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FP Tech Desk

## FP TECH DESK

# Apple co-founder Wozniak says he hates Samsung patent verdict



BONNIE CAO, BLOOMBERG NEWS | Sep 14, 2012 2:52 PM ET | Last Updated: Sep 14, 2012 2:56 PM ET  
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Steve Wozniak, co-founder of Apple, speaks at the ICSC Retail Real Estate World Summit in Shanghai, September 13, 2012.

Aly Song/Reuters

I don't think the decision of California will hold. And I don't agree with it

Apple Inc. co-founder Steve Wozniak said he plans to get the iPhone 5 and hopes it takes better photos than the ones he captures with his Samsung Electronics Co. Galaxy S III.

"I am always excited about every iPhone product because there are always good advances," Wozniak said in an interview in Shanghai today. "A better quality on the pictures will mean a lot, because when I show people pictures on my iPhone 4 and my Galaxy S III, they always say the Galaxy S III, or even the Motorola Razr, pictures look better."

Apple, the world's most-valuable company, on Wednesday unveiled a new iPhone that runs on faster wireless networks, boasts a bigger screen and has a chip that handles tasks more quickly than past versions. It is the company's first iPhone introduction since the October death of Steve Jobs, who co-founded the company with Wozniak in 1976 in a California garage.

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The Cupertino, California-based company unveiled a taller, lighter and speedier iPhone that's poised to become the fastest selling technology gadget in history — even as competition accelerates in the US\$219.1-billion smartphone market. Nokia Oyj, Google Inc.'s Motorola Mobility unit and Suwon, South Korea-based Samsung Electronics all introduced new models this month.

### 'Important Steps'

Apple may sell as many as 58 million units of the iPhone 5 by the end of the year, according to the average estimate of analysts surveyed by Bloomberg. That could generate as much as \$36.2 billion in sales for Apple, according to data compiled by Bloomberg.



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"I think they took some very important steps," Wozniak, 62, said. "I'd like to get a product, use it myself before I judge it and compare to others. I'd like to have it myself and tell what's good and bad about it."

Apple yesterday also announced it was upgrading the software that runs on the iPhone to include new mapping and turn-by-turn navigation features, as well as tools that make it easier to share photos and other content with Facebook Inc., the largest social-networking service. The company also demonstrated a new feature for taking panoramic photos taking feature.

Since the iPhone's introduction in 2007, competition for Apple has increased.

### 'Hate' Patent Dispute

Samsung, which uses Google's Android mobile operating system and offers several different models, has emerged as Apple's biggest competitor in smartphones. Samsung, also one of Apple's biggest suppliers of components, accounted for 19.1% of global smartphone shipments last year, compared with Apple's 18.8%, according to Bloomberg Industries data.

Samsung said this month it has sold 20 million Galaxy S IIIs.

The two companies also are battling in court, with [Apple being awarded more than US\\$1-billion](#) last month by a California jury that said Samsung copied the iPhone's design. Samsung said it will appeal.

"I hate it," Wozniak said when asked about the patent fights between Apple and Samsung. "I don't think the decision of California will hold. And I don't agree with it — very small things I don't really call that innovative.

"I wish everybody would just agree to exchange all the patents and everybody can build the best forms they want to use everybody's technologies."

[Bloomberg.com](#)



The new Apple Inc. iPhone 5 is displayed for a photograph during an event in San Francisco, California. David Paul Morris/Bloomberg

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**Guest**

The Woz has an S3???? I guess he didn't swallow the Apple koolaid his buddy Steve Jobs was dishing out. Finally some intelligence in this world.

**Mathieu LeFrançois**

Woz is a gadget freak. His full time phone is an iPhone but he does use the Galaxy S3 among other phones on the side

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## Apple-Samsung patent fight: Fuzzy math

The average smartphone may arguably infringe as many as 250,000 patents. A jury award of \$1.05 billion vastly overstates the real worth of each patent.

August 30, 2012 | By Brian J. Love

Late last week, a San Jose jury awarded Apple Inc. \$1.05 billion in damages for patent infringement, a huge win for Apple in its worldwide patent fight with smartphone manufacturers that, like Samsung, sell devices equipped with Google's Android operating system.



The award, the third largest in the history of U.S. patent litigation, will likely cruise into first place next month when U.S. District Court Judge Lucy Koh decides what additional amount Apple should receive from Samsung based on the jury's finding that much of the infringement was "willful."

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But even without that enhancement, which could add another \$2 billion to Samsung's tab, the jury's \$1 billion-plus verdict breaks down to just under \$48 for each of the roughly 22 million infringing phones sold by Samsung. To the jury, 50 bucks per phone must have sounded like a reasonable figure, and it may well to you too.

But it's not — it's way too high — and here's why: The average smartphone may arguably infringe as many as 250,000 patents, not to mention myriad copyrights and other design-related intellectual property. (Companies don't sift through every patent coming out of Washington before engineering and releasing a product; they create devices and battle claims as necessary.)

If you were to divide the average retail price of a smartphone — about \$400 — by those 250,000 potentially applicable patents, you'd find that each one would account for just \$0.0016 of the phone's value. And, in reality, even that's too much, once you factor in the costs of raw materials, labor, transportation and marketing, which also contribute to a phone's value.

Yet for infringing just a handful of Apple's patents, Samsung faces a minimum payment of \$48 per phone, a shocking 30,000 times the average per patent value. Put another way, if the owners of all the 250,000 inventions that might be present in Samsung smartphones were awarded damages at the same level as Apple, Samsung would have to charge a ludicrous \$2 million per phone just to break even.

California

But wait, you say, the San Jose jury no doubt included some level of punishment in its award, in order to "send a message." But, by law, patent damages are meant to compensate not punish, as the jury was expressly instructed.

Or maybe Apple's patents are worth far more than average intellectual property and are therefore deserving of a higher rate? Perhaps so. But thousands of times more valuable?

For that matter, why shouldn't we also entertain the possibility that Apple's patents are actually worth less than the average? It may sound blasphemous to question the value of intellectual property owned by the world's most valuable company, but consider this: When purchasing a phone are you willing to pay more for rounded corners and stylish icons or for the device's ability to transmit data to a cell tower? In the smartphone wars, Apple is primarily enforcing patents on the former, Samsung and Motorola on the latter.

Surprisingly, Apple is well aware of arguments about the real worth of each patent per phone: "In a world where a device can be made up of thousands of patented components, patent infringement damages should be proportionate to the value of the component in question rather than the entire product." That's a 2008 quote from the Coalition for Patent Fairness, an advocacy group formed by Apple and other tech companies frequently sued for patent infringement.

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Indeed, Apple makes this same point in some form or fashion dozens of times a year when playing defense against patent suits filed by other, much smaller patent owners. Over the last five years, no company has been sued more times for infringement than Apple. When the shoe was on the other foot, however, it was content to check its patent law principles at the courtroom door: It actually asked for far more than it received, about \$2.5 billion total in "compensatory" damages.

So, Apple, congratulations on your large award. Next time you're accused of patent infringement by a start-up, an individual inventor or a dreaded "patent troll," I'm sure you'll be flattered when the patent owner uses your own damages calculations against you. Actually, on second thought, here's betting you won't like it much at all.

*Brian J. Love is an assistant professor of law at Santa Clara University School of Law, where he teaches courses in patent law and remedies.*

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OP-ED COLUMNIST

## Has Apple Peaked?

By JOE NOCERA

Published: September 21, 2012 | 208 Comments

If [Steve Jobs](#) were still alive, would the new map application on the [iPhone 5](#) be such an [unmitigated disaster](#)? Interesting question, isn't it?

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### Readers' Comments

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As [Apple's](#) chief executive, Jobs was a perfectionist. He had no tolerance for corner-cutting or mediocre products. The last time Apple released a truly substandard product — MobileMe, in 2008 — Jobs gathered the team into an auditorium, berated them mercilessly and then got rid of the team leader in front of everybody, [according to](#) Walter Isaacson's biography of Jobs. The three devices that made [Apple the most valuable company in America](#) — the iPod, the iPhone and the [iPad](#) — were all genuine innovations that forced every other technology company to play catch-up.

No doubt, the iPhone 5, [which went on sale on Friday](#), will be another hit. Apple's halo remains powerful. But there is nothing about it that is especially innovative. Plus, of course, it has [that nasty glitch](#). In rolling out a new operating system for the iPhone 5, Apple replaced Google's map application — the mapping gold standard — with its own, vastly inferior, application, which has infuriated its customers. With maps now such a critical feature of smartphones, it seems to be an inexplicable mistake.

And maybe that's all it is — a mistake, [soon to be fixed](#). But [it is just as likely to turn out](#) to be the canary in the coal mine. Though Apple will remain a highly profitable company for years to come, I would be surprised if it ever gives us another product as transformative as the iPhone or the iPad.

Part of the reason is obvious: Jobs isn't there anymore. It is rare that a company is so completely an extension of one man's brain as Apple was an extension of Jobs. While he was alive, that was a strength; now it's a weakness. Apple's

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current executive team is no doubt trying to maintain the same demanding, innovative culture, but it's just not the same without the man himself looking over everybody's

shoulder. If the map glitch tells us anything, it is that.

But there is also a less obvious — yet possibly more important — reason that Apple's best days may soon be behind it. When Jobs returned to the company in 1997, after 12 years in exile, Apple was in deep trouble. It could afford to take big risks and, indeed, to search for a new business model, because it had nothing to lose.

Fifteen years later, Apple has a hugely profitable business model to defend — and a lot to lose. Companies change when that happens. “The business model becomes a gilded cage, and management won't do anything to challenge it, while doing everything they can to protect it,” says Larry Keeley, an innovation strategist at Doblin, a consulting firm.

It happens in every industry, but it is especially easy to see in technology because things move so quickly. It was less than 15 years ago that Microsoft appeared to be invincible. But once its Windows operating system and Office applications became giant moneymakers, Microsoft's entire strategy became geared toward protecting its two cash cows. It ruthlessly used its Windows platform to promote its own products at the expense of rivals. ([The Microsoft antitrust trial](#) took dead aim at that behavior.) Although [Microsoft still makes billions](#), its new products are mainly “me-too” versions of innovations made by other companies.

Now it is Apple's turn to be king of the hill — and, not surprisingly, it has begun to behave in a very similar fashion. You can see it in [the patent litigation against Samsung](#), a costly and counterproductive exercise that has nothing to do with innovation and everything to do with protecting its turf.

And you can see it in the decision to replace Google's map application. Once an ally, [Google is now a rival](#), and the thought of allowing Google to promote its maps on Apple's platform had become anathema. More to the point, Apple wants to force its customers to use its own products, even when they are not as good as those from rivals. Once companies start acting that way, they become vulnerable to newer, nimbler competitors that are trying to create something new, instead of milking the old. Just ask BlackBerry, which once reigned supreme in the smartphone market but [is now roadkill for Apple and Samsung](#).

Even before Jobs died, Apple was becoming a company whose main goal was to defend its business model. Yes, he would never have allowed his minions to ship such an embarrassing application. But despite his genius, it is unlikely he could have kept Apple from eventually lapsing into the ordinary. It is the nature of capitalism that big companies become defensive, while newer rivals emerge with better, smarter ideas.

“Oh my god,” read one Twitter message I saw. “Apple maps is the worst ever. It is like using MapQuest on a BlackBerry.”

MapQuest and BlackBerry.

Exactly.

A version of this op-ed appeared in print on September 22, 2012, on page A23 of the New York edition with the headline: Has Apple Peaked?.

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J. Emilio Flores for The New York Times

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A display of giant iPhones at the Los Angeles County Fair that show some of Apple's patents.

By CHARLES DUHIGG and STEVE LOHR  
Published: October 7, 2012 | 277 Comments

When [Apple](#) announced last year that all iPhones would come with a voice-activated assistant named Siri, capable of answering spoken questions, Michael Phillips's heart sank.

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For Software, Cracks in the Patent System

For three decades, Mr. Phillips had focused on writing software to allow computers to understand human speech. In 2006, he had co-founded a voice recognition company, and eventually executives at Apple, Google and elsewhere proposed partnerships. Mr. Phillips's technology was even integrated into Siri itself before the digital assistant was absorbed into the [iPhone](#).

But in 2008, Mr. Phillips's company, Vlingo, had been contacted by a much larger voice recognition firm called Nuance. "I have patents that can prevent you from practicing in this market," Nuance's chief executive, Paul

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Ricci, told Mr. Phillips, according to executives involved in that conversation.

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Mr. Ricci issued an ultimatum: Mr. Phillips could sell his firm to Mr. Ricci or be sued for patent infringements. When Mr. Phillips refused to sell, Mr. Ricci's company filed the first of six lawsuits.

Soon after, Apple and Google stopped returning phone calls. The company behind Siri switched its partnership from Mr. Phillips to Mr. Ricci's firm. And the millions of

dollars Mr. Phillips had set aside for research and development were redirected to lawyers and court fees.

When the first lawsuit went to trial last year, Mr. Phillips won. In the companies' only courtroom face-off, a jury ruled that Mr. Phillips had not infringed on a broad voice recognition patent owned by Mr. Ricci's company.

But it was too late. The suit had cost \$3 million, and the financial damage was done. In December, Mr. Phillips agreed to sell his company to Mr. Ricci. "We were on the brink of changing the world before we got stuck in this legal muck," Mr. Phillips said.

Mr. Phillips and Vlingo are among the thousands of executives and companies caught in a software patent system that federal judges, economists, policy makers and technology executives say is so flawed that it often stymies innovation.

Alongside the impressive technological advances of the last two decades, they argue, a pall has descended: the marketplace for new ideas has been corrupted by software patents used as destructive weapons.

Vlingo was a tiny upstart on this battlefield, but as recent litigation involving Apple and Samsung shows, technology giants have also waged wars among themselves.

In the smartphone industry alone, according to a Stanford University analysis, as much as \$20 billion was spent on patent litigation and patent purchases in the last two years — an amount equal to eight Mars rover missions. Last year, for the first time, spending by Apple and Google on patent lawsuits and unusually big-dollar patent purchases exceeded spending on research and development of new products, according to public filings.

Patents are vitally important to protecting intellectual property. Plenty of creativity occurs within the technology industry, and without patents, executives say they could never justify spending fortunes on new products. And academics say that some aspects of the patent system, like protections for pharmaceuticals, often function smoothly.

However, many people argue that the nation's patent rules, intended for a mechanical world, are inadequate in today's digital marketplace. Unlike patents for new drug formulas, patents on software often effectively grant ownership of concepts, rather than tangible creations. Today, the patent office routinely approves patents that describe vague algorithms or business methods, like a software system for calculating online prices, without patent examiners demanding specifics about how those calculations occur or how the software operates.

As a result, some patents are so broad that they allow patent holders to claim sweeping ownership of seemingly unrelated products built by others. Often, companies are sued for violating patents they never knew existed or never dreamed might apply to their creations, at a cost shouldered by consumers in the form of higher prices and fewer choices.



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“There’s a real chaos,” said Richard A. Posner, a federal appellate judge who has helped shape patent law, in an interview. “The standards for granting patents are too loose.”

Almost every major technology company is involved in ongoing patent battles, but the most significant player is Apple, industry executives say, because of its influence and the size of its claims: in August in California, the company won [a \\$1 billion patent infringement judgment](#) against Samsung. Former Apple employees say senior executives made a deliberate decision over the last decade, after Apple was a victim of patent attacks, to use patents as leverage against competitors to the iPhone, the company’s biggest source of profits.

Apple has filed multiple suits against three companies — HTC, Samsung and Motorola Mobility, now part of Google — that today are responsible for more than half of all smartphone sales in the United States. If Apple’s claims — which include ownership of minor elements like rounded square icons and of more fundamental smartphone technologies — prevail, it will most likely force competitors to overhaul how they design phones, industry experts say.

HTC, Samsung, Motorola and others have filed numerous suits of their own, also trying to claim ownership of market-changing technologies.

While Apple and other major companies have sometimes benefited from this war, so have smaller partners. In 2010, Apple acquired Siri Inc., the company behind the software of the same name. The stock price of Mr. Ricci’s company, Nuance, which had by then become Siri’s partner, rose by more than 70 percent as iPhone sales skyrocketed. Some former executives at Vlingo, Nuance’s old rival, remain bitter.

“We had spent \$3 million to win one patent trial, and had five more to go,” said a former Vlingo executive who spoke on condition of anonymity because he had signed confidentiality agreements. “We had the better product, but it didn’t matter, because this system is so completely broken.”

Mr. Ricci declined to be interviewed. Others at Nuance said they were simply protecting their intellectual property.

“Our responsibility is to follow the law,” said Lee Patch, a vice president at Nuance. “That’s what we do. It’s not our fault if some people don’t like the system.”

Today, Nuance is a giant in voice recognition. Apple is the most valuable company in the world. And the iPhone is wrapped in thousands of patents that keep companies in numerous court battles.

“Apple has always stood for innovation,” the company wrote in a statement in response to questions from The New York Times. “To protect our inventions, we have patented many of the new technologies in these groundbreaking and category-defining products. In the rare cases when we take legal action over a patent dispute, it’s only as a last resort.

“We think companies should dream up their own products rather than willfully copying ours, and in August a jury in California reached the same conclusion,” the statement said.

At a technology conference this year, Apple’s chief executive, Timothy D. Cook, said patent battles had not slowed innovation at the company, but acknowledged that some aspects of the battles had “kind of gotten crazy.”

“There’s some of this that is maddening,” he said. “It’s a waste; it’s a time suck.”

The evolution of Apple into one of the industry’s patent warriors gained momentum, like many things within the company, with a terse order from its chief executive, Steven P.

Jobs.

### **A Patent Warrior's Education**

It was 2006, and Apple was preparing to unveil the first iPhone. Life inside company headquarters, former executives said, had become a frenzy of programming sessions and meetings between engineers and executives. And, increasingly, patent lawyers.

Just months earlier, Apple [reluctantly agreed](#) to pay \$100 million to Creative Technology, a Singapore-based company. Five years before, Creative applied for a broad software patent for a "portable music playback device" that bore minor similarities to the iPod, an Apple product that had gone on sale the same year. Once the patent was granted to Creative, it became a license to sue.

Apple settled three months after Creative went to court. "Creative is very fortunate to have been granted this early patent," Mr. Jobs said in a statement announcing the settlement in 2006.

Privately, Mr. Jobs gathered his senior managers. While Apple had long been adept at filing patents, when it came to the new iPhone, "we're going to patent it all," he declared, according to a former executive who, like other former employees, requested anonymity because of confidentiality agreements.

"His attitude was that if someone at Apple can dream it up, then we should apply for a patent, because even if we never build it, it's a defensive tool," said Nancy R. Heinen, Apple's general counsel until 2006.

Soon, Apple's engineers were asked to participate in monthly "invention disclosure sessions." One day, a group of software engineers met with three patent lawyers, according to a former Apple patent lawyer who was at the meeting.

The first engineer discussed a piece of software that studied users' preferences as they browsed the Web.

"That's a patent," a lawyer said, scribbling notes.

Another engineer described a slight modification to a popular application.

"That's a patent," the lawyer said.

Another engineer mentioned that his team had streamlined some software.

"That's another one," the lawyer said.

"Even if we knew it wouldn't get approved, we would file the application anyway," the former Apple lawyer said in an interview. "If nothing else, it prevents another company from trying to patent the idea."

The disclosure session had yielded more than a dozen potential patents when an engineer, an Apple veteran, spoke up. "I would like to decline to participate," he said, according to the lawyer who was at the meeting. The engineer explained that he didn't believe companies should be allowed to own basic software concepts.

It is a complaint heard throughout the industry. The increasing push to assert ownership of broad technologies has led to a destructive arms race, engineers say. Some point to so-called patent trolls, companies that exist solely to sue over patent violations. Others say big technology companies have also exploited the system's weaknesses.

"There are hundreds of ways to write the same computer program," said James Bessen, a

legal expert at Harvard. And so patent applications often try to encompass every potential aspect of a new technology. When such applications are approved, Mr. Bessen said, “the borders are fuzzy, so it’s really easy to accuse others of trespassing on your ideas.”

The number of patent applications, computer-related and otherwise, filed each year at the United States patent office has increased by more than 50 percent over the last decade to more than 540,000 in 2011. Google has received 2,700 patents since 2000, according to the patent analysis firm M-CAM. Microsoft has received 21,000.

In the last decade, the number of patent applications submitted by Apple each year has risen almost tenfold. The company has won ownership of pinching a screen to zoom in, of using magnets to affix a cover to a tablet computer and of the glass staircases in Apple stores. It has received more than 4,100 patents since 2000, according to M-CAM.

And as patent portfolios have expanded, so have pressures to use them against competitors.

In March 2010, Apple sued HTC, a Taiwanese smartphone manufacturer that had partnered with Google. Apple did not talk to HTC before suing. Negotiations were not part of the strategy, according to a former executive. “Google was the enemy, the real target,” the executive said.

It was one of seven major smartphone and patent-related lawsuits Apple has initiated since 2006. The suits have focused on two large companies, HTC and Samsung, both Google partners, which together account for 39 percent of American smartphone sales. Apple has also filed countersuits against Nokia, as well as against Motorola Mobility, which is now owned by Google and accounts for 12 percent of sales.

In addition, the company has filed two declaratory judgment actions asking the courts to rule on the provenance and validity of patents. Over the same period, Apple itself has been sued 135 times, mostly by patent trolls interested in its deep pockets.

Apple is not alone. The number of patent lawsuits filed in United States district courts each year has almost tripled in the last two decades to 3,260 in 2010, the last year for which federal data is available. Microsoft has sued Motorola; Motorola has sued Apple and Research in Motion; Research in Motion has sued Visto, a mobile technology company; and in August, Google, through its Motorola unit, sued Apple, contending that Siri had infringed on its patents. (Google dropped the suit last week, leaving open the possibility of refiling at a later date.) All of those companies have also been sued numerous times by trolls.

Patents for software and some kinds of electronics, particularly smartphones, are now so problematic that they contribute to a so-called patent tax that adds as much as 20 percent to companies’ research and development costs, according to a study conducted last year by two Boston University professors.

Supporters of suits initiated by Apple say that the litigation is vital to the company’s success and that Apple is sued far more often than it sues, as do all major tech firms.

“If we can’t protect our intellectual property, then we won’t spend millions creating products like the iPhone,” a former Apple executive said, noting that some of Apple’s patents, like the “slide to unlock” feature on the iPhone, took years to perfect. The concept “might seem obvious now, but that’s only after we spent millions figuring it out,” the executive said. “Other companies shouldn’t be able to steal that without compensating us. That’s why the patent system exists.”

But others challenge that logic, given the huge profits the technology industry enjoys.

Apple collects more than \$1 billion a week in iPhone and related sales. “I am skeptical whether patents are needed in the software industry to provide adequate incentives,” Judge Posner wrote in an e-mail.

One consequence of all this litigation, policy makers and academics say, is that patent disputes are suffocating the culture of start-ups that has long fueled job growth and technological innovation.

“Think of the billions of dollars being flushed down the toilet,” said Ms. Heinen, the former Apple general counsel, who left the company and [paid \\$2.2 million](#) in connection with a federal investigation of stock option backdating. “When patent lawyers become rock stars, it’s a bad sign for where an industry is heading,” she said, adding that she had no issue with the lawyers themselves.

There are some indications that the big companies themselves are growing weary of this warfare.

In its response to The Times, Apple addressed “standards-essential” patents, which companies are obligated to license to competitors at reasonable rates, and wrote that it was “deeply concerned by the rampant abuse of standards-essential patents by some of our competitors.”

“Standards-essential patents are technologies which these companies have volunteered to license to anyone for a reasonable fee,” the statement said, “but instead of negotiating with Apple, they’ve chosen to sue us.” Samsung, Motorola, Nokia and HTC have sued Apple, claiming it violated standards-essential patents.

Another sign of fatigue is the frequency with which executives and lawyers from Apple and Google speak to one another about patent disputes. Earlier this year, Google proposed a cease-fire, according to people familiar with the conversations. And when Google withdrew its Motorola suit last week, it was widely seen as a peace gesture.

But Apple has been hard to pin down, said one person from Google who was not authorized to speak publicly. “Sometimes they’re asking for money. Then they say we have to promise to not copy aspects of the iPhone. And whenever we get close to an agreement, it all changes again.

“Our feeling is they don’t really want this to end. As long as everyone is distracted by these trials, the iPhone continues to sell.”

Apple declined to comment on the negotiations.

### **The Patent Bureaucracy**

The application by Apple that eventually became patent 8,086,604 first crossed desks at the Patent and Trademark Office on a winter day in 2004.

In the next two years, a small cast of officials spent about 23 hours — the time generally allotted for reviewing a new application — examining the three dozen pages before recommending rejection. The application, for a voice- and text-based search engine, was “an obvious variation” on existing ideas, a patent examiner named Raheem Hoffler wrote. Over the next five years, Apple modified and resubmitted the application eight times — and each time it was rejected by the patent office.

Until last year.

On its 10th attempt, Apple got patent 8,086,604 approved. Today, though the patent was not among those Vlingo and Nuance fought over, it is known as the Siri patent because it is

widely viewed as one of the linchpins of Apple's strategy to protect its smartphone technologies.

In February, the company deployed this new patent in a continuing lawsuit against Samsung that could radically reorder the \$200 billion smartphone business by giving Apple effective ownership of now-commonplace technologies, software experts say.

Patent 8,086,604's path to approval "shows there's a lot wrong with the process," said Arti K. Rai, [an intellectual property](#) expert at Duke University School of Law who reviewed the patent application for The Times. That patent, like numerous others, is an example of how companies can file an application again and again until they win approval, Ms. Rai said.

When Apple submitted the first application for 8,086,604, the iPhone and Siri did not exist. The application was aspirational: it described a theoretical "universal interface" that would allow people to search across various mediums, like the Internet, corporate databases and computer hard drives, without having to use multiple search engines. It outlined how such software might function, but it did not offer specifics about how to build it. It suggested that some people might speak a search phrase rather than use a keyboard.

The ideas contained in the application would blossom at Apple, Google, Microsoft, Nuance, Vlingo and dozens of other companies. All the while, the application traveled quietly through the patent office, where officials rejected it twice in 2007, three times in 2008, once in 2009, twice in 2010 and once in 2011.

The patent office has a reputation for being overworked, understaffed and plagued by employee turnover, and employees concede that some of their work is subjective.

"When I get an application, I basically have two days to research and write a 10- to 20-page term paper on why I think it should be approved or rejected," said Robert Budens, a 22-year patent examiner and president of the examiners' labor union. "I'm not going to pretend like we get it right every time."

To receive a patent, an invention must be novel (substantially different from what exists), not obvious (one can't patent a new toaster simply by expanding it to handle five slices of bread), and useful (someone can't patent an invisibility machine if invisibility is impossible).

"If you give the same application to 10 different examiners, you'll get 10 different results," said Raymond Persino, a patent lawyer who worked as an examiner from 1998 to 2005.

After patent 8,086,604 was first rejected in 2007, Apple's lawyers made small adjustments to the application, changing the word "documents" to "items of information" and inserting the phrase "heuristic modules" to refer to bits of software code. A few years later, the inclusion of the word "predetermined" further narrowed Apple's approach.

These changes had little substantial impact, said experts who reviewed the application for The Times. But the patent office slowly began to come around to Apple's point of view.

Though submitting an application repeatedly can incur large legal fees, it is often effective. About 70 percent of patent applications are eventually approved after an applicant has altered claims, tinkered with language or worn down the patent examiners.

One consequence is that patents are sometimes granted for ideas that already exist.

In 1999, for instance, two men received a patent for a crustless, sealed peanut butter and jelly sandwich. (The J. M. Smucker company acquired the patent and used it to sue other food makers. In 2007, after press scrutiny, federal officials canceled the patent.)

A year earlier, the patent office had awarded an Illinois company effective ownership of many of the basic systems that power the Internet. That firm sued a number of tech giants, persuading many to sign multimillion-dollar settlements, until a jury declared some of the patents invalid last year.

For Apple's 8,086,604, the examiners finally relented last December and issued a patent.

"Apple got another warhead in its arsenal, but there's no big invention here," said David J. Pratt, president of M-CAM, the patent analysis firm, who analyzed the application for The Times.

The patent office declined to discuss 8,086,604. Officials pointed out that the agency's 7,650 examiners received more than half a million applications last year, and the numbers have kept climbing.

By all accounts, there have been improvements in the patent office since David J. Kappos took over as director in 2009. In an interview, Mr. Kappos said the lengthy back-and-forth between examiners and Apple was evidence that the system worked.

"It's called the patent office," he said, noting that issuing patents is the agency's job. In a statement, the agency said it had spent the last three years strengthening policies to improve patent quality. Besides, Mr. Kappos said, "we realize that only a handful of these patents will be really important."

However, patent 8,086,604 has proved very important. In February, Apple sued Samsung in a California court, arguing that 17 of Samsung's smartphones and tablets violated 8,086,604. In June, a judge [banned sales](#) of Samsung's Galaxy Nexus phone, validating 8,086,604 and ruling that the phone infringed on Apple's patent because it featured a "Google quick search box" that allowed users to enter one search term, either typed or spoken, that returned results simultaneously from the Internet, contacts stored on the phone and recently visited Web sites. (The ban has been stayed while under appeal.)

### Searching for Fixes

Some experts worry that Apple's broad patents may give the company control of technologies that, over the last seven years, have been independently developed at dozens of companies and have become central to many devices.

"Apple could get a chokehold on the smartphone industry," said Tim O'Reilly, a publisher of computer guides and a software patent critic. "A patent is a government-sanctioned monopoly, and we should be very cautious about handing those out."

Others say the system works fine.

"Intellectual property is property, just like a house, and its owners deserve protection," said Jay P. Kesan, [a law professor](#) at the University of Illinois. "We have rules in place, and they're getting better."

"And if someone gets a bad patent, so what?" he said. "You can request a re-examination. You can go to court to invalidate the patent. Even rules that need improvements are better than no rules at all."

Five years ago, Congress was debating how to fix the patent system when an inventor named Stephen G. Perlman went to Capitol Hill.

Mr. Perlman worked at Apple in the 1980s. Today, he runs a start-up incubator called Rearden in San Francisco. He holds 100 patents — including for the software behind the reverse aging in the film "The Curious Case of Benjamin Button" — and has about 100

more applications pending.

Patents are crucial to his business, Mr. Perlman said, particularly in raising money from venture capitalists and deterring large companies from copying his innovations. "When we file a patent application, it's a big deal," he said.

When Mr. Perlman went to Congress, he brought ideas to protect small inventors. He wasn't alone in suggesting solutions. Thousands of companies, from start-ups like Vlingo to large technology firms, have argued that a well-functioning patent system is essential to their success. The problems with the current system are so pervasive, they say, that the courts, lawmakers and Silicon Valley must find their own fixes.

One option is judicial activism. This year, Judge Posner, in an Illinois federal court, tossed out patent arguments made by both Apple and Motorola Mobility in [a 38-page opinion](#) that dismissed a lawsuit between the two companies. Cleaning up the patent mess, Judge Posner said in an interview, might also require reducing the duration of patents on digital technologies, which can be as long as 20 years. "That would make a big difference," he said. "After five years, these patents are mainly traps for the unwary."

Ideas have also come from policy experts and Silicon Valley. The Federal Reserve Bank of St. Louis recently published [a working paper](#) calling for the abolition of patents, saying they do more harm than good.

Another idea is to create different classes of patents, so that some kinds of inventions, like pharmaceuticals, would receive 20 years of ironclad protection, while others, like software, would receive shorter and more flexible terms.

A third suggestion was made by the Internet company Twitter, which released an ["Innovator's Patent Agreement"](#) this year intended to give software engineers some control over how their creations are used. Under the terms of the agreement, companies pledge that patents will be used only for defensive purposes.

"We're just trying to do something modest," said Benjamin Lee, Twitter's legal counsel.

Similarly, law school faculty at the University of California, Berkeley, have proposed a ["Defensive Patent License"](#) in which companies would contribute patents to a common pool that shielded participants from litigious aggressors. Companies would be allowed to participate as long as they did not become first-strike plaintiffs. The benefit is that "you don't have to worry about your patent being weaponized" and used to attack competitors, said Jason M. Schultz, [an assistant professor](#) who helped design the license.

But to really make a difference, such ideas require the participation of large technology companies, and the incentives to cooperate are small. So some frustrated engineers have become outspoken advocates for reform.

Mr. Perlman, the independent inventor, for instance, was hopeful his voice would be heard on Capitol Hill. But alongside Mr. Perlman were hundreds of lobbyists from high-tech corporations and the pharmaceutical industry, which often push conflicting proposals. Big technology companies, in general, want to limit the financial damages juries can award for minor patent violations, while drug makers want to make sure they can sue for billions of dollars if a single patent is violated.

These and dozens of other narrow battles have paralyzed Congress's ability to make real changes, lawmakers and lobbyists say. The last attempt, the America Invents Act, which was passed last year, achieved mostly administrative fixes, like making it easier for outsiders to challenge a patent's validity.

The new law did make one fundamental change. Since the patent system was overseen by Thomas Jefferson, the United States has awarded ownership of an innovation to whoever created the first prototype, a policy known as “first to invent.” Under the America Invents Act, ownership will be awarded to whoever submits the first application, or “first to file.”

The shift, inventors like Mr. Perlman say, makes life harder for small entrepreneurs. Large companies with battalions of lawyers can file thousands of pre-emptive patent applications in emerging industries. Start-ups, lacking similar resources, will find themselves easy prey once their products show promise.

That is the concern of people like Mr. Phillips, the voice recognition specialist and one-time Siri partner who founded Vlingo. “Start-ups are where progress occurs,” he said in an interview. “If you spend all your time in court, you can’t create much technology.”

In June, Mr. Phillips started work at his new employer, and former courtroom adversary, Nuance. Theoretically, his job was to help manage the companies’ integration and find new technological frontiers to explore. With a background at M.I.T. and Carnegie Mellon, he is widely acknowledged as one of the most innovative thinkers in computer speech.

But he spent much of the summer on vacation, recuperating from the last six bruising years. And in September, he quit. He plans to leave voice recognition altogether, he has told friends, and find an industry with less treacherous patent terrain.

A version of this article appeared in print on October 8, 2012, on page A1 of the New York edition with the headline: The Patent, Used as a Sword.

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## 277 Comments



Readers shared their thoughts on this article.

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**Deb** Paris, France  
patalcant,

I don't normally post comments on here, but I had to respond to your last message. Apple is not exactly the pioneer you seem to make it out to be. It takes already existing innovations and puts them in a very nicely designed and user-friendly package. They produce very compelling products, but they are hardly 'pioneers'.

The fact is that Samsung released a gesture based touch-screen device a year before the iPhone was launched - the SGH-Z610. It also included an app drawer, and front and rear facing cameras. Sound familiar? It was ultimately marketed as a multimedia device, rather than a phone. The LG Prada is also a good example of a smartphone with similar functions and design, and it came out a few months before the iPhone.

Even closer was the Samsung F700, which was shown a month after the iPhone came out. You cannot design, test and manufacture a smartphone device in the space of a month, so one can hardly claim there was any copying going on. There is also the little issue that Samsung supplies over 25% of the hardware used in the iPhones.

It's a bit like how Thomas Edison is credited with 'inventing' the electric light bulb, when in fact he didn't, nor did he even hold the first patent. He only improved on technology that already existed for 50 years. Furthermore, Edison's light bulb was an almost exact copy of Joseph Swan's light bulb, which the latter invented 10 years before. Edison (or rather the

scientists/engineers he hired) just made it better.

Oct. 9, 2012 at 5:55 a.m. RECOMMENDED 20



**rondonaz** AZ

I suspect that a key part of the problem may have to do with the compensation process at the US patent and trademark office (USPTO). If examiner compensation is tied to the total number of claims processed, plus an incentive to reject as large a fraction as possible of the submitted claims (to keep from simply granting all claims), then the USPTO could rapidly degenerate into a plea-bargaining system similar to our criminal justice system. You would then expect USPTO examiners to initially reject EVERY claim on EVERY patent, then exploit the fact that every iteration costs the applicant a year or so and many thousands of dollars to force smaller applicants to 'settle' for some fraction of the original claims - regardless of their actual validity. [Of course, this would play right into the hands of a huge firm like Apple, who could simply refuse to drop any patent, forcing the examiner to either give up and grant their claims or be forced to spend time re-rejecting each successive submission with slight variations. Examiners would quickly learn to simply give in to the huge firms using this 'attrition' strategy, since fighting them would directly impact their compensation.] An investigative reporter should check this out using USPTO statistics on initial claim rejections over recent years.

Oct. 8, 2012 at 10:51 p.m. RECOMMENDED 4



**David Gold** Palo Alto

Software is like a book. Th code and the overall concept should be patentable, not small details. Otherwise too novel could not have similar incidents or relationships- obviously if the plot is the same, the original author could claim infringement. Patenting rounded corners and images of trash cans is not just ridiculous but predatory.

Oct. 8, 2012 at 9:34 p.m. RECOMMENDED 8



**sayhi2yourmom4me** CA

Imagine it being done in other fields. Take advertising. "I would like to patent the use of the color blue to sell products". Or restaurants. "I would like to patent the use of heat to warm food and the use of tables to serve the food". Or writing. "I would like to patent the use of irony to describe situations." What I'm saying is, some of these patents are extremely broad. This commenting system probably infringes on patents that someone filed somewhere. It's ridiculous.

Oct. 8, 2012 at 9:28 p.m. RECOMMENDED 5



**Publius** USA

The problem is not U.S. patents per se. The Constitution provides for them. The U.S. is actually declining in the world, from 2nd place in 2008 to 12th place in 2012 in terms of patents obtained. The problem is a legal system that costs far too much and takes far too long to mete out justice. \$3 million for a patent case is actually rather cheap--such cases can cost tens of millions and take 5 years or more to resolve.

Then, too, there is the U.S. Patent Office, staffed by underpaid and overworked patent examiners--government workers-- with the result often being invalid patents that don't issue until 4-6 years or more after the application is filed. The new America Invents Act will help, as it provides more opportunities for the public to challenge invalid patents before they issue.

As the post below correctly states, the Constitutional intent of the patent system is to promote the progress of science. In recent years, the patent system has been perverted by "patent trolls"-- entities that make no products, but purchase large blocks of patents for the sole purpose of suing everyone from Starbucks to family businesses for patent infringement in hopes of winning the litigation lottery. Patent trolls are an added regressive tax that only benefits a few. The companies that are forced to settle with them merely pass those costs along to--and at the expense of--us consumers.

thepubliuspapers . com

Oct. 8, 2012 at 7:44 p.m.



**Tim McCoy** NYC

So, perhaps the only thing to be done is follow Shakespeare's dictum from "Henry VI": kill all the lawyers.

Oct. 8, 2012 at 8:40 p.m. RECOMMENDED 1



**PL Hayes** UK

In my view the problem /is/ patents per se. The purely economic case against patents - as discussed in e.g. that Boldrin and Levine paper linked to in the article - is compelling enough, but even if it weren't there is a horrible irony in your complaint that the legal system costs too much and takes too long to mete out /justice/. In reality, and contra the prevalent mythology and its attendant sanctimony, the no-independent-invention-defence patent system regularly metes out gross /injustice/:

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1270160](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1270160)  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1856610](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1856610)

Far from being the defence against IP 'theft' it is commonly assumed to be, the patent system is the facilitator of widespread theft by IP.

Oct. 8, 2012 at 10:40 p.m. RECOMMENDED 2



**G. Yar** NJ

We should not award software patents at all. Programmers are writing software as writers write novels: they are using language (programming language) to write sentences (statements.) The novels are protected by copyrights. The same should be done for software: you are not allowed to use the code developed by others, but you are free to get the same effect by your own way.

The patent code of the USSR forbid to issue patents on software, math formulas, and theoretical constructions.

Oct. 8, 2012 at 7:34 p.m. RECOMMENDED 4



**Tim McCoy** NYC

Utterly ironic. One of the myriad of reasons why the USSR collapsed. N'est-ce pas?

Oct. 8, 2012 at 8:40 p.m.



**Gunnar** Europe

I agree. I don't think we have software patents in Norway, at least not as in the States. I think this goes for most European countries as well. Many other countries are also going away from software patents, like New Zealand.

Still, it is kind of sad how the patent system in U.S affect us all, also here in Europe, even though we do not have the same law as they do. Hardware and software producers should have their own U.S patent versions, so other countries can benefit from more innovations.

I am not against software patents in general, but in U.S it is used by big companies to stop competition, not to help innovate. It is way to easy to get patents for broad ideas, they last for way too long, and one lawsuit is enough to bankrupt an idea. But since it is a lot of money behind patents for the big guys (lawyers and the big companies), I don't think we will see any changes soon.

The sad and annoying part, is also that some patents are just a normal evolution of how software evolves. And many patents has been used in other settings for the same effect (slide to open: door lock on public toilettes, zippers on bags, and so on).

Oct. 8, 2012 at 10:48 p.m. RECOMMENDED 1



**Gene Felch** Santa Clarita, Ca.

The purpose of patents is to encourage innovation, not to guarantee monopolistic profits. Only technologies essential to a product should be patentable, not incidental or cosmetic embellishments. Companies that purchase patents solely as a vehicle for legal blackmail should be prohibited. If a company fails to produce a product protected under a patent within 5 years of issuance it should be required to license it to other producers. All patent holders should be required to grant licenses after 7 years. If the parties cannot reach a licensing agreement, the matter should be submitted to binding arbitration.

Oct. 8, 2012 at 7:11 p.m. RECOMMENDED 4



**DougM** Palo Alto, CA

A data point on costs to defend against an invalid patent: In 2000, I was in a startup when a patent troll claimed our soon-to-be-released product violated its patent. First, we had announced \_no\_ details of the product, only the general area. Second, we looked at the patent and the idea and mechanism had already been published by someone else over a year before it was filed. That publication was widely circulated, commented on and refined. And the patent holder had no background in the field that would lend credibility that he had even developed the idea independently. A simple, straight-forward defense you might think? No. Because the USPTO had granted a patent, it had high presumption of being valid and the company spent over \$100K on legal bills, not to mention the considerable time of the CEO and CTO taken away from advancing the company. Despite what any technologist would have regarded as a fraudulent filing, the company didn't get awarded legal fees.

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Data point on productivity loss: Based on the above experience and others, the company had to expend considerable resources on defensive patents. On a product on which I was the lead developer, 15-20% of my time was spent on those patents (3-4 months of 20)..

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On the lack of merit of many patents: One Apple patent I looked at was the trivial pasting together of components that were routinely assigned a decade earlier as exercises in undergraduate programming courses. This is quite common.

Oct. 8, 2012 at 6:25 p.m. RECOMMENDED 3



**Tim McCoy** NYC

Which may explain why Hemingway, Fitzgerald, Faulkner, Jobs, and Gates, among other American titans, never earned an undergraduate degree. Too trivial for the the great?

Oct. 8, 2012 at 8:40 p.m. RECOMMENDED 1



**ILOVEMYNYT** MURRIETA

Meanwhile, China gets all the technology - whether the patent protects it in the US or not - for free...by mere theft.

Oct. 8, 2012 at 4:53 p.m. RECOMMENDED 3



**Gunnar** Europe

If they don't have the same patents rules in China as in U.S.A, they don't steal anything. They would however not be allowed to sell those products in other countries as for example U.S.

Aside from that. China is getting a very rich country, and many companies in China has bought many products from other countries, so they do actually own a lot of rights to many products.

Oct. 8, 2012 at 10:55 p.m.



**Gunnar** Europe

And BTW ... about stealing: Don't you think this is how many, just as Mr. Phillips, feels when big companies comes in and destroy what they

---

have put a lot of effort in?

Oct. 9, 2012 at 4:46 a.m.



**Bill H** New York

I appreciated the line in the article about "...all the litigation sending creativity down the drain..." (paraphrase). Given that the only beneficiaries in all this are the fantastically well paid law firms one has to make the analogy of sending creativity down the bathroom drain pipe into the cesspool peopled by said law firms. Law firms that create nothing but more problems and profit for themselves. By the way---how can they be "white shoe" law firms with all that sewage swilling about their feet?

Oct. 8, 2012 at 4:53 p.m. RECOMMENDED 1



**MyOnlinePersona** Middle America

NYT: do your research! If Apple filed for the innumerable patents this article alludes to, then they should all be identifiable and \*numerable\*. Patent applications are published by the USPTO no later than 18 months after filing, whether the applications are still pending or awarded or not.

Oct. 8, 2012 at 4:53 p.m.



**David Kline** Portland, OR

This article makes dramatic claims of a patent system in crisis, but suffers from a surprising lack of fact and context.

The authors state that "The number of patent lawsuits filed ... each year has almost tripled in the last two decades to 3,260 in 2010."

But they fail to note that the number of patents issued in that time has also nearly tripled, leaving the overall patent litigation rate -- i.e., the number of patent suits filed divided by the number of patents issued in a decade -- roughly constant, at 1.5% for the decade of the 2000s.

This is actually pretty modest compared to the patent litigation rate during the golden age of American invention in the mid-19th century, when it hit 3.6% -- more than double what it is today. (See B. Zorina Khan, "Property Rights and Patent Litigation in Early Nineteenth-Century America," *Journal of Economic History*.)

The article also fails to note that today's 100-plus smartphone patent suits are less than one-fifth the number of suits filed during the first "Telephone Wars" of Alexander Graham Bell's time, when he litigated 587 cases alone.

The authors claim: "The patent office routinely approves patents that describe vague algorithms." Really, routinely? No proof is offered, and multiple court cases like *Bilski* or *Mayo* that disprove their claim are simply ignored.

We need a thoughtful discussion on the patent system -- one based on fact and grounded in economic and historical context.

Sadly, this article offered neither.

Oct. 8, 2012 at 4:52 p.m. RECOMMENDED 3



**Silver Fang** Michigan

Software patents should last no longer than five years and should not be granted for obvious features such as pinch-to-zoom and universal search, which every smartphone worth its plastic shell now offers.

Oct. 8, 2012 at 4:44 p.m. RECOMMENDED 2



**Ralph Chernoff** Portland, OR

As reported in today's Times, two scientists, one at Cambridge U. in England, the other at Kyoto U. in Japan, have received the Nobel Prize for developing techniques which are expected to lead to the development of therapies for many hitherto untreatable conditions.

<http://www.nytimes.com/2012/10/09/health/research/cloning-and-stem-cell-...>

These techniques can certainly be described as inventions; they reflect not only ingenuity of the highest order but also persistence, years of hard work in the laboratory proving their ideas really work. So they are inventors, and their inventions will, no doubt, eventually produce huge profits for entrepreneurs who may market those techniques. But they, the inventors, will receive not a dime of those profits. Because, you see, they do not own their inventions, those belong to their employers, the two universities. Your work product, whatever it may be, belongs to your employer, That's the law.

They will, of course, share the Nobel Prize money, \$600,000 each, nothing to sneeze at, but a pittance compared to the billions the aforesaid entrepreneurs may eventually pocket from their work.

This, in my view,, is the fundamental inequity in our patent law; that the real creator, the inventor, the scientist, the engineer, hardware, software, whatever, that harmless drudge who first got that bright idea, almost never gets even a small piece of the action.

Oct. 8, 2012 at 4:08 p.m. RECOMMENDED 1



**Cal E** SoCal

But it's all in the contract when you sign up to work there. My employer gave me a decent salary, a computer, a lab to work in, expensive test equipment and intelligent coworkers to collaborate with. They even gave me 1500 bucks for my patent as a bonus, even though it could make the company a lot more money (or none at all). If I thought that were a bad deal, I could always try to raise money and start my own company, but then the investors would get most of the gains anyway.

Oct. 8, 2012 at 4:52 p.m. RECOMMENDED 2



Naples, FL

Ralph Chernoff is correct that, In general, in the US, an employed inventor does not get a share of the profits. Most technical employees sign contracts turning over their patent rights. He is incorrect because professors usually get half. Outside the US, inventors, by law, generally get half, even if they are employed in private companies.

Oct. 8, 2012 at 7:06 p.m. RECOMMENDED 1



**\_W\_** Minneapolis, MN

In 2003 the members of VITA, the VMEbus trade association, became fed-up with the strong-arm intellectual property tactics that have become rampant in the computer industry. As a countermeasure, it has adopted its so-called 'ex ante' patent procedures.

The VITA patent policy, adopted in 2007, essentially says that if a standard uses a patented technology then this fact must be fully disclosed (along with any terms and conditions for licensing) before it is ratified. Otherwise, any company that participates in the standards process agrees to inject their patent rights (relating to the standard) into the public domain. Once their standards are approved, anyone can license the technology on reasonable and non-discriminatory terms, on an equal basis.

This policy creates a level playing field for small innovative companies who choose to compete in an open marketplace on the basis of price, service, delivery, reliability and other issues. It also provides procedures for industry peer review to eliminate frivolous patents from entering the standard.

This policy also paves the way for inspectable computing technologies. These are open hardware, software and semiconductors whose design can be visually inspected to identify quality control problems like bugs, or the presence of viruses and back-door entry points.

See: VMEbus International Trade Association (VITA)  
Disclosure and Licensing of Patents in Standards

<http://www.vita.com/home/VSO/Disclosure2011.html> (08 OCT 2012)

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Oct. 8, 2012 at 2:56 p.m.



**Bill Wilde** NJ

One more reason to go to a "loser pays" system. Gaming the legal system like this is despicable, lawyers who do it should be disbarred.

Oct. 8, 2012 at 2:55 p.m. RECOMMENDED 1



**DrKick** Honiara, Solomon Islands

The Founding Fathers (FFs) did not intend for all of this. Greed, however, was not so rampant then--it had not been overfed because science and technology did not permit the agglomeration of power and wealth that was possible a century later (and even more possible today). The FFs felt that one generation was enough for a patent or a copyright. Greed was able to stretch copyright to nearly a century. For the past two decades (+/-) it has been working on patents. Greed gets away with this because our legislators are a lazy lot: Push them and they bend. Do not push them and they do nothing. Greed loves pushing. And its pushes are not being rebutted by generosity and good will. Why is that? Perhaps it is because those of use who dislike greed do not organise to push back. This must change, else the wise advice of Edmund Burke in late 18th Century England: "When bad men combine, the good must associate; else they will fall one by one, an unpitied sacrifice in a contemptible struggle."

Oct. 8, 2012 at 2:55 p.m. RECOMMENDED 3



**BenjaminFranklin** Texas

The proposition that patents are impeding sophisticated executives of modern corporations from doing anything that management wants to undertake in pursuit of profits is preposterous - just an overblown, misleading myth enlarged by skilled public relations to influence opinions of a gullible, uninformed public. In reality, inventors possess no leverage over manufacturers infringing their patents. U.S. patents are so weakened by judicial decisions favoring corporations that, absent litigation, Thomas Edison today could not force companies manufacturing his light bulbs to take licenses and pay royalties for using his inventions. The NY Times blames inventors, the victims here. Corporations have pushed judges to remove the burden of performing patent searches and negotiating licenses before selling complex products like smartphones, abolish injunctions for start-ups, and weaken penalties for infringement. Judicial remedies, however, do not adequately compensate innovators for the immense disadvantages incurred when their technologies and first mover advantage are usurped. Because patent infringement harms innovators, economic growth and job creation, national security is promoted by strengthening, not weakening, patent rights to meticulously protect individuals and their tiny start-ups against the unrestrained might of huge corporations making products overseas using technologies created in the U.S.A. by brilliant, hard-working engineers, scientists and individual inventors.

Oct. 8, 2012 at 2:54 p.m. RECOMMENDED 2



**John** Soong

why should you have to perform patent searches or negotiate licences in order to use or sell something you invented by yourself? One should only have to do that if one is using another person's invention, no?

Oct. 8, 2012 at 4:52 p.m.



**Michael-in-Vegas** Las Vegas, NV

"Intellectual property is property, just like a house, and its owners deserve protection," said Jay P. Kesan, a law professor at the University of Illinois. "

One hopes Mr. Jay P. Kesan doesn't teach \*patent\* law. This comment not only shows a complete ignorance of simple patent law, but could only be made by someone unfamiliar with that most basic U.S. legal document: The Constitution.

Oct. 8, 2012 at 2:53 p.m.



**Aardman** Mpls, MN

Software patents are just plain ridiculous. With any new software, the innovation is not the software itself but the machine that allows a set off instruction to be converted into sound, pictures, signals, a stream of information, etc. That machine, the computer was invented years ago and the patents for it have all lapsed. Anything you do with a computer should not be patentable because if you patent software, then you are patenting concepts, which as far as I remember, aren't patentable.

This whole mess was started by the SCOTUS when they decided that software is patentable. A verdict that was reached by a bunch of old men and women who really have no understanding of the high tech world that we all live in today.

As an example of how preposterous software patents are, Amazon has a patent for one-click ordering. This is just the automated/computerized version of an answering machine that says "Just leave your name and order and we will fill it using the shipping and payment information that you have previously furnished to us." Where is the innovation in that?

Oct. 8, 2012 at 2:53 p.m. RECOMMENDED 3



**bruce** ny

ironically there is nothing nuanced about Mr. Ricci. similar to medical malpractice, patent law needs to be reformed to put the onus on the plaintiff.

Oct. 8, 2012 at 2:52 p.m.



**Jay Arr** Los Angeles, CA

Are we also beginning to see the effect of patent wars on actual productivity. For instance, are Apple execs so absorbed in litigation that they are taking their eyes off advancement in its real product lineup.

iPhone5 is, perhaps, an example. The new phone is an advancement over model 4S. But let's face it, not so radical or surprising. It could have been much more.

Apple maps is another example of simple badly managed development. It's not ready for prime time; and only because Apple does not want to play ball with Google.

Real advancements will come when companies are more willing to cross license their patents (like they used to) and not try to control the market to exclusive devices.

Litigation breeds protectionism. Litigation never ever breeds innovation.



**Me** Somewhere

I completely agree. You have it the issue on the head -- "Litigation breeds protectionism".

It's not patents, software or otherwise, that's causing all this hand-wringing and anger. It's what one DOES with the patents that's problematic. As you noted, if companies played fair with each other, cross-licensed IP, and dealt with each other in a civil and non-adversarial manner, this whole mess may not have occurred.

Oct. 8, 2012 at 4:52 p.m.



**All Around** OR

The article is a good start at an expose, highlighting USPTO incompetence and the waste and economic dislocation caused by patents.

The article entirely misses other critical facets of how the U.S. patent system is broken. Most significant is the corruption of the courts, especially the CAFC (the patent appeals court). Sole inventors cannot hope to legally enforce their inventions under the law, because the courts don't follow the law. Instead, they twist the law to suit their bias on a case-by-case basis.

The most telling facet is how much patents cost consumers. For example, the drug industry has managed, with court permission, to extend their patent monopolies, by being allowed to bribe generic makers to keep their versions off the market, so that the patent holder can continue to rake in monopoly rent.

The business dynamism in this country would be much higher without patents. Innovation deserves being rewarded, but the system has been so corrupted that it simply does not function for that purpose.

Oct. 8, 2012 at 2:23 p.m. RECOMMENDED 1



**Praveen** Chennai

To clean up the mess:

1. Trolls should be banned outright.
2. Companies can file a patent suit only if they are actually using the patent on any of their products.
3. One who files offensive patent suit but fails to convince courts should be fined heavily in addition to the legal fees incurred on the counter party.

apart from these, politicians should actively discuss the merits and demerits of the patent system.

Oct. 8, 2012 at 2:22 p.m. RECOMMENDED 1



**thomasmcdonagh** San Francisco

It is oftentimes difficult to create; it is easy for many to imitate.

So creativity deserves its just rewards.

Legal methods to protect the creative should be highly efficient and streamlined.

Innovation and creativity are amongst the most valuable attributes of mankind

To enable innovation to foster and grow, create streamlined systems to help make it happen.

The system that excels in creativity has begun to understand that it has made contact with an almost limitless energy supply(imagination).

Good legal systems protect the imagination; the imagination must be allowed to flow.

However a junkyard of laws can both stifle an economy and the imagination.

Oct. 8, 2012 at 2:15 p.m.

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OP-ED

## Apple vs. Samsung: Is copying theft or innovation?

Apple's big victory over Samsung underscores a central economic issue: What is the right balance between competition and copying?

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An Apple Inc. iPhone 4S is displayed at an electronics shop in Osaka, Japan. (Tomohiro Ohsumi / Bloomberg)



Apple vs. Samsung: Infringing by design



Apple-Samsung patent fight: Fuzzy math

By Kal Raustiala and Christopher Sprigman  
September 4, 2012

Does anyone own the rectangle? Should anyone own the rectangle?

These questions may sound absurd, but they're at the heart of U.S. patent law's Battle of the Titans: Apple vs. Samsung.

On Aug. 24, a San Jose jury awarded Apple Inc. a whopping \$1.05 billion in damages. Apple had accused Samsung of copying its intellectual property, including its very broad design patents for rectangular "electronic devices." And Apple wants to use those patents to stop its competitor from selling items like the new (rectangular) Galaxy tablet and (rectangular) Android-based smartphones.

Now, you may be thinking that a lot of devices in your house

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earlier writers, and "West Side Story" in turn drew heavily from Shakespeare. This kind of copying and tweaking often leads to more choice in the marketplace — many variations on a theme — and more competition, which is good for consumers. Copying can also drive the process of invention, as competitors strive to stay ahead. And copying can serve as a powerful form of advertising for originators, one that carries weight because it is authentic. Copying may even expand a market by creating a trend.

We can see this dynamic best by looking at industries in which copying is legal, where our intellectual property laws do not reach. A great example is cuisine.

Surprisingly, chefs have almost no rights in their creations. Recipes can be legally copied by anyone, including a competitor. It happens all the time. Molten chocolate cake; miso-glazed black cod — these dishes and many more have been widely knocked off.

The world of cuisine nonetheless remains highly creative, and many great chefs believe openness, and the freedom to tweak the work of others, is what makes contemporary cuisine so vital. In their "Statement on the New Cookery," Thomas Keller and Ferran Adria argue for "full acknowledgment" for culinary inventors but also declare their "readiness to share ideas and information."

The same is true for the designs of typographic fonts, the look of the letters used to make printed material. There are more than a quarter million such designs, and they can be freely copied, as was the case with Arial, familiar to all Microsoft users. Arial is a knockoff of Helvetica (perhaps the only font to be the subject of a documentary). All the copying hasn't stopped the creation of new fonts.

There are many other examples, from fashion designs to football plays to financial innovations like index funds, that exhibit this marriage of copying and creativity. These examples do not prove that copying is always a force for good. And it is not. But they do show that the relationship between imitation and innovation is more complicated than conventional wisdom suggests. Copying can be destructive. Yet copying can also be productive.

Just ask Apple. From its beginning Apple was an active copier itself.

In a 1994 interview — when Apple was a tiny minnow in comparison with the leviathan it is today — Steve Jobs invoked Picasso's alleged dictum that "good artists copy, great artists steal." Jobs went on to say that at Apple, "We have always been shameless about stealing great ideas."

Jobs was right. While he has often been invoked as a visionary, he was, as Malcolm Gladwell recently described, "the greatest tweaker of his generation." On a visit in 1979 to the Xerox research center in Palo Alto, he became fascinated with a Xerox prototype computer that used a mouse and screen icons. Jobs (and company) took ideas he'd seen at Xerox, refined them and made them central

are rectangular. Perhaps you're even reading one now. Televisions, laptop screens, Amazon's Kindle. Even the Ur-reading device — paper — is rectangular.

Apple, in designing the iPad and iPhone, created its version of a rectangular reading platform. Yet now Apple has succeeded in punishing Samsung for much the same thing: copying a rectangular design. And this highlights a central issue in today's innovation-based economy. What is the proper balance between competition and copying?

Intellectual property law is based on the notion that copying is bad for creativity. It is usually cheaper to copy something than create something wholly new. If innovators are not protected against imitation, they will not invest in more innovation. At least that's how the story goes.

The real world, however, tells a different story. Imitation is at the center of an enormous amount of innovation. Rules against copying are sometimes necessary. But in many cases, they serve to slow down innovation. Copying, in short, is often central to creativity.

How can copying be beneficial? Because it can enable as well as inhibit innovation. When we think of innovation, we usually picture a lonely genius toiling away until he or she finally has an "aha!" moment. In fact, innovation is often an incremental, collective and competitive process. And the ability to build on existing creative work — to tweak and refine it — is critical to the creation of new and better things.

Once we look, we see examples all around us. Thomas Edison's light bulb imitated elements from a dozen earlier bulbs. Shakespeare's "Romeo and Juliet" borrowed from



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## Videos

features of the Macintosh.

The freedom to copy built Apple, and gave us the great products we enjoy today.

The surprising upside of copying has implications for how we think about our increasingly ideas-based economy. Consider one more example. In the 1980s, Hollywood tried to eliminate a fearsome new copying technology — the VCR — that the industry’s chief lobbyist at the time, Jack Valenti, memorably likened to the Boston Strangler. But the home video market, with all its copying, poured many more dollars into the studios’ coffers than piracy was ever able to steal away.

Major industries can survive in the face of copying, and sometimes even thrive due to copying. Apple’s victory against Samsung does not change that. It just may make the next Apple all the less likely to launch.

*Kal Raustiala and Christopher Sprigman are law professors at, respectively, UCLA and the University of Virginia. They are the authors of "The Knockoff Economy: How Imitation Sparks Innovation."*

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**melo1991** at 7:58 PM September 07, 2012

I think that globalization generates competition because everyone wants to be the best and be the first and people do what is needed to fight hard in the market due to the large number of competitors. This fact generates discontent me and I do not think Apple should be the empire in mobile devices, because there are many other brands that have good quality and are available to everyone. Samsung wanted to offer a good product for consumers, based on the Apple’s system, which I think was valid to do because without a good model, people can do not a great job. Apple took advantage of this situation and lower the level of earnings of Samsung and continue as a market leader. If Apple lower their costs I think that a lot of people could access their products, but they are so expensive that Samsung decided to sell its phones with a similar Apple’s system competition and a much lower cost, so Apple did not suit him. This is a business tactic and I think and even though Apple wanted to defend their interests, they stopped the creation of new sources and the opportunity to buy a product accessible to everyone.

**martinv** at 5:06 PM September 05, 2012

the conflict between Apple and Samsung about the intellectual property is repugnant because the innovation is created by the copying in the way in which inventors always try to improve the other creations. On the other hand, I agree with the authors in the case that the intellectual property must be protected with laws; however, in this situation apple claim that Samsung have to abide the sanction, but I think that the conflict for a shape of a device is ridicule because as the authors argue: “many devices have the rectangular form”.

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Catch up on the latest awards buzz.

GregMaragos at 2:41 AM September 05, 2012

Certainly innovative technology and software deserve protection--but patent protection for "rounded corners"? Really? I think we had those BEFORE the iPhone. This award can and should be overturned by SCOTUS. Very little of what Apple sued over was really "invented" by Apple. It may be time to revisit the idea of patent law reform. This decision is just plain goofy.

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EDITORIAL

# Apple's courtroom win reveals deeper woes in US patents

SEPTEMBER 04, 2012

To people who aren't avid tech buffs, a Samsung Galaxy S II smartphone looks and acts an awful lot like an iPhone — so much so that, when California-based Apple sued the Korean firm Samsung for patent infringement, a Silicon Valley jury was likely to find for the hometown electronics maker on at least some counts. When jurors awarded Apple more than \$1 billion in damages recently, the company was quick to paint the result as a victory for innovators whose hard work is stolen by others.

Yet Apple's victory was far more resounding than the circumstances warranted. The jury upheld patents even for seemingly obvious design features — for instance, the iPhone's rectangular shape and rounded corners. Must other companies make their phones triangular and pointy? At least in consumer electronics, the US patent system may be discouraging the kind of technological innovation that patents exist to protect.

Last year, Congress reformed the system somewhat, passing a law that should lead to the more efficient processing of patent applications. But the reform doesn't weaken patents that never should have been issued. Further action in Congress is needed.

Patents exist so inventors can profit from their own ingenuity, rather than having their ideas stolen by others. But a patent office built for the simpler inventions of bygone centuries has struggled to find the right balance today. New discoveries need protection: In biotechnology, many lucrative drugs depend on patents for a small number of substances, and the long approval process for drugs eats up a chunk of the patent term. Yet even in that industry, there are legitimate questions over whether the US Patent and Trademark Office has been too quick to issue patents for genes and other substances found in nature.

situation can be crippling to smaller startup firms — and bewildering even to the likes of Samsung. It's hard to see how the Silicon Valley jury concluded the firm, which has products that compete with both the iPhone and the iPad, violated a patent on a rectangular phone with rounded corners but not a patent on a rectangular tablet with rounded edges.

Meanwhile, to insulate themselves from overly broad patent-infringement litigation, major tech firms have been spending billions of dollars to buy up fading firms — not because those firms have valuable technologies but because the patents they own can help the acquirer fend off infringement lawsuits. Such expenditures are passed on to consumers, one way or another, and they are an unproductive use of money that could instead be spent on researching new products. But this defensive spending will only increase unless Congress rolls back the power of patents — at least those covering minor features of complex gadgets.

“

*The US patent system may be discouraging the kind of technological innovation that patents exist to protect.*

The Apple-Samsung case isn't finished; the jury verdict is just the prologue to an appeals process that could take some time. Rather than sit back and watch years of legal wrangling in this and a thousand other cases, Congress needs to take another look at the issue.

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# EXHIBIT 1

Video: Apple-Samsung Tabloid Clash  
The Colbert Report 9-18-2012

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