EXHIBIT A

Judgement
COURT OF THE HAGUE

Civil Law Section

Judgement in summary proceeding of 24 August 2011 (expedited)

in the case with case number/roll number: 396957 / KG ZA 11-730 of

the corporation under foreign law
APPLE INC.
established in Cupertino, California, United States of America,
plaintiff,
counsel: mr. P.J.M. von Schmidt auf Altenstadt, The Hague,

versus

1.   the company under foreign law
       SAMSUNG ELECTRONICS CO. LIMITED
       established in Suwon City, Kyungki-Do, South Korea,
2.   the private limited liability company
       SAMSUNG ELECTRONICS BENELUX B.V.,
       established in Delft,
3.   the private limited liability company
       SAMSUNG ELECTRONICS EUROPE LOGISTICS B.V.,
       established in Rijswijk,
4.   the private limited liability company
       SAMSUNG ELECTRONICS OVERSEAS B.V.,
       established in Amsterdam,
defendants,
counsel: mr. B. J. Berghuis van Woortman, Amsterdam,

and in the case with case number/roll number: 396959 / KG ZA 11-731 of

the corporation under foreign law
APPLE INC.
established in Cupertino, California, United States of America,
plaintiff,
counsel: mr. P.J.M. von Schmidt auf Altenstadt, The Hague,

versus

1.   the company under foreign law
       SAMSUNG ELECTRONICS CO. LIMITED
       established in Suwon City, Kyungki-Do, South Korea,
2.   the private limited liability company

SAMSUNG ELECTRONICS BENELUX B.V.,
established in Delft,
3. the private limited liability company
SAMSUNG ELECTRONICS EUROPE LOGISTICS B.V.,
established in Rijswijk,
4. the private limited liability company
SAMSUNG ELECTRONICS OVERSEAS B.V.,
established in Amsterdam,
defendants,
counsel: mr. B. J. Berghuis van Woortman, Amsterdam.

The cases are handled combined. Hereinafter the parties shall also be called Apple (plaintiff) and Samsung (defendants collectively). For Apple, the cases are handled by mr. R.M. Kleemans, mr. ir. T.M. Blomme and mr. A.A.A.C.M. van Oorschot, all of them attorneys in Amsterdam. For Samsung, the cases are handled by mr. Berghuis van Woortman, aforementioned, and mr. A. F. Kupecz, mr. Ch. Gielen and mr. R.C. van Oerle, also all of them attorneys in Amsterdam.

1. The proceeding

1.1. The course of the proceeding appears from:
- the citations of 27 June 2011;
- exhibits 1 to 24 (KG ZA 11-730) and exhibits 1 to 30 (KG ZA 11-730) of Apple;
- in both cases: response pleadings, also containing counterclaims, of 20 July 2011 of Samsung, with exhibits 1 to 21 (KG ZA 11-730) and exhibits 1 to 34 (KG ZA 11-731);
- the letter of 21 July 2011 of Apple, in which Apple objects to the counterclaims, and the response to this in letter of 22 July 2011 of Samsung;
- the email of 22 July 2011, in which the judge in interlocutory proceedings announces his decision that the counterclaims in both cases will not be handled because – in brief – they were in conflict with a proper proceeding;
- the explanation in exhibits of Samsung, sent by email of 25 July 2011;
- the letter of 3 August 2011 of Samsung, with supplemental exhibits 22 to 47 (KG ZA 11-730) and supplemental exhibits 35 to 59 (KG ZA 11-731);
- the letter from Apple, received on 28 July 2011, with supplemental exhibits 31 to 44 (in both cases), wherein Apple withdraws its claims with respect to EC design patent 1260624-15;
- the bookmark (with respect to the soft IP) of Samsung, sent by email of 2 August 2011;
- the bookmark (with respect to the prior art for the patents) of Samsung, sent by email of 4 August 2011;
- the letter of 5 August 2011 of Apple, with supplemental exhibit 45;
- the letter of 8 August 2011 of Samsung, with supplemental exhibits 60 to 66;
- the letter of 8 August 2011 of Apple, with supplemental exhibits 46 to 50;
- the letter of 9 August 2011 of Samsung, with supplemental exhibit 67;
- the letter of 9 August 2011 of Apple, with supplemental exhibit 51;
- the oral proceedings held on 10 and 11 August 2011, during which counsels submitted written summaries of the arguments.

1.2.   The documents submitted in the email of August 10 and in court are rejected as tardy. Moreover, both parties repeatedly submitted applications for interlocutory relief in court. After consultation, both parties indicated their desire to consider these further. That consideration resulted in no need to rule on those applications, as communicated in the email of mr. Kleemans of 12 August 2011.

1.3.   Judgement is scheduled to be handed down not later than 15 September 2011, but shall be pronounced today in an expedited manner.

2.   The facts

2.1.   Apple is a worldwide producer and developer of computers, consumer electronics, operating systems and software. Its products include the iPhone, a so-called smartphone, and the iPad, a tablet computer. Both products have been placed on the market in different versions by Apple.

2.2.   Apple is the holder of European patent EP 2 059 868 (hereinafter: EP 868) for a "*Portable electronic device for photo management*", granted on 29 September 2010 for an application of 31 August 2007, claiming priority of seven American patents: US 824.769 P (6 September 2006, US 883.785 P (6 January 2007), US 879.253 P (7 January 2007), US 879 469 P (8 January 2007), US 937.993 P and US 947.118 P (both 29 June 2007) and US 848.210 (30 August 2007). Netherlands is one of the designated countries. At the time of summoning, no opposition has been filed against the granting of EP 868.

2.3.   The claims of EP 868 in the original English read:

1.   A computer-implemented method, comprising:
at a device (100) with a touch screen display (112):
detecting (2402) a first movement (2310) of a physical object on or near the touch screen display (112);
while detecting the first movement (2310), translating (2404) a first digital object (2300-1) displayed on the touch screen display (112) in a first direction, wherein the first digital object (2300-1) is associated with a set of digital objects; **characterized in that:**

in response to display of a previously hidden edge (2312) of the first digital object (2300-1) and continued detection of the first movement (2310),
displaying (2406) an area (2314) beyond the edge (2312) of the first digital object (2300-1);
after the first movement (2310) is no longer detected, translating (2408) the first digital object (2300-1) in a second direction (2316) until the area (2314) beyond the edge (2312) of the first digital object (2300-1) is no longer displayed;
detecting (2410) a second movement (2318) of the physical object on or near the touch screen display (112); and
in response to detecting the second movement (2318) while the previously hidden edge (2312) of the first digital object (2300-1) is displayed, translating (2412) the first digital object (2300-1) in the first direction and displaying a second digital object (2300-2) in the set of digital objects.

2. The computer-implemented method of claim 1, wherein, prior to the translating while detecting the first movement, at least one edge of the first digital object extends beyond the touch screen display in the first direction.

3. The computer-implemented method of claim 1 or 2, wherein the first movement is a horizontal swipe gesture.

4. The computer-implemented method of any one of claims 1 to 3, wherein the set of digital objects is a set of digital images, a set of web pages, or a set of electronic documents.

5. The computer-implemented method of any one of claims 1 to 4, wherein the device is a portable electronic device.

6. The computer-implemented method of any one of claims 1 to 5, wherein the physical object is a finger or a stylus.

7. A computer program with software code adapted to perform the method of any one of claims 1 to 6.

8. An electronic device (100), comprising:
a touch screen display (112);
one or more processors (120);
memory (102); and
a program, wherein the program is stored in the memory and configured to be executed by the one or more processors, the program including:

instructions for detecting (2402) a first movement (2310) of a physical object on or near the touch screen display (112);
instructions for, while detecting the first movement (2310), translating (2404) a first digital object (2300-1) displayed on the touch screen display (112) in a first direction, wherein the first digital object (2300-1) is associated with a set of digital objects;
characterized in that:
instructions for, in response to display of a previously hidden edge (2312) of the first digital object (2300-1) and continued detection of the first movement (2310), displaying (2406) an area (2314) beyond the edge (2312) of the first digital object;
instructions for, after the first movement (2310) is no longer detected, translating (2408) the first digital object (2300-1) in a second direction (2316) until the area (2314) beyond the edge of the first digital object (2300-1) is no longer displayed;
instructions for detecting (2410) a second movement (2318) of the physical object on or near the touch screen display (112); and instructions for, in response to detecting the second movement (2318) while the previously hidden edge (2312) of the first digital object (2300-1) is displayed, translating (2412) the first digital object (2300-1) in the first direction and displaying a second digital object (2300-2) in the set of digital objects.

9. The electronic device of claim 8, wherein, prior to the translating while detecting the first movement, at least one edge of the first digital object extends beyond the touch screen display in the first direction.

10. The electronic device of claim 8 or 9, wherein the first movement is a horizontal swipe gesture.

11. The electronic device of any one of claims 8 to 10, wherein the set of digital objects is a set of digital images, a set of web pages, or a set of electronic documents.

12. The electronic device of any one of claims 8 to 11, wherein the device is a portable electronic device.

13. The electronic device of any one of claims 8 to 12, wherein the physical object is a finger or a stylus.

2.4.   In the unchallenged Dutch translation, the claims of EP 868 read:

1.   A computer-implemented method, comprising:
        at a device (100) with a display (112) with touch screen:
        detecting (2402) of a first movement (2310) of a physical object on or near the
        touch screen display (112);
        while detecting the first movement (2310), the translating (2404) of a first digital
        object (2300-1) displayed on the touch screen display (112) in a first direction,
        wherein the first digital object (2300-1) is associated with a set of digital objects;
        characterized in that
        in response to display of a previously hidden angle[1] (2312) of the first digital
        object (2300-1) and continued detection of the first movement (2310), an area
        (2314) is displayed beyond the edge (2312) of the first digital object (2300-1);
        after the first movement (2310) is no longer detected, the translating (2408) of the
        first digital object (2300-1) in a second direction (2316) until the area (2314)
        beyond the edge (2312) of the first digital object (2300-1) is no longer displayed;
        detecting (2410) of a second movement (2318) of the physical object on or near
        the touch screen display (112); and
        in response to the detecting of the second movement (2318) while the previously
        hidden edge (2312) of the first digital object (2300-1) is displayed, the translating
        (2412) of the first digital object (2300-1) in the first direction and the displaying
        of a second digital object (2300-2) in the set of digital objects.

2.   Computer-implemented method according to claim 1, wherein, prior to the
        translating while detecting the first movement, at least one edge of the digital
        object extends beyond the touch screen display in the first direction.

3.   Computer-implemented method according to claim 1or 2, wherein the first
        movement is a horizontal swipe gesture.

4.   Computer-implemented method according to any one of claims 1-3, wherein the
        set of digital objects is a set of digital images, a set of web pages or a set of
        electronic documents.

5.   Computer-implemented method according to any one of claims 1-4, wherein the
        device is a portable electronic device.

6.   Computer-implemented method according to any one of claims 1-5, wherein the
        physical object is a finger or a stylus.

7.   Computer program with software code adapted to perform the method according
        to any one of claims 1-6.

---

[1] This is a translation error. "A previously hidden edge" is mistranslated by "a previously hidden angle
[*hoek*]" instead of "edge [*rand*]".

8.   Electronic device (100), comprising:
a touch screen display (112);
one or more processors (120);
a memory (102); and
a program, wherein the program is stored in the memory and configured to be executed by the one or more processors, wherein the program includes:
instructions for the detecting (2402) of a first movement (2310) of a physical object on or near the touch screen display (112);
instructions for the translating (2404), during the detecting of the first movement (2310), of a first digital object (2300-1) displayed on the touch screen display (112) in a first direction, while the first digital object (2300-1) is associated with a set of digital objects; **characterized** by
instructions for displaying (2406), in response to the displaying of a previously hidden edge (2312) of the first digital object (2300-1) and continued detection of the first movement (2310), of an area beyond the edge (2312) of the first digital object;
instructions for translating (2408), after the first movement (2310) is no longer detected, of the first digital object (2300-1) in a second direction (2316) until the area (2314) beyond the edge (2312) of the first digital object (2300-1) is no longer displayed;
instructions for the detecting (2410) of a second movement (2318) of the physical object on or near the touch screen display (112); and
instructions for the translating (2412), in response to the detecting of the second movement (2318) while the previously hidden edge (2312) of the first digital object (2300-1) is displayed, of the first digital object (2300-1) in the first direction and the displaying of a second digital object (2300-2) in the set of digital objects.

9.   Electronic device according to claim 8, wherein, prior to the translating while detecting the first movement, at least one edge of the first digital object extends beyond the touch screen display (112) in the first direction.

10.   Electronic device according to claim 8 or 9, wherein the first movement is a horizontal swipe gesture.

11.   Electronic device according to claim to any one of claims 8-10, wherein the set of digital objects is a set of digital images, a set of web pages or a set of electronic documents.

12.   Electronic device according to any one of claims 8-11, wherein the device is a portable electronic device.

13.   Electronic device according to any one of claims 8-12, wherein the physical object is a finger or a stylus.

2.5.	The following figures, among others, belong to EP 868:

Figure 23A
Figure 23B
Figure 23C
Figure 23D
Figure 23E
Figure 23F
Figure 23G
Figure 23H
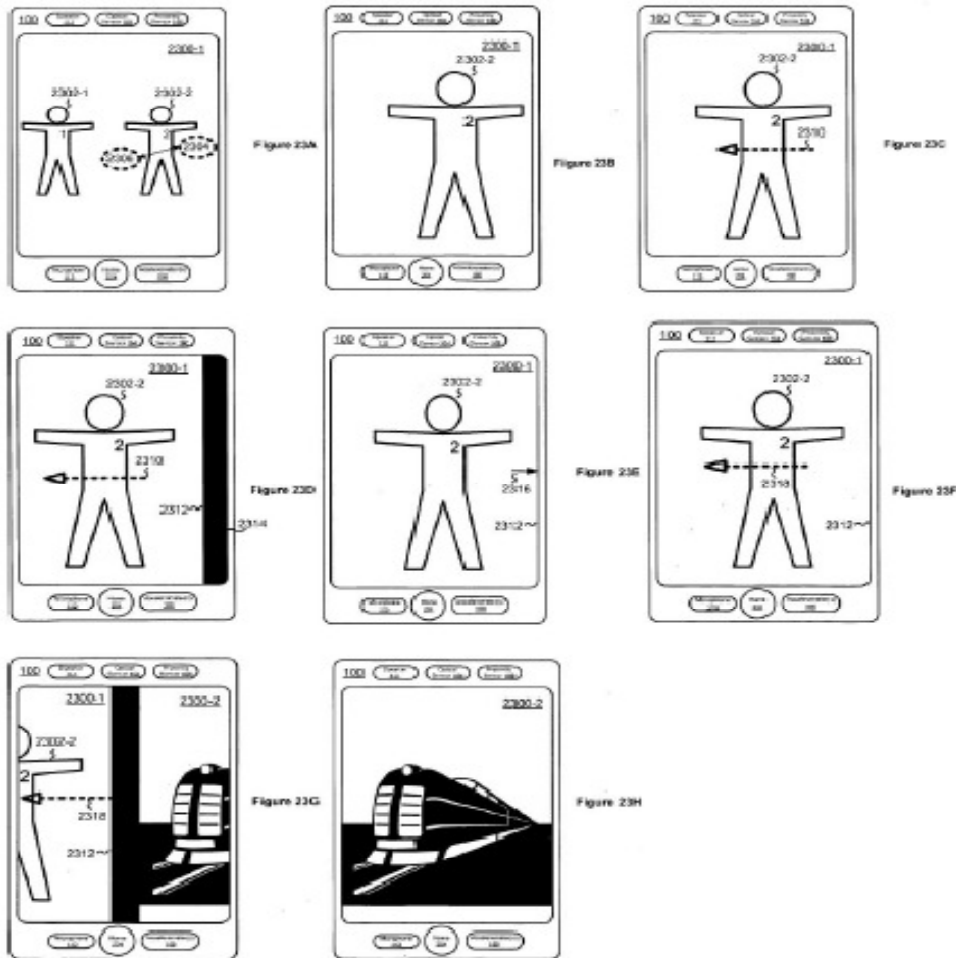
2.6.	In addition, Apple is the holder of European patent EP 2 098 948 (hereinafter: EP 948) for a "*Touch event model*", granted on 9 February 2011 for an application of 4 March 2009, claiming priority of the American patent application US 42381 dated 4 March 2008. Netherlands is one of the designated countries. At the time of summoning, no opposition has been filed against the granting of EP 948.

2.7.	The claims of EP 868 in the original English text read:

1. A method for handling touch events at a multi-touch device (200, 210), comprising:

    displaying one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312);

    executing one or more software elements, each software element being associated with a particular view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312);

    associating a multi-touch flag or an exclusive touch flag with each view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312), said multi-touch flag indicating whether a particular view is allowed to receive multiple simultaneous touches and said exclusive touch flag indicating whether a particular view allows other views to receive touch events while the particular view is receiving a touch event;

    receiving one or more touches at the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312); and

    selectively sending one or more touch events, each touch event describing a received touch, to one or more of the software elements associated with the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312) at which a touch was received based on the values of the multi-touch and exclusive touch flags.

2. The method of claim 1, further comprising:

    if a multi-touch flag is associated with a particular view, allowing other touch events contemporaneous with a touch event received at the particular view to be sent to software elements associated with the other views.

3. The method of claim 1, wherein if a multi-touch flag is associated with a particular view, the multi-touch flag indicates whether the software element associated with that particular view is allowed to process multiple contemporaneous touches located in that view.

4. The method of claim 1, wherein the exclusive touch flag prevents touch events from being sent to software elements associated with views other than a view with an asserted exclusive touch flag while a touch is being received at the view with the asserted exclusive touch flag.

5. The method of claim 1, wherein the multi-touch device (200, 210) is a mobile telephone.

6. The method of claim 1, wherein the multi-touch device (200, 210) is a digital media player.

7. The method of claim 1, comprising:

    associating a multi-touch flag with a first view;

    receiving a first touch at the first view, the first view being one of the one or more views;

    sending a touch event describing the first touch to a first software element,

    the first software element being one of the one or more software elements and associated with the first view; determining whether the multi-touch flag associated with the first view indicates that the first view is a multi-touch view; and

    if the first view is not a multi-touch view, blocking all touch events describing any other touches located in the first view until the first touch is no longer received.

8. The method of claim 7, further comprising:

associating an exclusive touch flag with each of the one or more views;
determining whether the exclusive touch flag associated with the first view indicates that the first view is an exclusive touch view; and
if the first view is an exclusive touch view, blocking all touch events describing any other touches located in any view other than the first view until the first touch is no longer received.

9. The method of claim 8, wherein the first view is not an exclusive touch view, the method further comprising:

receiving a second touch at the multi touch panel, the second touch located at a second view and associated with a second software element;
determining whether the exclusive touch flag associated with the second view indicates that the second view is an exclusive touch view; and
if the second view is an exclusive touch view, preventing a touch event associated with the second touch from being sent to the second software element until the first touch is no longer received.

10. The method of claim 9, further comprising:

if the second view is not an exclusive touch view, sending a touch event describing the second touch to the second software element.

11. A computer readable medium comprising a plurality of instructions configured for execution at a multi-touch device (200, 210), the instructions being configured to cause the multi-touch device (200, 210) to:

display one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312);
execute one or more software elements, each software element being associated with a particular view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312);
associate a multi-touch flag or an exclusive touch flag with each view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312), said multi-touch flag indicating whether a particular view is allowed to receive multiple simultaneous touches and said exclusive touch flag indicating whether a particular view allows other views to receive touch events while the particular view is receiving a touch event;
receive one or more touches at the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312); and
selectively send one or more touch events, each touch event describing a received touch, to one or more of the software elements associated with the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312) at which a touch was received based on the values of the multi-touch and exclusive touch flags.

12. The computer readable medium of claim 11, wherein the instructions are further configured to cause the multi-touch device (200, 210) to:

if a multi-touch flag is associated with a particular view, allowing other touch events contemporaneous with a touch event received at the particular view to be sent to software elements associated with the other views.

13. The computer readable medium of claim 11, wherein if a multi-touch flag is associated with a particular view, the multi-touch flag indicates whether the software element associated with that particular view is allowed to process multiple contemporaneous touches located in that view.

14. The computer readable medium of claim 11, wherein the exclusive touch flag prevents touch events from being sent to software elements associated with views other than a view with an asserted exclusive touch flag while a touch is being received at the view with the asserted exclusive touch flag.

15. The computer readable medium of claim 11, wherein the multi-touch device (200, 210) is a mobile telephone.

16. The computer readable medium of claim 11, wherein the multi-touch device (200, 210) is a digital media player.

17. The computer readable medium of claim 11, wherein the instructions are further configured to cause the multi-touch device (200, 210) to:

associate a multi-touch flag with a first view;
receive a first touch at the first view, the first view being one of the one or more views;
send a touch event describing the first touch to a first software element, the first software element being one of the one or more software elements and associated with the first view;
determine whether the multi-touch flag associated with the first view indicates that the first view is a multi-touch view; and
if the first view is not a multi-touch view, block all touch events describing any other touches located in the first view until the first touch is no longer received.

18. The computer readable medium of claim 17, wherein the instructions are further configured to cause the multi-touch device (200, 210) to:

associate an exclusive touch flag with each of the one or more views;
determine whether the exclusive touch flag associated with the first view indicates that the first view is an exclusive touch view; and
if the first view is an exclusive touch view, blocking all touch events describing any other touches located in any view other than the first view until the first touch is no longer received.

19. The computer readable medium of claim 18, wherein the first view is not an exclusive touch view and the instructions are further configured to cause the multi-touch device (200, 210) to:

receive a second touch at the multi touch panel, the second touch located at a second view and associated with a second software element;

determine whether the exclusive touch flag associated with the second view indicates that the second view is an exclusive touch view; and

if the second view is an exclusive touch view, prevent a touch event associated with the second touch from being sent to the second software element until the first touch is no longer received.

20. The computer readable medium of claim 19, wherein the instructions are further configured to cause the multi-touch device (200, 210) to:

if the second view is not an exclusive touch view, send a touch event describing the second touch to the second software element.

21. A multi-touch enabled device (200, 210) including a computer readable medium comprising a plurality of instructions configured for execution at the device (200, 210), the instructions being configured to cause the device (200, 210) to:

display one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 11, 312);
execute one or more software elements, each software element being associated with a particular view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312);
associate a multi-touch flag or an exclusive touch flag with each view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312), said multi-touch flag indicating whether a particular view is allowed to receive multiple simultaneous touches and said exclusive touch flag indicating whether a particular view allows other views to receive touch events while the particular view is receiving a touch event;
receive one or more touches at the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312); and
selectively send one or more touch events, each touch event describing a received touch, to one or more of the software elements associated with the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312) at which a touch was received based on the values of the multi-touch and exclusive touch flags.

22. The multi-touch enabled device (200, 210) of claim 21, wherein the multi-touch enabled device (200, 210) is a mobile telephone.

23. The multi-touch enabled device (200, 210) of claim 21, wherein the multi-touch enabled device (200, 210) is a digital media player.

2.8.   In the unchallenged Dutch translation, the claims of EP 948 read:

1.   Method for handling of touch events at a multi-touch device (200, 210), comprising:
the displaying of one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312);
the executing of one or more software elements, each software element being associated with a specific view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312);
the associating of a multi-touch flag or an exclusive touch flag with each view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312), wherein said multi-touch flag indicates whether a specific view can receive multiple simultaneous touches and said exclusive touch flag indicates whether a specific view makes it possible for other views to receive touch events while the specific view is receiving a touch event;
the receiving of one or more touches at the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312);

the selective sending of one or more touch events, each touch event describing a received touch, to one or more of the software elements associated with the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312) where a touch was received based on the values of the multi-touch and exclusive touch flags.

2. Method according to claim 1, further comprising:
    if a multi-touch flag is associated with a specific view, the contemporaneous allowing of other touch events with a touch event received at a specific view that must be sent to the software elements associated with other views.

3. Method according to claim 1, wherein if a multi-touch flag is associated with a specific view, the multi-touch flag indicates whether the software element associated with the specific view can process multiple contemporaneous touches that are located in that view.

4. Method according to claim 1, wherein the exclusive touch flag prevents touch events from being sent to the software elements associated with views other than a view with a confirmed exclusive touch flag while a touch is received at the view with the confirmed exclusive touch flag.

5. Method according to claim 1, wherein the multi-touch device (200, 210) is a mobile telephone.

6. Method according to claim 1, wherein the multi-touch device (200, 210) is a digital media player.

7. Method according to claim 1, comprising:
    the associating of a multi-touch flag with a first view;
    the receiving of a first touch at the first view, the first view being one of the one or more views;
    the sending of a touch event that describes the first touch to a first software element, the first software element being one of the one or more software elements and being associated with the first view;
    the determining whether the multi-touch flag associated with the first view indicates that the first view is a multi-touch view; and
    if the first view is not a multi-touch view, the blocking of all touch events that describe other touches located in the first view until the first touch is no longer received.

8. Method according to claim 7, further comprising:
    the associating of an exclusive touch flag with each of the one or more views;
    the determining whether the exclusive touch flag associated with the first view indicates that the first view is an exclusive touch view; and

if the first view is an exclusive touch view, the blocking of all touch events that describe other touches located in each view other than the first view until the first touch is no longer received.

9.   Method according to claim 8, wherein the first view is not an exclusive touch view, the method further comprising:
the receiving of a second touch at the multi-touch panel, the second touch being located at the second view and being associated with a second software element; the determining whether the exclusive touch flag associated with the second view indicates that the second view is an exclusive touch view; and if the second view is an exclusive touch view, the preventing of a touch event associated with the second touch being sent to the second software element until the first touch is no longer received.

10.   Method according to claim 9, further comprising:
if the second view is not an exclusive touch view, the sending of a touch event that describes a second touch to the second software element.

11.   Computer readable medium comprising a number of instructions configured for execution on a multi-touch device (200, 210), the instructions being configured to cause the multi-touch device (200, 210) to:
display one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312);
execute one or more software elements, each software element being associated with a specific view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312); associate a multi-touch flag or an exclusive touch flag with each view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312), wherein said multi-touch flag indicates whether a specific view can receive multiple simultaneous touches and said exclusive touch flag indicates whether a specific view makes it possible for other views to receive touch events while the specific view is receiving a touch event;
receive one or more touches at the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312); and
selectively send one or more touch events, each touch event describing a received touch, to one or more of the software elements associated with the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312) where a touch was received based on the values of the multi-touch and exclusive touch flags.

12.   Computer readable medium according to claim 11, wherein the instructions moreover are configured to cause the multi-touch device (200, 210) to:
if a multi-touch flag is associated with a specific view, make it possible for other touch events contemporaneous with a touch event received at a specific view to be sent to software elements associated with the other views.

13.   Computer readable medium according to claim 11, wherein if a multi-touch flag

is associated with a specific view, the multi-touch flag indicates whether the software element associated with the specific view can process multiple contemporaneous touches that are located in that view.

14.   Computer readable medium according to claim 11, wherein the exclusive touch flag prevents touch events from being sent to the software elements associated with views other than a view with a confirmed exclusive touch flag while a touch is received at the view with the confirmed exclusive touch flag.

15.   Computer readable medium according to claim 11, wherein the multi-touch device (200, 210) is a mobile telephone.

16.   Computer readable medium according to claim 11, wherein the multi-touch device (200, 210) is a digital media player.

17.   Computer readable medium according to claim 11, wherein the instructions are further configured to cause the multi-touch device (200, 210) to:
associate a multi-touch flag with a first view;
receive a first touch at the first view, the first view being one of the one or more views;
send a touch event that describes the first touch to a first software element, the first software element being one of the one or more software elements and being associated with the first view;
determine whether the multi-touch flag associated with the first view indicates that the first view is a multi-touch view; and
if the first view is not a multi-touch view, block all touch events that describe other touches located in the first view until the first touch is no longer received.

18.   Computer readable medium according to claim 17, wherein the instructions are further configured to cause the multi-touch device (200, 210) to:
associate an exclusive touch flag with each of the one or more views;
determine whether the exclusive touch flag associated with the first view indicates that the first view is an exclusive touch view; and
if the first view is an exclusive touch view, block all touch events that describe other touches located in each view other than the first view until the first touch is no longer received.

19.   Computer readable medium according to claim 18, wherein the first view is not an exclusive touch view and the instructions are further configured to cause the multi-touch device (200, 210) to:
receive a second touch at the multi-touch panel, the second touch being located at the second view and being associated with a second software element;
determine whether the exclusive touch flag associated with the second view indicates that the second view is an exclusive touch view; and

if the second view is an exclusive touch view, prevent a touch event associated with the second touch being sent to the second software element until the first touch is no longer received.

20. Computer readable medium according to claim 19, wherein the instructions are further configured to cause the multi-touch device (200, 210) to:
if the second view is not an exclusive touch view, send a touch event that describes a second touch to the second software element.

21. Multi-touch activated device (200, 210) comprising a computer readable medium including a number of instructions configured for execution on the device (200, 210), the instructions being configured to cause the device (200, 210) to:
display one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312);
execute one or more software elements, each software element being associated with a specific view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312);
associate a multi-touch flag or an exclusive touch flag with each view (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312), wherein said multi-touch flag indicates whether a specific view can receive multiple simultaneous touches and said exclusive touch flag indicates whether a specific view makes it possible for other views to receive touch events while the specific view is receiving a touch event;
receive one or more touches at the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312); and
selectively send one or more touch events, each touch event describing a received touch, to one or more of the software elements associated with the one or more views (301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312) where a touch was received based on the values of the multi-touch and exclusive touch flags.

22. Multi-touch activated device (200, 210) according to claim 21, wherein the multi-touch activated device (200, 210) is a mobile telephone.

23. Multi-touch activated device (200, 210) according to claim 21, wherein the multi-touch activated device (200, 210) is a digital media player.

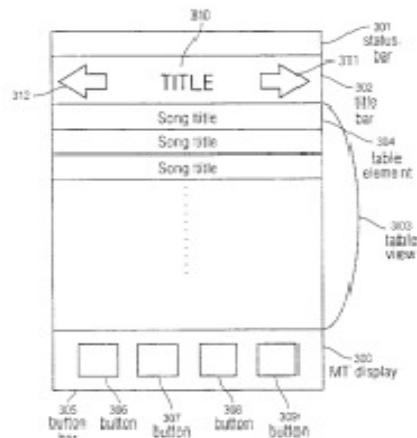2.9. The following picture, among others, belongs to EP 948.

Fig. 3

2.10. Apple is furthermore the holder of European patent EP 1 964 022 (hereinafter: EP 022) for "*Unlocking a by performing gestures on an unlock image*", granted on 10 March 2010 for an application of 30 November 2006, claiming priority of the American patent US 322549 with priority date of 23 December 2005. Netherlands is one of the designated countries. No opposition has been filed against the granting of EP 022.

2.11. The claims of EP 022 in the original English text read:

1   A computer-implemented method of controlling a portable electronic device (400, 1000) comprising a touch-sensitive display (408, 1014), comprising:

   detecting (308, 908) contact with the touch-sensitive display (408, 1014) while the device is in a user-interface lock state;
   transitioning (314, 914) the device (400, 1000) to a user-interface unlock state if the detected contact corresponds to a predefined gesture; and
   maintaining (312, 912) the device (400, 1000) in the user-interface lock state if the detected contact does not correspond to the predefined gesture;
   characterized by
   moving an unlock image (402, 1002, 1008) along a predefined displayed path on the touch-sensitive display (408, 1014) in accordance with the contact, wherein the unlock image (402, 1002, 1008) is a graphical, interactive user-interface object with which a user interacts in order to unlock the device (400, 1000).

2.   The computer-implemented method of claim 1, further comprising displaying (304) the unlock image (402) and one or more visual cues on the touch-sensitive display (408) while the portable electronic device (400) is in a user-interface lock state, wherein the one or more visual cues indicate a movement of the unlock image (402) along the touch-sensitive display (408) that will unlock the device (400).

3. The computer-implemented method of claim 1, further comprising displaying (304) the unlock image (402) on the touch-sensitive display (408) while the device (400) is in a user-interface lock state; and wherein the predefined gesture corresponds to moving the unlock image (402) along the predefined displayed path on the touch-sensitive display (408) to a predefined location on the touch-sensitive display (408).

4. The computer-implemented method of claim 1, further comprising displaying (304) the unlock image (402) on the touch-sensitive display (408) while the device (400) is in a user-interface lock state; and wherein the predefined gesture corresponds to moving the unlock image (402) across the touch-sensitive display (408) according to the predefined displayed path on the touch-sensitive display (408).

5. The computer-implemented method of claim 1, further comprising:

    displaying (904) a first unlock image (1002) and a second unlock image (1008) on the touch-sensitive display (1014) while the device (1000) is in a user-interface lock state; and

wherein transitioning the device (1000) to a user-interface unlock state comprises:

    transitioning (914) the device (1000) to a first active state corresponding to the first unlock image (1002) if the detected contact corresponds to a predefined gesture with respect to the first unlock image (1002); and
    transitioning (914) the device (1000) to a second active state distinct from the first active state if the detected contact corresponds to a predefined gesture with respect to the second unlock image (1008).

6. A portable electronic device (100, 400, 1000), comprising:

    a touch-sensitive display (126, 408, 1014);
    one or more processors (106);
    memory (102); and
    one or more programs (132 to 146), wherein the one or more programs (132 to 146) are stored in the memory (102) and configured to be executed by the one or more processors (106), the programs (132 to 146) including instructions for:

        detecting (308, 908) contact with the touch-sensitive display (126, 408, 1014) while the device (100, 400, 1000) is in a user-interface lock state;
        transitioning (314, 914) the device (100, 400, 1000) to a user-interface unlock state if the detected contact corresponds to a predefined gesture; and
        maintaining (312, 912) the device (100, 400, 1000) in the user-interface lock state if the detected contact does not correspond to the predefined gesture;

        characterized in that
        the programs (132 to 146) further include instructions for moving an unlock image (402, 1002, 1008) along a predefined displayed path on the touch-sensitive display (126, 408, 1014) in accordance with the contact,

wherein the unlock image (402, 1002, 1008) is a graphical, interactive user-interface object with which a user interacts in order to unlock the device (100, 400, 1000).

7. The portable electronic device of claim 6, wherein the device (100, 400, 1000) is a portable multifunction device.

8. The portable electronic device of claim 6, further comprising instructions for preventing (302, 310, 312) the device (100, 400) from performing a predefined set of actions in response to detecting any contact with the touch-sensitive display (126, 408) that does not correspond to the predefined gesture while the device (100, 400) is in the user-interface lock state.

9. The portable electronic device of claim 6, wherein the predefined displayed path is a channel (404).

10. The portable electronic device of claim 6, wherein the detected contact is a movement of a point of contact across the touch-sensitive display (126, 408) while maintaining continuous contact with the touch-sensitive display (126, 408).

11. The portable electronic device of claim 10, wherein the movement of the point of contact across the touch-sensitive display (126, 408) while maintaining continuous contact with the touch-sensitive display (126, 408) is a horizontal movement.

12. The portable electronic device of claim 6, wherein the one or more programs (132 to 146) further comprise instructions for displaying (304) the unlock image (402) and one or more visual cues on the touch-sensitive display (126, 408) while the portable electronic device (100, 400) is in a user-interface lock state, wherein the one or more visual cues indicate a movement of the unlock image (402) along the touch-sensitive display (126, 408) that will unlock the device (100, 400).

13. The portable electronic device of claim 12, wherein the one or more visual cues include an arrow.

14. The portable electronic device of claim 12, wherein the one or more visual cues include text.

15. The portable electronic device of claim 6, wherein the one or more programs (132 to 146) further comprise instructions for displaying (304) the unlock image (402) on the touch-sensitive display (126, 408) while the device (100, 400) is in a user-interface lock state, and wherein the predefined gesture corresponds to moving the unlock image (402) along the predefined displayed path on the touch-sensitive display (126, 408) to a predefined location on the touch-sensitive display (126, 408).

16. The portable electronic device of claim 6, wherein the one or more programs (132 to 146) further comprise instructions for displaying (304) the unlock image on the touch-sensitive display while the device is in a user-interface lock state; and wherein the predefined gesture corresponds to moving the unlock image (402) across the touch-sensitive display (126, 408) according to a predefined displayed path on the touch-sensitive display (126, 408).

17. The portable electronic device of claim 6, wherein the one or more programs further comprise instructions for displaying (904) a first unlock image (1002) and a second unlock image

(1008) on the touch-sensitive display (1014) while the device (1000) is in a user-interface lock state; and

wherein the instructions for transitioning the device to a user-interface unlock state comprise:

instructions for transitioning the device (1000) to a first active state corresponding to the first unlock image (1002) if the detected contact corresponds to a predefined gesture with respect to the first unlock image (1002), and

instructions for transitioning the device (1000) to a second active state distinct from the first active state if the detected contact corresponds to a predefined gesture with respect to the second unlock image (1008).

18. A computer program product with instructions configured for execution by one or more processors (106), which when executed by a portable electronic device (100, 400, 1000) with a touch-sensitive display (126, 408, 1014), cause the device (100, 400, 1000) to perform the method of any of claims 1 to 5.

2.12. In the unchallenged Dutch translation, the claims of EP 022 read:

1. Computer-implemented method of controlling a portable electronic device (400, 1000), comprising a touch-sensitive display (408, 1014), which consists in:
detecting (308, 908) of contact with the touch-sensitive display (408, 1014) while the device is in a user-interface lock state;
transitioning (314, 914) the device (400, 1000) to a user-interface unlock state if the detected contact corresponds to a predefined gesture; and
maintaining (312, 912) the device (400, 1000) in the user-interface lock state if the detected contact does not correspond to the predefined gesture;

   characterized by

   moving an unlock image (402, 1002, 1008) along a predefined displayed path on the touch-sensitive display (408, 1014) in accordance with the contact, wherein the unlock image (402, 1002, 1008) is a graphical, interactive user-interface object with which a user interacts to unlock the device (400, 1000).

2. Computer-implemented method according to claim 1, moreover comprising displaying (304) the unlock image (402) and one or more visual instructions on the touch-sensitive display (408) while the portable electronic device (400) is in a user-interface lock state, wherein the one or more visual instructions indicate a movement of the unlock image (402) along the touch-sensitive display (408) that will unlock the device (400).

3. Computer-implemented method according to claim 1, moreover comprising displaying (304) the unlock image (402) on the touch-sensitive display (408) while the device (400) is in a user-interface lock state; and wherein the predefined gesture corresponds to moving of the unlock image (402) along the predefined displayed path on the touch-sensitive display (408) to a predefined location on the touch-sensitive display (408).

4. Computer-implemented method according to claim 1, moreover comprising

displaying (304) the unlock image (402) on the touch-sensitive display (408) while the device (400) is in a user-interface lock state; and wherein the predefined gesture corresponds to moving of the unlock image (402) over the touch-sensitive display (408) in accordance with the predefined displayed path on the touch-sensitive display (408).

5. Computer-implemented method according to claim 1, moreover comprising:
displaying (904) of a first unlock image (1002) and a second unlock image (1008) on the touch-sensitive display (1014) while the device (1000) is in a user-interface lock state; and
wherein the transitioning of the device (1000) to a user-interface unlock state comprises:
transitioning (914) of the device (1000) to a first active state corresponding to the first unlock image (1002) if the detected contact corresponds to a predefined gesture with regard to the first unlock image (1002); and
transitioning (914) of the device (1000) to a second active state different from the first active state if the detected contact corresponds to a predefined gesture with regard to the second unlock image (1008).

6. Portable electronic device (100, 400, 1000), comprising:
a touch-sensitive display (126, 408, 1014);

one or more processors (106);
memory (102); and
one or more programs (132-146), wherein the one or more programs (132-146) are stored in the memory (102) and are configured to be executed by the one or more processors (106), where the programs (132-146) include instructions for:
detecting (308, 908) of contact with the touch-sensitive display (126, 408, 1014) while the device (100, 400, 1000) is in a user-interface lock state;
transitioning (314, 914) the device (100, 400, 1000) to a user-interface unlock state if the detected contact corresponds to a predefined gesture; and
maintaining (312, 912) the device (100, 400, 1000) in the user-interface lock state if the detected contact does not correspond to the predefined gesture;

characterized in that

the programs (132-146) moreover contain instructions for moving an unlock image (402, 1002, 1008) along a predefined displayed path on the touch-sensitive display (126, 408, 1014) in accordance with the contact, wherein the unlock image (402, 1002, 1008) is a graphical, interactive user-interface object with which a user interacts to unlock the device (100, 400, 1000).

7. Portable electronic device according to claim 6, wherein the device (100, 400, 1000) is a portable multifunction device.

8. Portable electronic device according to claim 6, furthermore comprising

instructions to prevent (302, 310, 312) the device (100, 400) from performing a predefined series of actions in response to the detecting of any contact with the touch-sensitive display (126, 408) that does not correspond to the predefined gesture while the device (100, 400) is in the user-interface lock state.

9. Portable electronic device according to claim 6, wherein the predefined displayed path is a channel (404).

10. Portable electronic device according to claim 6, wherein the detected contact is a movement of a contact point over the touch-sensitive display (126, 408), while continuous contact is maintained with the touch-sensitive display (126, 408).

11. Portable electronic device according to claim 10, wherein the movement of the contact point over the touch-sensitive display (126, 408), while continuous contact is maintained with the touch-sensitive display (126, 408), is a horizontal movement.

12. Portable electronic device according to claim 6, wherein the one or more programs (132-146) moreover contain instructions for displaying (304) the unlock image (402) and one or more visual instructions on the touch-sensitive display (126, 408) while the portable electronic device (100, 400) is in a user-interface lock state, wherein the one or more visual instructions indicate a movement of the unlock image (402) along the touch-sensitive display (126, 408) that will unlock the device (100, 400).

13. Portable electronic device according to claim 12, wherein the one or more visual instructions contain an arrow.

14. Portable electronic device according to claim 12, wherein the one or more visual instructions contain text.

15. Portable electronic device according to claim 6,

wherein the one or more programs (132-146) moreover contain instructions for displaying (304) the unlock image (402) on the touch-sensitive display (126, 408) while the device (100, 400) is in a user-interface lock state; and
wherein the predefined gesture corresponds to moving of the unlock image (402) along the predefined displayed path on the touch-sensitive display (126, 408) to a predefined location on the touch-sensitive display (126, 408).

16. Portable electronic device according to claim 6,

wherein the one or more programs (132-146) moreover contain instructions for displaying (304) the unlock image on the touch-sensitive display while the device is in a user-interface lock state; and

wherein the predefined gesture corresponds to moving of the unlock image (402) over the touch-sensitive display (126, 408) in accordance with a predefined displayed path on the touch-sensitive display (126, 408).

17.   Portable electronic device according to claim 6, wherein the one or more programs moreover contain instructions for displaying (904) of a first unlock image (1002) and a second unlock image (1008) on the touch-sensitive display (1014) while the device (1000) is in a user-interface lock state; and

wherein the instructions for transitioning of the device to a user-interface unlock state comprise:
instructions for transitioning of the device (1000) to a first active state corresponding to the first unlock image (1002) if the detected contact corresponds to a predefined gesture with regard to the first unlock image (1002); and instructions for transitioning of the device (1000) to a second active state different from the first active state if the detected contact corresponds to a predefined gesture with regard to the second unlock image (1008).

18.   Computer program product with instructions that are configured to be executed by one or more processors (106) that, when executed by a portable electronic device (100, 400, 1000) with a touch-sensitive display (126, 408, 1014, cause the device (100, 400, 1000) to execute the method according to one of claims 1-5.

2.13. The following figures among others below to EP 022.

Figure 5A

Figure 5B

Figure 5C

Figure 5D
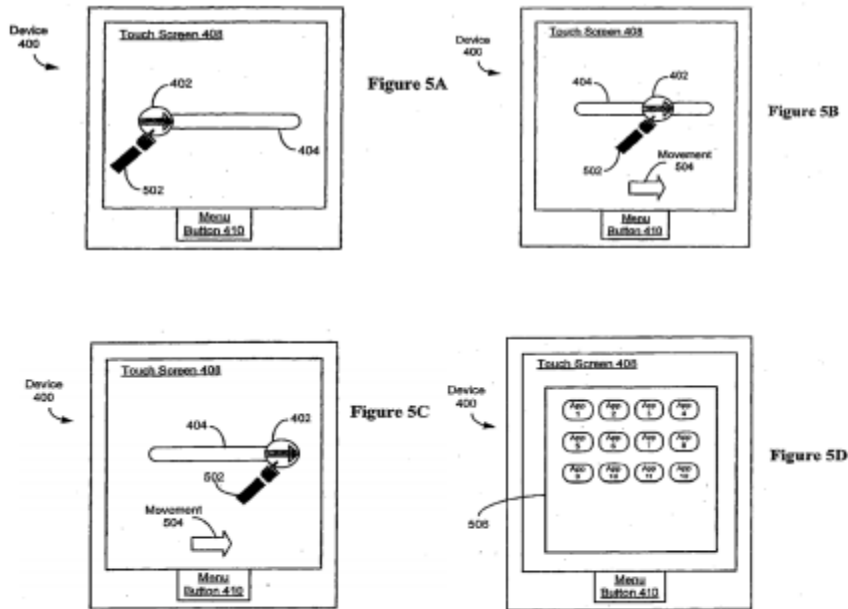
2.14.   Finally, Apple is the holder of the following design patents:

- EC design 181607-0001, filed on 24 May 2004 with priority of 17 March 2004
and registered on 10 August 2004 for "pocket computers";
- EC design patent 748280-0006, filed on 28 June 2007 with priority of 5 January
2007 and registered on 28 August 2007 for "apparatus for recording and playback
of sound or image";
- EC design patent 8889201-0018, filed on 29 Feb 2008 with priority of 31 Aug
2007 and registered on 13 May 2008 for "electronic devices";
- EC design patent 748694-0003, filed on 28 Jun 2007 with priority of 23 Jun
2007 and registered on 5 December 2007 for "graphical user interfaces";
- EC design patent 1236590-0011, filed on 24 Sep 2010 with priority of 19 April
2010 and registered on 4 February 2011 for "electronic devices";
- EC design patent 1260624-0015, filed on 16 Feb 2011 with priority of 16 Aug
2010 and registered on 8 April 2011 "electronic devices". [Apple no longer
asserts this design]

The images in the design filings are assumed to be represented in the evaluation.

2.15.   Defendant 1, Samsung Electronics Co. Limited, is part of the worldwide Samsung
Group and produces and markets products in the field of (consumer) electronics,
including smartphones and tablet computers.

2.16.   Samsung carries, among others, the following smartphones:

- Galaxy S GT-19000;
- Galaxy Ace GT-S5830;
- Galaxy S II GT-19100;

and the following tablet computers:

- Galaxy Tab GT-P1000;
- Galaxy Tab 10.1v GT-P7100;
- Galaxy Tab 10.1 GT-P7510.

2.17.   Defendant 2, Samsung Electronic Benelux B.V., has defendant 1 as its sole
shareholder and according to the commercial register it is a general trading company and
wholesaler in computer and electronics equipment. It is the holder of the website
www.samsung.nl addressed to the Netherlands. Via this website, Samsung offers in
Netherlands the smartphones and tablet computers involved in this proceeding.

2.18.   Defendant 3, Samsung Electronics Logistics Europe B.V. also has defendant 1 as
its sole shareholder and deals with warehousing, distribution and logistics of Samsung's
electronic products (among others) within Europe. In this, it makes use of warehouses in
Tilburg and Breda.

2.19.   Defendant 4, Samsung Electronics Overseas B.V. has as its mission statement according to the commercial register (among other things): dealing in, manufacturing, buying, selling, importing, exporting, and distributing of electronic apparatus.

3.   The dispute

3.1.   Apple asks, after reducing its claim[2], asks the court to issue a judgement, provisionally enforceable, with regard to the tablet computers of Samsung (KG 11-730):

Primary injunction claim:

(A) To enjoin defendants, effective immediately upon notification of the judgement, from infringing the Dutch parts of EP 2.059.868, EP 2.098.948 and EP 1.964.022 in any way, directly or indirectly, by manufacturing, warehousing, offering, importing, placing in commerce, selling and/or otherwise dealing in tablet computers;

(B) To enjoin defendants 2-4, effective immediately upon notification of the judgement, from infringing the foreign parts of EP 2.059.868, EP 2.098.948 and EP 1.964.022 in any way, directly or indirectly, by manufacturing, warehousing, offering, importing, placing in commerce, selling and/or otherwise dealing in tablet computers;

(C) To enjoin defendant 1, effective immediately upon notification of the judgement, from infringing the EC design patent No. 181607-0001 in any way by manufacturing, warehousing, offering, importing, exporting, placing in commerce, selling and/or otherwise dealing in tablet computers in Netherlands;

(D) To enjoin defendants 2-4, effective immediately upon notification of the judgement, from infringing the EC design patent No. 181607-0001 in any way by manufacturing, warehousing, offering, importing, exporting, placing in commerce, selling and/or otherwise dealing in tablet computers in the European Union;

(E) To enjoin defendants, effective immediately upon notification of the judgement, from infringing the copyright of plaintiff with respect to the iPad 1 and iPad 2 in any way in the Netherlands.

Subsidiary injunction claim:

(F) To enjoin defendants, effective immediately upon notification of the judgement, from manufacturing, warehousing, offering, importing, placing in commerce, selling and/or otherwise dealing in the Galaxy Tab, the Galaxy Tab 10.1v and/or the Galaxy Tab 10.1 in the Netherlands.

Ancillary claims:

---

[2] The claims regarding EC design patent 1260624-0015 are withdrawn upon arrival of letter at the clerk of the court on 28 July 2011, as mentioned above.

(G) To order defendants to report to the members of the board of plaintiff, within 30 calendar days from notification of the judgement, the sales and gross profits achieved with the infringing products, certified by an independent chartered accountant, as well as report all other information important to the calculation of the profit and/or indemnification;

(H) To order defendants, within a period of 7 days from notification of the judgement, to ask all its buyers in writing, insofar as these buyers are established in the European Union, at least in the countries where the asserted patent rights are in force, at least in Netherlands, to return the infringing products within two weeks, with the offer to compensate them for the invoice price and shipping costs, making use solely of the following text (i.e., without an offer letter or other additional text):
for Dutch buyers:
"Dear [name of buyer],
Some time ago we supplied you with tablet computers from the Galaxy range. In particular, this involves tablet computers of the type Galaxy Tab (GT-P1000) and Galaxy Tab 10.1v (GT-P7100) [fill in with other infringing tablet computers].
By judgement of [date of judgement], the judge in interlocutory proceedings of the Court of The Hague has ruled that the manufacturing, warehousing, offering, selling and/or delivering of these products INFRINGES the patent rights, design patents and/or copyright of Apple Inc., in any case that we have acted unlawfully towards Apple Inc. We ask you to return to us the Galaxy tablet computers supplied to you, if you still have any of them in stock, within 14 days of the date of signing of this letter.
Of course, we shall reimburse you for the price paid as well as the shipping costs.
For the record we would like to mention the fact that by storing, offering and/or selling of the mentioned Galaxy tablet computers you are infringing the intellectual property rights of Apple Inc."
for foreign buyers:
"Dear [name buyer],
Some time ago we supplied tablet computers from the Galaxy range to you. More in particular this concerns the Galaxy Tab (GT-P1000) and Galaxy Tab 10.1v (GT-P7100) [to be completed with other infringing tablet computers].
By judgment of [date judgment] the Judge in Interlocutory Proceedings of the Court The Hague, the Netherlands, ruled that the production, storing, offering, selling and/or supplying of these products COMMITS INFRINGEMENT of the patent rights, design rights and/or copyrights of Apple Inc, in any event that we have acted unlawfully towards Apple Inc.
We request you to return to us the Galaxy tablet computers supplied to you, insofar as you still have these in stock, within 14 days after the date of signing of this letter. We will of course compensate the price paid by you as well as the transport costs.
For the record we would like to mention the fact that by storing, offering and/or selling of the above mentioned Galaxy tablet computers, you commit infringement of the intellectual property rights of Apple Inc."
as well as a letter with content to be determined by the judge in interlocutory proceedings as he deems proper, while at the same time sending copies of this letter as well as a list of addressees with complete address information to the members of the board of plaintiff;

(I) Order the defendants to notify the market, within a period of 48 hours after notification of the judgement, as to the infringing of the patent rights, the design patents and/or the copyright of plaintiff, as well as the unlawful actions, by placing a message on the homepage of their Dutch website www.samsung.nl and keeping this message on the homepage without interruption for a period of four weeks, without any further commentary in word or image, with merely the following content and in neutral and customary typography with a letter size that does not differ from the other text on the homepage:

"Recently we offered the sale of tablet computers from the Galaxy range in the Netherlands. In particular, this involves the tablet computers of the type Galaxy Tab (GT-P1000) and Galaxy Tab 10.1v (GT-P7100).
By judgement of [date of judgement], the judge in interlocutory proceedings of the Court of The Hague has ruled that the sale of these tablet computers infringes the patent rights, design patents and/or copyright of Apple Inc., in any case that we have acted unlawfully towards Apple Inc., and forbids us from dealing any further in these Galaxy tablet computers on the Dutch market."

as well as a message with content to be determined by the judge in interlocutory proceedings as he deems proper, the message to be placed in a "pop-up window" that appears automatically whenever an Internet user visits the Dutch website of defendants and which message shall be of such size as to take up at least a quarter of the visible portion of the homepage, without having to scroll down this homepage, and the text of the message being designed so that the space of the pop-up window is fully utilized and the message is easily legible;

(J) Order the defendants to pay to plaintiff an immediately payable penalty of EUR 100,000 for each day or portion of a day or, at choice of plaintiff, per infringing product, for which it can be imputed to defendants that the prohibitions as stated under (A)-(F) and the commandments as stated under (G)-(I) have not been fulfilled or properly fulfilled;

(K) Set the period in which the claim in the main case must be brought as provided in art. 1019i Rv at six (6) months after notification of this judgement, or a period to be determined by the judge in interlocutory proceedings as he deems proper;

(L) Order defendants to pay the court costs in keeping with art. 1019h Rv.

and with regard to the smartphones of Samsung (KG 11-731):

Primary injunction claim:

(A) To enjoin defendants, effective immediately upon notification of the judgement, from infringing the Dutch parts of EP 2.059.868, EP 2.098.948 and EP 1.964.022 in any way, directly or indirectly, by manufacturing, warehousing, offering, importing, placing in commerce, selling and/or otherwise dealing in smartphones;

(B) To enjoin defendants 2-4, effective immediately upon notification of the judgement, from infringing the foreign parts of EP 2.059.868, EP 2.098.948 and EP 1.964.022 in any way, directly or indirectly, by manufacturing, warehousing, offering, importing, placing in commerce, selling and/or otherwise dealing in smartphones;

(C) To enjoin defendant 1, effective immediately upon notification of the judgement, from infringing the EC design patents No. 748280-0006, 888920-0018, 1236590-0001 and 748694-0003 in any way by manufacturing, warehousing, offering, importing, exporting, placing in commerce, selling and/or otherwise dealing in smartphones in the Netherlands;

(D) To enjoin defendants 2-4, effective immediately upon notification of the judgement, from infringing the EC design patents No. 748280-0006, 888920-0018, 1236590-0001 and 748694-0003 in any way by manufacturing, warehousing, offering, importing, exporting, placing in commerce, selling and/or otherwise dealing in smartphones in the European Union;

(E) To enjoin defendants, effective immediately upon notification of the judgement, from infringing the copyright of plaintiff with respect to the iPhone 3G and the iPhone 4 in any way in the Netherlands;

Subsidiary injunction claim:

(F) To enjoin defendants, effective immediately upon notification of the judgement, from manufacturing, warehousing, offering, importing, placing in commerce, selling and/or otherwise dealing in the Galaxy S, the Galaxy Ace and/or the Galaxy S II in the Netherlands.

Ancillary claims:

(G) To order defendants to report to the members of the board of plaintiff, within 30 calendar days from notification of the judgement, the sales and gross profits achieved with the infringing products, certified by an independent chartered accountant, as well as report all other information important to the calculation of the profit and/or indemnification;

(H) To order defendants, within a period of 7 days from notification of the judgement, to ask all its buyers in writing, insofar as these buyers are established in the European Union, at least in the countries where the asserted patent rights are in force, at least in Netherlands, to return the infringing products within two weeks, with the offer to compensate them for the invoice price and shipping costs, making use solely of the following text (i.e., without an offer letter or other additional text):
for Dutch buyers:
"Dear [name of buyer],

Some time ago we supplied you with mobile telephones from the Galaxy range. In particular, this involves smartphones of the type Galaxy S (GT-I9000, Galaxy SII (GTI-9100) and Galaxy Ace (GT-S5830) [fill in with other infringing telephones].
By judgement of [date of judgement], the judge in interlocutory proceedings of the Court of The Hague has ruled that the manufacturing, warehousing, offering, selling and/or delivering of these products INFRINGES the patent rights, design patents and/or copyright of Apple Inc., in any case that we have acted unlawfully towards Apple Inc.
We ask you to return to us the Galaxy smartphones supplied to you, if you still have any of them in stock, within 14 days of the date of signing of this letter.
Of course, we shall reimburse you for the price paid as well as the shipping costs.
For the record we would like to mention the fact that by storing, offering and/or selling of the mentioned Galaxy smartphones you are infringing the intellectual property rights of Apple Inc."
for foreign buyers:

"Dear [name buyer],
Some time ago we supplied mobile phones from the Galaxy range to you. More in particular this concerns the Galaxy S (GT-I9000), the Galaxy S II (GT-I99100) and the Galaxy Ace (GT-S5830) [to be completed with other infringing smartphones].
By judgment of [date judgment] the Judge in Interlocutory Proceedings of the Court The Hague, the Netherlands, ruled that the production, storing, offering, selling and/or supplying of these products COMMITS INFRINGEMENT of the patent rights, design rights and/or copyrights of Apple Inc, in any event that we have acted unlawfully towards Apple Inc.
We request you to return to us the Galaxy smartphones supplied to you, insofar as you still have these in stock, within 14 days after the date of signing of this letter. We will of course compensate the price paid by you as well as the transport costs.
For the record we would like to mention the fact that by storing, offering and/or selling of the above mentioned Galaxy smartphones, you commit infringement of the intellectual property rights of Apple Inc."

as well as a letter with content to be determined by the judge in interlocutory proceedings as he deems proper, while at the same time sending copies of this letter as well as a list of addressees with complete address information to the members of the board of plaintiff;

(I) Order the defendants to notify the market, within a period of 48 hours after notification of the judgement, as to the infringing of the patent rights, the design patents and/or the copyright of plaintiff, as well as the unlawful actions, by placing a message on the homepage of their Dutch website www.samsung.nl and keeping this message on the homepage without interruption for a period of four weeks, without any further commentary in word or image, with merely the following content and in neutral and customary typography with a letter size that does not differ from the other text on the homepage:
"Recently we offered the sale of mobile telephones from the Galaxy range in the Netherlands. In particular, this involves the smartphones of the type Galaxy S (GT-I9000, Galaxy S II (GTI-9100) and Galaxy Ace (GT-S5830).
By judgement of [date of judgement], the judge in interlocutory proceedings of the Court of The Hague has ruled that the sale of these smartphones infringes the patent rights, design patents and/or copyright of Apple Inc., in any case that we have acted unlawfully

towards Apple Inc., and forbids us from dealing any further in these Galaxy smartphones on the Dutch market."
as well as a message with content to be determined by the judge in interlocutory proceedings as he deems proper, the message to be placed in a "pop-up window" that appears automatically whenever an Internet user visits the Dutch website of defendants and which message shall be of such size as to take up at least a quarter of the visible portion of the homepage, without having to scroll down this homepage, and the text of the message being designed so that the space of the pop-up window is fully utilized and the message is easily legible;

(J) Order the defendants to pay to plaintiff an immediately payable penalty of EUR 100,000 for each day or portion of a day or, at choice of plaintiff, per infringing product, for which it can be imputed to defendants that the prohibitions as stated under (A)-(F) and the commandments as stated under (G)-(I) have not been fulfilled or properly fulfilled;

(K) Set the period in which the claim in the main case must be brought as provided in art. 1019i Rv at six (6) months after notification of this judgement, or a period to be determined by the judge in interlocutory proceedings as he deems proper;

(L) Order defendants to pay the court costs in keeping with art. 1019h Rv.

3.2   In short, Apple argues that Samsun is infringing on its aforementioned intellectual property rights according to the outlines below. With respect to the Samsung Galaxy tablets:

	Tab	Tab 10.1v	Tab 10.1
EP'868	X	X	X
EP'949		X	X
EP '022	X	X	X
CDR 181607-0001		X	X

Regarding the Samsung Galaxy smartphones:

	S	S II	Ace
EP'868	X	X	X
EP'948		X	
EP '022	X	X	X
CDR 888920-0018	X		
CDR 748280-0006	X		
CDR 1236590-0011			X
CDR 1260624-0015		X*	
CDR 748694-0003	X		

*withdrawn claim

In addition, Apple argues that Samsung is infringing on its copyrights with respect to the iPad1, 2 and iPhone 3, 4 and that it imitates its style slavishly.

3.3   Samsung replies in defense, in short, by stating that the cases are too complicated for a summary proceeding, that there is talk of misuse of procedural law, that there is certainly no urgent interest, that the patents and models are invalid, that it is not infringing on them, that there is no question of copyright protection in the Netherlands or of infringement on those rights or of slavish style imitation.

3.4   To the extent they are of interest, the statements of the parties are further looked into below.

4. Assessment

Competence

4.1.   Though not disputed, officially the boundary exceeding competence of the court with respect to defendants 2-4 is looked into, considering the fact that the patents invoked are greeted with a defense of invalidity. With a judgment of December 22, 2010, in the Solva/Honeywell case (LJN BP6970), this court has asked a prejudicial question about the exclusive competence rule of article 22 item 4 of the EEX regulation of the Court of Justice of the European Union in connection with the competence for a provisional measure (there pending with case number C 616/10). As long as the Court of Justice has not decided otherwise, it must be assumed however that in summary proceedings boundary exceeding competence must be assumed, even if there is talk of a defense of invalidity (compare Court of The Hague dated July 12, 2011, LJN BR1364, Yellow Page/Yell). As such, there is a boundary exceeding competence with respect to the patent rights invoked. With respect to the invoked model rights

applies that articles 82 item 1, 83 item 1 and 90 item 3 of the Regulation (EC) No. 6/2001 of the Council of December 12, 2001 regarding Community Models (Community Model Regulation) (hereinafter GmodVo) with respect to defendants 2-4 established in the Netherlands provide competence. With respect to defendant 1 no boundary exceeding provision is requested.

Urgent Interest

4.2   Apple has an urgent interest in its claims, now that it states that there is talk of continuous infringing action. The circumstance that certain Samsung products have already been on the market since 2010 detracts insufficiently from this, also considering that this does not apply for other Samsung products such as the Galaxy Tablet 10.1 which will be launched shortly [5]. In addition, there has been talk of negotiations between the parties and some rights, such as EP 948 and Community Model Rights 36590-0011 and 1260624-0015 have been granted in 2011 (February / April). At this state of affairs, Samsung has shown with insufficient clarity against which of its products and with respect to what rights, Apple would have acted with insufficient energy.

4.3   Restraint is in place to assume, as Samsung wants, that the interests on its part are so large that already because of them the claimed provisions must be rejected. The mirror image like interests on Apple's side are at this time also considered to be considerable. Add to this that with respect to the patents, on behalf of Samsung it has been stated during the hearing that it is relatively simple to adapt the software of its products in such a way that infringement is no longer applicable.

4.4   Consideration of the (urgent) interests of both parties had led the summary trial judge to state already during the hearing that for a possible prohibition an extension period to at least October 13, 2011 will be granted. This takes mainly into account the circumstance that consultation between the parties is taking and has been taking place regarding the granting of licenses, whereby also patent rights belonging to Samsung are involved and which Apple would use for the marketing of its iPad and iPhone. It is not necessary to put these negotiations under unnecessary heavy and one-sided pressure (the counterclaims based on two of the patents invoked by Samsung have been rejected after all) with a prohibition going into effect immediately.

Complexity

4.5   Though undeniably complex, this case is not too complicated for summary proceedings. The summary proceedings judge states first of all that restraint is suitable to deny a temporary provision on the grounds that a case is too complicated. The patents which are brought forward in this proceeding, are in addition not related to a technology which is too complicated. Also the dispute related to model rights and copyrights is of a nature and a scope as they are seen more often between large companies with large-scale interests. It must also be considered that such companies are in a condition to put together a team of attorneys and patent agents to make an actual case possible within a short period of time. Comparable arguments are opposed

[5] When issuing this judgment, the Galaxy tab 10.1 is apparently already launched in the Netherlands.

to Samsung's statement that it has not been able to prepare its case properly, especially with respect to the patent rights invoked by Apple, or that for such reason there would be talk of abuse of (procedural) law.

Patent Infringement

4.6   For each patent, hereinafter a short introduction will be made of the applicable technology. Such introduction is borrowed from the – undisputed – clarification given by Apple.

EP 868

Introduction
4.7   EP 868 is related to a user interface for scrolling and moving of digital objects, such as photos or electronic documents, on a device with a touchscreen display. EP 868 is among other related to an interface which can be used in such a fashion that a user can scroll within displays in a digital photo gallery and can navigate among different images.

4.8   More in particular, EP 868 claims protection for a method for making a second object (for instance a photo) visible from a first object that finds itself for instance in a zoomed in condition, while looking at two or more digital objects (Photos) one after the other, as well as for an electronic device in which this method is performed.

4.9   The patent explains that as image screens of portable electronic devices become smaller and smaller, this leads to restrictions with respect to the user interface and the manner in which users control the device (paragraph [0002]). For portable devices which are controlled on a touchscreen by touching with the finger (or another means, such as a stylus), (such as that of a smartphone or a tablet computer), the user interface has already improved greatly (paragraph [0008]) but also the use of such a touchscreen represents again new challenges.

4.10   EP 868 teaches the use of different movements to let the user navigate easily and intuitively within and among different photos in an album. For instance, when an individual image is looked at within the collection, the size of the image due to the reduced dimensions of the touchscreen can be greater than what can be shown on the screen, for instance, because one has zoomed in on the image. Therefore, it is handy to provide the user with an intuitive manner to navigate within the image and to indicate when the edge of the image has been reached. It is also conceivable that a user after looking at an image in the collection, would like to look at the next image. Therefore, it is useful that the user after looking at a single image, would be able also to look at the next image.

4.11   Paragraphs [0140] through [0144] of the patent describe by means of figures 23A through 23 H an implementation form of the claimed functionality. This assumes a situation in which a photo (2300-1) shown on a touchscreen shows two male figures (2302-1 and 2302-2) (figure 23A):
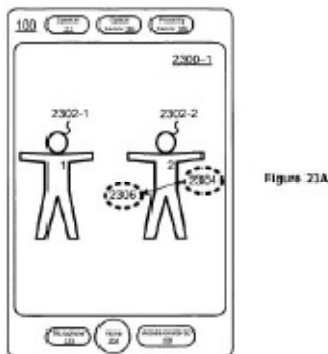

Figure 23A

4.12 EP 868 involves the situation in which the photo that is looked at, extends outside the edges of the screen; this means, that one or more of the edges of the photo are not visible. For instance, this may be the case when the user has zoomed in on a portion of the photo, as can be seen below on figure 23B, where the user has zoomed in on the male figure on the right on the photo of figure 23A:
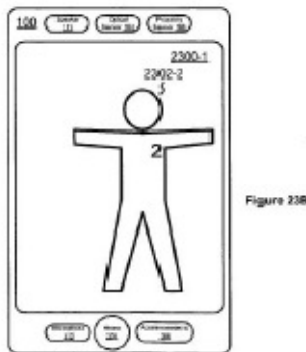
Figure 23B

4.13   As a result of the zoom action, the right side edge of the zoomed in photo is no longer visible on the screen of the device. When a first movement, such as a horizontal swiping movement 2310 from right to left is made over the zoomed in photo (figure 23C), the photo is moved a little bit to the left so that one after the other, the right-hand side edge 2312 original hidden by the zoom action as well as area 2314 beyond edge 2312 become visible (figure 23D):

Figure 23C

Figure 23D
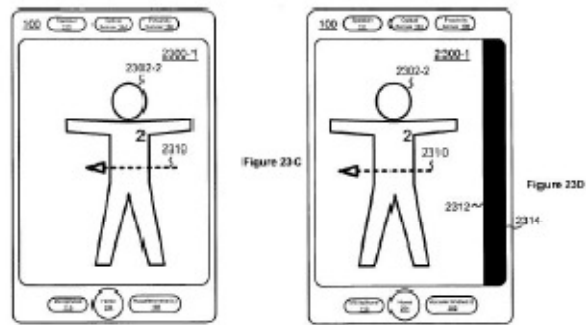
4.14   At the time when the <u>first</u> (swiping) movement is interrupted (for instance, because the finger is removed from the touchscreen), the zoomed in photo slides back by itself again in the opposite direction 2316 so that area 2314 made visible earlier is no longer visible (figure 23E):
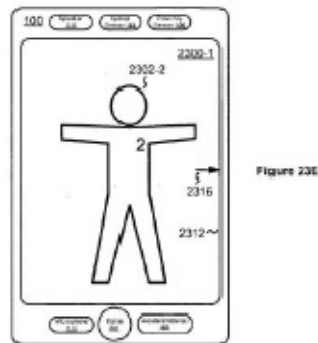
Figure 23E

4.15   With a <u>second</u> movement, such as in a horizontal swiping movement 2318, from right to left across the photo, the zoomed in photo is shifted again in the direction of the second movement 2318 (Figure 23F):
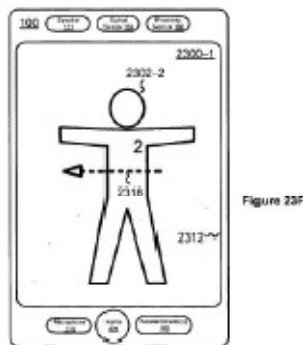
Figure 23F

4.16   By performing the second movement 2318, again and successively, the hidden side edge 2312 of the photo and the area 2314 past the edge 2312 are shown, and also a new photo 2300-2 (figure 23G) after which the first (zoomed in) photo in the direction of the second (swiping) movement disappears from the screen and the second photo appears on the screen (figure 23H):

Figure 23G   Figure 23H
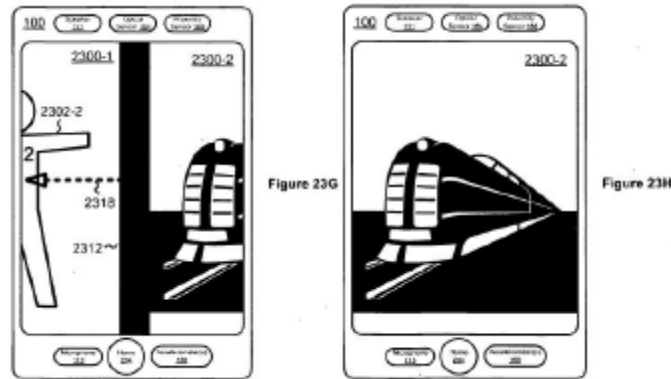
4.17   The patent explains that in practice it is also possible for the first (swiping) movement 2310 to make the first photo disappear immediately from the screen and to make appear a second photo, for instance in the situation that the first photo was visible in full on the screen and consequently, that it had not been zoomed in on (paragraph [0155]).

Infringement / validity
4.18   According to a provisional opinion, the mode of operation in the Galaxy S, S II and Ace falls under the protection of EP 868 but not the mode implemented in Galaxy Tab, Tab 10.1 and 10.1v.

4.19   Samsung has adopted the position that EP 868 would be invalid on the basis of WO 03/081458 published on October 2, 1993 (hereinafter WO 458). To this respect, the following is being considered. In the state of the art, it was unknown to make first one swipe (first movement) and then to let the digital object bounce back, and only then to show the next photo as soon as a second swipe (second movement) is performed. Judging at this time, this is not evident either for WO 458. That document reveals however swiping through columns (a column is according to a provisional judgment a first digital object in the sense of EP 868). In this context applies that when a "horizontal motion threshold" (page 15, line 9, WO 458) is exceeded, the next column is shown but when the threshold is not exceeded , the column will bounce back and "snap into alignment with the logical column" (page 15, line 20, WO 458). The mandatory bounce-back after the first movement of EP 868 cannot be found back in WO 458 nor is there any indication to that effect. The other state of the art mentioned by Samsung is further removed from the invention. Consequently, EP 868 is considered as being valid for the time being.

4.20   Considering what precedes, it is essential for EP 868 that there is a (mandatory) bounce back after a first movement, as described in claim 1. For the Samsung smartphones Galaxy S, S II and Ace, this takes place at the time when one zooms in on a photo. Then, a second swipe is necessary to move on to the next photo, precisely as described in paragraphs 140 through 144 as well as figures 23A-H of EP 868. This form of implementation is in line with the undisputed benefit or advantage of EP 868 stated by Apple, namely, preventing the problem of disorientation during navigation (which would be strongest when zooming in). This means that all components of claim 1 are complied with as soon as with the Galaxy S, S II or Ace one zooms in on a photo in the gallery and then, swipe movements are made with the finger. This does not alter the fact that bouncing back after a first swipe movement does not take place when there is no zooming in on the photo. This form of implementation of the Galaxy S, S II and Ace coincides with what is described in paragraph 0155 of EP 868 (see 4.17 above) so that an average expert or craftsman will understand that bouncing back after a first swipe does not have to take place all the time, namely, not when there is no zooming in. Otherwise than what Samsung has also argued, this expert or craftsman will also understand that the second movement must be sufficiently long or fast to pull the photo over the threshold value. On the one hand, this is dictated by the logic of the EP 868 method and on the other hand, this appears from the fact that the first photo of figure 23F must be pulled more than half over the next photo (figure 23G and 23H). That after the first movement, therefore movements are conceivable which are not sufficiently long or fast, does not detract from the fact that in Samsung's application at a given time a second movement is to be distinguished which is sufficient to move on to the next photo.

4.21   Judging at this time, this is different however for Galaxy Tab 10.1 and 10.1v. Also when zooming in on the photo in the gallery, it is possible at the tabs to leaf through directly to the next photo. Consequently, with the Galaxy tabs, there is no talk of a "first movement" after which there is a bounce back in the sense of EP 868. In fact, with the tabs it is therefore always possible, irrespective of whether there is zooming in, a "second movement" in the sense of EP 868 can be performed immediately as long as this second movement is long or fast enough. That is essentially different from what the average expert or craftsman will understand with the EP 868 system. That swipe movements are conceivable whereby there is bounce back, because the movement is too short or not fast enough, does not mean that there is infringement because an average expert or craftsman will not understand the difference between the first and the second movement as such. From the EP 868 system, he will understand that, in any event when there is zooming in, a first movement with bounce back must always take place, before moving on to the next photo is possible. That is not the case with the Galaxy tabs and this will be recognized by the average expert. The passage in paragraph 153 of EP 868 which Apple has pointed out, does not bring the expert to the idea that the first and second movements in the patented system should be viewed as totally separate from each other (and as such, that a first movement should not have to precede the second one), and certainly not when the expert is aware in how EP 868 differs from WO 458.
In fact, the application of the Galaxy tabs is not more or different than what WO 458 is revealing, namely , leafing through or "snapping" back and "aligning" of the digital

object, according to whether a horizontal threshold value is exceeded (read: whether swiping is sufficiently long or fast).

4.22   Since the summary proceedings judge is of the opinion that a mode of operation whereby also in a zoomed in condition, it is possible to leaf through with one movement (such as with the Galaxy

Tablets) , is not part of the patent, Samsung's argument that EP 868 as read would be too ample and non-repeatable, does not require an opinion anymore.

EP 948

Introduction
4.23   EP 948 relates to a device with touchscreen which can receive and process several touches simultaneously: a multi-touch touchscreen.

4.24   According to the patent, the user interface of a (multi-touch) touchscreen can include various views, whereby a view represents a certain graphic element of the user interface which is used by a software element (paragraph [0023] of the patent). Such a software element can be a software application, but also a given subcomponent of a software application.

4.25   When a user touches the touchscreen, data related to such touch (including information about when and where on the screen this took place) are generated and transmitted to the software element. These data – identified by the patent as touch input data – are processed by the software and transmitted to the software element which belongs to the touched view, so that said software element can react correctly. The processed touch input data of one touch are identified by EP 948 as a touch event (paragraph [0023]).

4.26   Normally speaking, control software within a device transmits information regarding a touch event to the software element associated with the view touched by the user. When the touch takes place for instance on a bar or a key, information related to the touch event is transmitted to the software responsible for the bar or the key and for reacting when it is pressed.

4.27   Use of a multi-touch screen leads to two possibilities, either there are multiple finger touches within the same view, or a finger will touch a view (for instance a key), and a second finger touches simultaneously another view (for instance a menu or a photo).

4.28   The patent explains that in principle, a multi-touch screen makes it possible that at the same time, multiple touch events are transmitted to the different software application(s) (elements), which consequently, have to be processed simultaneously by the software. In principle, this makes it necessary to develop complex and expensive software for use in a device with a multi-touch screen (paragraph [0006].

4.29   Though a multi-touch screen can process data from different touches simultaneously, there can be circumstances whereby for individual views there is no longer a need for processing a multi-touch input, or that this is not desirable. In this context, one might think of a single virtual knob (a view) which can be controlled with a single touch. In the event that a user (whether or not intentionally) would touch said knob with two fingers, the underlying software would be burdened unnecessarily with more than one touch event (paragraph [0038]). For instance, this is different with a digital photo which can be zoomed in or out respectively by a spreading or pinching movement of two fingers.

4.30   A user of a multi-touch screen can also touch the screen simultaneously at different locations (multiple views). For instance, with most video games it is desired to control virtual control knobs simultaneously (paragraph [0038]). However, when playing such a video game, at the same time, it may not be desirable to allow that a possible touch by the user, for instance, of the status bar, is processed, because it would unexpectedly disturb or interrupt the user's game.

4.31   EP 948 provides a solution for the abovementioned problems by allowing or not allowing for a device with a multi-touch screen that several views react on the screen to (multi-) touch events. EP 948 describes a system that can determine whether any specific view can receive multi-touch events and whether a view which receives a touch event, will allow other views to receive touch events as well.

4.32   For that purpose, the patent defines two different flags[6] which may or may not be used in combination. A multi-touch flag which indicates whether a certain view may or may not receive several touches simultaneously, and an exclusive touch flag which indicates, while a given view receives a touch, whether that view allows that other views may also receive touches (paragraph [0040]).

4.33   Anyway, it cannot be inferred from the patient that the invention is not limited to cases in which the multi-touch flag as well as the exclusive touch flag are applied. That appears, among other, from paragraph [0040] which states that the multi-touch flag and/or the exclusive touch flag can be used, paragraph [0050] which states that two flags can be combined and paragraph [0052] which describes that some forms of implementation have at their the disposal of only one of the two flags (and the associated functionality).

4.34   Depending on the flag set-up of a given view (whether or not multi-touch and/or whether or not exclusive), the EP 948 system enables to achieve that for that view and/ or other views intended touch events can be processed or generated. Denied touches (touch events) are not transmitted to the related software element. By denying selective touches (and the associated touch events) in this manner, simpler and cheaper software which does not support multi-touch may be sufficient for some applications, while for other applications, there is a provision for this (paragraph [0008]). This will also reduce to a minimum the simultaneous processing of touch events for different applications.

Infringement

4.35   Judging at this time, the Samsung products under attack do not fall under the extent of protection of EP 948. The invoked claims in fact prescribe that with "each view" an "exclusive touch flag" is associated. The reference which Apple has made

[6] In computer programming language, a "flag" refers commonly to one bit or several bits which are used to store a code (for instance 1 or 0) with a given meaning.

to paragraph 27 of EP 948 does not hold. Such paragraph, includes the following:

"*In some embodiments, touch events are processed at the lowest level of the view hierarchy. Thus, for example, if a user touches title bar view 302, the touch event need not be directly processed by the software element associated with the title bar view, but instead can be processed by a software element associated with a view included within the title bar view where the touch occurred (i.e. a software element associated with one of views 310, 311 and 312). In some embodiments, some higher level view can also handle touch events.*"
(underscoring by Apple, par. [0027], lines 12-16).

According to a provisional opinion, from this it does not appear that according to the EP 948 method also multiple views per "exclusive touch flag" would be allowed. In addition, this part of the description does not look as much to the patented solution (which is described in detail as of paragraph 38) but rather to what is possible with a multi-touch screen and how this works with software. The interpretation that Apple wants to give to this passage would furthermore be in contradiction with the already mentioned clear wording of the claim "associating an exclusive touch flag with each view" and "said exclusive touch flag indicating whether a particular view (…)" as well as for instance with paragraph 40 of EP 948 "The exclusive touch flag can indicate whether a particular view is to allow other views (…) (underscoring by presiding judge).

4.36   As was briefly stated above, according to paragraph 23 of EP 948, a "view" is a graphic user interface element that is associated with a separate software element. Examples of such view are according to EP 948 numbers 301-312, meaning, the status bar, title view, song title views and various knobs. See figure 3 of the patent shown below:
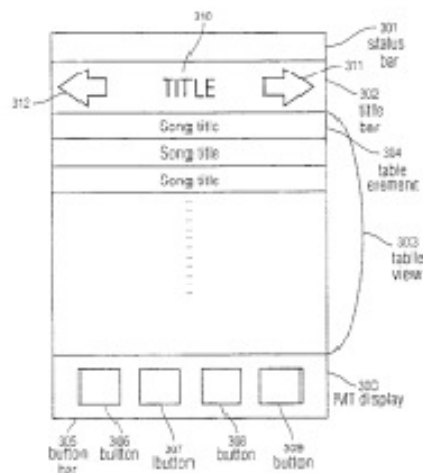
Fig. 3

4.37   In the on Samsung products running Android 2.3 or higher, however, an exclusivity flag (so-called Flag_Split_Touch) is coupled to a window. However, as Apple admits, the Android windows almost always include multiple views in the sense of EP 948. This means that in de Android, differently from EP 948, an exclusivity flag cannot be applied for "each" view. That for a pop up window, there may be talk of one view, and as such the exclusivity per (for each) view can be differentiated, does not change this. The other windows which are open next to the pop up do not know such differentiation per view so that also, for a possible pop up window, "each" view does not have an exclusivity flag next to it.

4.38   The following figure [7] used by Apple during the hearing may illustrate the Android operation.

Visible   Software
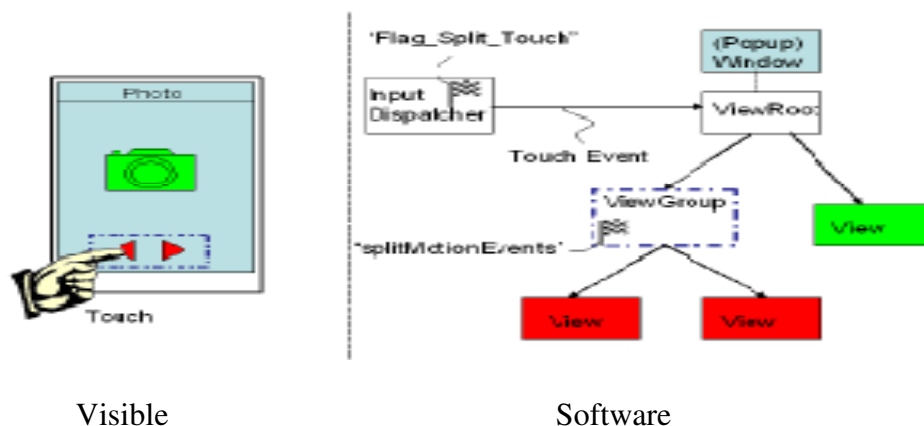
On the left, the figure shows the screen as seen by the user and on the right, next to the dotted line the associated software, whereby the association is indicated by colors (red for the return and forward button; green for the plate of a camera). Since with the Android, there is one ViewRoot per window, the "Flag_Split_Touch" in the Input Dispatcher only guarantees the exclusivity for the whole window. This means that this flag determines whether, when the light blue window is touched, at the same time, also outside touches will be allowed (no views outside the window are shown in the preceding figures, but conceivably for instance there is a status bar). In the light blue window however, multiple views in the sense of EP 948 are visible: the green plate and the two red arrow keys. Therefore, the "Flag_Split_Touch" gives exclusivity to a <u>window</u> (as a whole) but not to a specific <u>view</u>. For that reason, the "Flag_Split_Touch" does not fulfill the exclusivity flag of EP 948. In other words, the "Flag_Split_Touch" does not guarantee, as the {activated} exclusivity flag of EP 948 would, that when one of the red arrow keys is touched for instance, also the other red key or the green plate can be touched simultaneously.

[7] Memorandum of pleading, attorneys Kleemans, Blomme and van Oorschot No. 78

4.39   Nor does the Android 3.0 and higher which runs on the Galaxy Tabs comply with the "splitMotionEvents" flag. This flag guarantees after all the exclusivity of Views within a ViewGroup (see paragraph 48 of the Nieh statement, exhibit 36 of Apple). In the figure above, the "splitMotionEvents" flag consequently guarantees that either one or the other of the red arrow keys has exclusive touch <u>within</u> the ViewGroup. Let it be clear that with the "splitMotionEvents" flag, no exclusivity is guaranteed with respect to views <u>outside</u> the ViewGroup, such as the green plate in the figure. In other words and simply stated, even if the "splitMotionEvents" flag is exclusive for one of both read arrow keys, then still, simultaneously , the green plate can be "pinched" or "depinched" (zoomed in or out). Also, a possible view located outside this Window (not shown on the figure) can be touched if the "Flag_Split_Touch" is not positioned on exclusive.

4.40   Even when both flags are looked at together, exclusivity per view as in EP 948 is out of the question. When both flags are situated on exclusive, so that one of the two red arrow keys in the figure shown above has an exclusive touch, even then – just as before – the green plate can be touched.

4.41   As such, judging at this time, the operation of the Android 2.3 or 3.0 or higher does not comply with EP 948. Apple did not argue that there would be equivalent measures, so that it has not been the subject of discussion and for that reason, this cannot be agreed. The summary trial judge points out that as a minimum, there is doubt whether the result and/or the manner in essence are the same, now that for the Android 2.3 or 3.0 there is still no exclusivity on view level but that exclusivity on a higher level (not per view but per window or viewgroup) is settled. At this state of affairs, the Samsung argument or plea that EP 948 would be invalid, does not require further discussion.
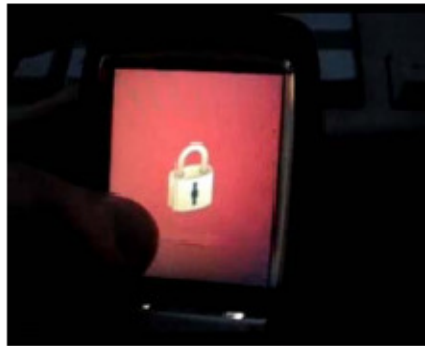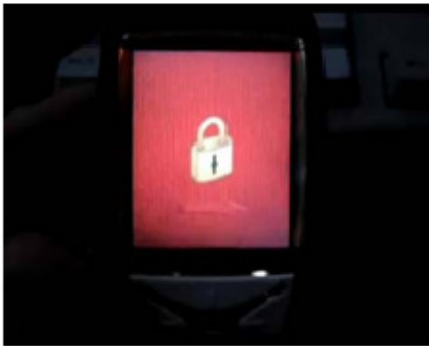
EP 022

Introduction
4.42   The patent relates to portable electronic devices which are provided with a touchscreen display. Touchscreen devices have often a limited number of physical keys. The functions of and applications of the device can be controlled by means of virtual keys which are shown on the touchscreen and can be used by means of the touchscreen.

4.43   In paragraph [0003] of the patent, it is pointed out that a problem with touchscreens is that functions can be activated or deactivated unintentionally. Therefore, a touchscreen in most tablet computers can be locked when the touchscreen has not been touched for a certain period of time or when a user locks the touchscreen by hand. Locking of a touchscreen makes sure that the screen does not react to further touches until the screen has been unlocked.

4.44   The invention of the patent is related to the situation where, starting from a locked touchscreen in which the user interface is not accessible, the touchscreen must be unlocked to allow user input.

Validity / Infringement

4.45   According to the provisional judgment, there is a reasonable chance that EP 022 in a proceeding on the main issue will be considered invalid so that for that reason the measures requested with respect to EP 022 must be denied. With the parties, the closest state of the art to be considered is the Neonode Nlm whereby the manner of unlocking is to be shown as follows (after pressing a button):
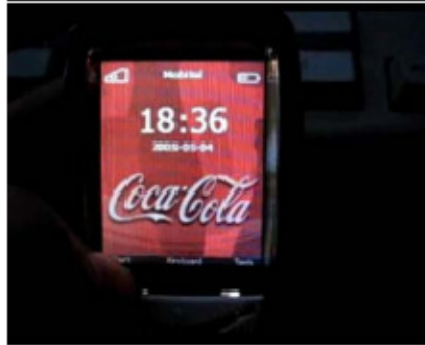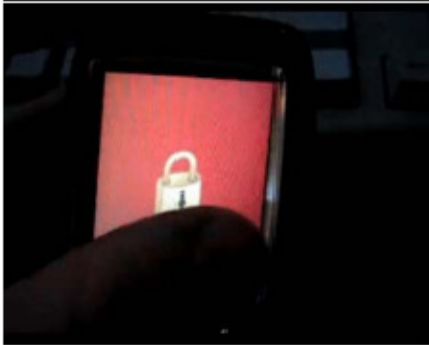
4.46   This Neonode phone reveals all features from claim 1 prior to the words "characterized by" as is also admitted by Apple (these are the features a-c which it indicated). The difference with EP 022 is according to Apple – in short – in that (d) an unlocked image is moved over a predefined displayed path and (e) which unlock image is an graphic object with which the user has interaction. However, Samsung states validly that the Neonode Nlm has also a predefined displayed path for unlocking in the form of the red transparent arrow [8]. Furthermore, it is clear from the telephone that if there is no correct swiping, the phone remains locked. As such, also with this telephone, there is a certain form of feedback (interaction). This means that actually the only difference to be pointed out is the use of an unlock image. The problem statement would then be formulated in line with paragraph 5 of EP 022 as providing a more user friendly procedure for unlocking a touch screen. Application of such an unlock image, the summary proceedings judge considers at this time to be evident. In fact it is not more than having another graphic element sliding over the arrow with the Neonode. If not totally trivial then the application of getting such a graphic element (with feedback/interaction) without inventive imagination can be taken out of the long known virtual on/off slider buttons of Plaisant et al., article "Touchscreen Toggle Design", CHI 3-7 May 1992 (exhibit 6.8 of Samsung, shown on the left and then above all, the button at the bottom left) or even the virtual equalizer slides of the Guitar Rig (exhibit 31 Samsun, right):
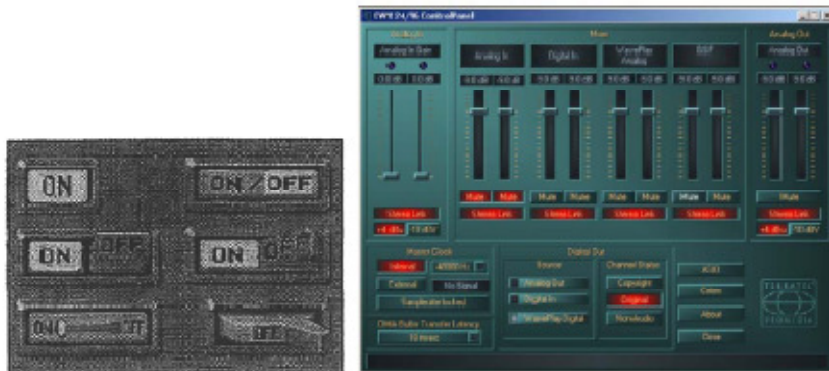
[8] Just visible on the illustrations, a red arrow is located under the small lock.

4.47   In both prepublications, a graphical element (a virtual slider) must be slid over a specific pad. With respect to the slider of the Plaisant, a professional will understand that if it is not slid far enough, the switch is released too soon, or [if] the sliding is off the [designated] path, the switch will not switch from OFF to ON (or vice versa). Therefore, there is an interaction with the user here, just as with the EP 022. This is not diminished by the fact that Plaisant has found in its research that that slider was preferred to a lesser degree. It should be clear to a professional that the push buttons for unlocking a touchscreen are not suitable for a portable device, because there still remains a significant possibility that it might be unlocked unintentionally. It should also not be considered relevant that the touchscreen of the Plaisant is not itself unlocked by the switches, but that it was used to switch on or off an external device, since under the problem formulation as it is also used by Apple, a better way for unlocking a touchscreen is already being

researched. Moreover, the court in interlocutory proceedings has deemed it plausible that an average professional would not be deterred to consult the device by Plaisant merely because an external device is being operated. Similar considerations apply with respect to the Guitar Rig.

4.48   Since the EP 022 cannot presently be deemed to be inventive, the claims relating to it must be unsuccessful on that account, and no ruling is needed as to whether there is a case of infringement.

Infringement on Design

4.49   The court in interlocutory proceedings is presently ruling that there is no case of infringement on any of Apple's design rights, on the following grounds. In this framework, it is presumed - in contrast with the argument by Apple - that solely external characteristics, as following from the design registration, may be included for consideration. The court in interlocutory proceedings deems it inappropriate that for the purpose of the design infringement question, any concrete implementation of registered designs may be included as well, as AG Mengozzi appears to propose in the Pepsico Pogs case (legal ground nr. 83).[3] Another ruling, after all, would be in conflict with the design registration system (and the distinction made in the [European] Community Designs Regulation between registered and unregistered designs) and with the protection of legal certainty for third parties. Furthermore, this would also give rise to important questions which would create legal uncertainty, and which do not follow from the Regulation. Examples of such questions are: which criterion would have to be used in order to evaluate which design would be embodied in a certain product on the market, at what point in time (time of filing, of registration, or later) a product would have to be on the market if it were to be considered, and what to do if several products with slight mutual variations would be on the market that could be considered, et cetera. It is not for nothing that Article 19 sub 1 of the Community Designs Regulation grants the holder of the registered Community Design (see Article 1 sub 2 item b of the Community Designs Regulation: registration in accordance with the Regulation) an exclusive right for a period exceeding 3 years (Article 12: a maximum of 25 years). A concrete implementation obviously does have significance when invoking a non-registered community design, but that is not (and was not brought) up for discussion in this case.

Galaxy Tab 10.1 and 10.1v

4.50   Starting from the premise that Community Model 181607-0001 of Apple is valid, Samsung has presently kept a sufficient distance from it. In the present framework it is significant that as a matter of fact, only the fronts of the Galaxy Tab 10.1 and 10.1v show similarities. The characteristic elements of the front of the design as registered, in other words, the rectangular shape with the rounded corners, the minimalistic design, the passe-partout frame behind a fully transparent ("glass") front panel, were each well-known already on the priority filing date (17 March 2004). The HP Compaq TC1000, for

---

[3] Statement of 12 May 2011 in C-281/10

instance, was already rectangular with rounded corners, and it had an almost entirely transparent surface with a (grey) passe-partout beneath that surface (see illustration below).

4.51   The fact that this device can open up and show a keyboard does not cause the exterior as shown above to have been known. The TC1000 features a second darker/black implementation of a passe-partout within the grey one, but the "minimalistic" concept of only a single passe-partout (the frame of which, incidentally, does not extend), was already found on the Knight-Ridder tablet PC of 1994 (see below).
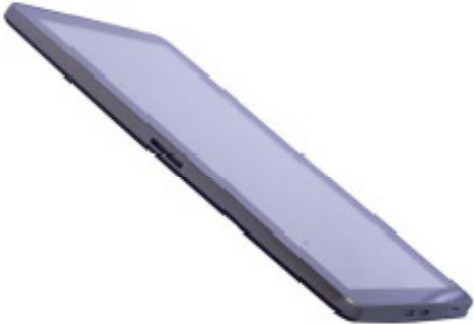
4.52   Apple has insufficiently contested that the Knight-Ridder tablet PC was known in the respective circles. The mere circumstance that this tablet PC did not end up in production does not presently imply that the design was not known in the respective circles.

4.53   The front of the Apple design therefore features a combination of known elements which in themselves do not enjoy a significant degree of protection. For these purposes, the court in interlocutory proceedings has taken into account that according to [its?] preliminary opinion, the necessary [?] appears to be technically determined. If one seeks to prevent visible accumulation of dirt along the edges of the touchscreen and yet allow for the finger to perform touch operations at the edges of the touchscreen (and thereby be able to utilize the full scope of the screen), a continuous "glass" touch panel covering the entire front seems to be a logical choice.

4.54   With respect to the attractive "minimalistic" or "tight" exterior design posited by Apple, the court in interlocutory proceedings also took into account the following: it is indisputable that at present there is a trend to give products a "minimalistic" exterior design. In many cases this will be visually attractive, as with the iPad. Taking into account this attractive exterior, there might then be an inclination to give such designs a broad protection. It should be remembered, however, that "minimalistic" design means, in fact, that the design follows as much as possible the contours dictated by the technology and the ergonomics of the device. In its preliminary opinion, this is the case with the design as well. Rounded corners result from the fact that sharp corners are not convenient to touch and might cause damage to fabric covers and clothes, in particular if this is a pocket computer, which is what this design was registered for. The same consideration as the one described above applies to an important extent to the continuous "glass" touch panel. A design right to "minimalistic design" inherently implies the problem that competitors are factually forced to make less optimal choices (read: they are forced to add unnecessary frills to their design in order to avoid infringement of a protected design), which provides a competitive advantage to the design rights holder who (happened to) beat his competitors to the registration of a design for a certain product segment, such as tablet computers. The competitive advantage is unjustifiable from a design rights point of view, because it is not so much the result of design work as from the fact that the respective design rights holder was the first to be able to register the (tight) exterior of a new product segment. This may not mean that the design is invalid, but it does mean that the protection given to it may not be broad, and must be limited to the actual design elements of the design. This is difficult, because precisely for a "minimalistic" or "tight" design, the general impression of the interior happens to be greatly determined by technological and practical or ergonomic considerations. Yet, an abstraction is necessary from the design elements that cannot be protected because they are technologically or otherwise practically or ergonomically determined.

4.55   Apart from the considerable similarities, there are some less conspicuous differences that can be seen on the front panel. One might mention the camera eye on the Galaxy tabs, the passe-partout that is somewhat thicker in the Galaxy tabs in relation to the effective screen, and in the Galaxy 10.1. the SAMSUNG trademark in the middle below. Cf. the following images (on the left the picture of the design, on the right the Galaxy Tabs, always with the 10.1v at the top and the 10.1 at the bottom).

CDR000181607-0001	Samsung Tab 10.1v (top) and 10.1 (bottom)
0001.2	
0001.1	

0001.3

4.56   In contrast with the external similarities on the front, there are conspicuous difference on the back side.

The Galaxy Tab 10.1 has a dark rear panel with a light grey rim around it, with a thickness of several millimeters. At the top, this rim bulges, and includes a conspicuous camera eye, and a second little eye next to it. Also clearly visible are the headphone connection as well as several protruding at the top. In the middle, the SAMSUNG trademark is prominently displayed.

In the Galaxy Tab 10.1v the difference are even bigger. The rear panel here is no longer flat, but has a round camber in the middle, which entirely changes the look of the rear panel. The Samsung trademark inside the round circle also gives the rear panel of this tablet an entirely different appearance than the simple, rounded but otherwise flat and unadorned rear panel of the design.

0001.5	

4.57   The side views of the Galaxy 10.1 and 10.1v tabs are also considerably different from the design. In both tabs there is a clearly visible distinction between the light grey rim and the dark rear panel. The form of the edge is also significantly different. The side rim of the 10.1 is convex, meaning narrower at the top, then bulging broadly, and narrower again at the bottom, similar in shape to a '('. In the 10.1v, the side is essentially flat, with a scalloped lower bevel. However, the side edges of the design follow the contours of a quarter circle. Furthermore, the connections, buttons, and speakers that determine the look of the side panel are all positioned in different locations in the Galaxy tabs. To mention a few conspicuous examples: both Galaxy tabs have a conspicuous flat port (for connection to a PC) in the long side, which do not appear in the long side of the design (images 0001.6 and 0001.7). The design shows only one single short side (images 0001.4 wherefore it must be presumed that the short sides are identical). In the Galaxy tab 10.1 , the grooves for the speakers are not in the middle, but eccentrically at one quarter of the short sides. To the extent that the designs have a thin look at all (referred to by expert Woodring as a 'thin form factor', Exhibit 39 Apple), the Galaxy tabs 10.1 and 10.1v are clearly even thinner. Moreover, Samsung has stated correctly that such products must be as flat and as thin as possible, and that the technology - and the court in interlocutory proceedings indicates that this is a generally known fact - increasingly makes this possible. See the following images:

0001.7	

| 0001.6 | |
| 0001.4 | |
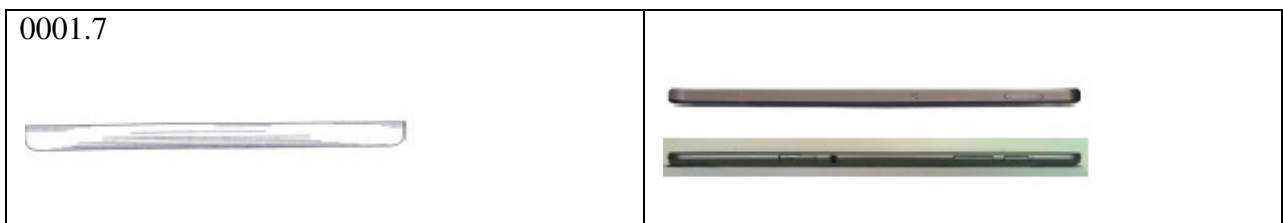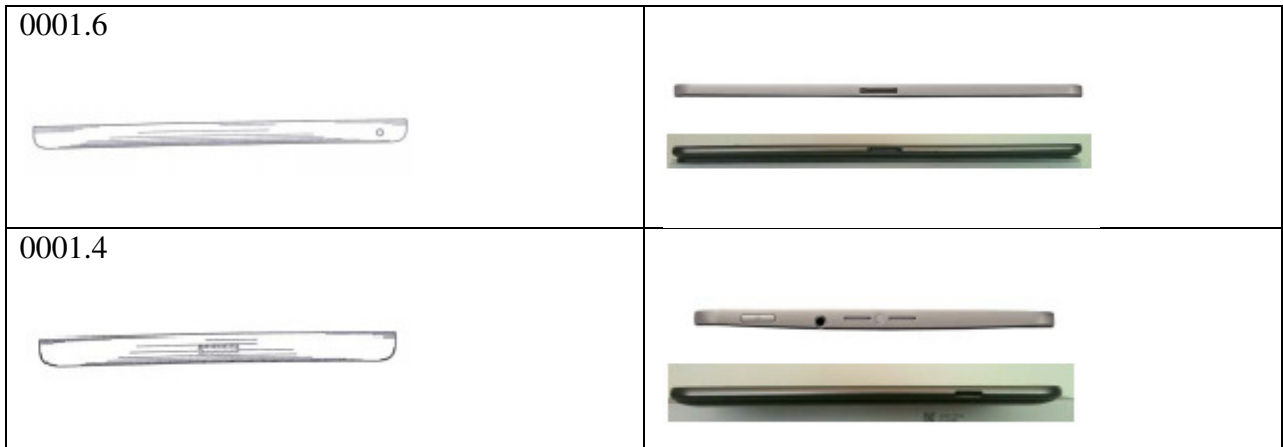
4.58   If the technological / practical and ergonomically determined elements are abstracted and only the features that can be protected under design rights are considered, there is no other conclusion possible at present that the Galaxy Tabs 10.1 and 10.1v create a different general impression than the design, in particular when taking into account the conspicuous differences between their rear and side panels. This is even true if the front panel should be given more attention than the rear and side panels, as Apple has argued.

4.59   The aforementioned is insufficiently diminished by the alleged conclusion from a market survey conducted by Apple according to which a significant part of the public thinks that the design and the Galaxy tab 10.1 and 10.1v are too similar. First of all, the survey fails in the definition of the question. The question asked was whether the general impression of the design and the Galaxy Tab was identical. There should have been an indication, however, which elements of the "minimalistic" model are actually subject to protection, in order to arrive at a realistic result. Moreover, it presently appears improper that the surveyed persons did not have an opportunity to go back to the first image after seeing the second image. The survey is therefore more a memory test than a survey of similarities, taking into account the elements subject to protection.

Galaxy S

4.60   With respect to the exterior of Galaxy S, Apple bases itself on a pair of Community Design registrations, 748280-0006 and 888920-0018. With respect to the Galaxy S user interface, Apple also bases itself on Community Design registration 748694-0003.

Galaxy S versus Community Design 748280-0006

4.61   Presently there is no case of an identical general impression of Galaxy S and Community Design 748280-0006. It should be taken into account here that it was already known in the relevant circles that the Korean design registration of LG with the number of 30-0418547 (Exhibit 53H Samsung)

and with the iHolic HTV 200 (Exhibit 53J Samsung). With respect to the iHolic, Apple has insufficiently contested that it was known to insiders in the respective sector.

Community Design 748280-0006   LG design 30-0418547   iHolic HTV

4.62   This means that as far as the front panel goes, the own character of the design is mainly caused by the conspicuous round button below the screen. It is also clearly visible that the design - other than the aforementioned designs that are already known - features a screen that covers the full width of the telephone. Characteristic on the sides are the convex roundings, more or less in the shape of a semicircle, or ')'. The LG design featured a rim as well, but in the Community Design 748280-0006, the rim around the front panel is more pronounced.

4.63   While the front of the Galaxy S also has a screen that covers the full width, other than the design it has a rectangular button. Since the round button of the design is an important and conspicuous difference with respect to earlier known designs, an informed user will consider this to be a prominent difference. Furthermore, the groove for the speaker of the Galaxy S is a bit thinner and wider, there is a camera eye next to the groove, the Samsung trademark is prominently displayed beneath the speaker, and there are [additional] buttons to the left and eight of the rectangular central button.

Community Design 748280-0006	Samsung Galaxy S
0006.5 	

0006.7	

4.64   It should also be considered that the side panels of the Galaxy S, apart from having different connections and buttons, feature a somewhat sharper angle, as compared to the entirely rounded sides of the design. The rear panel of the Galaxy S has a pronounced bulge at the bottom end of the device, which is also visible from the side. Furthermore, apart from this bulge, the Galaxy S is a bit slimmer than the design.

0006.4	
0006.2	
0006.1	

0006.3	
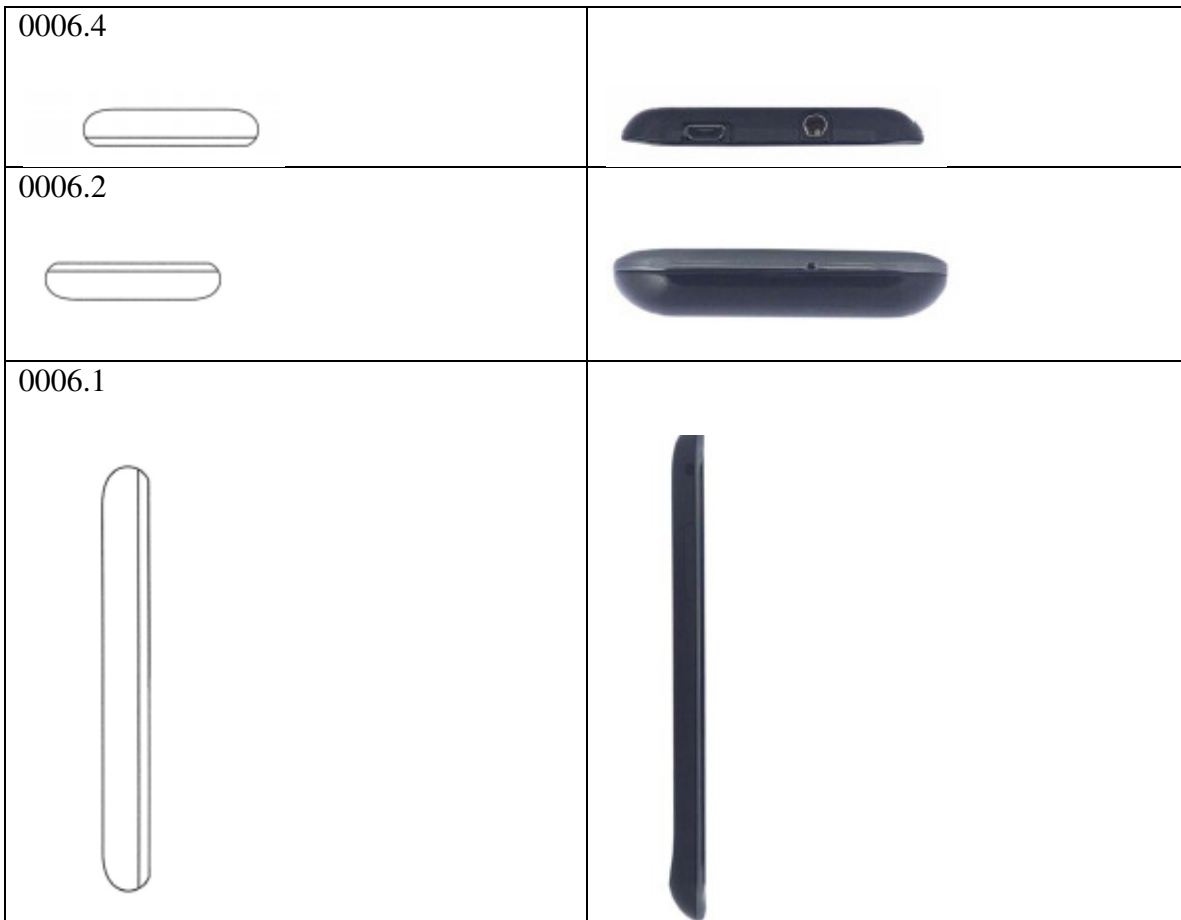
4.65   The rear also features a conspicuous camera eye in the top left, surrounded by a chrome square. Also visible here are the SAMSUNG trademark and [the text] "with Google", whereas the Design has an unadorned rear panel.

0006.6	

4.66   Looking at the totality, the conclusion must be that the design and the Galaxy S create different impressions on the informed user. As stated before, the results of the market survey do not diminish that.

Galaxy S versus Community Design 888920-0018

4.67   Presently there is also no case of an identical general impression of Galaxy S and Design 888920-0018. First of all, the court in interlocutory proceedings has ruled that Samsung has correctly stated that the priority invoked by Apple is incorrect.

Apple bases itself on the priority of US D 604,297 (Exhibit 19 Samsung) and US D 602,014 (Exhibit 20 Samsung), whereby it becomes immediately clear that neither of the two filings have a rectangular menu button on the base, but a round one. Schematically, this can be represented as follows, with a summary of the differences on the right:

Community Design 888920-0018	US D 604,297	- features a round menu button;
	US D 602,014	- features a round menu button; - front panel features a square screen that is not dotted;

4.68.   The parties have discussed the question about which criterion must be determined whether a model has the right to priority or not. Article 41, Section 1 GModVo states that the same model must be concerned. Article 4 of the Union Treaty of Paris does not specify any obligatory measure in this connection but it can be derived from the context of 4C at 4 that the priority application must have "the same subject matter". It seems to the judge hearing applications for interim relief that in this framework the minimal test should be the novelty in the sense of Article 5 GMoV whether the priority model is identical to the registration that the priority claims. In other words, if the model is to be considered novel vis-à-vis the priority model it has no claim on priority. Judging in advance, the noticeable, rectangular menu button of the model makes it not identical to the priority applications, so that the claim for priority cannot be applied for, starting from the actual application date of GM 888920-0018 (February 29, 2008). This does not concern a difference in a merely unimportant detail.

4.69. The previous matter means that at the time of filing the Samsung SGH-F700 that came on the market in The Netherlands on October 9, 2007 (Samsung production 64) and Samsung's common model 00718770-0007 (Samsung production 23) were already known in the circles concerned.

GM 888920-0018   Samsung SGH-F700   GM 00718770-0007

4.70.   According to the provisional judgment the front edge of the Samsung SGH-F700 anticipates all important elements of the front edge of GM 888920-0018. The SGH-F700 also has a completely transparent "glassy" front edge with a rectangular menu button and a thick edge. The side views of the apparatus are, for the rest, fairly different from the model; the apparatus is noticeably thicker and has a different rounding of the side edges. Furthermore, there is a noticeable camera on the back side.

4.71. Assuming that GM 888920-0018 is novel and has its own character, it must recognized that in view of the SGH-F700 not much value can be attributed to a possible coinciding of the front sides of the model and Galaxy S. For the rest, differences can be perceived on the front side upon a comparison. Thus, in the Galaxy S there is a noticeable slot for the loudspeaker and there is a camera eye next to slot, the trademark SAMSUNG is prominently located under the loudspeaker and there are buttons on both sides of the rectangular central button. The screen frame is designed striated in GM 888920-0018, which means according to the conventions - not contested by Apple -that no protection is

requested for this.[4] Therefore, a possible coinciding of the model and of the Galaxy S

cannot be taken into account in view of this aspect.

GM 888920-0018	Samsung Galaxy S
0018.5	

4.72.   Consequently, it should also be kept in mind that the back edge of the Galaxy S

has a pronounced curvature under the apparatus that is also visible from the side.

---

[4] See also 11.4 of the Examination Guidelines Community Design of the OHIM at Alicante, to be found at
http://oami.europa.eu/en/office/aspects/pdf/ExamGuidelines.pdf

0018.4	
0018.2	
0018.1	
0018.3	

4.73. In addition, the back side has a noticeable rectangular camera eye surrounded by chrome. The model has an entirely different recess/ornament at the upper left. Also, the trademark SAMSUNG and "with Google" are visible on the back side.

4.74. In view of everything, the conclusion must be that the model and the Galaxy S produce a different impression for the informed user. As already considered previously, the results of the market survey do not change this.


GUI Galaxy S

4.75. Judging in advance, there is just as little talk about the same general impression of the graphical user interface (GUI) of the Galaxy S and the model 748694-0003. The judge hearing applications for interim relief assumes that the model must be evaluated as registered. Given the lack of any indication in the model registration that no protection was actually requested for the specific content of the icons as represented in the filing, they should also be taken into consideration in the judgment. Apple has, for example, not claimed a model in which the rectangular contours of the icons are included without content. Furthermore, it should be assumed that only the screens of the Galaxy S such as sold by Samsung can be evaluated for violation. A possible rearrangement of the icons by a user must not play a part because this cannot be considered as a reserved act in the sense of Article 19 GMoV.

4.76. At the time of the filing the GUI of the Nokia 7710 (production 7.56 Samsung) was already known in the circles concerned.
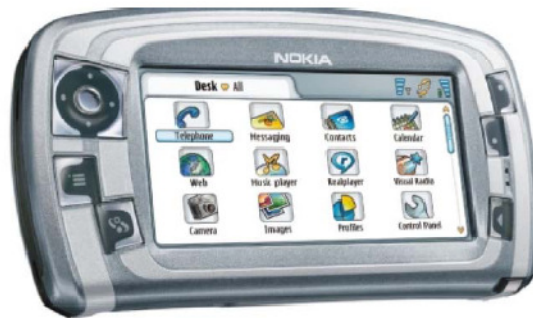
GM 748694-0003   Nokia 7710

 According to the provisional judgment the GUI of the Nokia 7710 anticipates a number of important elements of the GM 748694-0003. The GUI of the Nokia 7710 also has icons of many colors set in rows of 4. Furthermore, the icons of Nokia 7710 have a rectangular form with rounded-off corners. In addition, there is a short text under the icons. Also, the background is designed in one color. However, there are many differences, of which the most noticeable is, perhaps, the different content of the icons, the presence of three rows instead of 4, whereby the lowest row in the model leaves the black area open and the lowest row is in a grayish bar. For the present, there is no protection for the difference in color because Samsung has stated without contest that it is technically determined (in order to save the battery and the screen itself is black).

4.77. The considered screen imprints of the Galaxy S sold by Samsung illustrated next to the model appear as follows:
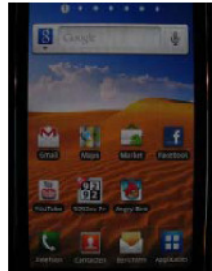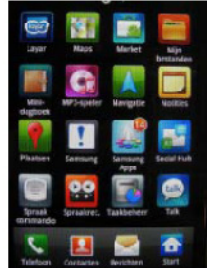
GM 748694-0003   Openingsscherm Galaxy S

Menu-scherm 1 Galaxy S   Menu-scherm 2 Galaxy S   Menu-scherm 3 Galaxy S

4.78. It is obvious that the welcoming screen of the Galaxy S definitely produces a different general impression for the informed user than the model on account of the color-rich desert image as background, the Google search bar above the icons and the arrangement of the icons (three rows at the bottom, no open black row, an icon is lacking at the bottom right.

4.79. The menu screens come closer to that of the model. This also concerns multicolor icons in rows of four with rounded-off corners. However, this was already presented as known from the GUI of the Nokia 7710. In fact, only the light grey bar around the lowest row is taken over from the aspects in which the model differs from the Nokia 7710. However, the content of the icons is considerably different. In addition, in the model a row is "skipped", that is, is black, which is lacking in menu screens 1 and 2 of the Galaxy S. According to the provisional evaluation the screens also cause a considerably different general impression on the informed user. However, Samsung is also completely different with screen 3 in that – in addition to the clearly different content of the icons – yet another icon is skipped in the 3d row.

4.80. In view of the above, no comment is made whether the model is valid (for example, in combination with the GUI of model 8, about which Apple stated that it has

become obvious due to misuse) and whether a start must be made from the black-white version of the model such as Samsung had argued because the model was initially published in black/white, which was, however, later rectified to a color version as reproduced above.

Galaxy Ace

4.81. Judging in advance, there is no talk about the same general impression of Galaxy Ace and model 1236590-0011 from 2010. It should be noted here that all test models previously discussed here were already known in the circles concerned. Thus, the external part of the front view was entirely known. Samsung then also rightfully takes the standpoint that the protection aims in particular at a combination of known elements with the external part of the edge. The edge is provided all-around with a flat "band" located on top and furthermore with simple, round, flat buttons. The judge hearing applications for interim relief remarked that the back shell, in as far as it extends above the band, is again reproduced with striations so that obviously no rights are claimed for it.

4.82. The first thing that is noticed on the front side is that the Galaxy Ace, in distinction to the model, has a rectangular button instead of a round button. The rectangular appearance of the button is accented even more by a chrome edge. Furthermore, the slot for the loudspeaker in the Galaxy Ace, which is also accented in chrome, is designed somewhat thinner and broader, lacks the small slot above it and the camera eye and the trademark SAMSUNG is located prominently under the small loudspeaker.

| GM 1236590-0011	Samsung Galaxy Ace
0011.1	

0011.3
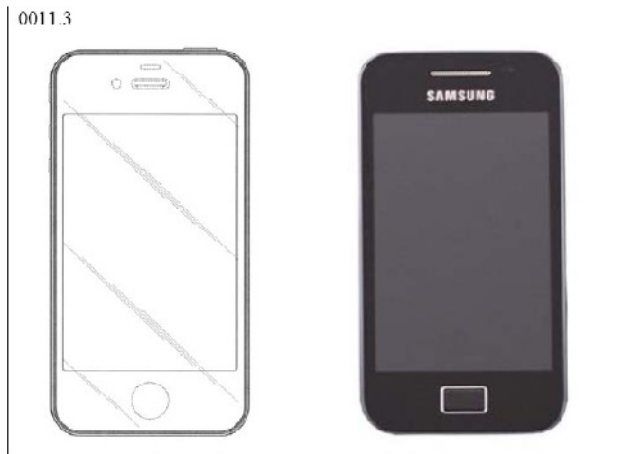
4.83. Consequently, it should also be kept in mind that the side edges of the Galaxy Ace have a significantly different appearance. The "band" does not rest here as it were on top of the edge but is sunk. On the top side of the Galaxy Ace adjacent to the band there is no part of another material than the "band", while that is the case for the back shell, that is not protected on account of the dotted lines. Also, the buttons look different here. See the following figures.

0011.5

4.84. Furthermore, the back side has a second eye (probably for a flash or light) not next to but under the camera eye. Also the trademark

SAMSUNG is prominently visible there and also a small grid (probably for a

loudspeaker). See the figures below.
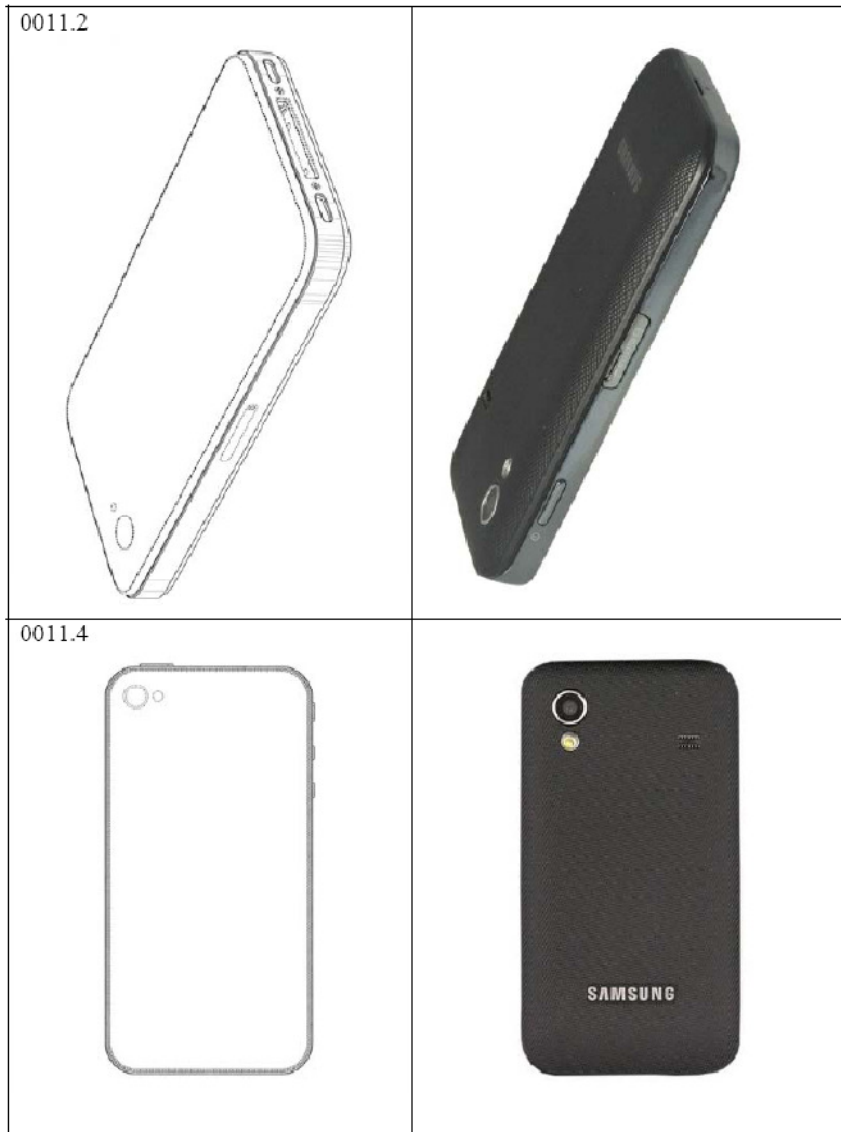
4.85. In view of the entirety, the conclusion must be that the model and the Galaxy Ace make a different impression on the informed user. As already considered above, the results of the market survey change nothing about this.

Copyright violation and slavish imitation

4.86. Samsung stated without opposition that as regards the outer part of the products of Apple the United States must be considered the country of origin and that the items have no copyright protection there, so that on the basis of the reciprocity principle determined

in it in Article 2, Section 7 of the Bern Convention there is all the less copyright protection in The Netherlands. Samsung has argued this also regarding the user interface taking into consideration an opinion of Professor Ralph Oman regarding this topic. Since Apple has not argued anything against this, it can be assumed in this short lawsuit that that it will not receive any copyright protection for one of the claimed items and the claims based on it must fail.

4.87. Apple did not return to the session for the illegal imitation of style cited in the summons, so that it can be assumed that the basis is no longer being maintained. In as far as Apple made an appeal in the session regarding slavish imitation of its products, the basis was presented late and will be left aside as being in conflict with a good order of the process.

Conclusion and process costs

4.88. The sum of the above is that Samsung violates EP 868 with the smart phones Galaxy S, S II and Ace but not with the tablet computers. Samsung does not violate EPA 948 whereas EP 022 is to be considered null and void at the present. There is no talk of violation by Samsung regarding the model rights or copyrights argued by Apple. At any rate, given this state of affairs there is a good chance that this will be adjudicated in the basic procedure. This means that a prohibition of violation can be granted regarding the matter of EP 868 but limited to the smart phones Galaxy and Ace. For the rest, the claims must be rejected. Apple has not argued any specific urgent concerns regarding its other claims and now that a violation is being assumed for only one patent, which Samsung can obviously take care of in technically simple manner, these claims should be rejected. On account of the adaptation which is obviously simple for it to carry out, it is not indicated that the surety claimed by Samsung has to be observed. The relevant damage to be possibly sustained by Samsung because the given prohibition was not made in a basic procedure does not seem great in that light, not to mention the creditworthiness (non-creditworthiness argued by Samsung) of Apple. For the same reason and in view of the

extension date to be granted, a prohibition to be granted executable by declaration of anticipation is justified.

4.89. Now that the parties on both sides are wrong, the process costs shall be compensated.

5. **The decision**

The judge hearing applications for interim relief

5.1. Forbids the defendants from violating the Dutch part of EP 2.059.868 after the passage of 7 weeks and one day after the serving of the judgment in any manner, directly or indirectly by manufacturing, storing, offering, importing, marketing, selling and/or otherwise dealing with smart phones Galaxy S, S II and Ace;

5.2. Forbids the defendants under 2-4 from violating the foreign parts of EP 2.059.868 after the passage of 7 weeks and one day after the serving of the judgment to be pronounced in any manner, directly or indirectly by manufacturing, storing, offering, importing, marketing, selling and/or otherwise dealing with smart phones Galaxy S, S II and Ace;

5.3. Orders the defendants to pay an immediately payable penalty of EUR 100,000 to the plaintiffs for each day or part of a day or, to be chosen by the plaintiffs, of EUR 10,000 per violating product, whereby it can be granted to the defendants that the prohibitions such as taken up under 5.1 and 2.2 are not to be complied with either entirely or not thoroughly;

5.4. Declares this judgment to be executable by anticipation to this extent;

5.5. Compensates the const of the procedures between the parties in the sense that each party carries its own costs;

5.6. Sets the date specified in Article 1019iRv at six months, to be counted from the day of this pronouncement;

5.7. Rejects that which has been more or less claimed.

This judgment is rendered by Mr. .E. F. Brinkman and publicly pronounced on August 24, 2011.