
A Clash between IT Giants and the Changing Face of International Law: The Samsung *vs.* Apple Litigation and Its Jurisdictional Implications

Jaemin Lee*

There has been a sudden surge in simultaneous legal disputes between Samsung and Apple in domestic courts of multiple States since 2011 concerning patent infringements involving their new digital products. The intensity of these confrontations between the two digital giants has come to exert significant influence over the lives of many people all over the world. In a sense, they are not competing to protect or increase the market share in a given domestic market, as other large corporations usually do; rather, they are now competing in a single, integrated global digital market where borders and boundaries have virtually disappeared. The emergence of the dominant digital entities is a showcase example of the increasing role of the MNCs in the international community, an issue that has already attracted a significant amount of attention from scholars of international law. At the same time, the unprecedented clash between the two corporations in multiple jurisdictions also raises an important issue of how conventional jurisdictional principles under international law are and will be implicated in this regard.

Keywords

Prescriptive Jurisdiction, Enforcement Jurisdiction, Municipal Courts, Multinational Corporations, Patent Infringement, IPRs, CSR

* Professor of Law at Hanyang University School of Law. LL.B./LL.M./Ph.D.(Seoul N.U.), J.D.(Boston College), LL.M.(Georgetown). The author may be contacted at: jaemin@hanyang.ac.kr / Address: School of Law, Hanyang University, 17 Haengdang-dong, Sungdong-gu, Seoul 133-791 Korea.

I. Introduction

A new digital revolution is in full gear. Smartphones and tablet PCs have conquered the world in a very short timeframe.¹ Millions of people use smartphones or tablet PCs and subscribe various programs provided by the smartphones in affiliation with relevant service providers.² Smartphones and tablet PCs have enabled people to be wired, literally, all the time.³ These technologies have become an integral part of our daily lives and are significantly changing the way we live.⁴ Social network services have changed the method people communicate with each other, the immense potential of which has become evident in recent political elections. Smartphones and tablet PCs have become ubiquitous throughout the world market. These products are advertised, sold and serviced globally at the same time and with the same conditions.

The rise of smartphones has also brought with it a substantial increase in litigation. Since early 2011, legal battles between Samsung and Apple have been plaguing courts in various countries, with the two corporations showing no signs of slowing down. Together, the intensity and frequency of disputes have been elevated with each new lawsuit. The Samsung-Apple disputes have received a great deal of attention from many countries due to the number of jurisdictions involved and the direct effect the litigation has on consumers. In other words, the attention has been largely involved a general curiosity coupled with a practical purchasing-level problem. On the one hand, people are curious to watch epic battles between two global IT giants, while, on the other hand, the result of the litigation may end up prohibiting or limiting the sales of products produced in their in the respective markets.

At the same time, the spike of international litigation has presented a new momentum to evaluate the changing nature of the international community and the

¹ Julius Genachowski, Remarks at the GSMA Mobile World Congress in Barcelona, Spain (Feb. 27, 2012), available at <http://www.fcc.gov/document/chairman-genachowskis-remarks-gsma-mobile-world-congress> (last visited on Apr. 30, 2012).

² This phenomenon is particularly visible in Korea. The statistics released on October 31, 2011, by the Korea Communications Commission, describe the virtual explosion of smartphone subscriptions in Korea. As of October 31, 2011, the total number of smartphone users in Korea exceeded 20 million. Four out of ten Koreans and eight out of ten economically active populations in Korea are currently using smartphones. More remarkable is the rate of surge of those subscriptions: the 20 million mark has been reached in just 23 months since the smartphone was first introduced in the Korean market in November 2009. See Sung-won Shim, *South Korea Smart Phone Subscribers Exceed 20 Million*, REUTERS (Oct. 31, 2011), available at <http://www.reuters.com/article/2011/10/30/us-korea-smartphone-idUSTRE79T0WV20111030> (last visited on Apr. 30, 2012).

³ Steve Lohr, *Smartphone Rises Fast from Gadget to Necessity*, N.Y. TIMES (June 9, 2009), available at <http://www.nytimes.com/2009/06/10/technology/10phone.html> (last visited on Apr. 30, 2012).

⁴ *Supra* note 1.