

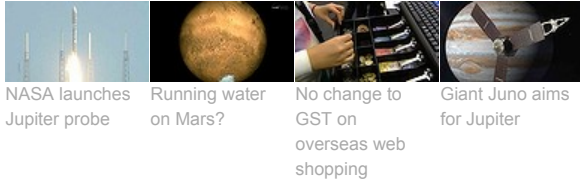
Apple v Samsung just the tip of the iceberg

Asher Moses
August 3, 2011

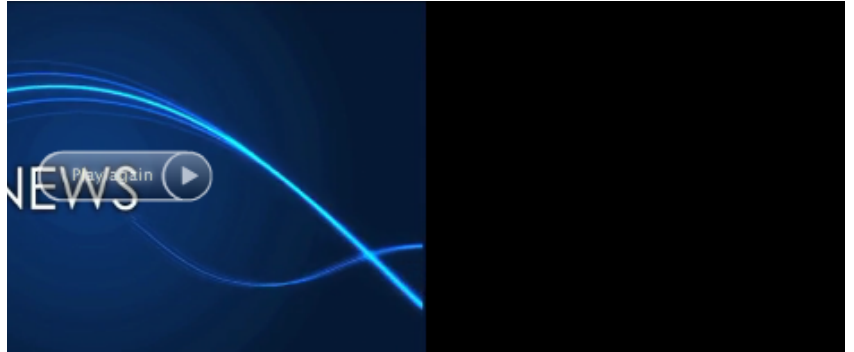
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iPad v Galaxy Tab: did Samsung copy Apple?

Joseph Hanlon of CNET Australia says many companies have released products similar to the iPad.

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Apple's tablet and smartphone patents are so broad that virtually all major competitors could be targeted by the company if it is successful in its legal tussle with Samsung.

Intellectual property experts say Samsung would have to significantly hobble the Galaxy Tab 10.1 for the Australian market if it hopes to avoid infringing Apple's patents.

In a [showdown in the Federal Court](#) on Monday, Apple accused Samsung of infringing 10 of its patents including the "look and feel" and touchscreen technology of the iPad. Apple sought injunctions preventing Samsung from selling or advertising the Galaxy Tab 10.1 in Australia - and demanded all of Samsung's stock be sent to it to be destroyed.



The Samsung Galaxy Tab 10.1 Photo: Supplied

Samsung did not admit liability but [bowed to Apple's demands](#) that it not sell the Galaxy Tab 10.1 in Australia. The agreement stymied Samsung's launch plans, forcing it to cancel a media event for the tablet scheduled for next week.

However, yesterday Samsung said it was going to release a modified version of the Galaxy Tab 10.1 for the Australian market "in the near future".

It did not say how this modified version would differ from the US model or how it planned to avoid infringing Apple's patents, but Samsung has committed to sending Apple three samples seven days before it puts them on sale. This would give Apple enough time to seek further injunctions against Samsung.

It is understood Apple chose the US model to present in court this week because the so-called Australian version was not yet available and had not been publicly discussed by Samsung.

Florian Mueller, an intellectual property expert who has been intimately following the smartphone patent battles around the world [via his blog](#), said the patents cited by Apple in this case would have to be declared invalid by the court or "Samsung won't be able to build a Galaxy Tab 10.1 that consumers want to buy".

Samsung may have to ditch multi-touch

The patents are so broad that they cover the basics of multi-touch gestures - both the hardware and software implementations - and functions like slide to unlock and list scrolling. Mueller said the fact that Samsung had agreed to hold back its launch of the Tab indicated it believes Apple's case has merit.

"As those patents stand, they would most likely prevent Samsung from providing capacitive multi-touch screens in general, or at the very least any workaround would result in a substantial degradation of the user experience," said Mueller.

"Apple's selection of patents is symptomatic of the problem of patent thickets, meaning that a particular technology can hardly be implemented without infringing on at least some of the relevant patents. The multi-touch user interface has given rise to one incredibly dense patent thicket."

Kimberlee Weatherall, an Australian intellectual property lawyer, blogger and academic, agreed with Mueller. She said while some of the patents in the case related to specific Apple features - such as the way that lists and websites scroll on the iPhone, including the bounce when you get to the bottom - others were far more general and covered most multi-touch gestures used on the screen.

"If that [patent] claim is valid, that would be quite a restriction on the look and feel of an alternative tablet," she said.

What's more, Apple could further delay Samsung's Galaxy Tab 10.1 launch by adding more patents to the list of potential infringements if it is not satisfied that the company has sufficiently modified the device.

Apple could target other competitors

Weatherall said the broad nature of some of the patents in Apple's case means it could sue or demand licensing fees from other tablet and smartphone vendors. It may be targeting Samsung first because it is its biggest threat.

"Perhaps Apple wants to take on one company with the multitouch patent to see if it's valid before taking on other companies," she said, adding it was unclear whether courts would allow such a "broad monopoly" on multitouch.

"Maybe Apple knows that if it takes on one or more of the other smartphone makers, it risks a battle almighty against the combined forces of all the phone manufacturers."

Samsung and Apple are suing each other in nine countries and similar patents are cited in Apple's US case. Apple has also gone after other Google Android competitors including HTC and Motorola.

Google executive chairman Eric Schmidt has previously accused Apple of responding to Android's success with lawsuits rather than innovation. "We have not done anything wrong and these lawsuits are just inspired by our success," he said last month, commenting on Apple's battle with HTC.

With a \$US76 billion war chest, Apple is unlikely to back down and has accused Samsung of "stealing our ideas" and "blatant copying" in both tablets and smartphones. Apple's copycat claims range "from the shape of the hardware to the user interface and even the packaging".

Foad Fadaghi, a telecommunications analyst with Telsyte, said it was difficult to see how Samsung could resolve this issue.

"Without Samsung providing specifics of the differences [between the US and Australian versions of the Tab] and putting them to test in the courts, it's very difficult to determine how this situation will be resolved," he said.

A settlement is likely, lawyer says

But Australian patent attorney Mark Summerfield, who blogs on patent law on his site, Patentology.com.au, said it was unlikely courts would award Apple an injunction preventing sales of the modified Australian version.

He said any case could run for years but a settlement would likely be reached. This could involve Samsung paying Apple some sort of compensation.

Given that Samsung and Apple are in court over similar issues in the US, Germany, Britain, France, Italy, the Netherlands, Japan and South Korea, Summerfield said "this action in Australia is at best a strategic move by Apple, and at worst a mere sideshow, nothing more than a brief storm in a teacup".

"Long before any resolution in the Australian case, Samsung and Apple will settle all of their suits on a worldwide basis," he said.

In the US, Apple has applied to the International Trade Commission seeking to block US sales of various Samsung Galaxy smartphones and tablets. Today the ITC said was launching an investigation into Apple's claim and its request for a "cease and desist order".

Vodafone Hutchison Australia said yesterday it would not stock the Galaxy Tab 10.1 until the Australia court case is resolved.

Aussie Galaxy Tab 'still in production'

This morning Samsung maintained that the Galaxy Tab 10.1 was still on track to launch in Australia "in the coming months".

It would not comment on the differences between the US and Australian Galaxy Tab models, saying the latter was "still in production".

"We are confident that the Galaxy Tab 10.1 will not violate any of the plaintiff's patents," Samsung said.

"As with many of our products, both hardware and software features can differ from market to market. While this is a 10.1-inch tablet device, there are differences between the variant presented in the court hearing and the variant that will launch here in Australia."

Despite supplying a number of internal components for Apple's products - accounting for over \$US5 billion in sales a year - Samsung has emerged as the company's key competitor in both smartphones and tablets. Its Galaxy S II smartphone has been compared favourably to the iPhone 4 while the Galaxy Tab 10.1 is regarded as a leading challenger to the iPad.

Any delays in bringing its new products to market will give a huge advantage to Apple, which announced last month that it had sold nearly 29 million iPads since they first went on sale in April last year.

Over 5m tablets in Australia by 2015

PriceWaterhouseCooper's annual entertainment and media outlook, released this week, reported that the number of tablets in Australia would balloon from 750,000 to 5.5 million in 2015.

Apple and Samsung are due back in the Federal Court for another hearing on the matter on August 29. Justice Annabelle Bennett will review the status of the case and set a trial date if necessary.

The dispute between the companies began in April when Apple sued Samsung in the US, claiming the Galaxy products "slavishly" imitated the designs and technologies used for its iPad and iPhone. A decision is scheduled to be made by the District Court for the Northern District of California in mid-October.

Samsung retaliated with lawsuits in South Korea, Japan, Germany and the US.

These are the Australian patents Apple alleges Samsung infringed:

Standard Patents

- 2008201540: List scrolling and document translation, scaling, and rotation on a touch-screen display
- 2005246219: Multipoint touchscreen
- 2007283771: Portable electronic device for photo management
- 2009200366: List scrolling and document translation, scaling, and rotation on a touch-screen display
- 2007286532: Touch screen device, method and graphical user interface for determining commands by applying heuristics

Innovation Patents

- 2008100283: List scrolling and document translation, scaling, and rotation on a touch-screen display
- 2008100372: Electronic device for photo management
- 2009100820: Unlocking a device by performing gestures on an unlock image
- 2008100419: Unlocking a device by performing gestures on an unlock image
- 2008101171: Portable electronic device for image-based browsing of contacts

Samsung has launched new ads for the Galaxy Tab that give some indication as to why Apple is so miffed:



This reporter is on Twitter: [@ashermoses](#)

Comments



96 comments so far

»«

»Patent and intellectual property laws have grown to become the exact opposite of what they intended. Instead of fostering innovation and creativity these laws are now used to crush it.

«
»Regards«

»«

Peter | Oz - August 03, 2011, 11:55AM

»«

»Apple is right, pretty much every other tablet is a blatant rip-off of Apple's. Apple innovates, everyone else follows and copies. Must be a bit annoying.«

»«

Jane Sutherland | Brisbane - August 03, 2011, 11:55AM

»«

»When will some one take on apple they do not use a normal retail methods rather forcing all companies that deal with them to become agents thereby giving them complete control of the pricing structure and the margin available to retailers no wonder they have more money than the US its called monopoly and the people who pay for it is us they are even threatening the lowly paid staff in china with replacement with robots - just who will be able to afford their products if that becomes wide spread?«

»«

Weescot | Geelong - August 03, 2011, 12:10PM

»«

»Pfift - Apple needs to get over itself - these patents are no different from Mercedes trying to patent the motor car or Goodyear trying to patent tyres - nothing Apple has done is truly innovative - improvements, yes, vast improvements, indeed but Apple has not had a single, revolutionary departure or innovation from any longstanding method of delivering any product or service - consumers have simply been "wowed" by design and sucked into a product lifecycle that everyone is very quick to criticise Microsoft for. All devices - whether they're hand-held, desktop or tablet use a GUI, use wireless technologies, use processors, use batteries and are navigated either by buttons or "x-y" pointing devices it's just the implementation that's different. Use high quality components and wrap it in a nice box and anyone can claim it's unique.... and because Apple has deep pockets they'll probably win any court cases.«

»«

Nick | Canberra - August 03, 2011, 12:19PM

»«

»It is such rubbish about "Apple Innovates, everyone else follows and copies". Everything apple have was built on top of other things. They didn't invent the touchscreen, the tablet, the touchscreen phone, or just about any of this stuff.«

»They took things which others invented, made slight changes of their own and came out with their product.«

»In truth, nothing Apple has come out has been revolutionary so much as evolutionary anymore than any other technology has been.«

»One of the claims above is about "shape". The things are rectangles! How can they possible claim a patent on the rectangular shape!«

»The issues here are trying to patent rather vague things. Coming up with a specific piece of technology and putting a patent on that so that others can use it by paying royalties only isn't unreasonable, but to patent "gestures" is just ridiculous!«

»That's not a point where you can reasonably claim a patent. If they are allowed to patent that, then it will mean that going from one brand of product to another can never be smooth because they can't stick to any sort of nice standard of what people are used to for certain things but all have to do things completely differently!«

»«

Chris | Sydney - August 03, 2011, 12:28PM

»«

»Wonder where all the fanboys are today. How's your brave innovation factory now? Patenting multitouch. What a crock. The idea is so broad and obvious, I anticipate Apple will lose any upcoming law case. it's like patenting shoelaces, or the colour purple. They know this also. The idea is intimidation, so players smaller than Samsung won't even bother. Which is good for society at large, as is destroying all infringing tablets. Makes sense. Nuts to you, third-world countries. We won't be donating them. We'll be burning them. Or, and nuts to you Mother Earth too. There's money to be made and competition to crush.«

»«

Andy - August 03, 2011, 12:29PM

»«

»Get over yourselves Apple. Just because you were the first to do something well, doesn't mean you were the first to do it.«

»I can't think of anything worse than a world where everyone has the exact same products. But that seems to be Apple's dream. And millions of sheep seem to want to be a part of it.«

»But regardless - so long as they outsource their manufacturing, cheaper & better alternatives will always be available somewhere, somehow. You can already get this Samsung Tab in Australia through plenty of avenues.«

»«

Kayzersoze | Melb - August 03, 2011, 12:35PM

»«

»Hey trolls, don't forget copying is not innovation.

@Nick|Canberra, your analogy couldn't be worse. What would happen if Holden copied the Ford design? Do you think Ford would sit by, and do nothing?»

»«

ij - August 03, 2011, 12:36PM

»«

»I agree with Nick, Apple have taken what already existed and made it prettier and used clever marketing, that is all, the majority of items patented above existed in products elsewhere, Apple just have the money to be able to fight them, what a broken system.«

»«

MrM | *Yawn* Apple - August 03, 2011, 12:37PM

»«

»Apple innovates...«

»Yes and no.«

»Apple's implementation of the Graphical User Interface (GUI) was based on Xerox's work at the Palo Alto Research Centre, and Apple are reported to not have bought the rights nor properly have credited XEROX PARC for the concept.«

»The iPod? It's an electronic version of the Walkman.«

»The iPhone? It's just one in a line of personal terminals.«

»I *do* like Apple for their design solutions, but innovation is maybe too strong a claim.«

»Ian.«

»«

Ian | Harcourt - August 03, 2011, 12:40PM

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