Judge denies Apple request to ban Samsung phones

PAUL ELIAS - Associated Press

A federal judge late Monday rejected Apple Inc.'s demands that its chief rival in the more than $100 billion global smartphone market cease selling models a jury recently found illegally used Apple technology.

The immediate impact of the ruling means that Samsung can continue to sell three of the older-generation smartphones still on U.S. shelves that a San Jose jury in August found ripped off technology Apple used to create its iPhone.

The jury ordered Samsung to pay Apple $1.05 billion after it found the South Korean titan "infringed" several of Apple's patents in creating 26 products — three of which are still being sold in the United States.

U.S District Judge Lucy Koh noted that Samsung claims to have "worked around" using different technology than the Apple patents found to have been infringed such as the iPhone's popular "pinch to zoom" feature.

And even if that's a false claim, the judge ruled, Apple's demands to yank the Samsung products from U.S. shelves and bar future sales was too broad of a punishment in devices built with technology backed by hundreds of patents each.

"The phones at issue in this case contain a broad range of features, only a small fraction of which are covered by Apple's patents," Koh wrote in her ruling issued late Monday night. "Though Apple does have some interest in retaining certain features as exclusive to Apple, it does not follow that entire products must be forever banned from the market because they incorporate, among their myriad features, a few narrow protected functions."

The judge also concluded that the public would be harmed if she ordered a ban.

"Though the phones do contain infringing features, they contain a far greater number of non-infringing features to which consumers would no longer have access if this Court were to issue an injunction," the judge wrote. "The public interest does not support removing phones from the market when the infringing components constitute such limited parts of complex, multi-featured products."

At the same time, the judge also rejected Samsung's call for a new trial because of alleged juror misconduct.

Samsung had alleged jury foreman Velvin Hogan committed misconduct for failing to disclose that his former employer Seagate Technology filed a lawsuit against him in 1993. Samsung later acquired nearly 10 percent of Seagate.

Samsung alleged after the trial that Hogan had a bias against it because of its ownership stake in Seagate, a Northern California-based maker of computer hard drives.

The judge said Samsung had the ability to investigate whether Hogan was biased toward Samsung before trial started because the company's lawyer possessed Hogan's bankruptcy file, which included the lawsuit. She said Samsung objected too late to Hogan's joining the jury.

"What changed between Samsung's initial decision not to pursue questioning, or investigation of Mr. Hogan, and Samsung's later decision to investigate was simple: the jury found against Samsung, and made a very large damages award," the judge ruled.

Koh still has before her several other legal demands from both companies. Apple is seeking to increase the award while Samsung is asking for a decrease in damages — or a new trial.

Samsung argues that it didn't receive a fair trial in San Jose, about 12 miles from Apple's Cupertino, Calif., headquarters.

Apple in turn argues that the jury didn't award it enough damages and is seeking more than $100 million above the $1.05 billion.

The judge earlier this month at a hearing seemed inclined to trim Apple's award by tens of millions of dollars after concluding the jury erred in its calculations, though she didn't specify an amount or a time she would rule.

Apple spokeswoman Kristin Huguet declined comment Monday night. Samsung officials didn't respond to email and phone queries placed late Monday night.

Adding to the legal tangle, Apple filed a second lawsuit earlier this year, alleging that Samsung's newer products are unfairly using Apple's technology. That's set for trial in 2014. In addition, the two companies are locked in legal battles in several other countries.

Apple lawyer Harold McElhinny claimed earlier this year that Samsung "willfully" made a business decision to copy Apple's iPad and iPhone, and he called the jury's $1.05 billion award a "slap in the wrist."

Samsung lawyer Charles Verhoeven has argued that Apple was trying to tie up Samsung in courts around the world rather than competing with it head-on.

Samsung recently shot passed Apple as the world's top smartphone maker.

In the third quarter of 2012, Samsung sold 55 million smartphones to Apple's 23.6 million sales worldwide, representing 32.5 percent of the market for Samsung compared with Apple's 14 percent.

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