Apple vs Samsung Patent Battle

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It doesn't get bigger than this. The world's most valuable company by market capitalization versus an Asian giant. The multi-billion dollar patent battle between Apple & Samsung is being fought in over 9 different countries. Each one throwing up a different outcome. Some day this will make for a Hollywood blockbuster. But till then make do with our version. Payaswini Upadhyay gets you the tech specs on this new age war...but wait she does more than that. She gets experts to imagine how Apple v/s Samsung would play out here in India.

Steve Jobs' Biography:

"I will spend my last dying breath if I need to, and I will spend every penny of Apple's USD 40 billion in the bank, to right this wrong….I'm going to destroy Android, because it's a stolen product. I'm willing to go thermonuclear war on this,"

Jobs declaration of war has resulted in A full blown patent infringement war between Apple and Samsung…playing out in 9 different jurisdictions with different outcomes.

In Germany, a court barred sales of Samsung's Galaxy Tab 10.1 upholding Apple's claim of interface patent infringement.

But Apple lost in Netherlands after a Dutch court ruled that it had violated a Samsung patent used in some of Apple's phones and tablet computers to connect to the Internet.

The battle in Australia has been long drawn. Last year Apple lost in a lower court that allowed Samsung to sell its Galaxy Tab 10.1 in the Australian market. The high court refused Apple's appeal. Now the Australian federal court will hear the matter between February and May next year

South Korea delivered a split verdict – a Seoul court ruled that both the companies had infringed each others patents. It ordered Samsung to pay Apple about USD 22,000 and Apple to pay Samsung USD 11,000. Add to this a ban of several products of both companies.

In the UK, the court held that Samsung's Galaxy tablets were not "cool" enough to be confused with Apple's iPad. Apple's appeal will be heard in October later this year.

Apple lost in one of the several cases being fought in Tokyo as well. The court ruled that Samsung did not infringe on Apple's music synchronizing technology.

But Apple's poor luck turned in the US…the largest market for smartphones in the world. A 9 member jury in a San Jose court ruled in favor of Apple on 5 out of 7 infringement counts.

The core of Apple's U-S case against Samsung rest on 3 grounds - Utility Patents, Design Patents and Trade Dress.

Utility patents cover the functionality of a device and Apple accused Samsung of copying 3 of its utility features- window bounce back, pinch to zoom and tap to zoom. Samsung argued that all 3 of Apple's utility patents should be held invalid on grounds of previous inventions by competing companies. But the jury did not buy that and instead found Samsung guilty of infringing all 3 utility patents

Jonathan Masur
Professor, Chicago Law School

"There were a couple of pieces of evidence that were really compelling to the American jury. One is that Samsung's President send an email saying that there was an enormous gap

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between what Samsung's old products and Apple's products and that Samsung should try to bridge that gap as much as possible. And the jury thought that it was a clear evidence that Samsung intended to copy Apple's products. And secondly there was a meeting between representatives at Google and Samsung's Executives and Google's people told Samsung to back away from Apple a little bit because Google thought Samsung's products were getting too close to Apple- Google was the manufacturer of the operating systems that Samsung uses on its phones. So that was also viewed by the jury as evidence that Samsung was copying Apple's products."

Not just on functionality but on design as well. The design patents relate to ornamental features of the device. Apple accused Samsung of copying several of its phone designs including the front speaker slot, uncluttered front face, display borders, general grid layout and the edge to edge glass. It also claimed that Samsung's Tablet infringed upon its design patents relating to the thin bezel, outer edge border, rounder corners and edge to edge front glass. A Design Patent in the United States needs to pass muster with the 'ordinary observer test'- a principle laid down by the country's Supreme Court in 1871.

Christopher V. Carani,
Partner, McAndrews, Held & Malloy
Chairman -Design Rights Committee

"The test itself has its roots in the famous case, going back to 1871. After the Civil War in the United States, the name of the case was Gorham v. White and in that particular case, there was patented design on flatwear- on a folk and a spoon- and the accused product was of a similar type. The patented product was made of sterling silver and the accused product was made of plated silver- sort of a cheap copy. And in that particular case, the United States Supreme Court held that the test should not be in the eyes of an expert because they're trained to discern whether or not there are differences between the two designs. And so, ultimately, the test lies in the eyes of an ordinary observer."

Jonathan Masur, Professor, Chicago Law School, "This is one of the very first cases in which a technology manufacturer like Apple has successfully used design patents against a competitor. No one really thought before this case that design patents were particularly useful. They were viewed as very narrow; they covered only little bit of territory and so it was quite a surprise that Apple was able to assert them and win such a tremendous victory. It seems that the way the jury understood these design patents was perhaps a bit too broad. The design patents are written too broadly to cover rectangular devices with rounded corners, metal edges, touchscreen that covers the entire surface of the device - that sort of technology existed. So this is really a big step forward in use of design patents in the American courts."

What finally clinched the verdict in Apple's favor was that the jury believed that a Samsung product can be easily mistaken for an Apple product by a consumer- a claim that in legal parlance is referred to as Trade Dress

Christopher V. Carani
Partner, McAndrews, Held & Malloy
Chairman -Design Rights Committee

"When we are taking about Trade Dress infringements as opposed to the patent side of things, we're talking about the product to product comparison; in this case Apple's products to Samsung's products. In this particular case, Apple's strong design identity, its strong design persona is what carried the day for it. In the jury box, they decided that Samsungs is got too close. Trade Dress again - its serving as a trademark- the design itself serves as the trademark. Think about the Coco Cola bottle- it's the shape of that Coke bottle that effectively serves as a trademark- separate and part from any logo or name on it. And that's what we're talking about here- Apple's design and its products are what carried the day."

The 9 member jury decided that Samsung willfully infringed on 5 of 7 Apple's patents and has recommended a 1 billion dollar penalty. Samsung has responded to the verdict saying its 'unfortunate that patent law can be manipulated to give one company a monopoly over rectangles with rounded corners'. And that begs the question- could Apple have got such patents in India?

Before we answer that, here's a quick reality check of Apple's presence in India- one estimate pegs iPhone's consumer base to be one tenth of that in the United States. Lack of a sizeable market coupled with unfavorable patent laws could be the reason why India is not a patent warzone for the tech giant yet.

Unfavorable patent regime because the Indian Patent Act does not grant patents for software- an integral part of Apple's intellectual property strategy worldwide.

Section 3(k) of the Indian Patents Act provides that "a mathematical or business method or a computer programme per se or algorithms are not patentable."

Manish Saurastri
Partner, Krishna & Saurastri

In India, we do not recognize a business method to be protectable in favor of any person. Algorithm per se is also not patentable. A software is not patentable; it could be a subject matter of a copyright but if you combine a computer programe or a software with a system or a hardware, then perhaps you can have a patent. For eg, in the context of the Apple vs Samsung dispute, the patent relating to the bounceback effect can be a subject matter of patent in India if you combine it with a system claim."

Barring that, the only protection software has is under the Copyrights Act.

Apar Gupta
Partner, Advani & Co

"Copyright only protects, broadly and generally, an expression on the idea as opposed to the idea itself which is protected under Patent. A patent contains a patent specification which contains a claim- this is the heart of the patent grant and which states that this is how I am achieving a process and it is blocking all others from doing it. It's a very high level of protection when you compare it to a copyright. Under copyright, the minute there is a slight variation in the actual implementation itself, your protection goes and copyright, when it comes to protecting software, has not historically proven to be a very strong point."

Apple's Design arguments made before the US jury, if made in the Indian courts, would've fallen under the Design Act, 2000. The Act grants a design patent if a design is novel, is distinguishable from existing designs and not commercially exploited anywhere in India

Manish Saurastri
Partner, Krishna & Saurastri

"Indian Design Act recognizes a global novelty- meaning anything which is new and novel when it is applied for registration in India or when a priority is claimed over any other application in any other country. If Apple can prove that the design was new and novel on the date of its application in India or on the date of the priority application, then perhaps they can sustain the claim with respect to the front appearance of the iphone and other gadget. ((Another claim was with respect to the back cover and the third claim was pertaining to the home screen- the arrangement of various icons on the homescreen and the last claim was with respect to the trade dress."

As for Trade Dress – that does not enjoy the protection of any specific law…

Manish Saurastri
Partner, Krishna & Saurastri

"It takes a long way to enforce the trade dress concept in India because you have to go under the common law of tort or a passing off. One has to really prove a lot of things when you make a claim with respect to a trade dress. Therefore, I think it is better that we codify this under the statute. Recently, in the Videocon vs Whirpool matter, the shape of the washing machine was not only protected under the design act but even under the common law of passing off. Even prior to that the Bombay HC protected the shape of a vodka bottle inspite of that not being registered under the design act. Therefore I feel that we should codify it under the statute."

This hypothetical Apple vs Samsung battle- India round- that we just staged for you brings to the fore some very important aspects of India's patent regime. It raises some very pertinent questions- is India seen as a country where IP laws do not adequately protect innovation? And should India take a relook at its software patents and trade dress regime? Answers to these questions will determine the comfort India can give to its companies and investors. Until then, India may just have to contend with being an observer in this global patent fight between Apple and Samsung.

Comments

Guest

APPLE COPY OTHER PHONE COMPANY DESIGN THERE SHOULD BE NO PATENT FOR IT. IT IS WHAT IS IN THE IOS AND TELECOMMUNICATION DEVICE FOR PATENTS ONLY. THE JUDGE IN THE STATE TOOK BRIBERY MONEYS FROM THOSE BULLIES AND ASIAN COMPANY LOSE.

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