

Integrating intellectual property and the smartphone patent wars: case study of conflicts of supplier partnering

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Abstract

The key issues dealing with the legal battle with Apple and Samsung, there are several key strategic concepts and issues that characterize each company. The issues addressed in this strategy analysis include the patent war between the two companies and a discussion about the various claims and counterclaims of patent protection/infringement.

Spending on smartphone patent litigation and acquisition of intellectual property rights has reached roughly US\$10 billion per year in recent years. Apple has been involved in numerous lawsuits in regards to intellectual property with companies such as Motorola, HTC, Amazon, Google, and Nokia. However, Apple was unwilling to take legal action against Samsung due to the company's role in supplying chips and components that made up 26% of the manufacturing cost of the iPhone. In August 2010, the late Steve Jobs and Tim Cook contacted Samsung to discuss their concerns about the company's use of the Android operating system, which they believed violated a number of Apple software patents. Specifically, Apple was worried about the Samsung Galaxy S smartphone, a product that was extremely similar to the iPhone in appearance and function. Apple believed that the Android operating system was causing Samsung to unfairly use Apple's intellectual property to weaken and imitate the iPhone. Apple was concerned about Samsung's plan to release a tablet similar to the iPad in 2010. After failing to reach a cross-licensing agreement, Samsung released the tablet and Apple filed a patent infringement suit against Samsung in April, 2011 (Grandoni, 2012).

After a patent infringement settlement with Creative in 2001, Apple vowed to become more protective of their intellectual property. Patents went on to become an important part of Apple's competitive strategy. In its first petition to the U.S. District Court, Apple argued that Samsung had copied Apple's technology in order to diminish the company's image as a product and design innovator. Apple claimed that Samsung had copied the look and feel of the iPhone, in addition to other design features such as the retail packaging and icons. Samsung responded by claiming that the iPhone had borrowed a lot from Samsung's own innovations for transmission optimization and 3G technologies. Samsung also argued that many of the iPhone's design features were obvious and the majority of Apple's patents should not have been granted. In the same lawsuit, Samsung counterclaimed for infringement of its patent based on Apple's unlicensed use of its technology. Apple's claims focused on the user interface, appearance and overall look and feel of its products. Samsung's primarily focused on technical features that improved functionality, but were not always apparent to customers. This mirrors both companies competitive strategy because Apple focuses on sleek and interactive user interfaces while Samsung focuses more on performance (Grandoni, 2012).

There have been a number of claims and counterclaims in three categories: utility patents, design patents and trademarks. Utility patents cover inventions of new, useful devices, processes, and materials. Apple claimed that Samsung infringed on several utility patents, including one that dealt with list scrolling and document translation. Design patents cover the new, original, ornamental design of a product and the cosmetic features. Samsung attempted to prove that its products did not violate Apple's design patents by showing jury members that the appearance of Galaxy phones and tablets were not the same as Apple's designs. A trademark is a word, logo, or other indication of source. Apple asserted that Samsung had copied the iPhone's icons that represented basic functions.

On August 24, 2012, a jury found that Samsung had willfully infringed many of Apple's utility and design patents. It also determined that Apple had not infringed the Samsung patents identified in the counterclaim. The case was reopened in 2016 in order to determine how much Samsung owes Apple. The previous amount was US\$399 million but the U.S. Supreme Court overturned that amount (Chokkattu, 2017).

For Samsung to recover from this case and remain competitive, they must focus on further differentiation from Apple products and continue to release new products in order to compete. Samsung should focus on creating devices that are distinct and have original designs. The company has done this in the past with their Galaxy Note series that featured a much larger and distinct screen than the iPhone. Additionally, the company is currently working to create a smartphone that is flexible and can bend. While a feature such as this may be seen as a gimmick, it provides Samsung with another layer of differentiation from Apple and gives their phones a distinct look and feel. In order to remain competitive, Samsung should focus on countries outside of the U.S. to gain a competitive advantage. Apple and Samsung have gone back and forth over the years in regards to profits in the United States. Both remain the top two companies in the U.S. by a relatively large margin. In countries such as China, Germany, Italy, and Spain, however, Samsung is losing ground to Chinese vendors like Huawei. The company should increase their focus on the global market and market to other countries in order to regain their competitive advantage over Apple.

Apple should continue to be protective of their intellectual property. This will ensure that other companies do not mimic their ideas and creations. However, the company must focus on developing innovative products. Under CEO Tim Cook, Apple has only entered one new product category, which was the Apple Watch (Sydell, 2017). The Apple Watch was released late in the game after the company's competitors had already released their own variants. To remain competitive, Apple will have to look for new ways to innovate their current product lines and develop new ones before the competition. Similar to Samsung, Apple should focus more on the global smartphone market where smaller companies are having success. In particular, the company must focus on improving sales in China. China is the second-biggest market for the iPhone but sales have decreased significantly in the last few years due to the rise of Chinese vendors. Apple seems to be aware of this issue and has recently invested more than US\$500 million in research in China. The company is also building two new research and development centers in the country (Dunn, 2017).

For Samsung to remain competitive and successful, they must look to the future and release new products that are substantially different than Apple's iPhone. Also, they must find new growth opportunities in the global market. Samsung got involved in this debacle because their Galaxy phone series included designs and features that closely mimicked the iPhone. In the future, Samsung must find new ways to differentiate their smartphones from the iPhone. They should also continue to focus on the hardware side of things and develop products with impressive specifications that outperform the iPhone. By differentiating themselves and creating devices that perform well, Samsung can avoid future lawsuits with Apple and focus solely on gaining a long-term competitive advantage. The downside to product differentiation is that some features could be viewed as a gimmick. For example, if the company were to release a phone with a curved screen, consumers may respond negatively because it would not be a feature that added any significant value to the phone. The downside to creating devices with superior performance and hardware is the possibility for defects. This is something the company recently went through with the release of the Galaxy Note 7. The phone had issues with its battery, which resulted in the phone catching on fire. Samsung was forced to recall the device and take it off store shelves in an attempt to fix the problem. This significantly hurt their sales numbers in late 2016 during the holiday season. To avoid such issues in the future, Samsung must focus heavily on quality assurance in order to fix any significant problems and regain consumers' trust. Focusing more on the global market will allow Samsung to regain their competitive advantage from Chinese vendors such as Huawei. The downside of focusing more on the global market is that sales in the U.S. may decrease, which will give Apple the advantage. However, Samsung would not have to worry about any other competitors in the country because Apple and Samsung have such a large presence in the U.S. that other competitor are not really close in terms of profit.

For Apple to remain competitive, they should continue to protect their intellectual property, develop innovative products, and focus more on the global market. This will ensure that their ideas and designs do not get mimicked or copied by the competition. The downside of this is consumer backlash. If consumers see Apple constantly patenting new ideas and hypothetical designs, they may grow unhappy. It could be seen as an attempt to throttle the market and be viewed as an attempt to create a monopoly. Consumers like markets where there are a lot of

products available to them so they can choose the one that best fits their needs. Apple has always been viewed as an innovative and forward thinking company with the creation of the iPhone and iPad. However, as mentioned previously, the company has struggled to enter new product categories. The company could focus on entering new product categories in areas that have not been significantly explored by the competition. The downside to this is that Apple could fall into the trap of innovating for the sake of innovating. Adding new features and creating new products that do not add any value to customers will result in lost sales and wasted money. The company would have to create products that are actually useful and entice customers to purchase them. Finally, as mentioned in the previous paragraph, focusing on the global market could allow Apple to regain the competitive advantage from Chinese vendors. The downside to this is that Apple may fall from the top spot in the smartphone market in the U.S.; thus allowing Samsung to regain the competitive advantage in the country (Rawlinson, (2017; Spence, (2016).

We would recommend that Samsung focus on releasing new devices with excellent hardware and performance. We believe that solely focusing on unique product designs and features will not entice enough customers. Samsung's current focus on creating a flexible phone is pointless to me because it does not really add any value to the product. It seems more like a gimmick that could backfire if not developed effectively. Releasing new devices with excellent hardware and performance is the best route because it actually adds value to the product. As far as design goes, there is only so much that can be done, particularly for smartphones. Consumers are smart enough to know this and are beginning to look more into the specifications and performance of smartphones. Samsung's use of the Android operating system already helps them appeal to an audience that is more interested in the technical aspects of smartphones, so this seems to be the correct route. We believe Samsung should focus more on the global market and combat Chinese vendors. Apple and Samsung dominate in the U.S. so losing the top spot would only be an issue in the short-term. Once they regained their competitive advantage in countries such as China, Samsung could refocus on the U.S.

We would recommend that Apple should continue to protect their intellectual property and focus more on the global market. Solely focusing on developing innovative products is a dangerous strategy because it requires a lot of research and testing. Additionally, the capabilities of technology in today's world allow even the smallest companies to create and develop new ideas, thus making it tough for larger companies to truly innovate. Apple should focus on protecting their intellectual property so other companies do not gain inspiration from their designs and concepts in the future. The iPhone and iPad were truly innovative ideas, but other companies saw an opportunity to create similar products at a cheaper price. Also, as mentioned with Samsung, focusing more on the global market can help the company gain even more of a global presence. Apple should specifically focus on China since it is the iPhone's second largest market. Given this information, Apple should focus on research and development in China in order to understand consumers' needs and offer iPhones that appeal to Chinese customers.

There are several implementation considerations that are common to the above recommendations. With a continued effort towards releasing new products with unparalleled performance and competing in the global market, Samsung must consider implementation factors that include functionality, usability, and increased costs. With a continued effort towards protecting intellectual property and competing in the global market, Apple must consider implementation factors that include consumer backlash, cultural differences, and additional resources.

Samsung should be concerned with the functionality and usability of their new products. Creating devices with superior performance can backfire when the devices are not properly tested before release. When Samsung creates a new smartphone with an improved battery or camera, the company should make sure there are no bugs. This will help them avoid defects that could significantly damage their brand. Also, when adding new features and hardware, Samsung must focus on making sure that their devices are still relatively simple for consumers to use. If new features clutter or complicate the usability of a device, consumers will be turned off and look at other options in the smartphone market. When focusing on the global market, Samsung must consider increased costs. To have increased growth in the global market, additional time and resources will have to be devoted, which will

increase costs.

Apple should be careful of consumer backlash when protecting intellectual property. Consumers may view Apple's constant patenting as an attempt to throttle the competition. They should be careful of patenting too many ideas because it may discourage Android customers from making a switch to Apple in the future. When spending more time on global growth, cultural differences should be considered. For example, China has different cultural practices and customs than the U.S. Apple should devote enough time to understand China's culture and consumer preferences in order to create an effective strategy. Apple should also be aware that additional resources would be needed for global growth. The company will have to hire additional employees to oversee the global centers and conduct the necessary research and development.

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KEY WORDS: *Apple, Patent protection/ infringement, Samsung,*

Relevance to Marketing Practitioners: This case study is relevant to marketers and researchers in dealing with patent infringement issues and supply chain partnering concerns.

TRACK: Business-to-Business marketing and Supply Chain Marketing