



## Jury Dials Up Record-Setting Damages Verdict for Design Patent Infringement

On May 24, 2018, a jury in the U.S. District Court for the Northern District of California awarded Apple over \$533 million in damages for Samsung's infringement of three Apple design patents covering portions of Apple's iPhone and iPad designs, plus about \$5 million for utility patent infringement. The design patent award split the difference between the \$1 billion that Apple sought and Samsung's counter of \$28 million. The *Apple Inc. v. Samsung Electronics Co. Ltd.* ("Apple") verdict represents the largest damages award for design patent infringement in U.S. history.

This trial was the third in a long and complex case that includes an intervening decision by the U.S. Supreme Court. Two earlier trials established Samsung's liability for infringement. The only issue in the 2018 trial was Apple's damages under a special damages provision for design patent infringement. 35 U.S.C. § 289 provides that whenever an infringer "applies" a "patented design" to "any article of manufacture," the infringer owes the patentee damages "to the extent of [its] total profit ... ." The Supreme Court held that the "article of manufacture" under Section 289 could be the entire infringing commercial product, or parts of it, but declined to prescribe a standard for determining the "article of manufacture." Several courts, including the California District Court, have adopted a four-part test for determining the "article of manufacture" proposed by the Solicitor General in a Supreme Court *amicus* brief.

Applying that four-factor test, the *Apple* jury found a different "article of manufacture" for each of the design patents. For Apple's graphical user interface design, the entire phone was the "article of manufacture," and the jury thus awarded all of Samsung's profits for phones that infringed that design. The other two patented designs covered a rounded rectangular surface plus a bezel. For those, the jury found that the relevant "article of manufacture" was not the entire phone, and thus awarded only partial profits.

Look for our *Commentary* in the coming weeks further discussing this evolving area of law concerning the "article of manufacture."

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### CONTACTS



David L. Witcoff  
Chicago



John C. Evans  
Cleveland



Krista S. Schwartz  
San Francisco / Silicon Valley

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