

## Jury selected in trial over iPhone, iPad patents

PAUL ELIAS - Associated Press - Associated Press

A jury was selected Monday to decide the merits of Apple Inc.'s claims that Samsung Electronics Co.'s smartphones and computer tablets are illegal knockoffs of the iPhone and iPad.

Lawyers for both sides were expected to deliver their opening arguments Tuesday morning in a San Jose federal courtroom, followed by Apple calling its first witness, a company designer. The witness lists of both sides are long on experts, engineers and designers and short on familiar names. Apple CEO Tim Cook, for example, is not scheduled to testify.

Apple filed a lawsuit against Samsung last year alleging smartphones and computer tablets made by the world's largest technology company are illegal knockoffs of Apple's popular iPhone and iPad products.

Cupertino-based Apple is demanding \$2.5 billion in damages, an award that would dwarf the largest patent-related verdict to date.

Samsung countered that Apple is doing the stealing and that some of the technology at issue — such as the rounded rectangular designs of smartphones and tablets — has been industry standards for years.

A jury of seven men and three women was selected to hear the case, which is just the latest skirmish between the two companies over product designs. A similar trial began last week, and the two companies have been fighting in courts in the United Kingdom and Germany.

Industrywide, some 50 lawsuits have been filed by myriad telecommunications companies jockeying for position in the burgeoning \$219 billion market for smartphones and computer tablets.

U.S. District Judge Lucy Koh in San Jose last month ordered Samsung to pull its Galaxy 10.1 computer tablet from the U.S. market pending the outcome of the upcoming trial, though she barred Apple attorneys from telling the jurors about the ban.

"That's a pretty strong statement from the judge and shows you what she thinks about some of Apple's claims," said Brian Love, a Santa Clara University law professor and patent expert. He said that even though the case will be decided by 10 jurors, the judge has the authority to overrule their decision if she thinks they got it wrong.

"In some sense the big part of the case is not Apple's demands for damages but whether Samsung gets to sell its products," said Mark A. Lemley, a Stanford Law

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School professor and director of the Stanford Program in Law, Science, and Technology.

Lemley said a verdict in Apple's favor could send a message to consumers that Android-based products such as Samsung's are in legal jeopardy. A verdict in Samsung's favor, especially if it prevails on its demands that Apple pay its asking price to certain transmission technology it controls, could lead to higher-priced Apple products.

Lemley and other legal observers say it's rare that a patent battle with so much at stake doesn't settle short of a trial. Court-ordered mediation sessions attended by Cook and high-ranking Samsung officials failed to resolve the legal squabble, leading to a highly technical trial of mostly expert witnesses opining on patent laws and technology.

Lemley, Love and others say it also appears Apple was motivated to file the lawsuit, at least in part, by its late founder's public avowals that companies using Android to create smartphones and other products were brazenly stealing from Apple. To that end, Samsung's attorneys made an unsuccessful pitch to have the jury hear excerpts from Steve Jobs' authorized biography.

"I will spend my last dying breath if I need to, and I will spend every penny of Apple's \$40 billion in the bank, to right this wrong," Jobs is quoted as saying in Walter Isaacson's book "Steve Jobs" published in November.

But the judge barred those statements in a ruling earlier this month.

In court papers filed last week, each company laid out its legal strategy in so-called trial briefs.

Apple lawyers argue there is almost no difference between Samsung's products and Apple's and that the South Korean company's internal documents show it copied Apple's iconic designs and its interface.

Samsung denies the allegation and counter-claims that Apple copied its iconic iPhone from Sony. Samsung lawyers noted the company has been developing mobile phones since 1991 and that Apple jumped into the market in 2007.

"One thing that is notable is that this trial is happening at all," said Love, the law professor and patent expert. He said that in an industry such as this where so many companies hold so many vital patents needed by all players, lawsuits are viewed as toying with "mutually assured destruction" and that most disputes are solved through "horse trading" and agreements to share intellectual property and royalties.

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