

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## IPFRONTIERS

### 'Smart' innovation or thermonuclear war?

*Smartphone disputes dominate  
U.S. courts and shape  
intellectual property law*

Dominating headlines recently are the global patent wars between dueling smartphone manufacturers. A few of the big names in this crowded field of consumer mobile communications include Apple, Samsung, Google, Research in Motion, Microsoft, Nokia, Motorola and HTC. Recent estimates suggest that smartphone technology accounts for more than 15 percent of all active U.S. patents, and each of these companies is fighting to get a piece of the pie.

The key players are attempting to improve and defend their shares of this fiercely competitive and litigious market by amassing huge intellectual property portfolios and vigorously asserting and defending claims of intellectual property infringement amongst one another.

Some say late Apple co-founder Steve Jobs set the stage for an epic battle when he vowed to go "thermonuclear war" on Google's Android operating system, which Jobs felt was a "stolen product." And boy has it become an epic battle. The disputes span several continents, several U.S. courts, the U.S. International Trade Commission, the U.S. Patent Office and involve all of the big players.

Amongst the largest ongoing battles is the fight between Apple and Samsung currently pending in the U.S. District Court for the Northern District of California (Civil Action No. 11-cv-01846). The longtime technology partners became rivals after Apple introduced the iPhone in 2007 and Samsung introduced products that contain similar features.

In April 2011, Apple sued Samsung, alleging that several Samsung devices (including the Galaxy S 4G, Infuse 4G and Galaxy 10.1 Tablet) copied certain designs and functionality of the iPhone and iPad. Samsung parried the blow, asserting its own counterclaims of patent infringement against Apple.

In August 2012, the jury found Samsung's accused devices infringed six Apple patents. Their damage award of \$1.05 billion was one of the largest patent infringement awards on record. Apple subsequently moved for a permanent injunction banning

the sale of the infringing devices, which was denied in December 2012.

District Court Judge Lucy Koh found that it was not in the public interest "to deprive consumers of Samsung's infringing phones when ... only limited features of the phones have been found to infringe." Also, earlier this year, Judge Koh overturned the jury's damage award, reducing the verdict to just under \$600 million and ordering a new trial on damages with respect to some of the accused devices.

Apple appealed the denial of its permanent injunction to the U.S. Court of Appeals for the Federal Circuit. The Federal Circuit heard oral argument on the appeal last month and its decision (expected later this year) could significantly impact the standard for issuing permanent injunctions in patent cases.

The appeal implicates the important question of when it is appropriate to permanently enjoin the sale of complex products such as smartphones that embody numerous different patented technologies and designs based upon the infringement of just one or a few of the patented features that contribute to the product's value.

On other fronts, Samsung won rulings in South Korea, Japan, and the United Kingdom. Also on June 4, Samsung received a favorable ruling from the United States International Trade Commission (ITC). The ITC has jurisdiction to entertain patent infringement actions involving the importation of allegedly infringing devices into the United States.

In the proceeding commenced by Samsung, the ITC ruled that certain models of Apple's iPhone 4, 3GS, 3, iPad and iPad2 infringed a Samsung patent for encoding mobile communications. In a seemingly huge win for Samsung, the ITC issued an exclusionary order banning the importation of these devices.

However, the Samsung victory was short-lived. President Obama recently joined the battle last month when he and his administration vetoed the ITC patent ruling. Notably, this was the first presidential veto of an ITC ruling in decades. The Obama administration's decision was made after considering the ban's "effect on competitive conditions in the U.S. economy and the effect on U.S. consumers."

Meanwhile, Apple and Motorola are embroiled in their own patent skirmish. The two tech companies sued each other for

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patent infringement in the U.S. District Court for the Northern District of Illinois. Apple alleged that Motorola's Android-based devices copied patented iPhone features, including touchscreen technology. Motorola counterclaimed, alleging that Apple devices infringe its patented technologies directed to mobile communications.

U.S. Circuit Judge Richard Posner (sitting by special designation) dismissed the entire case in June 2012, ruling that neither company could prove it was entitled to damages or an injunction. The ruling is currently under review by the U.S. Court of Appeals for the Federal Circuit, which heard oral argument in the case on Sept. 11. The decision, also expected later this year, could potentially make it more difficult to prove damages and obtain injunctions in patent cases.

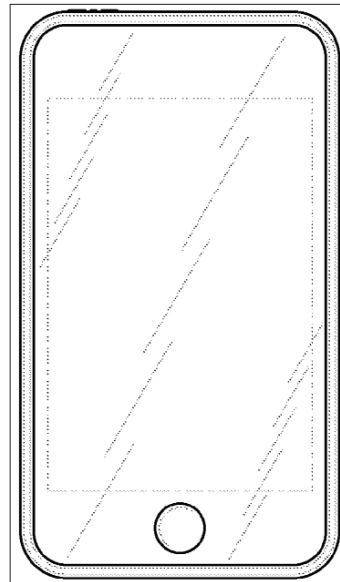
And the "thermonuclear" war is poised to rage on. In addition to the ongoing litigations, the players continue to aggressively build their portfolios, filing new patent applications directed to smartphone designs and functionality. For example, Apple's famous (or perhaps infamous) design patent protecting the shape of its iPhone depicts a rectangle with rounded corners.

This patent (U.S. Design Patent No. D633,091) is one of the key patents asserted by Apple against Samsung in the case pending in the U.S. District Court for the Northern District of California. Well, Motorola recently obtained a design patent of its own directed to a rectangular shape smartphone with flat corners. U.S. Design Patent No. D678,232 issued on March 19, 2013. (See figs 1, 2)

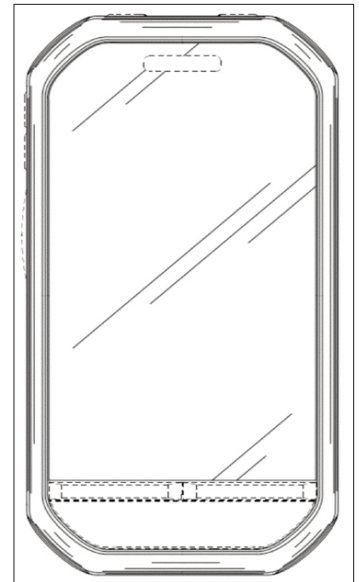
On Oct. 25, 2012, Samsung got a piece of the action when it filed a patent application directed to e-book functionality. Specifically, U.S. Application Serial No. 13/660,454, which published on April 25, claims a method and an apparatus that can display a page of an e-book according to user input information. This includes displaying an opened page of the e-book, detecting a pointing position indicated by a pointer, modifying the opened page based on the pointing position, and displaying a modified page.

U.S. Application Serial No. 13/660,454 is still pending. Not to be outdone, Apple obtained a U.S. design patent on a display screen with a page-turning function on Nov. 13, 2012; U.S. Design Patent No. D670,713 covers the ornamental design for a display with an animated graphic user interface. (See figs 3, 4)

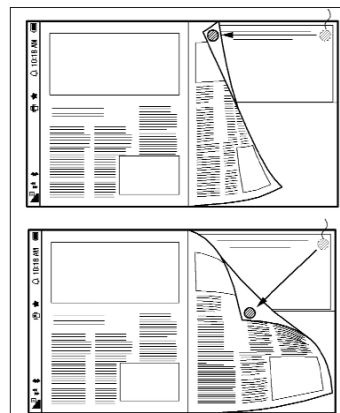
Many scholars suggest that these legal battles are part of a natural cycle of innovation. And eventually this "thermonuclear" technology war will come to an end, whether by licensing or law-



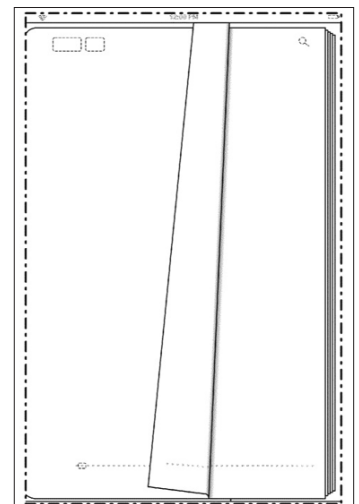
U.S. Design Patent No. D633,091  
Issued to Apple on Feb. 22, 2011  
(Fig. 1)



U.S. Design Patent D678,232  
Issued to Motorola Mobility on  
March 19, 2013 (Fig. 2)



U.S. Application Serial No.  
13/660,454  
Filed by Samsung on Oct. 25, 2012  
(Fig. 3)



U.S. Design Patent No. D670,713  
Issued to Apple on Nov. 13, 2012  
(Fig. 4)

suit. But chances are the war will not recede before making a lasting impact on our nation's patent jurisprudence.

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