

June 29, 2011

## ***Infringement Questions Grow Cloudier in Apple and Samsung Patent Battle***

*By Kerrie Spencer, staff technology writer – June 29, 2011*

In a chant rather reminiscent of the good old school yard days, two world-renowned technology giants are shouting, “Did not. Did so,” back and forth across the ocean to try and make a point. That point is that Samsung did not commit patent and copyright infringement against Apple. That, of course, remains to be seen, as this battle is just beginning to heat up in the courts since the initial filing of this lawsuit in April 2011.

In fact, there was a rather unusual turn of events in this duel between the two giants, when Samsung was ordered by a federal court to turn over, within 30 days, unreleased products for discovery. [2] This expedited discovery process will help Apple figure out if they want to file a request for an early injunction. This decision did not make Korean giant Samsung a very happy camper, as trotting out their about-to-be-released product lineup is a major problem, not to mention it tips their hand as to what consumers may expect to see soon.

There probably are already so many rumors and leaks around that consumers probably already have a good idea of what they are going to see next in terms of smartphones and tablets. That aside, having a court order Samsung to hand over the goodies is a bit unusual. It comes perilously close to saying, without saying it, that the evidence in this case offers a reasonable basis for Apple to believe Samsung’s products are deliberately designed to mimic theirs. [1][3] In fact, part of the statement of claim alleges that Samsung, rather than take the initiative and do their own unique designs and packaging, went out of their way to copy Apple’s technology, style and user interface.

While the court has not officially offered any kind of a conclusion about this case, the judge did comment that the evidence certainly seems to point out that Samsung may have imitated Apple’s designs, which, when it comes to issues like copyright infringement, trade dress and patent infringement, is not the smartest business move. What made the court offer that opinion? All it took were pictures that Apple submitted of Samsung’s new products. Evidently, pictures certainly are worth a thousand words.

The key element in this case will be that the design and appearance of Samsung’s latest product offerings and packaging is right on-point relevant to Apple’s design, trade dress and trademark claims; a point made by the federal court judge in her ruling that Samsung had to hand over its products for

June 29, 2011

discovery. It is not just the products that have to be produced either, as the order includes the proposed packaging and all package inserts.

Products that will come under legal scrutiny will include the 4G LTE Droid Charge, Infuse 4G, Galaxy S2 and the Galaxy Tab 8.9 and 10.1. [1-5] Neither Apple's nor Samsung's legal counsel will be conducting the discovery, as the judge wanted an arm's length independence in assessing the products. Samsung said they did not like the ruling, because the devices have not yet been released, and letting Apple access them would be inappropriate.

The judge ignored that particular protest because the company had already started advertising the devices and had given the media free samples, not to mention the free handout of 5,000 Galaxy 10.1 tabs given away at Google's developer's conference in May 2011 in San Francisco, California.

If the independent review by outside legal counsel decides the new devices are Apple imitations, Apple could file for an injunction blocking the Samsung devices from being retailed in the U.S. To say that would put a serious crimp in Samsung's sales projections would be a major understatement. Additionally, many of their products are highly anticipated, in a market that thrills to the latest, greatest and best smartphone or tablet.

The bottom line here is that these two corporate giants have a fairly good working relationship, with Samsung selling Apple LCD panels and semiconductors for their iPads and iPhones, and Apple is Samsung's No. 1 customer. [5] There is no telling what will happen to that working relationship in light of this latest legal battle, but if nothing else, this will be a hard lesson to learn that swiping someone else's designs really is not a good thing to do, not to mention the fact that it is also illegal.

## Sources

- [1] <http://www.ubergizmo.com/2011/05/samsung-ordered-reveal-unreleased-phones-tablets-apple/>
- [2] <http://gear.ign.com/articles/117/1170697p1.html>
- [3] <http://eckiller.com/2011/05/samsung-ordered-to-reveal-unreleased-phones-and-tablets-to-apple.html>
- [4] <http://www.bgr.com/2011/05/24/samsung-ordered-by-court-to-give-apple-access-to-unreleased-products/>
- [5] <http://www.mobilecrunch.com/2011/05/24/apple-steals-a-glance-at-five-upcoming-samsung-products-legally/>