

Apple v. Samsung: The Design War in the U.S.

Robert S. Katz

Banner & Witcoff, Ltd.

(202) 824-3181

rkatz@bannerwitcoff.com

www.bannerwitcoff.com/rkatz

FICPI St. Petersburg

October 2016



Overview

- *Apple, Inc. v. Samsung Elecs. Co.*,
 - *N.D. Cal. 2012*
 - *Fed. Cir. 2015*
 - *U.S. Supreme Court 2017*
- *Not covering today*
 - *Other utility patent actions in the fight*
 - *Injunction battles*

Causes of Action

Complaint

- 7 design patents
- 6 trademarks/trade dress
- 8 utility patents



Simplify



Sent to Jury (Apple)

- 4 design patents
- 4 trademark/trade dress
- 3 utility patents

Sent to Jury (Samsung)

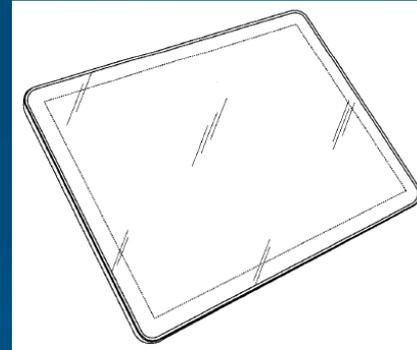
- 5 utility patents

Utility Patents

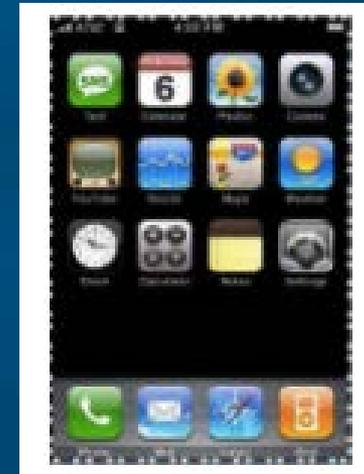
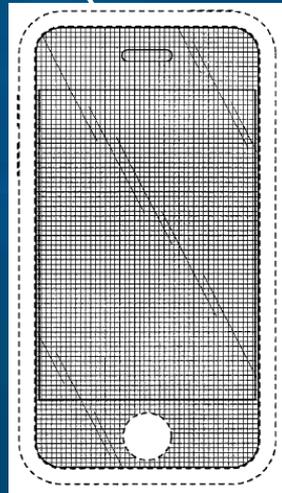
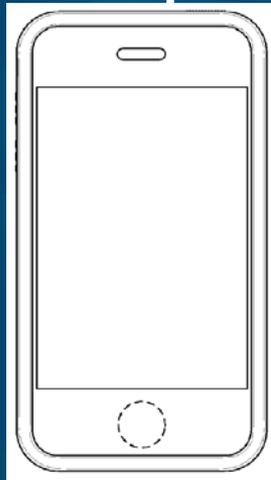
- Apple's Utility Patents
 - All found to be *infringed*
 - '915 Patent (Pinch to Zoom In)*
 - '381 Patent (Overscroll bounce back (rubberband effect))
 - '163 Patent (Tap to Zoom)
- Samsung's Utility Patents
 - All found to be *not infringed*
- *Other suits between the parties too.*

Apple's Design Patents

- Tablet (1 design patent)



- Smartphone (3 design patents)



Samsung's Products

20 Samsung Smartphone Models

Samsung
Galaxy S



Samsung
Infuse



Samsung
GUI
(accused
products)

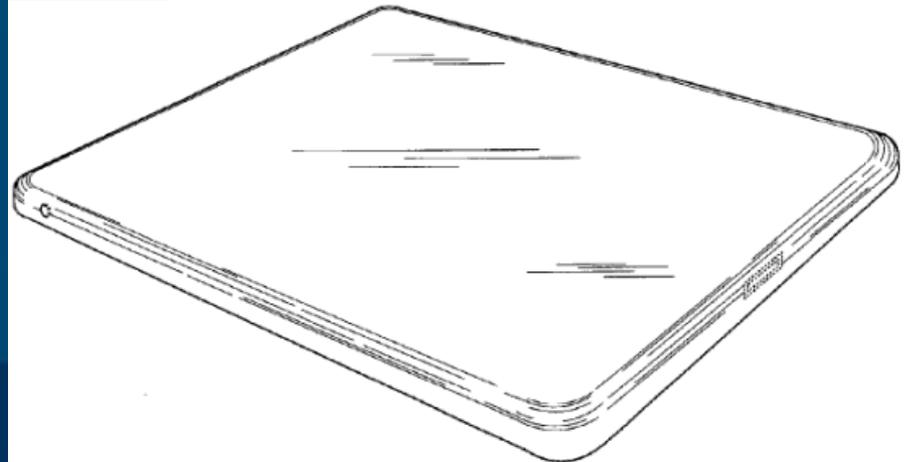
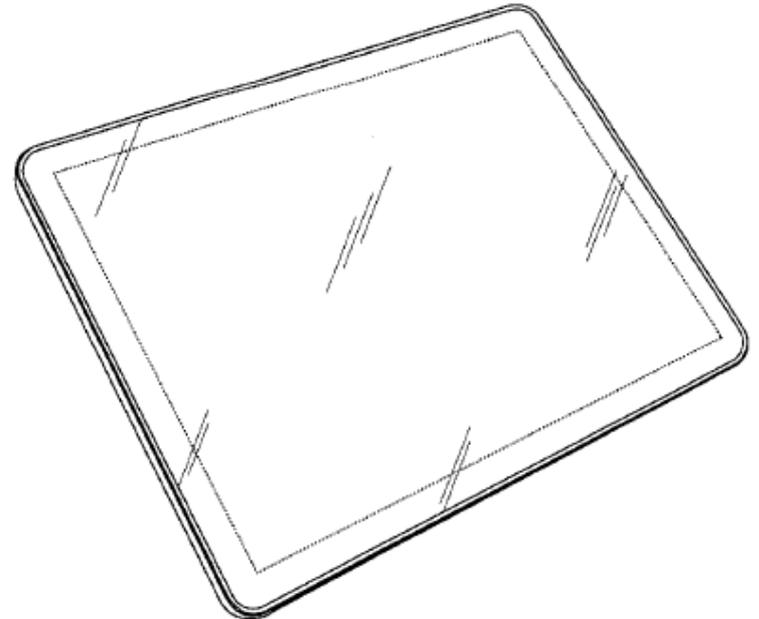
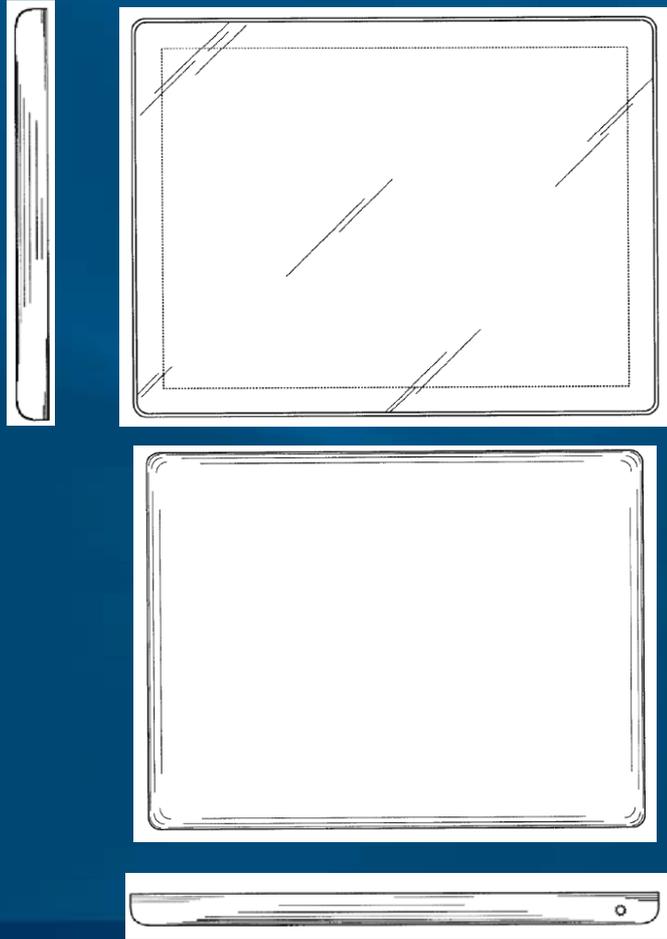


2 Samsung Tablet Models

Samsung Galaxy
10.1 Tab

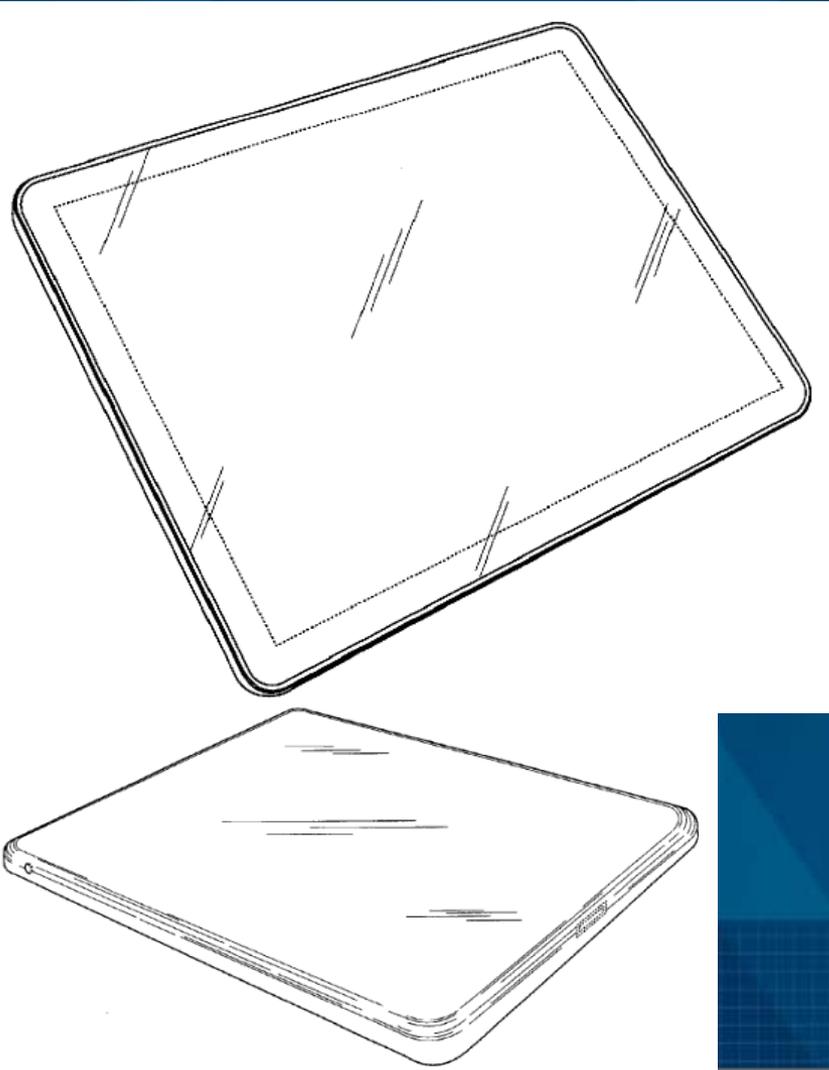


Apple's '889 Patent



Apple's Tablet Design Patent

Apple '889 Design Patent

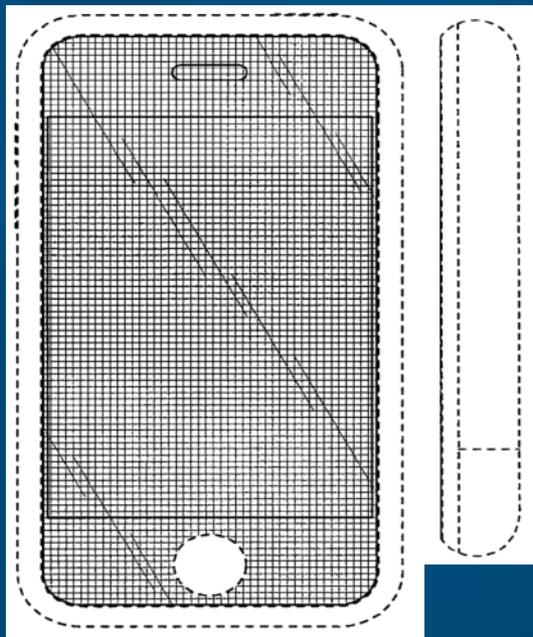


Accused Samsung Tablet
Galaxy Tab 10.1 (2 versions)

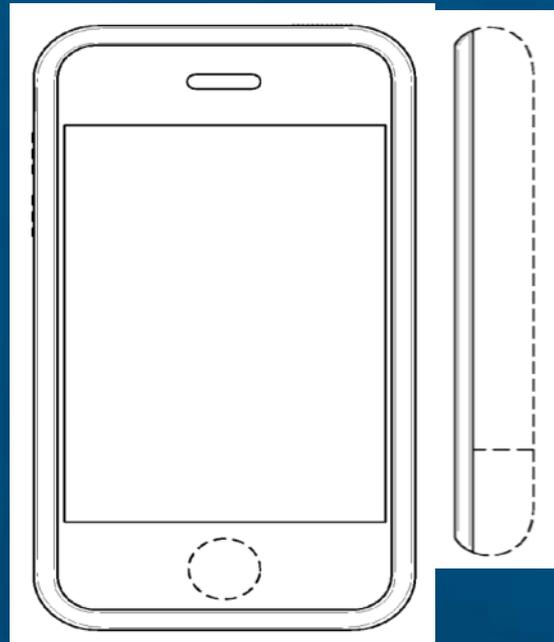


Samsung
Models
0 - Yes
2 - No

Apple's Smartphone Design Patents Hardware (x2) and GUI



D618,677

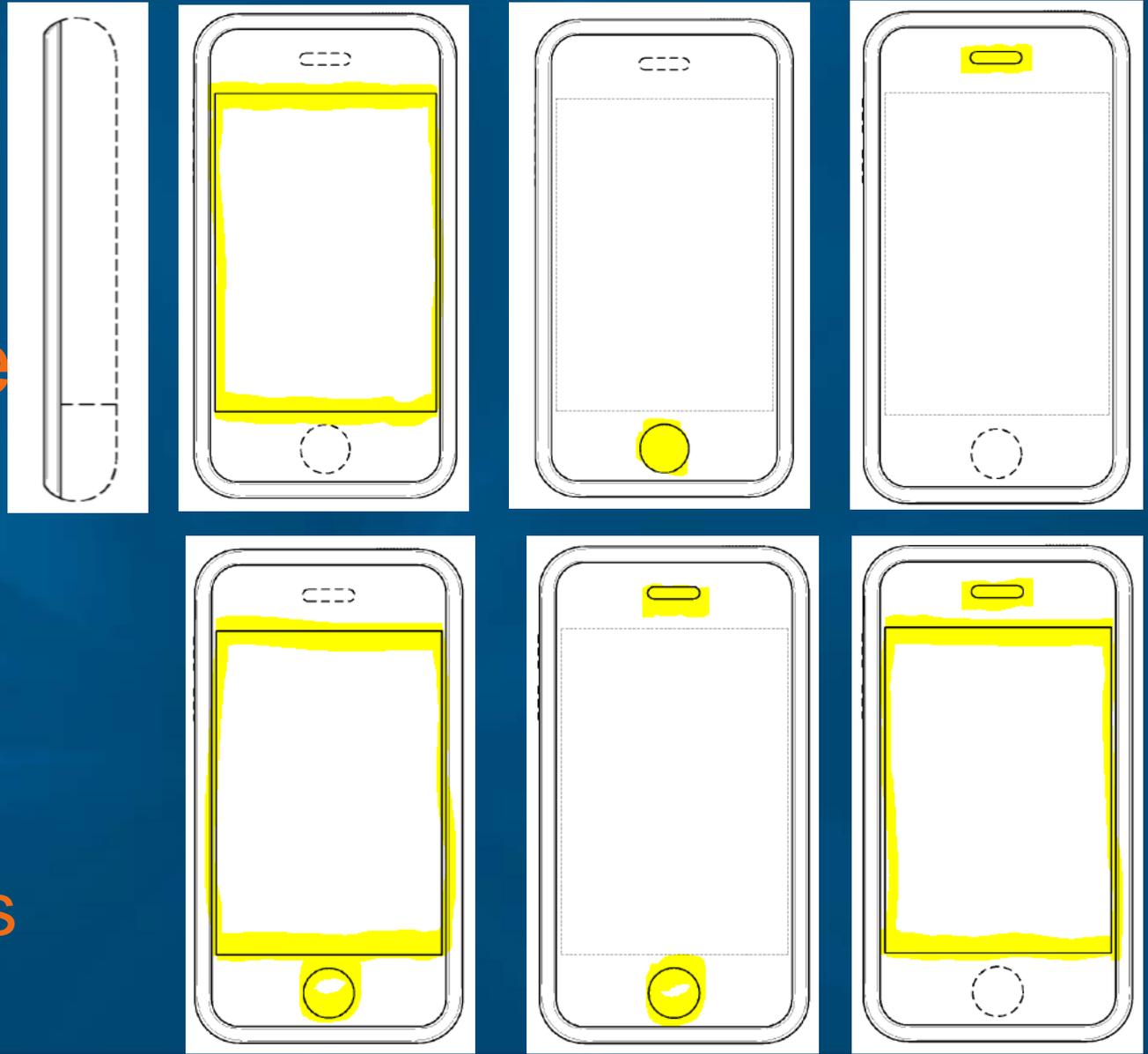


D593,087



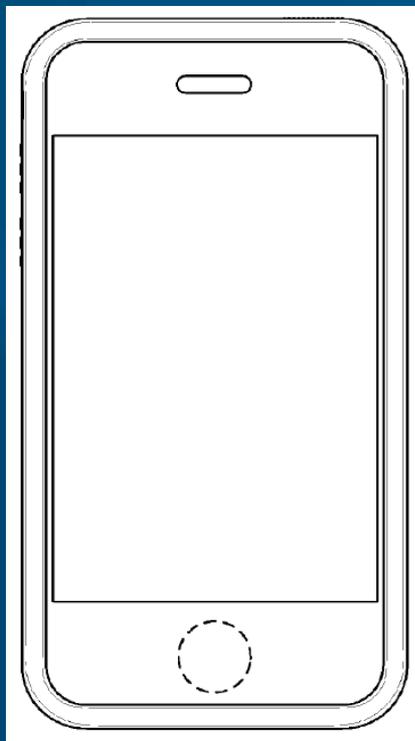
D604,305

Bezel & Front Face Design Patent (‘087) – Six (6) Embodiments



Bezel and Front Face Design Patent

'087 Design Patent



Samsung Model - Galaxy S and Infuse



3 - YES

4 - NO

Black Front Face '677 Design Patent



Galaxy S i9000
Jun. 2010



Vibrant T959
Jul. 2010



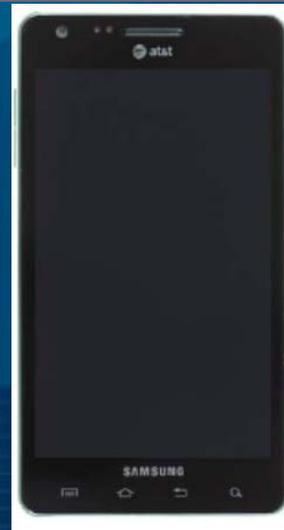
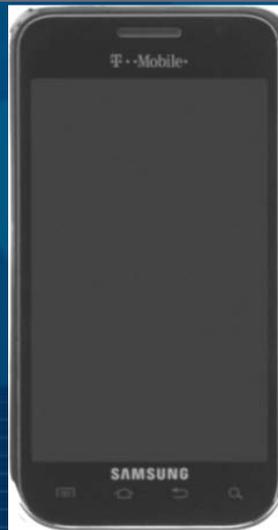
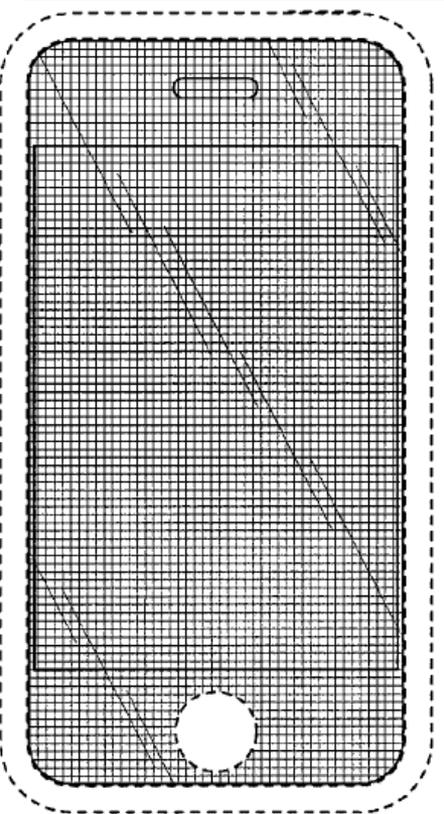
Mesmerize i500
Oct. 2010



Galaxy S 4G T959V
Feb. 2011



Galaxy S II T989



Samsung
Models
13 - Yes
1 - No

Apple '677
Design Patent

Apple's Screen Design Patent

'305 Design Patent



Accused Samsung GUI



Samsung Models

14 – Yes

0 - No

Trade Dress Claims

- Unregistered Trade Dress
 - Comb: rounder rectangle + black front face + colorful square icons + unchanging bottom dock of icons
- Registered Trade Dress
 - Home screen GUI
- Won at trial and reversed on appeal
- Lost on functionality grounds
 - Shape maximized display + easy to use

What Happened?

- Original jury verdict
 - \$1.05 BILLION dollars
 - Reduced and modified
- Amount due to design patents \$399M
- Upheld on appeal on merits
- Still not final
- Cert Granted by U.S. Supreme Court
 - Oral argument is October 11th

Design Patent Law Regarding Remedies

Monetary Remedies Overview

Two Primary Sections

- 35 U.S.C. § 284 – Damages
 - TRANSLATED: If you infringe someone's patent (utility or design) you are liable for how much the patentee was harmed BUT the no less than a reasonable royalty
- 35 U.S.C. § 289 – Additional remedy for infringement of design patent (inc. infringer's profits)
 - TRANSLATED: If you infringe someone's design patent you are liable to the extent of your infringer's total profit BUT not less than \$250 AND no double dipping

SupCt. Cert Granted: Question

- Whether 35 U.S.C. § 289, which provides that a party that infringes a design patent may be held “liable... to the extent of his total profit” on articles of manufacture to which the patented design is applied, permitted the jury to award the amount that it determined represented Samsung’s total profit from sales of Samsung devices that infringed Apple’s design patents.

Samsung's Position

- § 289 allows *only* the total profit *attributable* to the infringement of the patented design
- Congress really assumed that § 289 would apply where designs are the principle feature, and the courts should not apply it to multi-component articles
- Apple didn't prove that Samsung's profits arose from the patented designs
- The total profits rule would create disproportionate or double awards and harm innovation and small businesses

Apple's Position

- § 289 permits recovery of the total profit earned on the relevant article of manufacture
 - Supported by the statute and longstanding judicial interpretation
- § 289 does not permit apportionment
- Determining the article of manufacture is a question of fact
- § 289 reflects sound policy and rebuts Samsung's policy arguments

Other Amicus Briefs (generally categorized)

Apple

- U.S. Government
- IDSA
- AIPLA
- NIKE
- Crocs
- Bison (inc. Deckers, Kohler, Oakley)
- Tiffany/Adidas/Jenny Yoo
- APP Assoc.
- IP Professors
- Nordock
- Roger Cleveland Golf
- BSA
- Design Professionals

Samsung

- Internet Assn. (inc. Facebook, Google, eBay, etc)
- Public Knowledge, EFF
- Software Freedom
- IP Professors
- Engine Advocacy and Shapeways
- Computer & Communications Ind.
- Hispanic/Black/Husbandry leadership

Thanks!

www.bannerwitcoff.com

CHICAGO, IL

Ten South Wacker Drive
Suite 3000
Chicago, IL 6060
T 312.463.5000
F 312.463.5001

WASHINGTON, DC

1100 13th Street NW
Suite 1200
Washington, DC 20005
T 202.824.3000
F 202.824.3001

BOSTON, MA

28 State Street
Suite 1800
Boston, MA 02109
T 617.720.9600
F 617.720.9601

PORTLAND, OR

One World Trade Center
121 Southwest Salmon Street
11th Floor
Portland, OR 97204
T 503.425.6800
F 503.425.6801