

When tech companies are suing, they're not innovating

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Apple Inc. won a billion-dollar victory in its patent-infringement lawsuit against Samsung Electronics Co. last week. But the core of the story may be that Apple is running scared.

One of the key questions that arose during the trial in federal court in San Jose, Calif., was why Samsung? Why not other smartphone manufacturers - Motorola or HTC, for example - that run Android systems? Tech-watchers say Apple targeted Samsung because the South Korean corporation is the only one of the iPhone's competitors that is making significant money.

And therein lies the secret of the patent wars.

"This is the death knell for Apple, which I know is an odd thing to say," David K. Levine, John H. Biggs Distinguished Professor of Economics at Washington University, said Monday. "But the issue is you either build great products or you spend your time suing people."

Mr. Levine and Michele Boldrin, chairman of the Washington University economics department, wrote the 2008 book "Against Intellectual Monopoly," published by Cambridge University Press.

Mr. Levine said the fact that Apple went to court suggested that for the first time, Apple was feeling the threat of a competitor that can muster the icons, pinch-pressers and bounce-scrollers needed to give Apple's [iPhone](#) a run.

He said it's "pretty crazy" to patent such smartphone design features as bounce-back and icons on grids, which were done decades ago on computers, and devices with rounded corners, a shape familiar to anyone who has ever held a stone.

Lots of blame for the ruling and the underlying problems that led to the court case is being laid at the feet of the U.S. [Patent and Trademark Office](#), which patent attorneys say is understaffed, underfunded and not competent at this time to judge increasingly complex [patent applications](#).

Patents are intended to be protection for a real investment of time, effort, sweat equity and money, Mr. Levine said. When they work correctly, patents encourage and reward innovation. Instead, he noted, patents in the information technology field have become competitive weapons with companies investing in large patent portfolios and teams of attorneys who are tasked solely with developing patent applications and getting them processed.

"The patent system long ago took leave of common sense," he said.

Judge Richard Posner of the U.S. Court of Appeals in Chicago, another critic of the patent process, tossed out an Apple lawsuit against Motorola in June, writing that patents have become a way to provide "a windfall to the [[patent](#) holder] and a form of punitive rather than compensatory damages imposed on the infringer."

So why should you care if Samsung, Apple or the Acme Co. designed, modified or dreamed up the phone you carry?

Other than the fact that you could wind up paying more for a Samsung Galaxy, it's that future design and innovation could be thwarted.

One thing to note, however, is that technological property theft is

nothing new. Apple was famously accused of stealing its signature graphic display feature from Xerox in 1979.

Apple later sued Microsoft, accusing it of stealing software to create Windows. Microsoft's Bill Gates' retort to [Apple's](#) Steve Jobs has become a classic: "Steve, just because you broke into Xerox's house before I did and took the TV doesn't mean I can't go in later and take the stereo."

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