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Jury foreman in Apple v. Samsung: Verdict a message that copying is a big risk

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SAN JOSE -- A day after a federal jury slapped Samsung with a \$1 billion penalty for violating Apple's (AAPL) patent rights, the panel's foreman described the verdict as a billboard-sized message to tech companies that copy products: "If you elect to take the risk, you may end up paying."

The jury "wanted to send a message to the industry at large that patent infringing is not the right thing to do, not just Samsung," Velvin Hogan, a 67-year-old electrical engineer, told this newspaper in a wide-ranging interview Saturday.

A seven-man, two-woman jury on Friday sent shock waves through the raging smartphone and tablet world, finding that Samsung trampled on Apple's patent and "trade dress" rights by copying the iPhone and iPad, the Cupertino company's signature products. The jury reached its stunning verdict on the third day of deliberations after a three-week trial that pitted Apple against its chief rival in the smartphone and tablet market.

Despite what many legal observers considered a fairly swift deliberation given the complexity of the case, Hogan insisted that the jury was methodical in reaching a result that found Samsung liable for more than \$1 billion in damages, with the possibility the figure could be tripled because the panel concluded the South Korea-based tech giant "willfully" infringed Apple's patents.

"We didn't whiz through this," said Hogan, a San Jose resident who relied on his own experience patenting inventions. "We took it very seriously."

In sorting through a 20-page verdict form, the jury handed Apple a sweeping legal victory, finding that a host of Samsung smartphones infringed the designs on the iPhone, from its "bounce back" feature to its appearance and contours. Apple has waged a global legal assault on Samsung, accusing the company of copying the iPhone and iPad in its smartphones and tablets, notably its Galaxy line.

The most powerful evidence of Samsung's misconduct, Hogan said, were internal emails and reports among Samsung executives discussing the iPhone's impact, describing the difference between the iPhone and Samsung's earlier smartphones as the "difference between heaven and earth." The exchanges also suggested that Samsung executives felt the iPhone's features should be duplicated.

The jury also was persuaded by Google's (GOOG) warning to Samsung that its products were too similar to Apple's. Samsung runs on Google's Android operating system.

"It became clear Samsung in some cases chose to ignore when it knew or should have known what they were doing in their products was infringing on" Apple's intellectual property rights, Hogan said. "They had time internally to make some changes to avoid the (legal problems). In our way of thinking, they took a calculated risk."

While there wasn't much doubt in the jury's mind that Samsung copied the iPhone, the panel was less convinced that the Galaxy 10.1 tablet duplicated the iPad. The jury found some infringement, but scant damages for any tablet violations. Hogan said he views the Samsung tablet as "distinctively different" and was surprised to learn after the jury finished its work that U.S. District Judge Lucy Koh took a different position earlier in the case, issuing a preliminary injunction temporarily blocking sales of the device in the United States.

Hogan described the deliberations in vivid detail, saying the first task was to determine if Apple's patents were valid because of Samsung's arguments they were negated by "prior art" in the industry, essentially technology that existed for features such as touch screens before the introduction of the iPhone. Using his own experience getting a patent, Hogan said he had a revelation on the first night of deliberations while he watched television.

"I was thinking about the patents, and thought, 'If this were my patent, could I defend it?' " Hogan recalled. "Once I

answered that question as yes, it changed how I looked at things.

Hogan also said the jury did not want to completely buy Apple's demand for between \$2.5 billion and \$2.75 billion in damages, saying Apple "can't be a monopoly." Jurors settled on a calculation that rested somewhere between Apple and Samsung's experts.

Overall, Hogan said, he discounted the parade of high-paid experts on both sides. "You can pay people to say what you want them to say," he said.

Ironically, Hogan came into the trial a bit of an Apple skeptic, saying he has never bought the company's products because he considers them "too pricey."

"I wasn't going to let that influence any of my decisions in this trial," he said. "I wanted to give Apple and Samsung a fair shake on this."

Samsung has criticized the verdict, saying it will harm consumers. The company is expected to appeal the judgment.

But Hogan insists the verdict "didn't stifle competition," saying it will make companies think twice before trampling on a competitor's patent rights.

"We felt like we were 100 percent fair," he said. "But we wanted something more than a slap on the wrist."

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