

No. 15-777

IN THE
Supreme Court of the United States

SAMSUNG ELECTRONICS CO., LTD., SAMSUNG
ELECTRONICS AMERICA, INC., SAMSUNG
TELECOMMUNICATIONS AMERICA, LLC
Petitioners,
v.
APPLE INC.,
Respondent.

**On Writ of Certiorari to the United States Court
of Appeals For The Federal Circuit**

**BRIEF OF ACT | THE APP ASSOCIATION AS
AMICUS CURIAE IN SUPPORT OF
RESPONDENT**

BRIAN E. SCARPELLI*
ACT | THE APP ASSOCIATION
1401 K Street NW, Suite 501
Washington, DC 20005
(202) 420-7487
bscarpelli@actonline.org

Counsel for Amicus Curiae

August 5, 2016

* Counsel of Record

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF THE <i>AMICUS CURIAE</i>	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
I. DESIGN PATENTS ARE VITAL TO THE NASCENT APP ECONOMY.....	3
II. THE COURT SHOULD NOT REINTERPRET THE CLEAR INTENT OF CONGRESS IN SECTION 289.....	9
III. A WEAKENING OF THE SAFEGUARDS IN SECTION 289 WOULD CAUSE HARM TO SMALL SOFTWARE DEVELOPERS AND THE APP ECOSYSTEM, AND THE COURT SHOULD REJECT SPECULATIVE HARMS RAISED BY PETITIONER AND PETITIONER'S AMICI.....	12
A. Reducing Section 289's Clear Protections Against Design Patent Infringement Will Impede Small Business Innovators' Ability to Grow and Hire.....	13
B. Claims That Upholding Section 289's Clear Protections Against Design Patent Infringement Will Create Abusive Patent Litigation by "Patent Trolls" and "Patent Holdup" are Baseless.....	14
CONCLUSION	18

TABLE OF AUTHORITIES

CASES

	Page(s)
<i>American Fruit Growers v. Brogdex Co.</i> , 283 U.S. 1 (1931).....	9
<i>Bates v. United States</i> , 522 U.S. 23 (1997).....	11
<i>Bergstrom v. Sears, Roebuck & Co.</i> , 496 F. Supp. 476 (D. Minn. 1980).....	11
<i>Bonito Boats, Inc. v. Thunder Craft Boats Inc.</i> , 489 U.S. 141 (1989).....	17
<i>Catalina Lighting, Inc. v. Lamps Plus, Inc.</i> , 295 F.3d 1277 (Fed. Cir. 2002).....	10
<i>Commil USA, LLC v. Cisco Systems, Inc.</i> , 135 S. Ct. 1920 (2015).....	16
<i>Dobson v. Dornan</i> , 118 U.S. 10 (1886).....	11
<i>Gorham Co. v. White</i> , 81 U.S. (14 Wall.) 511 (1872).....	8
<i>Microsoft Corp. v. i4i Ltd. P'ship</i> , 564 U.S. 91 (2011).....	12
<i>Nike Inc. v. Wal-Mart Stores, Inc.</i> , 138 F.3d 1437 (Fed. Cir. 1998).....	10, 11

STATUTES AND RULES

35 U.S.C.	
§ 289.....	9,10,
Leahy–Smith America Invents Act, PL 112-29, Sept. 16, 2011, 125 Stat 284.....	11

LEGISLATIVE MATERIALS

49 Cong. Ch. 105, Feb. 4, 1887, 24 Stat. 387.....	11
S. Rep. No. 49-206 (1886).....	10

OTHER AUTHORITIES

ACT The App Association, <i>State of the App Economy 2016</i> (Jan. 2016), http://actonline.org/state-of-the-app-economy- 2016/	4
ACT The App Association, <i>Six-Figure Tech Salaries: Creating the Next Developer Workforce</i> , (Jan. 2016), http://www.arcgis.com/apps/MapJournal/index.ht ml?appid=b1c59eaadfd945a68a59724a59dbf7b1 ..	4
American Intellectual Property Law Association, <i>Report Of The Economic Survey</i> (2015) (ebook)..	14
Bessen, James & Michael J. Meurer, <i>The Direct Costs from NPE Disputes</i> , 99 Cornell L. Rev. 387 (2014).....	16

OTHER AUTHORITIES—Continued

	Page(s)
Breitzman, Anthony & Thomas, Patrick, <i>Analysis of Small Business Innovation in Green Technology</i> , SBA Office of Advocacy (Oct 2011) http://www.sba.gov/sites/default/files/rs389tot.pdf	5
Case, Jennifer L., <i>How the America Invents Act Hurts American Inventors and Weakens Incentives to Innovate</i> , 82 UMKC L. Rev. 29 (2013).....	7, 9
Chien, Colleen V., <i>Patent Assertion and Startup Innovation</i> , New America Foundation, Open Technology Institute White Paper (2013), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2321340	7, 14
Dictionary.com, http://www.dictionary.com/browse/article (last visited August 4, 2016).....	9
Graham, Stuart J.H. et. al., <i>High Technology Entrepreneurs and the Patent System: Results of the 2008 Berkeley Patent Survey</i> , 24 Berkeley Tech. L.J. 1255 (2009).....	6, 7
Grid Thoma, <i>Patent Management and Valuation: The Strategic and Geographical Dimension</i> (2016) (ebook).....	6, 7

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.