

A blurred background image of a business meeting. In the foreground on the right, a man in a dark suit and a bright yellow striped tie is partially visible. In the background, several other people in business attire are engaged in conversation, some looking at mobile devices.

October 2016

Designer Tablets (the Australian Apple Samsung story)

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Overview

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1. Chronology of proceedings
2. The asserted designs
3. Strategic non-use of design registrations

The interim injunction - background

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Mid 2011 – Samsung readies its iPad-killer, the Samsung Galaxy Tab 10.1

- intended launch – 11 August

28 July 2011 – Apple sues Samsung

- alleged infringement of 10 (utility) patents
- *no* registered designs asserted
- sought interlocutory injunction

The interim injunction cont...

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2 September 2011 – Apple changes / expands number of patents asserted

- identifies 5 patents for interlocutory injunction
- 1 not pressed, Samsung gave undertakings for 2
- only 2 patents ultimately asserted

Samsung later cross-claimed

- asserted SEPs
- ultimately only pressed 3

First case that gave rise to FRAND / competition considerations

Decisions, decisions

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13 October – single judge of Federal Court

Apple's inconvenience or injury from the refusal of an injunction of the Australian Galaxy Tab 10.1 marginally outweighs the inconvenience or injury Samsung would suffer if an injunction were granted.

30 November – overturned on appeal by Full Federal Court

No leave granted to appeal to the High Court

Result: Samsung could sell the Galaxy Tab 10.1 in Australia

Registered designs

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After the interlocutory injunction, main litigation commenced.

Apple asserted 4 registered designs, against 11 different products

- Galaxy Tab 10.1, Galaxy Tab 7.7
- 9 phones (including Galaxy SII and Nexus S)

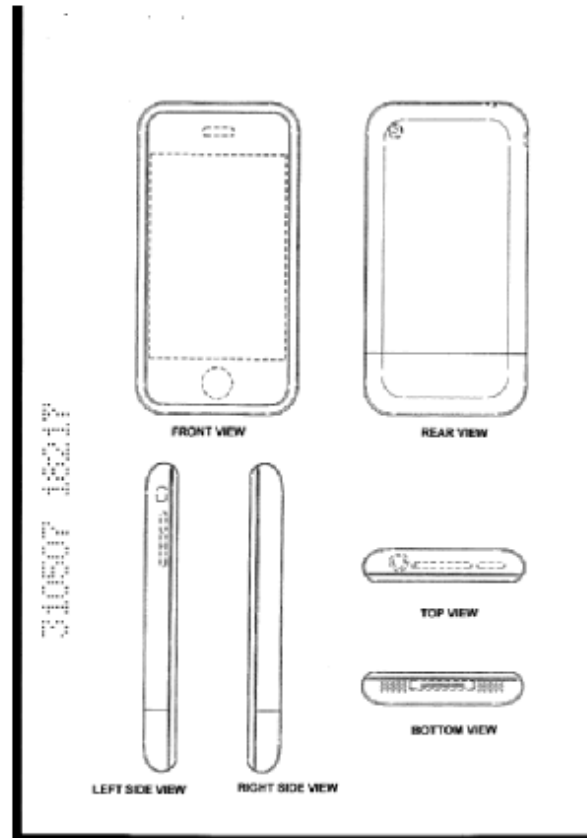
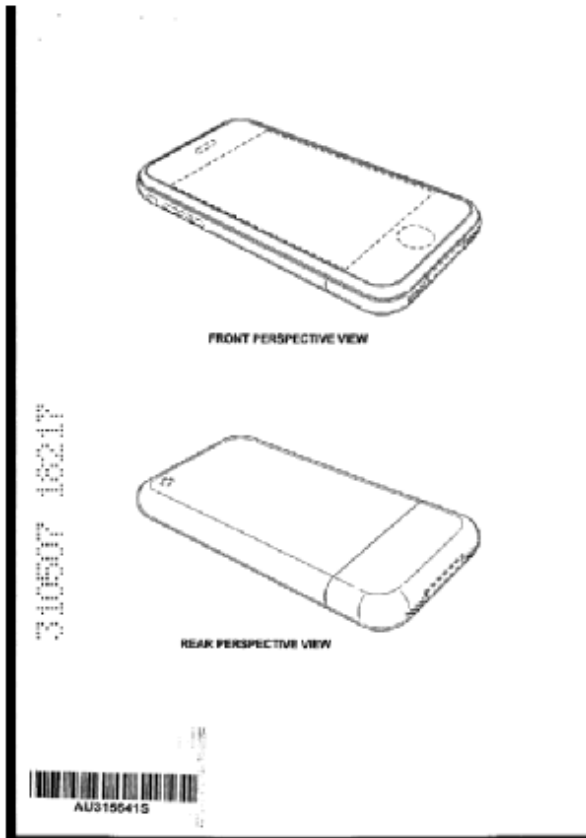
Evidence was filed in relation to the designs, but not publicly available due to August 2014 settlement

The designs in issue

(11) Registration AU 315641 S
(21) Design Number 200718217

Data Current as of 09 March 2016

Representations
Click on each image for larger view

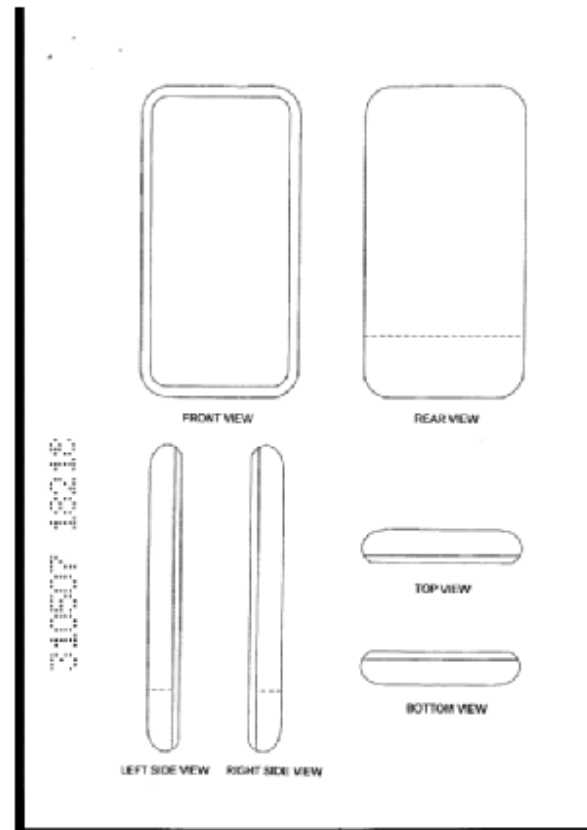
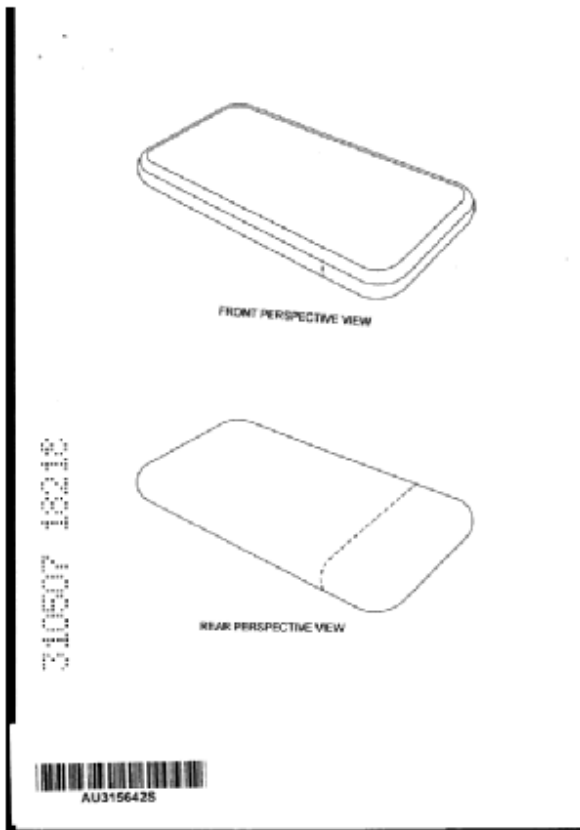


The designs in issue

(11) Registration AU 315642 S
(21) Design Number 200718218

Data Current as of 09 March 2016

Representations
Click on each image for larger view

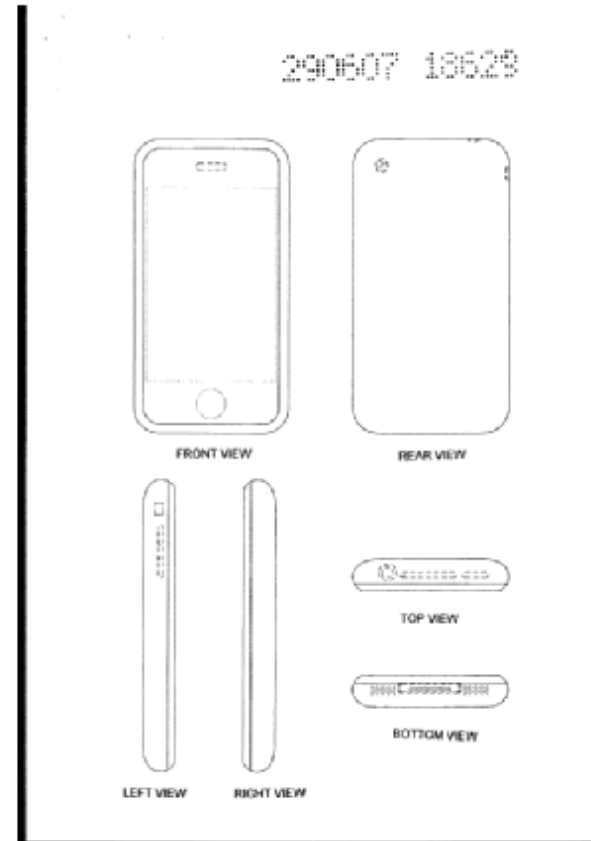
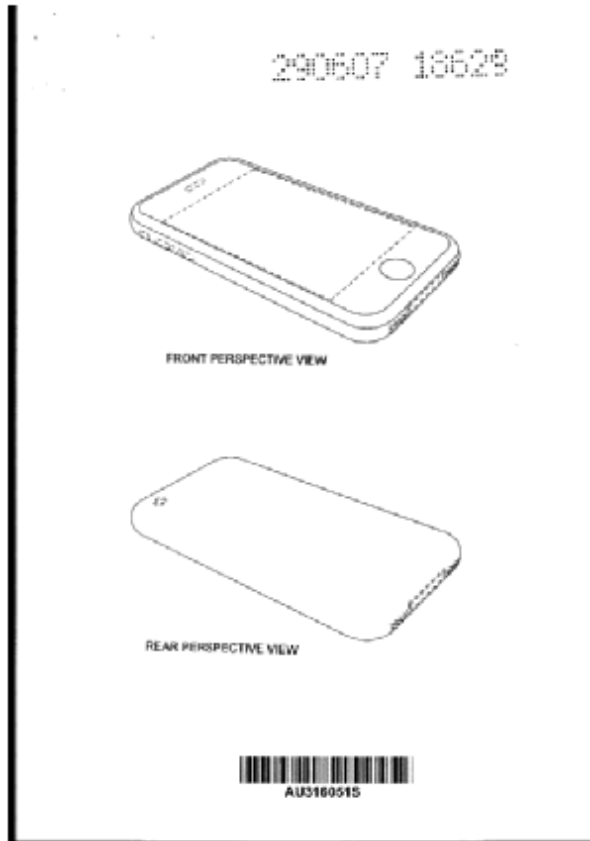


The designs in issue

(11) Registration AU 316051 S
(21) Design Number 200718629

Data Current as of 09 March 2016

Representations
Click on each image for larger view



The designs in issue

(11) Registration AU 337931 S
(21) Design Number 201113044

Data Current as of 09 March 2016

Representations
Click on each image for larger view

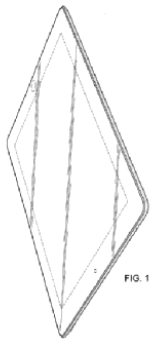


FIG. 1

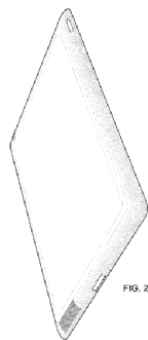


FIG. 2

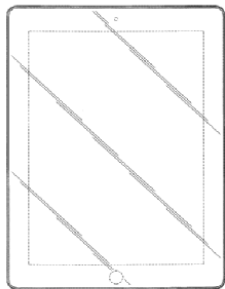


FIG. 3



FIG. 4

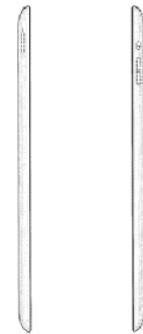


FIG. 5

FIG. 6



FIG. 7



FIG. 8



FIG. 9



FIG. 10

SCHEDULE OF FIGURES

- Fig. 1 is top front perspective view
- Fig. 2 is a bottom rear perspective view
- Fig. 3 is a front view
- Fig. 4 is a rear view
- Fig. 5 is a side view
- Fig. 6 is another side view
- Fig. 7 is a top view
- Fig. 8 is a bottom view
- Fig. 9 is an enlarged view of the left corner of Fig. 8
- Fig. 10 is an enlarged view of the right corner of Fig. 8

The Galaxy Tab 10.1



Galaxy Tab 10.1 (cont...)

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Galaxy Tab 10.1 (cont...)

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Why no designs in injunction?

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Interlocutory injunction requires

- prima facie case
- balance of convenience (damages sufficient)

Assertion of designs

- identical, or substantially similar in overall impression
 - different aspect ratio
 - different side curvature
 - limited freedom to innovate
- case not as complex as patent case
 - early final determination

Registered designs may not be a good tool to use for *interlocutory injunctions* unless you have a very strong case.

If designs are important, consider a design thicket

- Apple had only one relevant design for a tablet

Where possible, file accompanying patent applications

- Consider innovation patents where appropriate

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THANK YOU
Questions?

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