

Apple Takes a Bite out of Samsung

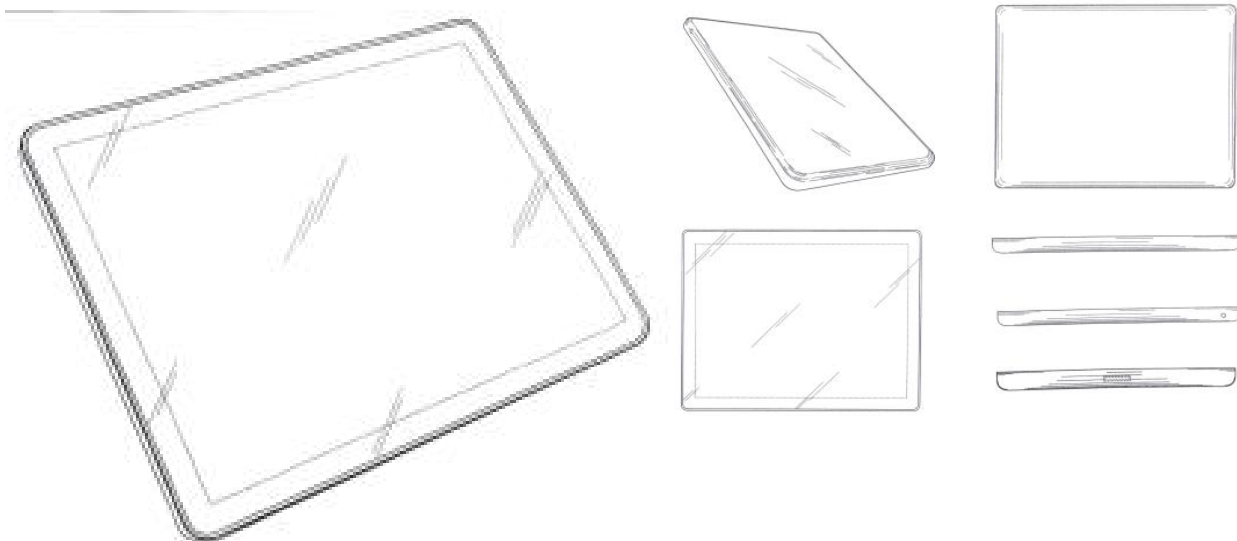
Apple Inc. has been granted a preliminary injunction by the German Courts preventing Samsung selling its Galaxy Tab 10.1 tablet anywhere in the European Union (except The Netherlands, where separate proceedings are currently under way).

The injunction was granted on basis of Apple's Registered Community Design for its iPad tablet. Representations of the design as registered are shown below. This case is a reminder that Registered Community Designs are potentially powerful rights and in the right circumstances can provide their owners with a significant competitive edge.

A Registered Community Design is comparatively inexpensive to acquire (the official filing fees start at €230.) A registration can protect the appearance of the whole or part of a product resulting from, e.g., its lines, contours, colours, shape and texture, and of the materials from which it is made, as well as its ornamentation.

No substantive examination is generally carried out. If formal requirements are met, the design is usually registered. Subject to renewal, Registrations can remain in force for up to 25 years.

Infringement claims are dealt with by the national courts of the EU member countries. As demonstrated by the Apple v Samsung case, such



courts have the power to grant European Union wide injunctions.

It will now be for Samsung to defend the infringement proceedings by demonstrating that the design of their Galaxy 10.1 tablet produces on the informed user a different overall impression to the design shown in Apple's registration. Samsung may also bring a counterclaim to invalidate Apple's registration.

There are numerous potential grounds for invalidity. For example, valid designs must be novel, and have individual character before the filing date of the application, or before the date of priority (where claimed).

A design is considered novel if no identical design has been made available to the public before the filing date (or priority date); immaterial details are not taken into consideration when applying this test.

A design is considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the filing date (or priority date).

Which of Apple or Samsung will eventually prevail remains to be seen, but we will continue to watch this case with interest.

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If you would like to have more detailed advice on any matter arising from this note please contact the person who usually deals with design matters on your behalf.