

# World Trademark Review *Daily*

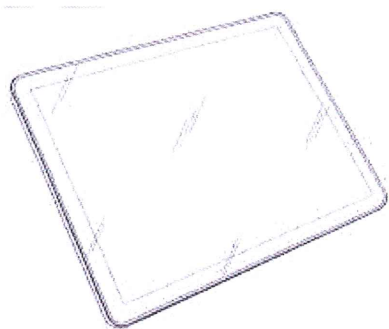
**Court rules that Samsung tablets do not infringe Apple's Community design  
Netherlands**

Design

February 15 2013

One of the many disputes in the worldwide legal battle between [Apple](#) and [Samsung](#) was dealt with by the District Court of The Hague in its decision of January 16 2013. In short, Samsung sought a declaration that three of its tablets did not infringe Apple's Community design No 181607-0001. Apple, as a counterclaim, sought an injunction.

Apple's Community design is depicted below:



The three Samsung tablets are depicted below:



Galaxy Tab 7.7



Galaxy Tab 8.9

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## Galaxy Tab 10.1

On August 24 2011 Apple had lost a (preliminary) lawsuit in the Netherlands in which it had invoked the same design against the Galaxy Tab 10.1. The court ruled that the Galaxy Tab 10.1 did not fall under the scope of protection of the design. On appeal, this decision was upheld by the Court of Appeal of The Hague (January 24 2012). Since this was only a preliminary decision, which concerned only the model Galaxy Tab 10.1, Samsung sought clarification in proceedings on the merits, seeking a pan-European declaration of non-infringement of Apple's design; Apple, in return, sought an injunction.

The District Court of The Hague first summarised the proceedings regarding the same Apple design and the same tablets in other European jurisdictions:

- In Germany, the *Landesgericht Düsseldorf* ruled on October 24 2011 that the Galaxy Tab 7.7 did fall under the scope of protection of the design. This decision was affirmed on July 24 2012 by the *Oberlandesgericht Düsseldorf*, which even granted a pan-European interim injunction against Samsung.
- In the United Kingdom, [on July 9 2012 the High Court ruled](#) that none of the three tablets fell under the scope of protection of the design. The [decision was confirmed on October 18 2012 by the Court of Appeal](#), which granted a EU-wide declaration of non-infringement.

The District Court of The Hague quoted the reasoning of Lord Justice Jacob in the UK Court of Appeal decision, who had criticised the German *Oberlandesgericht* for granting a pan-European interim injunction when the English High Court, acting as a Community court, had already granted a declaration of non-infringement.

In the Dutch proceedings, Apple argued that, since the UK Court of Appeal had already rendered a decision between the same parties, the Dutch district court no longer had jurisdiction to decide upon this matter.

However, the district court ruled that, since the UK case involved different Samsung entities, these entities and those involved in the Dutch litigation (ie, Samsung Ltd, Samsung Benelux BV, Samsung Europe Logistics BV and Samsung Overseas BV) could not be regarded as 'one party' under Article 27 of [Council Regulation 44/2001](#). It made reference to the ruling of the Court of Justice of the European Union in *Drouot v CMI* (Case C-351/96), in which it was held that different parties may have different interests. The district court thus found that it had jurisdiction in the Dutch proceedings.

Although the district court found that the Dutch case was not exactly the same as the UK case since it involved different entities, it did recognise that the subject-matter of the two cases was the same - namely, whether the three Samsung tablets fall under the scope of protection of Apple's design. In answering this question, the court held that, in principle, it had to follow the UK decision. It could deviate from the decision only if different arguments and evidence were presented. However, in the Dutch proceedings, Apple did not present arguments that differed from those denied by the UK Court of Appeal in a well-motivated decision; nor did Apple substantiate why the district court should deviate from the UK decision. Therefore, the outcome in the Netherlands could not be different.

Samsung's claims were thus granted, while Apple's claims were denied. Apple was ordered to pay Samsung's costs in an amount of €127,357.25.

With this decision, the District Court of The Hague has demonstrated that it deals in an efficient way with the (EU-wide) enforcement of Community designs, taking into account the decisions of other Community courts while protecting the interests of all the parties involved.

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