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# Apple Again Cites Inaccurate Evidence in Samsung Patent Case

By [Andreas Udo de Haes](#), [webwereld.nl](#) - Aug 19, 2011 6:20 am

Apple has filed inaccurate evidence again in a case against Samsung, this time in the Netherlands, where the company is arguing Samsung's Galaxy S smartphones are too similar to its iPhone 3G.

Apple also has an ongoing case in Germany, part of [a global intellectual property battle with Samsung](#) in the mobile phone and tablet market.

In addition to the charges that Samsung's Galaxy devices are "slavish" imitations of Apple's designs, the two companies are also clashing over several alleged patent infringements. (See also ["Samusng Galaxy vs Apple iPhone: Business Features."](#))

The first two devices at left show how Apple compared the Galaxy S to its iPhone 3G by size in court documents. The Galaxy S on the right is proportionally accurate. Apple's depiction of the Galaxy S has been resized by 6 percent.



Apple has provided flawed visual evidence of similarities between the iPhone 3G and Samsung's Galaxy S smartphones to the District Court in The Hague, [an investigation by Webwereld.nl](#), a Dutch IDG

publication, has found.

This time, a picture of a [Galaxy S smartphone](#) has been resized to match an [iPhone 3G](#).

During the court hearing last week, Samsung's lawyer, Bas Berghuis of Simmons and Simmons, claimed that Apple has been "manipulating visual evidence, making Samsung's devices appear more similar to Apple's." Berghuis, however, did not show evidence of his allegations.

Webwereld's investigation found that one of the pictures provided by Apple as evidence in the Dutch case is either wrong or manipulated.

## Size Misrepresented

On page 77 of the complaint, seen by Webwereld, Apple's lawyers have provided a picture of an iPhone 3G next to a Samsung Galaxy S as "an example of the similarity relevant to copyrights."

But the picture Apple submitted of the Galaxy S is inaccurate and does not match the real Galaxy S. Further analysis has confirmed this assessment. The Galaxy S, introduced in The Netherlands in July 2010, is both taller and wider than the iPhone 3G.



According to Samsung, the dimensions of the Galaxy S are 122.4 by 64.2 millimeters. The iPhone 3G measures 115.5 by 62.1 millimeters. In the text, Apple confirms that the Galaxy S has "some non-identical elements, such as the slightly larger dimensions."

But the picture of purported Galaxy S has been resized about 6 percent, making the Galaxy S appear smaller and more similar to Apple's phone. The height of the purported Galaxy S that Apple displays matches the iPhone exactly. The aspect ratio has not been measurably altered.

Apple also provided an unknown number of other pictures of Samsung's smartphones and tablets side-by-side with its own in separate productions, which were not available for inspection. There's only one picture of an iPhone side-by-side with a purported Galaxy S in the complaint itself.

A legal expert on intellectual property cases, who declined to be named, asserted that when pictures are filed both in the complaint and in separate productions, those in the complaint would be considered more important. Visual evidence presented there typically indicates that the plaintiff wants to emphasize its significance, he said.

## Similar Action with Tablet

Earlier this week, Webwereld uncovered a similar case in Dusseldorf, Germany, where [Apple has also filed faulty evidence](#) in court. Apple's German complaint contains a picture of an alleged Galaxy Tab 10.1, resized and its aspect ratio distorted so that it resembles the iPad 2 very closely.

Mark Krul, a lawyer at the Dutch firm WiseMen and a specialist in IT and intellectual property law, is astonished by the findings.

"It surprises me that for the second time incorrect presentations of a Samsung product emerge in photographic evidence filed in litigation," he said. "This is not appropriate and undermines Apple's

credibility both inside and outside the court room."

Krul said that litigating parties are required by Dutch law to provide "complete and truthful" evidence to the judge, adding that this is even more imperative when infringement on design and copyrights is alleged.

Krul noted a crucial difference with the German case, in which the judge granted a preliminary "ex parte" injunction, without a hearing or an opposition brief from the defendant. In The Hague, Samsung's lawyers lodged an opposition and flagged the flawed evidence.

Krul doesn't presume that the examples of the faulty evidence are malice on the part of Apple's lawyers. "But Apple has certainly some explaining to do, if only to clear itself from the appearance of improper behavior," he said.



Webwereld has briefed Apple and its Dutch counsel, Rutger Kleemans of Freshfields Bruckhaus Deringer, on the results of the investigation and submitted questions to clarify the issue. He declined to respond. Samsung also declined to comment, citing ongoing litigation.

The complaint is only available for viewing at the court in The Hague. Due to these restrictions, Webwereld has made a rendering of Apple's flawed evidence to present the findings visually.

In the Dutch case, [Apple seeks a ban on all Galaxy smartphones and tablets](#) in the European Union (E.U), including a complete recall of stock by European distributors and resellers. The court in the Hague will rule on September 15. At the hearing last week, Judge Edger Brinkman stated that if he grants any injunctions against Samsung's products, they would take effect no sooner than Oct. 13.

In Germany on Tuesday, the Dusseldorf District Court changed its preliminary injunction granted last week that [prohibited Samsung from selling the Galaxy Tab 10.1](#) in all E.U. countries except for The Netherlands.

The court, citing uncertainties about jurisdiction, changed its ban to allow Samsung to sell the product in all E.U. countries except for Germany. The first in Dusseldorf.

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**onceamarine** says:

Fri Aug 19 07:09:31 PDT 2011

I was thinking of buying an iPad2 as a gift for my son, but upon reading this BS about Apple they lost a sale. I bought the Galaxy 10.1. I wonder how many others are doing the same?

[REPLY](#)**WallyDuke** says:

Fri Aug 19 07:33:03 PDT 2011

*onceamarine said**I was thinking of buying an iPad2 as a gift for my son, but upon reading this BS about Apple*

*they lost a sale. I bought the Galaxy 10.1. I wonder how many others are doing the same?*

---

In my personal opinion, a noble choice! This BS from Apple is completely absurd! Reaks of fear to me, fear of a fair fight!

[REPLY](#)

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**actech** says:

Fri Aug 19 07:42:16 PDT 2011

For 30 years I have admired Apple for it's management and for it's products, and now these nonsense lawsuits show me that they are not the company that they were in the past and that I used to admire.

My wife's phone 3GS broke, and she decided to get a Samsung Infuse (which are amazingly better than the iPhone 3GS and 4) and I am trying to make a final decision on replacing my iPhone 4 with a Samsung S2 since I am very irritated with Apples latest product offerings and bs lawsuits.

[REPLY](#)

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**Testjb22gton** says:

Fri Aug 19 07:48:59 PDT 2011

irritating to see such news.. Good bye Apple, Hello S2 and Tab..

[REPLY](#)

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**mgltacoma** says:

Fri Aug 19 07:53:44 PDT 2011

I remember a court evidence of ipad and galaxy tab image alter they said it was apple's minor glitch mistake. That is not true. We just saw another picture wrong scaling problem with iphone and galaxy S. That cannot be a mistake on 2 products in 2 different countries. I think they intentionally provided false evidence. How can MAC people (all about look and design) mess up simple scaling issue of a product. It is very obvious they are guilty.

[REPLY](#)

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**zeth006** says:

Fri Aug 19 08:05:31 PDT 2011

*onceamarine said*

*I was thinking of buying an iPad2 as a gift for my son, but upon reading this BS about Apple they lost a sale. I bought the Galaxy 10.1. I wonder how many others are doing the same?*

---

If you think that's bad, read up on the cruddy survey they used showing that a large % of their customers were dissatisfied with Samsung's alleged copying. That evidence got promptly thrown out because it was a load of crap.

[REPLY](#)

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***zeth006*** says:

Fri Aug 19 08:09:15 PDT 2011

Ladies and gentlemen, here lies the problem with our legal system. It's not the few dishonest lawyers you hear about who make life miserable for honest men and women. It's about the corporate slimeballs who advise their legal teams to pull off this load of horse\*\*\*\*, all in the name of protecting their own profits. Any self-respecting individual who truly values innovation and private sector competition should think twice about his product preferences.

[REPLY](#)

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***halofaller*** says:

Fri Aug 19 08:15:41 PDT 2011

Why is it so hard to call liars liars?

[REPLY](#)

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***twidlofthumbs*** says:

Fri Aug 19 08:21:30 PDT 2011

i will play devils advocate here and note that the sizing of the devices is a known fact. i believe that what apple is pointing out is that the design aesthetically and functionally are its beef. as you cannot patent or trademark a size. from the picture i would have to agree that the samsung is a slightly larger clone of the apple device. when scaled uniformly the placement of functional items (eg. buttons, icons, status/information bar, so on and so on) are almost identical. so again i note that you can't patent a size however you can patent the layout and interface.

[REPLY](#)

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***AlexLaronsneski3d9m*** says:

Fri Aug 19 08:35:59 PDT 2011

Apple most likely was resizing both of the images to fit in the same area, and size. And like "twidlofthumbs" said, you can not copyright a size. so that is irrelevant. This is not a reason to go with a lesser operating system, or to buy a tablet that will not last nearly as long as an iPad would. I wonder how "oncemarine"'s son felt about getting a cheap peace of junk instead of an iPad...

[REPLY](#)

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**unbound** says:

Fri Aug 19 08:40:11 PDT 2011

*zeth006 said*

*Ladies and gentlemen, here lies the problem with our legal system. It's not the few dishonest lawyers you hear about who make life miserable for honest men and women. It's about the corporate slimeballs who advise their legal teams to pull off this load of horse\*\*\*\*, all in the name of protecting their own profits. Any self-respecting individual who truly values innovation and private sector competition should think twice about his product preferences.*

---

I agree except on one point. It isn't always about "...protecting their own profits". In many cases, it's about increasing profits. The less competition (the only aspect of supply that is relevant in this age), the higher price they can charge for something that is in demand.

[REPLY](#)

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**lj99** says:

Fri Aug 19 08:48:40 PDT 2011

*AlexLaronsoneski3d9m said*

*Apple most likely was resizing both of the images to fit in the same area, and size. And like "twidlerofthumbs" said, you can not copyright a size. so that is irrelevant. This is not a reason to go with a lesser operating system, or to buy a tablet that will not last nearly as long as an iPad would. I wonder how "oncemarine"'s son felt about getting a cheap peace of junk instead of an iPad...*

---

Ah no. They failed to keep the proportions correct. If they were resizing to fit an area then they needed to resize both items so that they accurately reflected their correct ratios. This is basic stuff especially if you're indicating that one model copied another and you're using visual evidence. Most people learned these things in geometry class in high school or hell, even in photography class if you're an art major rather than a math geek.

And, um, you do realize that an iPad is made out of Samsung parts? Typical of an Apple user to mock something without realizing they are actually mocking one of the manufacturers of their own device.

[REPLY](#)

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**samuraidrive** says:

Fri Aug 19 08:51:51 PDT 2011

Why is it that when I +1 links from PC world it links to the Deutsche version of the story?



[REPLY](#)

**vasic** says:

Fri Aug 19 08:51:57 PDT 2011

Images came from Samsung. Apple didn't alter them. Webwereld.nl fails to mention that, but others do.

Samsung's distorted picture of Tab was made by Samsung to look as similar to iPad as possible in their marketing materials. Apple just took that image and put it in their legal filing.

Who is doing BS here?

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