

# Apple, Samsung clash in top US court patent battle (Update)

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The epic patent clash between Apple and Samsung went before the US Supreme Court on Tuesday, as the smartphone giants debated the value of design in a case with major implications for the technology sector.

The eight justices on the top court appeared divided on how to resolve the complex dispute over damages the South Korean smartphone giant owes Apple for copying key design features of the iPhone.

The case arguments came as Samsung faces a fresh but unrelated crisis as it halted production of a flagship handset for safety reasons, potentially imperiling the powerhouse South Korean brand.

Samsung, which has been ordered to pay \$400 million for violating certain iPhone features, is challenging the legal precedent which requires the forfeiture of all profits from a product even if only a single design patent is infringed upon.

This key question on the value of design patents has rallied Samsung supporters in the tech sector, and Apple backers in the creative and design communities.

The justices Tuesday offered some support for both sides without providing a hint on the outcome of the case.

Justice Anthony Kennedy said Samsung's argument would create confusion for jurors in trying to apportion damages.

"If I'm the juror, I just don't know what to do," Kennedy told attorneys during the hearing. "I'd have the iPhone in the jury room; I'd—I'd look at it. I just wouldn't know."

## **VW Beetle example**

The court debate moved from smartphones to automobiles, and the importance of design to the Volkswagen Beetle, for example.

Justice Samuel Alito appeared to lean toward Samsung's position, saying, "Nobody buys a car, even a Beetle, just because they like the way it looks... What if it broke down every 50 miles?"

Offering a similar view, Justice Stephen Breyer said a single component cannot account for all profits: "A Rolls Royce thing on the hood? No, no, no. You don't get all the profit from the car."

Samsung attorney Kathleen Sullivan said the justices should consider all the components of a smartphone.

"A smartphone is smart because it contains hundreds of thousands of the technologies that make it work," she said.

She said the case could lead to more litigations because patent holders "carve the product up into multiple partial design claims... and find a little sliver of the phone on which infringement can be found."

## **Design 'not a component'**

Apple lawyer Seth Waxman fired back that Samsung made a conscious decision to revive its fortunes by copying the iPhone.

"A design is not a component, a design is applied to a thing," Waxman said.

Waxman contended that Samsung's own documents showed that the South Korean giant acted to deal with "a crisis of design" and sought to copy the iPhone.

He noted that limiting the damages would offer little deterrence and encourage "counterfeiters and copyists."

Observers are watching to see how the court—which has not taken up a design patent case in more than a century—tips the balance between technological innovation and protecting intellectual property. A ruling is expected in several months.

The case is one element of the \$548 million penalty Samsung was ordered to pay for copying the iPhone's distinctive front screen and graphical touchscreen interface.

Matt Levy of the Computer & Communications Industry Association said the debate suggested the justices were open to lowering the jury award.

"The damages statute for design patents was written to protect products like rugs, where the design was essentially the entire thing being sold," Levy said in a blog post.

"Congress certainly didn't intend to treat complex products as if only the outer appearance is what matters.... Based on what I heard, I think it's very likely that the (justices) will modify the lower court's decision."

Samsung has won the backing of major Silicon Valley and other IT sector giants, including Google, Facebook, Dell and Hewlett-Packard.

Apple is supported by big names in fashion and manufacturing. An amicus brief filed on behalf of design professionals, researchers and academics said they have no financial interest in the case but argue on the basis of "fundamental principles of visual design."

They cite precedents like the Coca-Cola bottle, which is an integral part of the value of the product.

The Supreme Court hearing took place hours after Samsung announced it was scrapping the production of Galaxy Note 7 smartphones, its new flagship device that has been mired in a disastrous recall over exploding lithium-ion batteries.

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