

## HTC prevails against Apple in the UK Patents Court

IP news over the past year has been dominated by a series of on-going disputes between Apple and other major players in the smartphone market; the so-called “smartphone wars”.

### Background

Cases against Samsung have been heard in the US, Germany and the Netherlands. HTC has also faced similar actions in the US. More recently, the UK has been the scene of similar litigation. This case of *Apple, Inc. v HTC* was heard in the UK Patents Court, and concerned four European (UK) patents held by Apple. Three of these patents were found to be invalid by the judge, Floyd J, who also held that HTC did not infringe the fourth patent.

HTC had initially applied for revocation of three of the patents. In response, Apple sued HTC for infringement of all four of the patents. HTC counter-claimed for revocation of the fourth patent. In addition to validity, so-called “excluded subject matter” and the statutory provisions against patenting such subject matter were also considered.

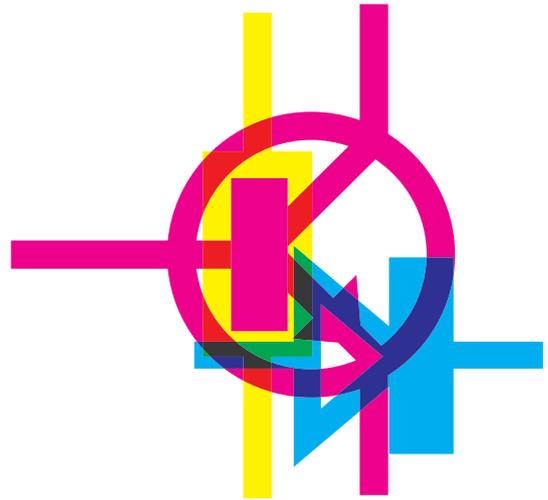
The first patent concerned a particular implementation of “multi-touch” gesture-based interfaces now commonly used on smartphones. The inventive concept behind this “multi-touch” patent was held to be in determining whether a particular view on a screen could be configured as a multi-touch view or a single touch view. This was held by the judge to be obvious on the ground that a skilled person tasked with designing an operating system for a multi-touch device would arrive at the invention. The patent

was also struck out for excluded subject matter. As determined by Floyd J, the patent’s downfall lay in the fact that it was the only patent of the four with a claim not tethered to a real-world effect, such as responding to a gesture, or sending an SMS. As a side note, HTC was also found not to infringe this first patent, a similar conclusion having been reached in a similar case by Apple against Samsung in the Netherlands; this similar conclusion being noted by Floyd J as “pleasing”.

The second patent concerned the “slide to unlock” feature familiar to many users of Apple iOS products. Points of claim construction were seen to be consistent with a Samsung case which had been heard in Germany. Three particular implementations of the slide to unlock functionally in HTC devices were alleged to infringe. However, only one of HTC’s implementations was found to infringe. In considering validity, Floyd J heard evidence from an expert witness in the field of Human Computer Interaction (HCI). In the end, the patent was found anticipated by an earlier publication, and obvious starting from both an HCI conference video and paper, and an earlier available handset with slide to unlock functionality. Interestingly, the invention defined by the patent was deemed not to be excluded from patentability since it was said to offer a real world effect in the form of an “improved switch”.

The third patent concerned the “bounce-back” effect now seen in more recent versions of Apple’s iOS when swiping an image to translate to a neighbouring image. This concept was found inventive over an earlier published PCT application which concerned navigating webpages on a small screen. In contrast to the PCT publication, this third patent concerned a zoomed-in image which was deemed to represent a complex evolution over the web-page based system disclosed in the PCT application, and as such was considered to be inventive. It was on this same point of construction that HTC was held not to infringe claim 1. In HTC’s implementation, when a zoomed-in image was swiped, the image stopped dead when the edge of the image was reached. There was no bounce-back effect. Again, this second patent was deemed not to be excluded from patentability since its invention was considered to help with manipulation of a zoomed image involving gestures having different effects.

The final patent concerned a method of changing the language assigned to keys to offer multi-lingual SMS services. This particular patent had a priority date of 1994, but was found obvious in view of a standards document in relation to an Arabic SMS service. The patent also had independent claims directed to automatic language selection based on the user’s home SIM card. This too was found to



be invalid. What was interesting about this finding was that it was based on the combination of the standards document in relation to an Arabic SMS service and an earlier handset which picked the phonebook entry language based on the SIM present, even though this latter phone was not considered part of the common general knowledge. The SMS messaging capability of this patent took it outside the computer sufficiently to avoid the statutory exclusions from patentability.

## Summary

In summary, this case was notable for being one of the first UK cases in the transnational “smartphone wars” to receive judgment. Perhaps unsurprisingly, the judgment reaffirms the high standard of patentability required for patents in the UK. For inventions involving only minor developments in smartphone user interfaces, then it could be said that the UK courts will not look favourably on patents for such inventions. Moreover, the different approaches by which an invention might be deemed to be excluded from patentability by the European Patent Office and UK courts are apparent, and in particular the judgment reaffirms that the “tethering” of a computer implemented method to a real world effect is necessary to escape the exclusions from patentability.

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