

Apple, Samsung set for blockbuster US patent trial

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Apple and Samsung are set to square off in a California court Monday in what is seen as the biggest patent US trial in recent memory.

Apple is seeking more than \$2.5 billion in a case accusing the South Korean firm of copying designs and other patents from the [iPhone](#) and iPad maker in the trial in San Jose, California, federal court.

Samsung however alleges that Apple infringed on some of its patents for mobile phones, and the case will sort out the competing claims.

It is one of several cases in courts around the world involving the two big electronics giants in the hottest part of the tech sector, [tablet computers](#) and smartphones.

While the results so far have been mixed in courts in Europe and Australia, Samsung is clearly on the defensive in the US case.

US [District Judge](#) Lucy Koh, who will preside in the jury trial barring any last-minute settlement, has issued temporary injunctions against US sales of Samsung's 10-inch Galaxy tablet and the Galaxy Nexus [smartphone](#) developed with Google.

To make matters worse, a magistrate in the case ruled Monday that Samsung failed to retain key evidence in the case by allowing emails to be destroyed after learning of the lawsuit.

That will mean Judge Koh can issue an "adverse inference" instruction to the jury.

"It's never good when the judge decides you've withheld or destroyed evidence," said R. Polk Wagner, a professor of [patent law](#) at the University of Pennsylvania.

Florian Mueller, a consultant who blogs on patent issues in the tech sector said the decision "must be a nightmare" for Samsung as it seeks to establish credibility with the jury.

A patent attorney in Washington DC who asked to remain anonymous because of client links, said the ruling could be "a killer" for Samsung.

"Whether it was relevant or not, the fact that evidence was destroyed will be taken into consideration," he said.

Additionally, the attorney said Apple could benefit from the fact that the case is being heard in [Silicon Valley](#), just down the road from its headquarters in Cupertino, California.

"You like to think there is no home court advantage, but there could be," the lawyer said. "You also have the issue of a foreign company versus an American one."

Wagner said the case is probably the biggest patent trial since the 1980s case involving photo giants Polaroid and Kodak, and is important because of its size and ability to set precedent.

"I see this as the first in what I expect to be many cases involving smartphone technology," he told AFP.

"It remains to be seen what the impact will be even if Apple wins.

Typically the patents are relatively easy to design around. So if Samsung loses a couple of rounds they may still be able to make their phones."

But Samsung could face big risks: If Apple wins, it would automatically get a permanent injunction on sales of Samsung devices. And if Samsung makes only minor changes, Apple could ask for the Korean firm to be held in contempt.

The case has huge financial implications for both firms and the burgeoning industry for mobile devices.

A survey by research firm IDC showed Samsung shipped 50.2 million smartphones globally in the April-June period while Apple sold 26 million iPhones. IDC said Samsung held 32.6 percent of the market to 16.9 percent for Apple.

Samsung is the leading maker of smartphones using [Google's](#) Android operating system, which has become the most popular platform despite complaints from Apple that it has infringed on its patents.

Apple outlined its case for damages in paperwork filed in advance of the pivotal court battle.

The Apple filing Tuesday said Samsung, in entering the smartphone and tablet markets, "chose to compete by copying Apple."

"Samsung's infringing sales have enabled Samsung to overtake Apple as the largest manufacturer of smartphones in the world," the document said.

Apple estimated that its lost profits and Samsung's "unjust enrichment" total in the vicinity of \$2.525 billion; a figure that could be ramped up given damages rules for "willful" infringement of patents.

Samsung has steadfastly denied abusing Apple patents and countered in court that Apple has been taking advantage of some of the South Korean company's patented technology for wireless connections.

In May, two days of court-directed peace talks between the chiefs of Apple and Samsung ended with no truce in the legal battle headed for court in San Jose, California.

[Apple](#) boss Tim Cook and Samsung chief Choi Gee-Sung met in San Francisco after a judge asked the bosses to personally try to resolve the case.

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