```
 1            IN THE SUPREME COURT OF THE UNITED STATES

 2     - - - - - - - - - - - - - - - - - x

 3     SAMSUNG ELECTRONICS CO.,            :

 4     LTD., ET AL.,                       :

 5               Petitioners              :   No. 15-777

 6          v.                             :

 7     APPLE, INC.,                        :

 8               Respondent.              :

 9     - - - - - - - - - - - - - - - - - x

10                          Washington, D.C.

11                          Tuesday, October 11, 2016

12

13               The above-entitled matter came on for oral

14     argument before the Supreme Court of the United States

15     at 10:05 a.m.

16     APPEARANCES:

17     KATHLEEN M. SULLIVAN, ESQ., New York, N.Y.; on behalf of

18        the Petitioners.

19     BRIAN H. FLETCHER, ESQ., Assistant to the Solicitor

20        General, Department of Justice, Washington, D.C.;

21        for United States, as amicus curiae, supporting

22        neither party.

23     SETH P. WAXMAN, ESQ., Washington, D.C.; on behalf of the

24        Respondent.

25
```

1   C O N T E N T S

15

16

17

18

19

20

21

22

23

24

25

1   P R O C E E D I N G S

2   (10:05 a.m.)

3   CHIEF JUSTICE ROBERTS: We'll hear argument

4   first this morning in Case No. 15-777, Samsung

5   Electronics v. Apple, Incorporated.

6   Ms. Sullivan.

7   ORAL ARGUMENT OF KATHLEEN M. SULLIVAN

8   ON BEHALF OF THE PETITIONERS

9   MS. SULLIVAN: Mr. Chief Justice, and may it

10   please the Court:

11   A smartphone is smart because it contains

12   hundreds of thousands of the technologies that make it

13   work. But the Federal Circuit held that Section 289 of

14   the Patent Act entitles the holder of a single design

15   patent on a portion of the appearance of the phone to

16   total profit on the entire phone.

17   That result makes no sense. A single design

18   patent on the portion of the appearance of a phone

19   should not entitle the design-patent holder to all the

20   profit on the entire phone.

21   Section 289 does not require that result,

22   and as this case comes to the Court on the briefing,

23   Apple and the government now agree that Section 289 does

24   not require that result. We respectfully ask that the

25   Court hold that when a design patent claims a design

1   that is applied to a component of a phone or a component

2   of a product, or, to use the language of Section 289,

3   when a design patent is applied to an article of

4   manufacture within a multi-article product, we request

5   that you hold that Section 289 entitles the

6   patent-holder to total profit on the article of

7   manufacture to which the design patent is applied, and

8   not the profits on the total product.

9   JUSTICE KENNEDY: The problem is, is how to

10   instruct the jury on that point. Both parties, not the

11   government, both parties kind of leave it up and say,

12   oh, give it to the juror. If I were the juror, I simply

13   wouldn't know what to do under your -- under your test.

14   My preference, if -- if I were just making

15   another sensible rule, is we'd have market studies to

16   see how the -- the extent to which the design affected

17   the consumer, and then the jury would have something to

18   do that. But that's apportionment, which runs headlong

19   into the statute.

20   You can't really have apportionment, so it

21   seems to me you leave us with no -- one choice is to

22   have a de minimis exception, like the cup-holder example

23   that's in the car -- maybe the boat windshield, which is

24   a little more difficult -- and just follow the -- and

25   just follow the words of the statute. But it seems to

1   me neither side gives us an instruction to work with.

2   MS. SULLIVAN: Your Honor --

3   JUSTICE KENNEDY: One -- I mean, it's one

4   thing to leave it to the jury. It's the other thing --

5   if I were the juror, I wouldn't know what to do under

6   your brief.

7   MS. SULLIVAN: Your Honor, we do not propose

8   a test that simply leaves it to the jury without

9   guidance. The instruction we proposed and that was

10   rejected by the district court appears in the blue brief

11   at page 21, and what we would have told the jury is that

12   the article of manufacture to which a design has been

13   applied is the part or portion of the product as sold

14   that incorporates or embodies the subject matter of the

15   patent.

16   So, Justice Kennedy, our test is very

17   simple.

18   JUSTICE KENNEDY: If I'm the juror, I just

19   don't know what to do. I'd have the iPhone in the jury

20   room; I'd -- I'd look at it. I just wouldn't know.

21   MS. SULLIVAN: Your Honor, what we

22   respectfully suggest is that there are two parts to the

23   test for what constitutes an article of manufacture.

24   And to be clear, I'm now stressing our

25   article-of-manufacture argument, not the causation

DOCKET ALARM

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.

fastcase®
Smarter legal research.