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Apple and Samsung battle over \$1bn patent award

By Tim Bradshaw in San Francisco

Apple and Samsung will once again clash in a California court over smartphone patents this week, as a jury reconsiders almost half of the \$1bn damages awarded to the iPhone maker last year.

The case could result in an even steeper penalty against Samsung or a diminution to Apple's landmark patent victory against its arch rival in August 2012.

Mistakes made by the jury in San Jose during its deliberations in that case, which saw Apple win on nearly every count in its case against its largest competitor in the smartphone market, prompted Judge Lucy Koh to order a retrial earlier this year. A total of \$450m worth of the original \$1.05bn were "vacated" and a new jury will be summoned to consider the appropriate damages for more than a dozen Samsung devices that were determined to infringe five Apple patents.

While the issue of infringement itself is not being reconsidered in this retrial, Judge Koh said in March that the jury had not followed her instructions on how to calculate damages, once its members had decided Samsung was guilty of copying Apple's iPhone and iPad. Other elements of the initial damages award were based on incorrect dates for when the infringement began and ended, Judge Koh said.

The highly technical hearing will hinge largely on the jury's determination of the timeframe of Samsung's infringement, which determines how much it must pay in damages. Apple would like to see Samsung pay hundreds of millions of dollars, while Samsung is likely to argue that figure should only be in the tens of millions.

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After the new jury is selected on Tuesday, Apple's legal team will argue that it is entitled to royalties from the infringing devices sold by Samsung, plus a portion of its Korean rival's profits and reimbursement for some of its own lost income. As well as expert witnesses, Apple executives including Phil Schiller, its head of marketing, will be called to give evidence.

In its defence, Samsung is expected to argue that the damages it owes are lower than originally awarded because Apple did not provide proper notice of infringement until 2011, rather than 2010 as Apple has claimed. Few, if any, of the devices found to be infringing are still on sale in the US and subsequent Samsung smartphones and tablets have designed around the patents at issue.

The trial, which will last for 10 days, will bring to an end this phase of this case, allowing Judge Koh to give her final judgment sometime before March 2014. However, appeals could drag out the case for several more years, as the two smartphone leaders prepare for another patent battle to come to trial next year.

After the jury gives its verdict, expected around November 22, Samsung will have to pay a bond, with the full damages paid only after appeals are exhausted. Samsung will probably begin its appeal to the Federal Circuit court next summer, with a decision expected by late 2015 or the beginning of 2016. If the case goes to the Supreme Court, its final decision would likely come in mid-2017.

Apple and Samsung both declined to comment ahead of the retrial.

Despite the blockbuster verdict last year, there has been little respite in the many intellectual property battles between technology groups.

This month, a consortium backed by Apple and Microsoft, called Rockstar, filed a suit against Google, Samsung, HTC and other smartphone makers using the Android platform. Rockstar paid \$4.5bn for patents from the bankrupt telecoms equipment company Nortel, which include intellectual property that may cover [Google's lucrative Adwords search advertising business](#), AdWords.