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
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 Galaxy (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

Samsung Models
13 - Yes
1 - No
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

  - 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!

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