

**GOLIATH V. GOLIATH  
FALLOUT:**

**Repercussions of  
Apple v. Samsung**

**August 27, 2014**

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Sunnyvale Library

# Disclaimer



The information presented in this presentation does not constitute legal advice.

The information presented in this presentation is based on a forthcoming publication:

Sessions et al., *Goliath v. Goliath: Repercussions of the Apple v. Samsung case*  
LINCOLN LAW REVIEW (2014)

# Summary



**Part 1: Procedural aspects of Apple v. Samsung**

**Part 2: Repercussions of Apple v. Samsung**

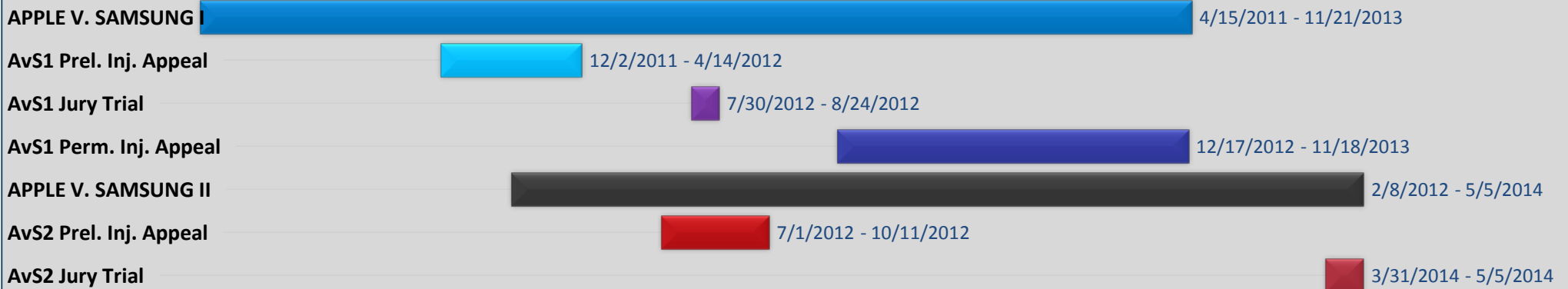
# Procedural Aspects of Apple v. Samsung

# Jurisdictions



- **U.S. Jurisdictions**
  - Federal Courts (includes District Court and Federal Circuit)
  - International Trade Commission (“ITC”)
  - Patent & Trademark Office (“PTO”)
  
- **Foreign Jurisdictions – suits in at least 10 countries**

# Timeline



# U.S. Federal Courts



- **Apple v. Samsung I**
  - Patents: Apple asserted 15; Samsung asserted 12
  - Preliminary Injunction (denied & appealed to CAFC)
    - ✦ Denial affirmed for 3 out of 4 patents; Vacated & remanded for 1.
  - Jury Trial – 5 infringed patents and \$1.051 billion verdict
  - Permanent Injunction (denied & appealed)
    - ✦ Affirming in part (3 patents) and vacating in part (3 patents)
  - Damages Retrial – \$930 million
- **Apple v. Samsung II (Feb. 8, 2012)**
  - Patents: limited to 5 per side
  - Preliminary Injunction
  - Jury Trial

# International Trade Commission



- **Samsung's complaint against Apple**
  - ITC's import ban against older iPhones (ver. 3 & 4) and iPads (ver. 1 & 2)
  - US Trade Representative vetoed the ban
- **Apple's complaint against Samsung**
  - ITC's import ban against older Samsung devices (i.e. Galaxy S 4G, Fascinate, and Galaxy Tab)
  - USTR declined to veto the ban
  - Since most devices have already left the market, it was mainly a symbolic victory for Apple



# U.S. Patent & Trademark Office



- *Ex parte* reexaminations:
  - '381 (rubber-banding)
    - ✦ Claim 19
  - '949 (touchscreen heuristics)
  - '915 (pinch-to-zoom API)
  - RE41,922
  - '172 (autocomplete) (AvS2)
  - '760 (missed-call) (AvS2)

# Foreign Jurisdictions



- **South Korea**
  - Both parties infringed
- **Germany**
  - Samsung found to have infringed re: Galaxy Tab 10.1
  - Samsung did not infringe on touch-screen technology
- **UK**
  - Galaxy tablets aren't "cool" enough to be confused with Apple's iPad
- **Japan**
  - Samsung infringed on "bounce-back" feature
- **Netherlands**
  - Samsung Galaxy Tablet did not infringe

# Recent Developments



- Apple v. Samsung II jury verdict
- Apple and Google's "cease-fire"
- Future Apple and Samsung disputes

# Repercussions of Apple v. Samsung

# Summary



1. General Perceptions of Patents
2. International Significance
3. Litigation Considerations
4. Effect on Consumers
5. Effect on Invention
6. Effect on the Patent Industry

# General Perception of Patents



Reporters have described the  
Apple v. Samsung case as the  
“[t]he patent trial of the century.”

*See, e.g.,* Seth Fiegerman, Apple Vs. Samsung: Everything You Need To Know About The (Patent) Trial Of The Century, BUSINESS INSIDER, (July 30, 2012), available at <http://www.businessinsider.com/apple-vs-samsung-everything-you-need-to-know-about-the-patent-trial-of-the-century-2012-7?op=1#ixzz2momHNt8b>

# General Perception of Patents



Case	Court	Year	Conclusion
<b>Graham v. John Deere Co.</b> <sup>1</sup>	Supreme	1966	Clarified the requirements of non-obviousness
<b>Diamond v. Chakrabarty</b> <sup>2</sup>	Supreme	1980	Found that genetically micro-organisms are patentable
<b>Diamond v. Diehr</b> <sup>3</sup>	Supreme	1981	Found that a machine which transforms materials physically under the control of a programmed computer is patentable
<b>Markman v. Westview Instruments, Inc.</b> <sup>4</sup>	Supreme	1996	Found that claim interpretation was a matter of law
<b>State Street Bank v. Signature Financial Group</b> <sup>5</sup>	CAFC	1998	Found that that business methods could be patented
<b>KSR v. Teleflex</b> <sup>6</sup>	Supreme	2007	Clarified reasoning for obviousness
<b>Bilski v. Kappos</b> <sup>7</sup>	Supreme	2009	Found that the machine-or-transformation test is not the sole test for determining patent eligibility

<sup>1</sup> Graham v. John Deere Co., 383 U.S. 1 (1966).

<sup>2</sup> Diamond v. Chakrabarty, 447 U.S. 303 (1980).

<sup>3</sup> Diamond v. Diehr, 450 U.S. 175 (1981).

<sup>4</sup> Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996).

<sup>5</sup> State Street Bank and Trust Company v. Signature Financial Group, Inc., 149 F.3d 1368 (Fed. Cir. 1998).

<sup>6</sup> KSR Int'l Co. v. Teleflex, Inc., 550 U.S. 398 (2007).

<sup>7</sup> Bilski v. Kappos, 561 U.S. \_\_\_ (2010).

# General Perception of Patents



- Why is this case different?
  - Familiarity
    - ✦ Leads to greater public disclosure/scrutiny
  - Emphasizes the “everyday juror”
    - ✦ Anyone *could* have been a juror on this case
  - Complexity of patents
    - ✦ Who really understands patent language?
  - High Damages
    - ✦ Greater than \$1B in damages



# General Perception of Patents



Case	Amount of Verdict
<b>Carnegie Mellon University v. Marvell Technology Group Inc.</b>	\$1.17B
<b>Apple v. Samsung</b>	\$1.05B
<b>Monsanto v. DuPont</b>	\$1.00B
<b>Virnext v. Cisco</b>	\$368M

Case	Technology <sup>1</sup>	Market Target
<b>Carnegie Mellon University v. Marvell Technology Group Inc.</b>	Integrated circuits	High Technology
<b>Apple v. Samsung</b>	Smartphone	Smartphone Industry
<b>Monsanto v. DuPont</b>	Herbicide-tolerant soybeans	Farming Industry
<b>Virnetx v. Cisco</b>	virtual-private-network	High Technology

<sup>1</sup> Margaret Cronin Fisk, *Largest U.S. Jury Verdicts of 2012*, BLOOMBERG NEWS, (January 17, 2013), <http://www.bloomberg.com/news/2013-01-18/largest-u-s-jury-verdicts-of-2012-table.html>.

# General Perception of Patents



## Conclusion:

The closer the technology of the patent relates directly to the general public, the greater the probability that the case will generate interest

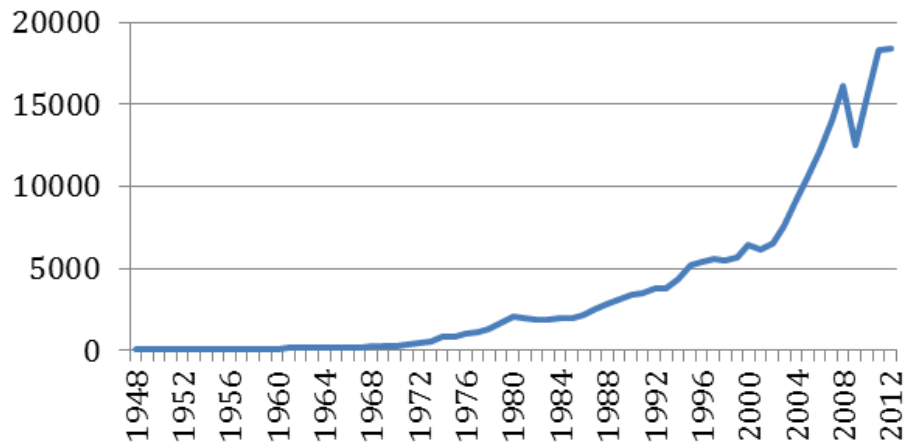
## Considerations:

- Consider the Market
- Consider the level of public interest (e.g. social media interaction)

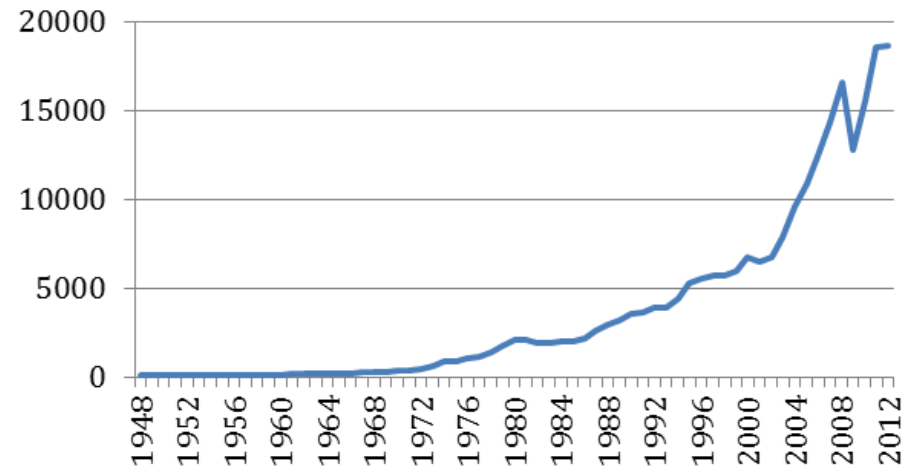
# International Significance



**World Exports - Total Merchandise  
(in U.S. Billion \$)**



**World Imports - Total Merchandise  
(in U.S. Billion \$)**



# International Significance



- Is Apple v. Samsung solely a national conflict?
- No. > 10 countries in over 3 years.
  - This is an international conflict.

# International Significance



- **International take-homes**
  - A patent's right is territorial
  - Each territory may take a conflicting view
  - Nature of court (e.g. juries, damages, nature of the patent, etc.)

# International Significance



- Repercussions of the Take-homes
  - Minor patent variances can cause significant dissimilarities
    - ✦ Is an international IP court necessary?
  - Favoritism
    - ✦ Apple, an American based company, was granted a veto; Samsung, a Korean based company, was not granted a veto
    - ✦ May cause further isolation (counter to global expansion)
    - ✦ May cause further government intervention
      - “The greater the [government] action, the greater the upset to “laissez-faire” conditions.”
  - Hypocrite
    - ✦ Countries proclaim trade agreements but take action of favoritism

# International Significance



## Conclusion:

- The Apple v. Samsung case is far from being resolved.

# Litigation Considerations



- **Choice of Forum**
  - Why Northern District of CA?
    - ✦ Home turf for Apple – ancillary favoritism?
    - ✦ Apple was spread across the United States in litigation with Motorola
    - ✦ Public image of company
- **Repercussions from selecting CAND?**
  - Background: CAND part of “patent pilot program”
    - ✦ Potential plaintiffs may view CAND as a choice forum
    - ✦ Unrealistic view of damages



# Litigation Considerations



- **Litigation Costs**

<b>MEDIAN LITIGATION COSTS FOR PATENT INFRINGEMENT</b>				
<b>Year</b>	<b>2005</b>	<b>2007</b>	<b>2009</b>	<b>2011</b>
<b>Less than \$1M at risk</b>				
<b>End of Discovery</b>	\$350K	\$350K	\$350K	\$350K
<b>All Costs</b>	\$650K	\$650K	\$650K	\$650K
<b>\$1M – \$25M at risk</b>				
<b>End of Discovery</b>	\$1.25M	\$1.25M	\$1.5M	\$1.5M
<b>All Costs</b>	\$2.0M	\$2.5M	\$2.5M	\$2.5M
<b>More than \$25M at risk</b>				
<b>End of Discovery</b>	\$3.0M	\$3.0M	\$3.0M	\$3.0M
<b>All Costs</b>	\$4.5M	\$5.0M	\$5.5M	\$5.0M

- **Conclusion: Apple v. Samsung was not a “typical” patent infringement case. It was a “high stakes” litigation.**

# Litigation Considerations



- **Litigation Costs Repercussions**
  - Damages – if Apple received [X], we should be able to achieve [X]
  - Experts – pay for the best
  - Legal Fees – the payoff can be worth the expense
- **Conclusion**
  - Small v. High Stakes Litigation may be less easily interpreted by the average consumer/business
  - Nature of the dispute (and not the nature of the damages) may be the basis for determining applicability for comparison

# Effect of Consumers



- Can expect increased fees to justify litigation costs
- Can expect increased fees to justify licenses
- Can expect less innovative technology
  - “the more time [a company] spends fighting litigation, the less time and resources it can spend on innovation.”
- Can expect a lack of competing products
  - Competition may be stifled by a lack of imitation

# Effect on Invention



- Nikola Tesla indicated almost one hundred years ago that “[t]he progressive development of man is vitally dependent on invention. It is the most important product of his creative brain.”

Nikola Tesla, *My Inventions*, Experimenter Publishing Company, Inc., New York (1919).

# Effect on Invention



- **Increase of “design-arounds”**
  - Increased difficulty due to the “patent saturated” market
- **Increase of a need for more innovation**
  - Beat the competition to new product/features
  - Legal incentives reward the first to invent – which means a company will not have to pay for damages/licenses
- **Increase of better (and newer) designs**

# Effect on Invention



Company	Spending on R&D (2013)	Percentage of Revenue
Volkswagen	\$11.4B	4.6%
Samsung	\$10.4B	5.8%
Roche Holding	\$10.2B	21.0%
Intel	\$10.1B	19.0%
Microsoft	\$9.8B	13.3%

- Of the top five R&D spenders, three out of the five ranked in the top 11 for the number of patents granted in 2012.

# Effect on the Patent Industry



- **Spotlight is on patents**
  - New laws (First to File Systems)
  - The fight against the patent troll
  - Recent patent sales (e.g. Nortel for \$4.5B; Motorola for \$12.5B)

# Effect on the Patent Industry



- **Repercussions from Apple v. Samsung**
  - Brought further attention to the value of patents
    - ✦ Need for patents may therefore increase
  - Brought further attention to the power of having patents
    - ✦ He who has the bigger arsenal can better protect the company
    - ✦ In the long run, will patent stockpiling create mutually assured destruction?
  - May increase level of scrutiny
    - ✦ Further government oversight (i.e. patent reform)
    - ✦ Modifications to USPTO guidelines (i.e. more rigorous level of review)
    - ✦ Investor relations (i.e. patents as investments may be scrutinized more by non-patent individuals)



# Conclusions



- Apple v. Samsung is just ‘one’ ripple in the stream of patent waters
- Some effects:
  - Everyday person is talking patents
  - Foreign courts are observing and learning
  - National courts are dealing with active patent plaintiffs
  - Consumers are demanding increased innovation
  - Patent industry is profiting through increased attention