



Written by [Joe Wolverton, II, J.D.](#) on November 7, 2011

## EU Antitrust Agency Probing Apple and Samsung

The European Commission has requested information on patents from smartphone powerhouses Apple (makers of the immensely popular iPhone) and Samsung. While Apple is not itself a target of the EC's patent protectors, it has been asked to voluntarily submit critical information regarding its use of 3G technology. Samsung, on the other hand, is being investigated.



“The Commission has sent requests for information to Apple and Samsung concerning the enforcement of standards-essential patents in the mobile telephony sector,” read the statement released by the EC, the agency of the European Union tasked with monitoring potential violations of Europe's antitrust laws. “Such requests for information are standard procedure in antitrust investigations to allow the Commission to establish the relevant facts in a case.”

According to a [report](#) published in the *Wall Street Journal*:

Standards-essential patents are patents which cover an area that is crucial to compliance with an industry standard, such as 3G or WiFi. Unlike regular patents, they must be licensed on a fair, reasonable, and non-discriminatory basis a standard known as Frand. This means infringement can't lead to injunctions on use, or extraordinarily high royalty payments.

Specifically, officials with the EC are trying to determine if there is any actionable merit to Apple's claim that Samsung is demanding exorbitant licensing fees and burdensome terms of use of its (Samsung's) patents. Either accusation would be violative of the FRAND standard, a standard requiring that the playing field for such technology be level.

Despite the headlines indicating Apple itself is being placed under the EC microscope, Florian Mueller at FOSS Patents is [quoted](#) as saying that there is nothing in either the EC statement, Samsung's reaction, or Apple's complaint filed in court, to “provide any reasonable statement that Apple's own behavior is being probed.”

Mueller further explained the specific violation of the FRAND standard supposedly committed by Samsung:

In my view, FRAND patent holders can ask for reasonable compensation, but they are not allowed to overcharge or to shut down products as long as an alleged infringer is willing to take a license on FRAND terms (if there actually is an infringement of valid patents). That view was also shared



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by a judge in The Hague, Netherlands, who dismissed a Samsung request for a preliminary injunction and held that Samsung had failed to honor its FRAND licensing commitment.

A [blog](#) published by Computerworld further elucidates the particulars of the situation:

Think back to development of the UMTS/3G standard and you can see that Apple was not involved in wireless devices or development of mobile payments. Only Samsung owns patents which relate to these technologies, and it is that company's alleged way of handling Apple's licensing of these patents which is in question.

Regardless of the ultimate outcome of the legal wrangling between Apple and Samsung that seems to never end, the EC has its own agenda. The Commission will seek to enforce Articles 101-109 of the [Treaty on the Functioning of the EU](#) (TFEU). Article 102 of the TFEU explicitly forbids companies from "directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions, as well as from "limiting production, markets or technical development to the prejudice of consumers."

The patent law of the European Union includes a compulsory licensing scheme as set forth in the [Agreement on Trade-Related Aspects of Intellectual Property Rights](#) (TRIPs). TRIPs allows business concerns to freely negotiate licenses, but Article 31 authorizes the government of Europe to arrange a compulsory license if the parties are unable to reach an acceptable agreement within a statutory length of time (defined in the law as "reasonable").

This history of the suits and countersuits filed by the two tech giants is given by the *Wall Street Journal*:

This is just the latest aspect of a global battle between Samsung and Apple over patents for smartphones and tablet computers. In the Netherlands last month, Samsung lost a case saying that Apple should pay Samsung royalties for 3G transmission technology used in its iPhones and iPads. And back in April, Apple sued Samsung in California, claiming Samsung's smartphones and Galaxy tablet computers had "slavishly" copied Apple's devices.

Both sides are asking the courts to settle the dispute. In June Apple filed [suit](#) in the Seoul (Korea) Central District Court against the "Galaxy" line of smartphones manufactured by Samsung running on the Android operating system (the chief competitor to the operating system that runs on the iPhone). Earlier in the year, Apple filed a similar suit against Samsung in the United States. Samsung responded by filing multiple patent infringement complaints against Apple in three different countries. The suits allege that Apple infringed on Samsung's intellectual property regarding technology it developed related to energy consumption and preventing data transmission errors.

While this war would seem to be waged by virulent belligerents, the truth is a little less black and white. Although they are competitors in many ways, Samsung and Apple have a mutually beneficial relationship and in fact depend upon each other's success to aid their own. For instance, Apple is the world's largest purchaser of the tiny chips that are the brains of its popular computers and phone, and "rival" Samsung is the world's largest manufacturer of those same chips.

In fact, Apple publicly recognized its reliance on Samsung even after filing a suit against it. In an [article](#) in the *Bangkok Post*, Apple spokesmen declared Apple's willingness to continue its largely successful partnership with Samsung.

For now, Samsung promises to cooperate with the EC authorities' investigation into its negotiations of fees with Apple.

"Samsung has at all times remained committed to fair, reasonable and non-discriminatory licensing



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terms for our wireless standards-related patents,” Samsung spokesman Jason Kim said. “We have received a request for information from the European Commission and are cooperating fully.”

Given the symbiotic relationship that exists (and must continue to exist) between Apple and Samsung, the more fundamental concern for both vis à vis the investigation on the part of the European Commission is whether Samsung’s negotiation tactics will be construed as evidence of a monopoly. As the *Wall Street Journal* explains:

“The fundamental question of patent is whether it really represents a monopoly; it’s a question which has been struggled with since medieval times,” said Alexander I. Poltorak, chief executive of General Patent Corp., an intellectual-property firm. “And the one exception to that rule is standard-essential patent, where patent law becomes intertwined with antitrust law.”

However far the EC pursues this investigation, the very mention of such should send shivers down the spines of the heads of Apple and Samsung. Surely they know that for years Europe has been hostile territory for companies gobbling up other companies, specifically those considered competitors. Just Google it.



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