

The battle of the tablets

Since early 2011, Apple and Samsung have been locked in multiple lawsuits all over the world to determine whether Samsung's Galaxy tablets infringe various elements of Apple's tablet designs.

This battle is not only being fought before various national courts, but also before the EU trade mark and designs registry, OHIM, where Samsung has contested the validity of a number of Apple's Community designs. OHIM has recently ruled on the validity of four of Apple's Community designs in particular.

The “cool” design valid over 50 prior designs

OHIM's latest decision of 5 July 2013 concerned a design (pictured below) which was filed by Apple and registered in 2004.

This design has been the subject of various infringement proceedings around the EU. For instance, both the UK court (which famously concluded that Samsung's tablets were “not as cool” as the Apple design) and the Dutch court found that it was not infringed by Samsung's Galaxy tablets.



OHIM has now found this design to be valid over 50 alleged prior designs, over which Apple's design was found to have the necessary individual character. OHIM also held a second Apple tablet design from 2010 (pictured below) as valid in a decision of 15 May 2013.



The meaning of dotted lines

An important issue in the decision on the 2004 design was how one should construe the dotted lines used in design registrations (for instance the border on the screen). There was significant debate as to whether the features depicted in dotted lines formed part of the protected design or not.

Apple took the view that the features depicted in dotted lines were still part of the design, whereas OHIM regarded features depicted by dotted lines to be in fact excluded from the

scope of protection of the design (consistent with OHIM's published guidelines for Community design applications).

Even disregarding such features however, OHIM nonetheless found that none of the prior designs cited by Samsung detracted from the design's individual character.

Later designs invalid despite abusive disclosures

Despite upholding the validity of certain designs, OHIM declared that others were in fact invalid. In particular, two tablet designs dating from 2011 (shown below), were found to be invalid over earlier 'mock up' designs shown on tech websites trying to second guess what the new Apple tablet design would look like when released.



According to Apple, the mock-ups only appeared on these websites due to leaks from within Apple and should therefore not be taken into consideration when considering the validity of Apple's registrations. OHIM however ruled in decisions dated 13 and 14 May 2013 that even in case of an allegation of abuse, a design application must still be filed within the 12 month grace period. The designs were eventually declared invalid due to lack of individual character in view of the mock-ups.

Technical function

In the various proceedings, Samsung tried to attack Apple's tablet designs by arguing that the designs were dictated by technical function, and hence excluded from registrability.

OHIM rejected such arguments, holding that none of the features of the designs were dictated solely by technical function, but instead contributed to the overall look of the product. In this respect, OHIM stressed that portable electronic devices compete not only in their technical features, but also in their design and that design plays a significant role in the marketing of such products.



The battle continuous

Whilst OHIM has now ruled on the validity of four of Apple's Community designs, Samsung has appealed a number of decisions and yet further designs are still being contested.

The "battle of the tablets" continues.

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