

No. 15-777

IN THE
Supreme Court of the United States

SAMSUNG ELECTRONICS CO., LTD.,

Petitioner,

v.

APPLE INC.,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FEDERAL CIRCUIT

**BRIEF *AMICUS CURIAE* OF THE COMPUTER
& COMMUNICATIONS INDUSTRY
ASSOCIATION IN SUPPORT OF PETITIONER**

MATTHEW LEVY
Counsel of Record
COMPUTER & COMMUNICATIONS
INDUSTRY ASSOCIATION
900 17th Street NW, Suite 1100
Washington, D.C. 20006
(202) 783-0070
mlevy@ccianet.org

Counsel for Amicus Curiae

June 8, 2016

266213



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

| | <i>Page</i> |
|---|-------------|
| TABLE OF CONTENTS..... | i |
| TABLE OF CITED AUTHORITIES | ii |
| INTEREST OF <i>AMICUS CURIAE</i> | 1 |
| RELEVANT CONSTITUTIONAL PROVISIONS AND STATUTES..... | 1 |
| INTRODUCTION AND SUMMARY OF ARGUMENT..... | 1 |
| ARGUMENT..... | 4 |
| I. The Federal Circuit’s Interpretation of Section 289 Expands the “Exclusive Right” Described in the Progress Clause to Far More Than the Inventor Invented | 5 |
| II. The Constitutionality Concerns With Respect to Section 289 Can Be Avoided By Not Limiting “Article of Manufacture” to Goods Sold to the Public..... | 9 |
| III. Patent Assertion Entities Will Use The Federal Circuit’s Interpretation of Section 289 to Increase Their Leverage | 13 |
| CONCLUSION | 16 |

TABLE OF CITED AUTHORITIES

| | <i>Page</i> |
|---|---------------|
| CASES | |
| <i>Bonito Boats, Inc. v. Thunder Craft Boats, Inc.</i> , 489 U.S. 141 (1989)..... | 8 |
| <i>Graham v. John Deere Co.</i> , 383 U.S. 1 (1966)..... | 8 |
| <i>Jones v. United States</i> , 529 U.S. 848 (2000) | 9 |
| <i>Pacific Coast Marine Windshields Ltd. v. Malibu Boats, LLC</i> , No. 6:12-cv-00033 (M.D. Fla. Aug. 22, 2014)..... | 3 |
| <i>Tidewater Oil Company v. United States</i> , 171 U.S. 210 (1898) | 10 |
| <i>United States ex rel. Attorney General v. Delaware & Hudson Co.</i> , 213 U.S. 366 (1909)..... | 9 |
| STATUTES | |
| 17 U.S.C. § 1301 | <i>passim</i> |
| 17 U.S.C. § 1309..... | 12 |
| 17 U.S.C. §§ 1310–20 | 11 |
| 17 U.S.C. § 1329 | 12 |

Cited Authorities

| | <i>Page</i> |
|-----------------------|---------------|
| 35 U.S.C. § 289. | <i>passim</i> |

OTHER AUTHORITIES

| | |
|--|-------|
| AIPLA, <i>Report of the Economic Survey 2013</i> (July 2013) | 14 |
| Christopher Manasians, <i>Where are the iPhone, iPad and Mac designed, made and assembled? A comprehensive breakdown of Apple's product supply chain</i> , MacWorld (Apr. 18 2016), http://www.macworld.co.uk/feature/ apple/are-apple-products-truly-designed-in- california-made-in-china-iphonese-3633832/ | 13 |
| H.R. REP. NO. 105-436 (1998) | 8, 11 |
| Letter from Samuel K. Giles, Managing Director, Intellectual Capital Consulting, LLC, to Gregory Lee, Samsung Telecommunications America, LLC (June 2, 2015), https:// trollingeffects.org/demand/intellectual- capital-consulting-ltd-2015-06-02 | 15 |
| RPX, <i>2015 Report: NPE Litigation, Patent Marketplace, and NPE Cost</i> (2016), https://www.rpxcorp.com/wp-content/ uploads/sites/2/2016/05/RPX-2015-Report- NPE-Litigation_Patent-Marketplace_ Cost_High-level_ZFinal.pdf | 14 |

Cited Authorities

| | <i>Page</i> |
|--|-------------|
| Sarah Burstein, <i>The Patented Design</i> , 83 TENN. L. REV. 161 (2015)..... | 10 |

CONSTITUTIONAL PROVISIONS

| | |
|---------------------------------------|------------|
| U.S. CONST., art. I, § 8, cl. 8 | 1, 2, 5, 8 |
|---------------------------------------|------------|

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.