

# Intellectual Asset Management

## International reports



Apple v Samsung: considering design and unfair competition  
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On 31st January 2012 the Dusseldorf Appeals Court confirmed the injunctive relief granted by the Dusseldorf District Court on 9th September 2011.

In Summer 2011 Apple filed a request for a preliminary injunction against Samsung's Galaxy Tab 8.9 and Tab 10.1. The district court granted the injunctive relief based on the assessment that the Galaxy Tabs infringed one of Apple's design patents. However, the appeal court has now found that the scope of Apple's design patent does not encompass the Galaxy tabs, as there was prior art for the design patent, limiting its scope.

Nevertheless, the appeal court confirmed Apple's claim on a different basis. The court found that Samsung had unfairly copied the design of the Apple iPad. According to the court, Samsung unfairly exploited the well-established prestige of Apple's products. The injunctive relief was thus confirmed based on the Law against Unfair Competition.

The appeal court clearly rewarded the combination of innovative design plus the ability to market a new category of product first. This demonstrates the ability of the German courts to make use of the available legal instruments. The advantage for Samsung could be that the scope of protection provided by the Law against Unfair Competition is flexible. The iPad revolution will fade away, letting the scope of protection adapt accordingly.

One week later, on 9th February 2012 the Dusseldorf District Court rejected a request from Apple for a preliminary injunction against Samsung's modified Galaxy Tab 10.1N. If Apple appeals the decision (which seems likely), it will be crucial to see whether the appeal court extends the scope of the unfair competition protection to a design that is even more separate from Apple's design patent. Taking the court's considerations regarding unfair competition seriously, Apple might have a good chance.

There is no doubt that the fight will continue.

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