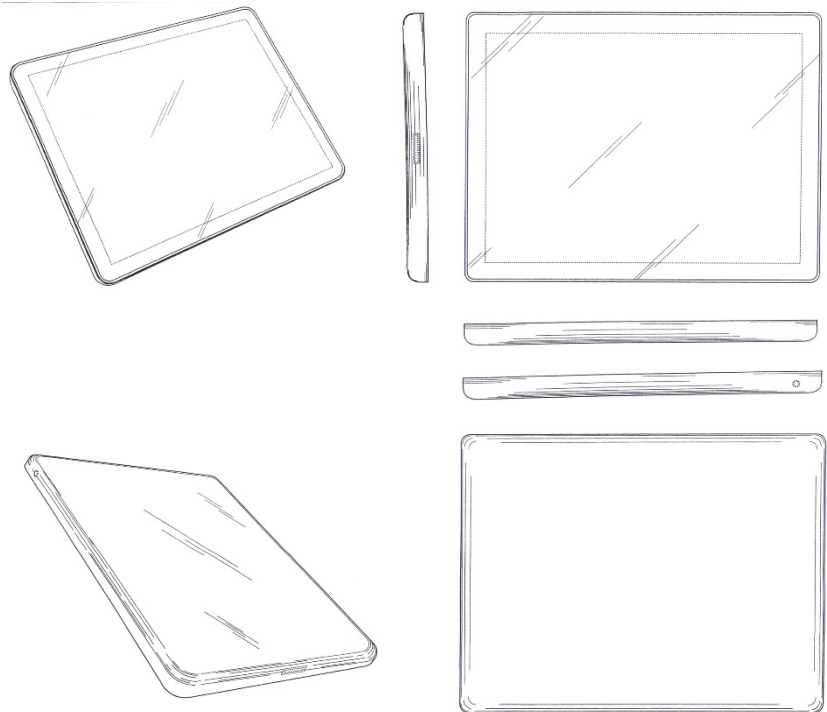
- No decision, but referral to UK court decision

## United Kingdom

### High Court of Justice (1<sup>st</sup> instance) on 9 July 2012

- Samsung sought declaratory judgment of non-infringement regarding its Galaxy Tabs 10.1., 8.9, 7.7
- Apple filed counterclaim for infringement of RCD '607
- Court found differences in thinness of said Tabs vs. RCD '607 and in ornamentation on their backs
- Thus: different overall impression on the informed user
- QUOTE: „[The Samsung Galaxy Tablets] do not have the same understated and extreme simplicity which is possessed by the Apple design. **THEY ARE NOT AS COOL.**“
- This was the first decision in main proceedings in the EU

# UK Court's Findings



**Apple's  
RCD 000181607-0001**



**Samsung Galaxy Tab 10.1**

**(Cont'd: UK - Galaxy Tabs 10.1, 8.9, 7.7)**

## **UK Court of Appeal on 18 October 2012**

- **Decision of non-infringement confirmed**
- **Strongly criticizes the adverse German Higher Court decision regarding the Galaxy Tab 7.7 in interim injunction proceedings, which was issued two weeks after 1<sup>st</sup> instance decision of UK court decision in main proceedings**
- **UK court urged Apple to renounce its rights from said decision of the German Higher Court (thus: no more infringement actions pending in Germany)**

## Publication Order by the UK High Court, later specified by the Court of Appeal

- Apple had to publish a notice on its website and in national newspapers that Samsung does not infringe the RCD
- Court quote: *“The more frequently and the more loudly an IP-rights holder has asserted infringement, the more useful it is to have a clear public statement to the contrary.”*
- Apple complied with that order – but also noted the „not as cool“ quote and commented on its successes in other jurisdictions
- Court of Appeal stopped Apple’s behavior and awarded higher costs to Samsung

## 11 August 2014

- **All infringement proceedings and EUIPO invalidity actions were terminated in Europe by withdrawing the respective requests and appeals**
- **No cross licensing agreement was concluded**
- **No royalties were paid**



## Summary and Lessons

- Apple strived for EU-wide bans of Samsung's tablets via requests for interim injunction filed in DE (and NL). Only partially successful.
- Samsung filed main actions for non-infringement in UK, NL, ES. The confirming EU-wide UK decision "overruled" the German decision re the Tab 7.7.  
Up to this point, Samsung won the design war in the EU.
- File your actions wisely: What, where and when !!
- Design rights proved to be quite weak (only the Tab 7.7 was barred by a German court – and only by an interim injunction)
- Don't count on a suspension of infringement proceedings due to ongoing separate invalidation proceedings before EUIPO
- You may loose, but you may still be cool



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Thank you. Any questions?