

IP Litigation

Law 115 | Week 10 | Lecture 20
Rachael Vaughn

Agenda

1. What is Litigation?
2. State or Federal Court
3. Litigation Procedure
4. Special Procedures for Patents
5. *Apple v. Samsung* Example
6. Discussion

What is Litigation?

- Litigation is a lawsuit that brings a dispute to be resolved by a judge and/or jury, under the authority of the court, whether state or local
- Litigation is confrontational and adversarial
- In many situations, litigation is the last resort, when negotiations and attempts to resolve a dispute have been fruitless



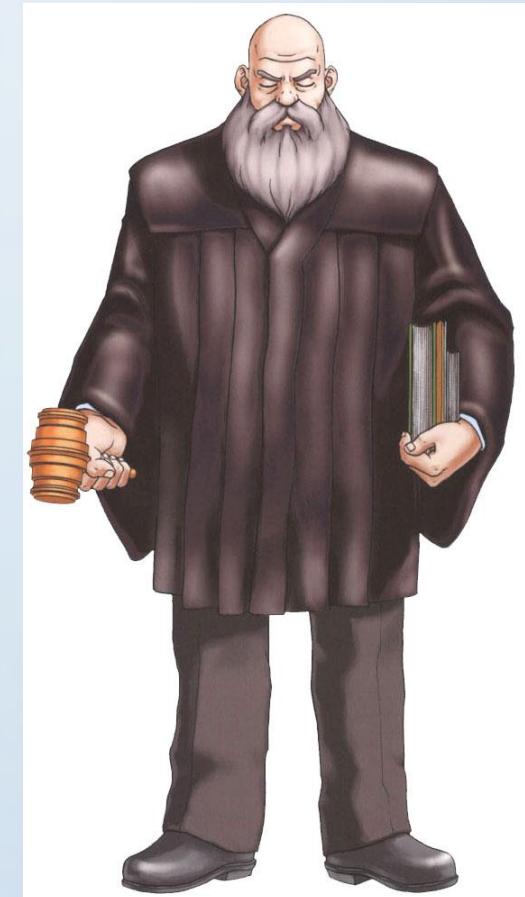
State or Federal Court?

Federal courts only hear cases that involve a set of very limited, specific legal issues. Along with certain federal crimes (e.g., terrorism), federal courts hear civil (non-criminal) cases:

1. If the case is premised on a ***question about the meaning of a federal statute*** or application of the U.S. Constitution;
2. If the parties are from ***different states*** or if one is a citizen of a foreign country, and more than \$75,000 is at stake; or
3. If the ***federal government*** itself is suing another party or itself has been sued.

Litigation Procedure: Pre-Trial

- Plaintiff gets to choose whether to present his case to a jury or to the “bench” (the judge)
- Jury is selected from a pool, Judge may question for qualification and bias, then each party can question.
- Each Party can challenge a juror “for cause,” where the Party believes he can’t get a fair trial before that juror.
- Each Party gets a certain number of “peremptory strikes” – no cause needed, but can’t strike jurors on basis of race or gender.



Litigation Procedure: Plaintiff's Case



- Opening statements
- Plaintiff presents testimony of witnesses and supporting documents or tangible things
- For each witness, defendant gets to cross-examine
- Plaintiff must have “proved her case” at end of her turn

Litigation Procedure: Rebuttal

- Defendant's turn – presents testimony of witnesses and supporting documents/tangible things to rebut plaintiff's case
- Also presents testimony, etc., to prove her defenses
- For each witness, plaintiff gets to cross-examine
- Defendant must have proved her defenses at end of her turn



Litigation Procedure: Rebuttal



- Plaintiff gets to present testimony, etc., to rebut that of defendant.
- Rebuttal only – no new theories, new information, only testimony responsive to defendant's case
- Closing statements

Litigation Procedure: Conclusion

- Judge instructs jury –provides the jury with the law that they must apply the facts to
- If a jury trial, jury decides case – whether plaintiff proved her case, whether defendant proved her defenses, what damages are
- If bench trial, judge decides everything.



Litigation Procedure: Post-trail



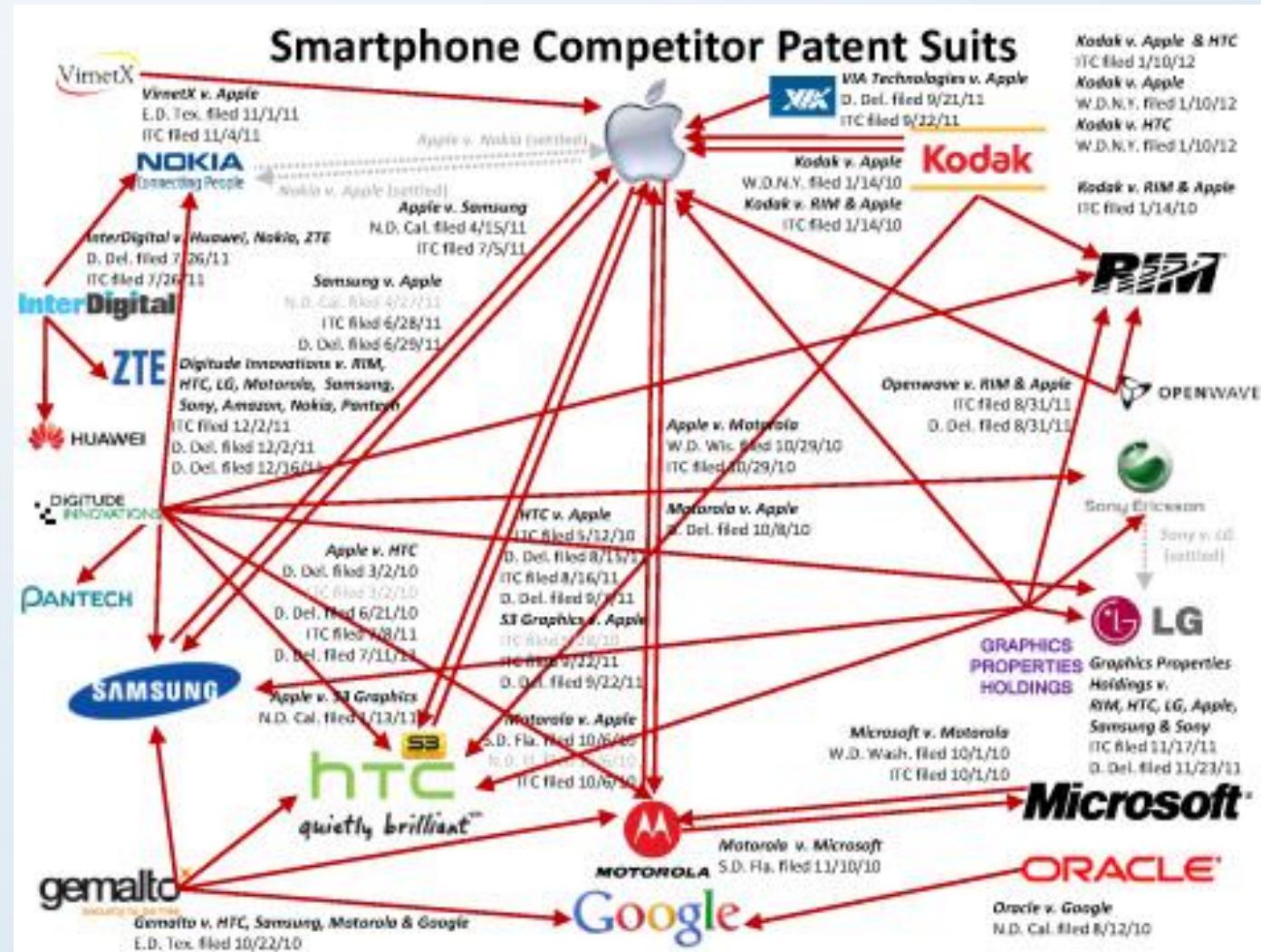
- Either party may appeal one or more decisions made by the court.
- Appeal goes first to Court of Appeals (appeal as of right), and may later go to Supreme Court (discretionary)
- A lawsuit from filing to trial can take 18 months to three years; appeals can take a year or more each

Special Procedures for Patents

- Post-issuance review proceedings within the USPTO
- International Trade Commission (ITC) complaints (injunctive relief)
- Markman hearings for claim interpretation



Apple v. Samsung Example



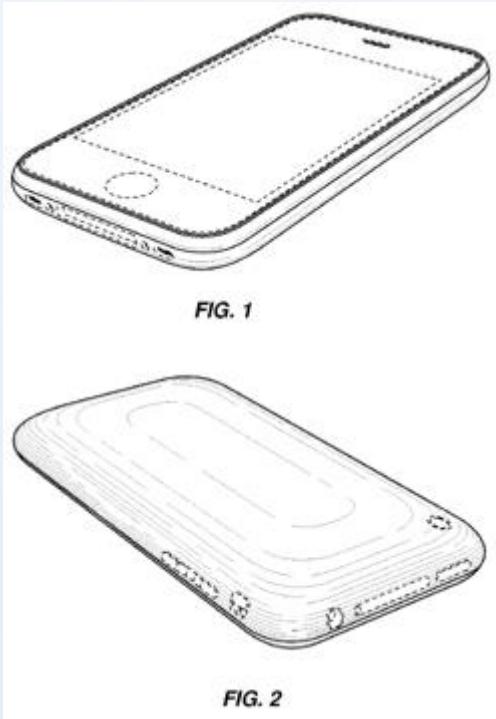
Apple v. Samsung Example

April 2011: Apple = plaintiff, Samsung = defendant (Northern District of California); 16 claims

- Trade dress infringement under 15 U.S.C. § 1125 (hardware, software, packaging)
- Federal trade dress infringement under 15 U.S.C. § 1114 (design)
- Federal trademark infringement under 15 U.S.C. § 1114 (icons)
- Common law trademark infringements
- Unfair business practices (state law claim)

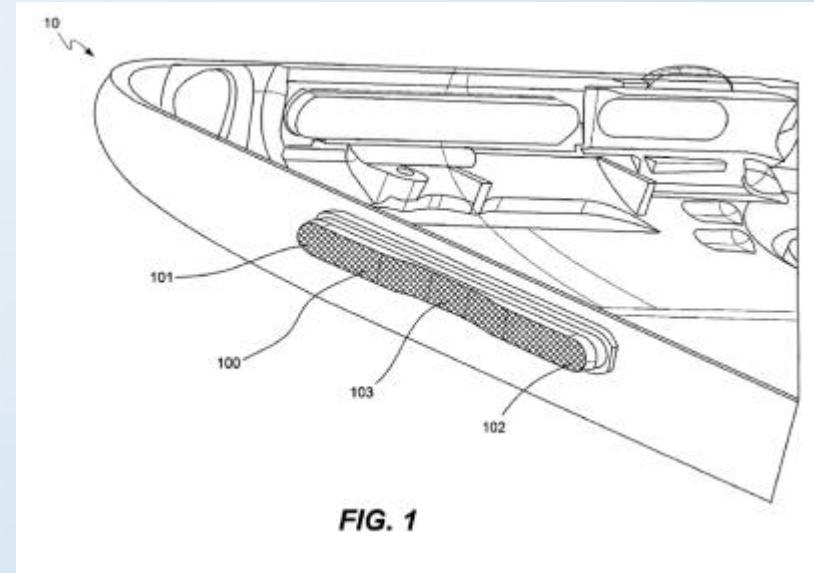


Apple v. Samsung Example



US Patent D602,016:
Electronic Device

- Unjust enrichment (state law claim)
- Three claims for infringement of design patents
- Seven claims for infringement of utility patents



US Patent 7,863,533:
Cantilevered push button
having multiple contacts and
fulcrums

Apple v. Samsung Example

Apple Inc. v. Samsung Electronics Co., LTD., et al.

Samsung Accused Products vs. Apple's Asserted Intellectual Property

#	Accused Products	Utility Patents		
		'163	'381	'915
1 Captivate		x	x	x
2 Continuum		x	x	x
3 Droid Charge		x	x	x
4 Epic 4G		x	x	x
5 Exhibit 4G		x	x	x
6 Fascinate		x	x	x
7 Galaxy Ace		x	x	x
8 Galaxy Prevail		x	x	x
9 Galaxy S (i9000)		x	x	x
10 Galaxy S 4G		x	x	x
11 Galaxy S II (AT&T)		x	x	x
12 Galaxy S II (i9100)		x	x	x
13 Galaxy S II (T-Mobile)		x		x
14 Galaxy S II (Epic 4G Touch)				
15 Galaxy S II (Skyrocket)				
16 Galaxy S Showcase (i500)				
17 Galaxy Tab		x	x	x
18 Galaxy Tab 10.1 (WiFi)		x	x	x
19 Galaxy Tab 10.1 (4G LTE)		x	x	x
20 Gem		x	x	x
21 Indulge		x	x	x
22 Infuse 4G		x	x	x
23 Intercept		x	x	x
24 Mesmerize		x	x	x
25 Nexus S 4G		x	x	x
26 Replenish		x	x	x
27 Transform		x		x
28 Vibrant		x	x	x

Trade Dress			
iPhone 3G	iPhone / iPhone 3G / iPhone 4	iPad and iPad 2	'983
			
X	X		X
X	X		X
X	X		X
X	X		X
X	X		X
	X		
X	X		X
X	X		X
X	X		X
X	X		X
X	X		X
X	X		X
X	X		X
X	X		X
		X	
		X	
X	X		X
X	X		X
X	X		X

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Apple v. Samsung Example

Samsung's claims against Apple

- Standard essential patent claims for 3G wireless networking
- US Patent 7,577,460: method of transmitting emails, with and without embedded images, from a mobile phone with a built-in camera
- US Patent 7,456,893: switching between photo and image display modes
- US Patent 7,698,711: selecting an "MP3 mode" on a mobile device and playing music in the background while performing other multi-tasking functions



Two allegedly
infringing devices

Apple v. Samsung Example

- Three of utility patents were found valid and infringed by several Samsung phones
- Apple's trade dress on the iPhone and iPhone 3G was diluted by several Samsung phones
- Total verdict:
\$1.049 billion



Apple v. Samsung Example



- Appeal at U.S. District Court: damages slashed to \$598 million
- Jury relied on an “impermissible legal theory” when it calculated damages
 - Used Samsung’s profits to determine award based on patent infringement
 - Error regarding notice and time period
- Next steps: appeal to the U.S. Court of Appeals for the Federal Circuit?

Discussion

Do you think the outcome of the Apple v. Samsung litigation affected how Samsung designs tablets and phones?

Is this a good or bad for innovation?