

APPLE INC. v. SAMSUNG ELECTRONICS CO., LTD

786 F.3d 983 (CAFC 2015)

PROST, *Chief Judge*.

Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC (collectively, "Samsung") appeal from a final judgment of the U.S. District Court for the Northern District of California in favor of Apple Inc. ("Apple").

A jury found that Samsung infringed Apple's design and utility patents and diluted Apple's trade dresses. For the reasons that follow, we affirm the jury's verdict on the design patent infringements, the validity of two utility patent claims, and the damages awarded for the design and utility patent infringements appealed by Samsung. However, we reverse the jury's findings that the asserted trade dresses are protectable. We therefore vacate the jury's damages awards against the Samsung products that were found liable for trade dress dilution and remand for further proceedings consistent with this opinion.

BACKGROUND

Apple sued Samsung in April 2011. On August 24, 2012, the first jury reached a verdict that numerous Samsung smartphones infringed and diluted Apple's patents and trade dresses in various combinations and awarded over \$1 billion in damages.

... The diluted trade dresses are Trademark Registration No. 3,470,983 ("983 trade dress") [See Appendix] and an unregistered trade dress [*990] defined in terms of certain elements in the configuration of the iPhone.

Following the first jury trial, the district court upheld the jury's infringement, dilution, and validity findings over Samsung's post-trial motion. The district court also upheld \$639,403,248 in damages, but ordered a partial retrial on the remainder of the damages because they had been awarded for a period when Samsung lacked notice of some of the asserted patents. The jury in the partial retrial on damages awarded Apple \$290,456,793, which the district court upheld over Samsung's second post-trial motion. On March 6, 2014, the district court entered a final judgment in favor of Apple, and Samsung filed a notice of appeal. We have jurisdiction under 28 U.S.C. § 1295(a)(1).

DISCUSSION

We review the denial of Samsung's post-trial motions under the Ninth Circuit's procedural standards. *See Revolution Eyewear, Inc. v. Aspex Eyewear, Inc.*, 563 F.3d 1358, 1370-71 (Fed. Cir. 2009). The Ninth Circuit reviews de novo a denial of a motion for judgment as a matter of law. *Id.* "The test is whether the evidence, construed in the light most favorable to the nonmoving party, permits only one reasonable conclusion, and that conclusion is contrary to that of the jury." *Id.* (citing *Theme Promotions, Inc. v. News Am. Mktg. FSI*, 546 F.3d 991, 999 (9th Cir. 2008)).

The Ninth Circuit reviews a denial of a motion for a new trial for an abuse of discretion. *Revolution Eyewear*, 563 F.3d at 1372. "In evaluating jury instructions, prejudicial error results when, looking to the instructions as a whole, the substance of the applicable law was [not] fairly and correctly covered." *Gantt v. City of Los Angeles*, 717 F.3d 702, 707 (9th Cir. 2013) (quoting *Swinton v. Potomac Corp.*, 270 F.3d 794, 802 (9th Cir. 2001)) (alteration in original). The Ninth Circuit orders a new trial based on jury instruction error only if the error was prejudicial. *Id.* A motion for a new trial based on insufficiency of evidence may be granted "only if the verdict is against the great weight of the evidence, or it is quite

clear that the jury has reached a seriously erroneous result." *Incalza v. Fendi N. Am., Inc.*, 479 F.3d 1005, 1013 (9th Cir. 2007) (internal quotation marks omitted).

Samsung appeals numerous legal and evidentiary bases for the liability findings and damages awards in the three categories of intellectual property asserted by Apple: trade dresses, design patents, and utility patents. We address each category in turn.

I. Trade Dresses

The jury found Samsung liable for the likely dilution of Apple's iPhone trade dresses under the Lanham Act. When reviewing Lanham Act claims, we look to the law of the regional circuit where the district court sits. *ERBE Elektromedizin GmbH v. Canady Tech. LLC*, 629 F.3d 1278, 1287 (Fed. Cir. 2010). We therefore apply Ninth Circuit law.

The Ninth Circuit has explained that "[t]rade dress is the totality of elements in which a product or service is packaged or presented." *Stephen W. Boney, Inc. v. Boney Servs., Inc.*, 127 F.3d 821, 828 (9th Cir. 1997). The essential purpose of a trade dress is the same as that of a trademarked word: to identify the source of the product. 1 McCarthy on Trademarks and Unfair Competition § 8:1 (4th ed.) ("[L]ike a word asserted to be a trademark, the elements making up the alleged trade dress must have been *used* in such a manner as to denote product source."). In this respect, "protection for [*991] trade dress exists to promote competition." *TraFFix Devices, Inc. v. Mktg. Displays, Inc.*, 532 U.S. 23, 28, 121 S. Ct. 1255, 149 L. Ed. 2d 164 (2001).

The protection for source identification, however, must be balanced against "*a fundamental right to compete through imitation of a competitor's product . . .*" *Leatherman Tool Grp., Inc. v. Cooper Indus., Inc.*, 199 F.3d 1009, 1011-12 (9th Cir. 1999). This "right can only be *temporarily* denied by the patent or copyright laws." *Id.* In contrast, trademark law allows for a perpetual monopoly and its use in the protection of "physical details and design of a product" must be limited to those that are "nonfunctional." *Id.* at 1011-12; see also *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 164-65, 115 S. Ct. 1300, 131 L. Ed. 2d 248 (1995) ("If a product's functional features could be used as trademarks, however, a monopoly over such features could be obtained without regard to whether they qualify as patents and could be extended forever (because trademarks may be renewed in perpetuity)."). Thus, it is necessary for us to determine first whether Apple's asserted trade dresses, claiming elements from its iPhone product, are nonfunctional and therefore protectable.

"In general terms, a product feature is functional if it is essential to the use or purpose of the article or if it affects the cost or quality of the article." *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 850 n.10, 102 S. Ct. 2182, 72 L. Ed. 2d 606 (1982). "A product feature need only have *some* utilitarian advantage to be considered functional." *Disc Golf Ass'n v. Champion Discs, Inc.*, 158 F.3d 1002, 1007 (9th Cir. 1998). A trade dress, taken as a whole, is functional if it is "in its particular shape *because it works better in this shape.*" *Leatherman*, 199 F.3d at 1013.

"[C]ourts have noted that it is, and should be, more difficult to claim product configuration trade dress than other forms of trade dress." *Id.* at 1012-13 (discussing cases). Accordingly, the Supreme Court and the Ninth Circuit have repeatedly found product configuration trade dresses functional and therefore non-protectable. See, e.g., *TraFFix*, 532 U.S. at 26-27, 35 (reversing the Sixth Circuit's reversal of the district court's grant of summary judgment that a trade dress on a dual-spring design for temporary road sign stands was functional); *Secalt S.A. v. Wuxi Shenxi Const. Mach. Co.*, 668 F.3d 677, 687 (9th Cir. 2012) (affirming summary judgment that a trade dress on a hoist design was functional); *Disc Golf*,

158 F.3d at 1006 (affirming summary judgment that a trade dress on a disc entrapment design was functional).

Moreover, federal trademark registrations have been found insufficient to save product configuration trade dresses from conclusions of functionality. *See, e.g., Talking Rain Beverage Co. v. S. Beach Beverage*, 349 F.3d 601, 602 (9th Cir. 2003) (affirming summary judgment that registered trade dress covering a bottle design with a grip handle was functional); *Tie Tech, Inc. v. Kinedyne Corp.*, 296 F.3d 778, 782-83 (9th Cir. 2002) (affirming summary judgment that registered trade dress covering a handheld cutter design was functional). The Ninth Circuit has even reversed a jury verdict of non-functionality of a product configuration trade dress. *See Leatherman*, 199 F.3d at 1013 (reversing jury verdict that a trade dress on the overall appearance of a pocket tool was non-functional). Apple conceded during oral argument that it had not cited a single Ninth Circuit case that found a product configuration trade dress to be non-functional. Oral Arg. 49:06-30, available at <http://www.cafc.uscourts.gov/oral-argument-recordings/14-1335/all>.

[*992] The Ninth Circuit's high bar for non-functionality frames our review of the two iPhone trade dresses on appeal. While the parties argue without distinguishing the two trade dresses, the unregistered trade dress and the registered '983 trade dress claim different details and are afforded different evidentiary presumptions under the Lanham Act. We analyze the two trade dresses separately below.

A. Unregistered Trade Dress

Apple claims elements from its iPhone 3G and 3GS products to define the asserted unregistered trade dress:

- a rectangular product with four evenly rounded corners;
- a flat, clear surface covering the front of the product;
- a display screen under the clear surface;
- substantial black borders above and below the display screen and narrower black borders on either side of the screen; and
- when the device is on, a row of small dots on the display screen, a matrix of colorful square icons with evenly rounded corners within the display screen, and an unchanging bottom dock of colorful square icons with evenly rounded corners set off from the display's other icons.

Appellee's Br. 10-11. As this trade dress is not registered on the principal federal trademark register, Apple "has the burden of proving that the claimed trade dress, taken as a whole, is not functional . . ." *See 15 U.S.C. § 1125(c)(4)(A)*.

Apple argues that the unregistered trade dress is nonfunctional under each of the *Disc Golf* factors that the Ninth Circuit uses to analyze functionality: "(1) whether the design yields a utilitarian advantage, (2) whether alternative designs are available, (3) whether advertising touts the utilitarian advantages of the design, and (4) whether the particular design results from a comparatively simple or inexpensive method of manufacture." *See Disc Golf*, 158 F.3d at 1006. However, the Supreme Court has more recently held that "a feature is also functional . . . when it affects the cost [**12] or quality of the device." *See TrafFix*, 532 U.S. at 33. The Supreme Court's holding was recognized by the Ninth Circuit as "short circuiting some of the *Disc Golf* factors." *Secalt*, 668 F.3d at 686-87. Nevertheless, we explore

Apple's contentions on each of the *Disc Golf* factors and conclude that there was insufficient evidence to support a jury finding in favor of nonfunctionality on any factor.

1. Utilitarian Advantage

Apple argues that "the iPhone's physical design did not 'contribute unusually . . . to the usability' of the device." Appellee's Br. 61 (quoting J.A. 41095:11-12) (alteration in original). Apple further contends that the unregistered trade dress was "developed . . . not for 'superior performance.'" *Id.* at 62 n.18. Neither "unusual usability" nor "superior performance," however, is the standard used by the Ninth Circuit to determine whether there is any utilitarian advantage. The Ninth Circuit "has never held, as [plaintiff] suggests, that the product feature must provide *superior* utilitarian advantages. To the contrary, [the Ninth Circuit] has suggested that in order to establish nonfunctionality the party with the burden must demonstrate that the product feature serves *no purpose* other than identification." *Disc Golf*, 158 F.3d at 1007 (internal quotation marks omitted).

The requirement that the unregistered trade dress "serves *no purpose* other than identification" cannot be reasonably inferred from the evidence. Apple emphasizes [*993] a single aspect of its design, beauty, to imply the lack of other advantages. But the evidence showed that the iPhone's design pursued more than just beauty. Specifically, Apple's executive testified that the theme for the design of the iPhone was:

to create a new breakthrough design for a phone that was beautiful and simple and *easy to use* and created a beautiful, smooth surface that had a touchscreen and went right to the rim with the bezel around it and looking for a look that we found was beautiful and *easy to use* and appealing.

J.A. 40722-23 (emphases added).

Moreover, Samsung cites extensive evidence in the record that showed the usability function of every single element in the unregistered trade dress. For example, rounded corners improve "pocketability" and "durability" and rectangular shape maximizes the display that can be accommodated. J.A. 40869-70; J.A. 42612-13. A flat clear surface on the front of the phone facilitates touch operation by fingers over a large display. J.A. 42616-17. The bezel protects the glass from impact when the phone is dropped. J.A. 40495. The borders around the display are sized to accommodate other components while minimizing the overall product dimensions. J.A. 40872. The row of dots in the user interface indicates multiple pages of application screens that are available. J.A. 41452-53. The icons allow users to differentiate the applications available to the users and the bottom dock of unchanging icons allows for quick access to the most commonly used applications. J.A. 42560-61; J.A. 40869-70. Apple rebuts none of this evidence.

Apple conceded during oral argument that its trade dress "improved the quality [of the iPhone] in some respects." Oral Arg. 56:09-17. It is thus clear that the unregistered trade dress has a utilitarian advantage. See *Disc Golf*, 158 F.3d at 1007.

2. Alternative Designs

The next factor requires that purported alternative designs "offer *exactly* the same features" as the asserted trade dress in order to show non-functionality. *Tie Tech*, 296 F.3d at 786 (quoting *Leatherman*, 199 F.3d at 1013-14). A manufacturer "does not have rights under trade dress law to compel its competitors to resort to alternative designs which have a different set of advantages and disadvantages." *Id.*

Apple, while asserting that there were "numerous alternative designs," fails to show that any of these alternatives offered exactly the same features as the asserted trade dress. Appellee's Br. 62. Apple simply catalogs the mere existence of other design possibilities embodied in rejected iPhone prototypes and other manufacturers' smartphones. The "mere existence" of other designs, however, does not prove that the unregistered trade dress is non-functional. *See Talking Rain*, 349 F.3d at 604.

3. Advertising of Utilitarian Advantages

"If a seller advertises the utilitarian advantages of a particular feature, this constitutes strong evidence of functionality." *Disc Golf*, 158 F.3d at 1009. An "inference" of a product feature's utility in the plaintiff's advertisement is enough to weigh in favor of functionality of a trade dress encompassing that feature. *Id.*

Apple argues that its advertising was "[f]ar from touting any utilitarian advantage of the iPhone design . . ." Appellee's Br. 60. Apple relies on its executive's testimony that an iPhone advertisement, portraying "the distinctive design very [*994] clearly," was based on Apple's "product as hero" approach. *Id.* (quoting J.A. 40641-42; 40644:22). The "product as hero" approach refers to Apple's stylistic choice of making "the product the biggest, clearest, most obvious thing in [its] advertisements, often at the expense of anything else around it, to remove all the other elements of communication so [the viewer] see[s] the product most predominantly in the marketing." J.A. 40641-42.

Apple's arguments focusing on its stylistic choice, however, fail to address the substance of its advertisements. The substance of the iPhone advertisement relied upon by Apple gave viewers "the ability to see a bit about how it might work," for example, "how flicking and scrolling and tapping and all these multitouch ideas simply [sic]." J.A. 40644:23-40645:2. Another advertisement cited by Apple similarly displayed the message, "[t]ouching is believing," under a picture showing a user's hand interacting with the graphical user interface of an iPhone. J.A. 24896. Apple fails to show that, on the substance, these demonstrations of the user interface on iPhone's touch screen involved the elements claimed in Apple's unregistered trade dress and why they were not touting the utilitarian advantage of the unregistered trade dress.

4. Method of Manufacture

The fourth factor considers whether a functional benefit in the asserted trade dress arises from "economies in manufacture or use," such as being "relatively simple or inexpensive to manufacture." *Disc Golf*, 158 F.3d at 1009.

Apple contends that "[t]he iPhone design did not result from a 'comparatively simple or inexpensive method of manufacture'" because Apple experienced manufacturing challenges. Appellee's Br. 61 (quoting *Talking Rain*, 349 F.3d at 603). Apple's manufacturing challenges, however, resulted from the durability considerations for the iPhone and not from the design of the unregistered trade dress. According to Apple's witnesses, difficulties resulted from its choices of materials in using "hardened steel"; "very high, high grade of steel"; and, "glass that was not breakable enough, scratch resistant enough." *Id.* (quoting J.A. 40495-96, 41097). These materials were chosen, for example, for the iPhone to survive a drop:

If you drop this, you don't have to worry about the ground hitting the glass. You have to worry about the band of steel surrounding the glass hitting the glass. . . . In order to, to make it work, we had to use very high, high grade of steel because we couldn't have it sort of deflecting into the glass.

J.A. 40495-96. The durability advantages that resulted from the manufacturing challenges, however, are outside the scope of what Apple defines as its unregistered trade dress. For the design elements that comprise Apple's unregistered trade dress, Apple points to no evidence in the record to show they were not relatively simple or inexpensive to manufacture. *See Disc Golf*, 158 F.3d at 1009 ("[Plaintiff], which has the burden of proof, offered no evidence that the [asserted] design was not relatively simple or inexpensive to manufacture.").

In sum, Apple has failed to show that there was substantial evidence in the record to support a jury finding in favor of non-functionality for the unregistered trade dress on any of the *Disc Golf* factors. Apple fails to rebut the evidence that the elements in the unregistered trade dress serve the functional purpose of improving usability. Rather, Apple focuses on the "beauty" of its design, even though Apple pursued both "beauty" and functionality in the design of the iPhone. We therefore [*995] reverse the district court's denial of Samsung's motion for judgment as a matter of law that the unregistered trade dress is functional and therefore not protectable.

B. The Registered '983 Trade Dress

In contrast to the unregistered trade dress, the '983 trade dress is a federally registered trademark. The federal trademark registration provides "prima facie evidence" of non-functionality. *Tie Tech*, 296 F.3d at 782-83. This presumption "shift[s] the burden of production to the defendant . . . to provide evidence of functionality." *Id.* at 783. Once this presumption is overcome, the registration loses its legal significance on the issue of functionality. *Id.* ("In the face of sufficient and undisputed facts demonstrating functionality, . . . the registration loses its evidentiary significance.").

The '983 trade dress claims the design details in each of the sixteen icons on the iPhone's home screen framed by the iPhone's rounded-rectangular shape with silver edges and a black background:

The first icon depicts the letters "SMS" in green inside a white speech bubble on a green background;

...

the seventh icon depicts a map with yellow and orange roads, a pin with a red head, and a red-and-blue road sign with the numeral "280" in white;

...

the sixteenth icon depicts the distinctive configuration of applicant's media player device in white over an orange background.

'983 trade dress (omitting thirteen other icon design details for brevity).

It is clear that individual elements claimed by the '983 trade dress are functional. For example, there is no dispute that the claimed details such as "the seventh icon depicts a map with yellow and orange roads, a pin with a red head, and a red-and-blue road sign with the numeral '280' in white" are functional. *See id.* Apple's user interface expert testified on how icon designs promote usability. This expert agreed that "the whole point of an icon on a smartphone is to communicate to the consumer using that product, that if they hit that icon, certain functionality will occur on the phone." J.A. 41458-59. The expert further explained that icons are "[v]isual shorthand for something" and that "rectangular con-

tainers" for icons provide "more real estate" to accommodate the icon design. J.A. 41459, 41476. Apple rebuts none of this evidence.

Apple contends instead that Samsung improperly disaggregates the '983 trade dress into individual elements to argue functionality. But Apple fails to explain how the total combination of the sixteen icon designs in the context of iPhone's screen-dominated rounded-rectangular shape--all part of the iPhone's "easy to use" design theme--somehow negates the undisputed usability function of the individual elements. *See* J.A. 40722-23. Apple's own brief even relies on its expert's testimony about the "instant recognizability due to highly intuitive icon usage" on "the home screen of the iPhone." J.A. 41484; Appellee's Br. 43, 70, 71 (quoting J.A. 41484). Apple's expert was discussing an analysis of the iPhone's overall combination of icon designs that allowed a user to recognize quickly particular applications to use. J.A. 41484, 25487. The iPhone's usability advantage from the combination of its icon designs shows that the '983 trade dress viewed as a whole "is nothing other than the assemblage of functional parts . . ." *See Tie Tech*, 296 F.3d at 786 (quoting *Leatherman*, 199 F.3d at 1013). There is no "separate 'overall appearance' which is non-functional." *Id.* (quoting [*996] *Leatherman*, 199 F.3d at 1013). The undisputed facts thus demonstrate the functionality of the '983 trade dress. "In the face of sufficient and undisputed facts demonstrating functionality, as in our case, the registration loses its evidentiary significance." *See id.* at 783.

The burden thus shifts back to Apple. *See id.* But Apple offers no analysis of the icon designs claimed by the '983 trade dress. Rather, Apple argues generically for its two trade dresses without distinction under the *Disc Golf* factors. Among Apple's lengthy citations to the record, we can find only two pieces of information that involve icon designs. One is Apple's user interface expert discussing other possible icon designs. The other is a citation to a print iPhone advertisement that included the icon designs claimed in the '983 trade dress. These two citations, viewed in the most favorable light to Apple, would be relevant to only two of the *Disc Golf* factors: "alternative design" and "advertising." But the cited evidence suffers from the same defects as discussed in subsections I.A.2 and I.A.3. Specifically, the expert's discussion of other icon design possibilities does not show that the other design possibilities "offer[ed] exactly the same features" as the '983 trade dress. *See Tie Tech*, 296 F.3d at 786 (quoting *Leatherman*, 199 F.3d at 1013-14). The print iPhone advertisement also fails to establish that, on the substance, it was not touting the utilitarian advantage of the '983 trade dress. The evidence cited by Apple therefore does not show the non-functionality of the '983 trade dress.

In sum, the undisputed evidence shows the functionality of the registered '983 trade dress and shifts the burden of proving non-functionality back to Apple. Apple, however, has failed to show that there was substantial evidence in the record to support a jury finding in favor of non-functionality for the '983 trade dress on any of the *Disc Golf* factors. We therefore reverse the district court's denial of Samsung's motion for judgment as a matter of law that the '983 trade dress is functional and therefore not protectable.

Because we conclude that the jury's findings of nonfunctionality of the asserted trade dresses were not supported by substantial evidence, we do not reach Samsung's arguments on the fame and likely dilution of the asserted trade dresses, the *Patent Clause of the Constitution*, or the dilution damages....

AFFIRMED-IN-PART, REVERSED-IN-PART, VACATED-IN-PART and REMANDED

COSTS

Each party shall bear its own costs.

Appendix: Trademark Registration No. 3,470,983



Word Mark	SMS
Goods and Services	IC 009. US 021 023 026 036 038. G & S: Handheld mobile digital electronic devices comprised of a mobile phone, digital audio and video player, handheld computer, personal digital assistant, electronic personal organizer, pocket computer for note-taking, electronic calendar, calculator, and camera, and capable of providing access to the Internet and sending and receiving electronic mail, digital audio, video, text, images, graphics and multimedia files. FIRST USE: 20070629. FIRST USE IN COMMERCE: 20070629
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	<ul style="list-style-type: none">01.05.25 - Sun, other representations of the sun01.15.17 - Balloons, thought or speech; Clouds, thought or speech; Thought or speech clouds01.17.14 - Maps of the world05.05.05 - Daisies06.07.01 - Skylines07.11.11 - Highways without lines or dividers; intersections (roads) without lines or dividers; Roads without lines or dividers; Streets without lines or dividers09.09.01 - Crochet hooks; Hooks, crochet; Needles, sewing and knitting; Pins, safety; Pins, sewing (straight); Safety pins15.05.06 - Adding machines; Calculators; Pocket calculators15.07.01 - Cog wheels; Gears16.01.03 - CB radios; Projection screens (television); Radios; Remote controls, television; Screens, projection; Screens, television; Television sets16.01.08 - Telephones16.03.01 - Cameras; Cameras, motion picture; Cameras, video; Lenses, photographic17.01.02 - Clock faces (alone); Clock radios; Clocks; Radios with clock; Watch faces (alone)17.07.05 - Compasses (directional); Directional compasses, including mariner's compasses and compass points18.15.03 - Other road signs20.03.03 - Envelopes20.03.08 - Blueprints; Charts; Diagrams; Graph paper; Paper, graph; Periodic chart of the elements and similar graphics20.03.09 - Pads, Writing; Paper, note; Paper, stacks of sheets; Tablets, paper26.09.14 - Squares, three or more; Three or more squares26.09.21 - Squares that are completely or partially shaded26.09.25 - Squares with curved sides26.11.09 - Rectangles made of geometric figures, objects, humans, plants or animals26.11.20 - Rectangles inside one another26.11.21 - Rectangles that are completely or partially shaded26.11.25 - Rectangles with one or more curved sides

Trademark Search Facility Classification Code	ART-01.17 Maps or outlines of continents, countries and other geographical areas" ART-07.11 Structural Works ART-09.09 Sewing accessories and equipment; patterns for dressmaking ART-15.05 Office and business machines ART-15.07 Wheels; bearings ART-16.01 Telecommunications and sound recording or reproduction equipment ART-16.03 Photography; cinematography; optics ART-17.01 Time-measuring instruments ART-17.07 Measuring instruments ART-18.15 Traffic signs ART-20.03 Paper goods; documents BLDG-AND-SCEN A type of building or a type of scenery INAN Inanimate objects such as lighting,clouds,footprints,atomic configurations,snowflakes,rainbows,flames LETS-2 SMS Two letters or combinations of multiples of two letters NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks NUM-26-UP 73 Other Numerals - 26 and Up SHAPES-BAR-BANDS Designs with bar, bands or lines SHAPES-COLORS-3-OR-MORE Design listing or lined for three or more colors SHAPES-GEOMETRIC Geometric figures and solids including squares, rectangles, quadrilaterals and polygons VEG Plant life such as trees,flowers,fruits,grains,nuts,wreaths,and leaves
Serial Number	77303282
Filing Date	October 12, 2007
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	May 6, 2008
Registration Number	3470983
International Registration Number	0946310
Registration Date	July 22, 2008
Owner	(REGISTRANT) Apple Inc. CORPORATION CALIFORNIA 1 Infinite Loop Cupertino CALIFORNIA 95014
Attorney of Record	Thomas R. La Perle
Disclaimer	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SMS" APART FROM THE MARK AS SHOWN
Description of Mark	The color(s) black, blue, brown, brown-gray, gray-green, green, orange, red, silver, tan, white and yellow is/are claimed as a feature of the mark. The mark consists of the configuration of a rectangular handheld mobile digital electronic device with rounded silver edges, a black face, and an array of 16 square icons with rounded edges. The top 12 icons appear on a black background, and the bottom 4 appear on a silver background. The first icon depicts the letters "SMS" in green inside a white speech bubble on a green background; the second icon is white with a thin red stripe at the top; the third icon depicts a sunflower with yellow petals, a brown center, and a green stem in front of a blue sky; the fourth icon depicts a camera lens with a black barrel and blue glass on a silver background; the fifth icon depicts a tan television console with brown knobs and a gray-green screen; the sixth icon depicts a white graph line on a blue background; the seventh icon depicts a map with yellow and orange roads, a pin with a red head, and a red-and- blue road sign with the numeral "280" in white; the eighth icon depicts an orange sun on a blue background, with the temperature in white; the ninth icon depicts a white clock with black and red hands and numerals on a black background; the tenth icon depicts three brown-gray circles and one orange circle on a black background with a white border, with the mathematical symbols for addition, subtraction, multiplication, and the equal sign displayed in white on the circles; the eleventh icon depicts a portion of a yellow notepad with blue and red ruling, with brown binding at the top; the twelfth icon depicts three silver gears over a thatched black-and-silver background; the thirteenth icon depicts a white telephone receiver against a green background; the fourteenth icon depicts a white envelope over a blue sky with white clouds; the fifteenth icon depicts a white compass with a white- and-red needle over a blue map; the sixteenth icon depicts the distinctive configuration of applicant's media player device in white over an orange background.
Type of Mark	TRADEMARK
Register	PRINCIPAL-2(F)
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE