



Design Patents at the Supreme Court: A Picture is Worth...

Client Advisories

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In August of 2012 a jury awarded Apple over \$1 billion in patent infringement damages against Samsung in one of the legion lawsuits in the ongoing smart phone war between these two competitors. On May, 18, 2015, the Federal Circuit, the appeals court that reviews determinations of the federal district courts in patent cases, upheld the award of nearly \$400,000,000 by a California jury against Samsung for infringement of Apple's three pictured design patents. A design patent can be awarded by the United States Patent and Trademark Office for "any new, original and ornamental design for an article of manufacture."

Design Patents at the Supreme

The method of calculating damages for infringement of a design patent is found in Chapter 35 of the United States Code at Section 289:

"Whoever during the term of a patent for a design, without license of the owner...applies the patented design...to any article of manufacture...shall be liable to the owner to the extent of his total profit, but not less than \$250..."

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Samsung, in an effort to take the Federal Circuit's decision up to the Supreme Court, had described the matter in its Petition for a Writ of Certiorari as follows:

"[T]he Federal Circuit allowed the jury to award Samsung's entire profits from the sale of smart phones found to contain the patented designs--here totaling \$399 million. It held that Apple was 'entitled to' those entire profits no matter how little the patented design features contributed to the value of Samsung's phones. In other words even if the patented features contributed 1% of the value of Samsung's phones, Apple gets 100% of Samsung's profits."

The Supreme Court has granted certiorari and will hear argument on the question brought by Samsung: "Where a design patent is applied only to the component of a product, should an award of infringer's profits be limited to those profits attributable to the component?"

Since the Supreme Court rarely takes a design patent case, given the importance of the precedent that will be decided going forward for design patent holders, and taking into account the ubiquitous use and interest in smart phones, the outcome of this case is highly anticipated. We will certainly provide to you the results of this case and our analysis as soon the opinion becomes available.

If you have questions about patents or other related intellectual property issues, please contact **Gregory J. Winsky** or a member of Archer's **Intellectual Property Group** in Haddonfield, N.J., at (856) 795-2121, in Philadelphia, Pa., at (215) 963-3300, in Princeton, N.J., at (609) 580-3700, in Hackensack, N.J., at (201) 342-6000, or in Wilmington, Del., at (302) 777-4350. ¹With respect to the drawings shown in this Alert, one should be advised that the "patented design" of each on which damages can be assessed is limited to the design as shown by solid lines; the dotted lines are not part of the "patented design."

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