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## **\$120M Win No Knockout Victory For Apple In Smartphone War**

By **Ryan Davis**

Law360, New York (May 05, 2014, 9:24 PM ET) -- The \$120 million a jury awarded [Apple Inc.](#) on Friday in its latest smartphone patent trial against [Samsung Electronics Co. Ltd.](#) was only about 5 percent of what the iPhone maker was seeking, a disappointing outcome for Apple that will provide little leverage in the litigation war with its chief rival, experts say.

Apple's argument that Samsung owed it more than \$2.2 billion for infringing several patents failed to persuade the jury, and while an award of \$120 million would be large in most patent cases, "it is hard to view this outcome as much of a victory for Apple," said Brian Love, a professor at Santa Clara University School of Law.

"Apple launched this litigation campaign years ago with aspirations of slowing the meteoric rise of Android phone manufacturers," he said. "It has so far failed to do so, and this case won't get it any closer."

The jury's **verdict Friday** in a case dealing largely with software patents was considerably smaller than the \$930 million Apple won in an **earlier trial** that was focused more on design patents.

Even the combined damages total of more than \$1 billion is relatively paltry for two such hugely profitable companies, so Apple's best hope at making a dent in Samsung's smartphone

market share would be to win an injunction barring sales of its rival's products.

Apple has so far struck out on that front, with a **judge ruling** after the first trial that the company wasn't entitled to an injunction because it had failed to prove its patented features drove demand for Samsung products.

It remains to be seen if Apple will have more luck after the second trial, but "without a sales ban, this case is unlikely to move the needle on the larger battle between Apple and Android," Love said.

Apple's demand for \$2.2 billion in damages in the most recent trial raised eyebrows for its exceptional size, "so maybe we shouldn't be surprised that they didn't get it," said Jim Klaiber of **Pryor Cashman LLP**.

While \$120 million is a good-sized award, it was only about 5 percent of what Apple was seeking, which would seem like a "complete failure" in most cases where the actual award was not so large, he said.

"It doesn't really feel like they're putting the hurt on Samsung," he said. "This isn't a huge knockout blow."

The jury's damages award reflects that Apple wasn't able to prove that its patented smartphone features were essential to the purchasing decisions of consumers, said Maurice Ross of **Barton LLP**.

"Apple clearly was not awarded anything close to the damages that it sought and for which it believed it was entitled," he said. "This is consistent with a trend in patent cases of all kinds to limit damage awards based on an analysis of the contribution of

the patented device or component to the invention as a whole."

The value of the \$1 billion in damages awards is further diminished by the many years of litigation it will take Apple to collect it. Samsung has **appealed the verdict** in the first trial and is all but certain to do so with the second.

Apple has also incurred substantial expenses in the case, having **told a judge** in December that it spent more than \$60 million on attorneys' fees just for the first trial and a retrial on damages.

Compared to the first one, this trial seemed to be an uphill battle for Apple, Love said, since Samsung's argument that Android maker **Google Inc.** was directly involved in developing the allegedly infringing software appeared to undercut Apple's claim that Samsung blatantly copied the iPhone.

"Overall, this outcome is feels like a defensive victory for Samsung, and not a particularly shocking one," he said.

In addition to the low damages, the jury also found that Apple infringed one of Samsung's patents and ordered it to pay \$158,400, which Love said was "icing on the cake, a moral victory against Apple's insistence that it is a peerless innovator."

Patent attorneys for defendants may want to take note of Samsung's strategy of arguing that the Android software features Samsung's products were alleged to infringe were designed by Google, since that argument appeared to resonate with the jury as a mitigating factor, Klaiber said.

He said he could see other companies accused of infringing software or services developed by another party taking a page

from Samsung's playbook.

"If that seems to be a winner with juries, I think a lot of people might climb aboard with that," he said.

Jury foreman Tom Dunham **told reporters** Monday that Google's involvement "woke us all up" but didn't influence the jury's damages calculations. Still, he suggested that the jury thought Apple should have just sued Google directly.

While the verdict is being described as a setback for Apple, "it's always better to win than lose," said Gregory Winsky of [Archer & Greiner PC](#), and Apple was able to prove that most of its patents were valid and infringed.

"The downside on this for Apple is that the verdict set the bar pretty low for a royalty rate that can be charged going forward" in any future cases over the patents, he said.

But Apple certainly does not walk away from the trial empty-handed, and its tenacity in pursuing Samsung will send a message to other competitors, said Brandon Baum of [Agility IP Law](#).

"Apple has demonstrated to Samsung and everyone else that if you trespass on its patents, you will be in for a huge fight," he said. "The deterrent effect is significant and should not be overlooked."

The \$120 million Apple was awarded "seems about right to me" for the technology involved, Baum added via email.

"I am old enough to remember when a verdict of valid plus infringed plus \$120 million in damages was considered a 'win,'" he said. "Maybe I am old-school, but that is still my opinion

today."

Both Apple and Samsung have showed an almost insatiable appetite for litigating the patent dispute, with suits in several forums and multiple appeals. But the underwhelming verdict may demonstrate to Apple the limits of the strategy, Love said.

"To the extent it wasn't already apparent, this verdict should suggest to Apple that litigation isn't a very effective means to gain a competitive advantage over Android," he said.

"Hopefully, Apple will come to that conclusion, end its worldwide patent war and go back to competing in the marketplace with innovative products."

--Additional reporting by Beth Winegarner. Editing by Kat Laskowski and Philip Shea.