

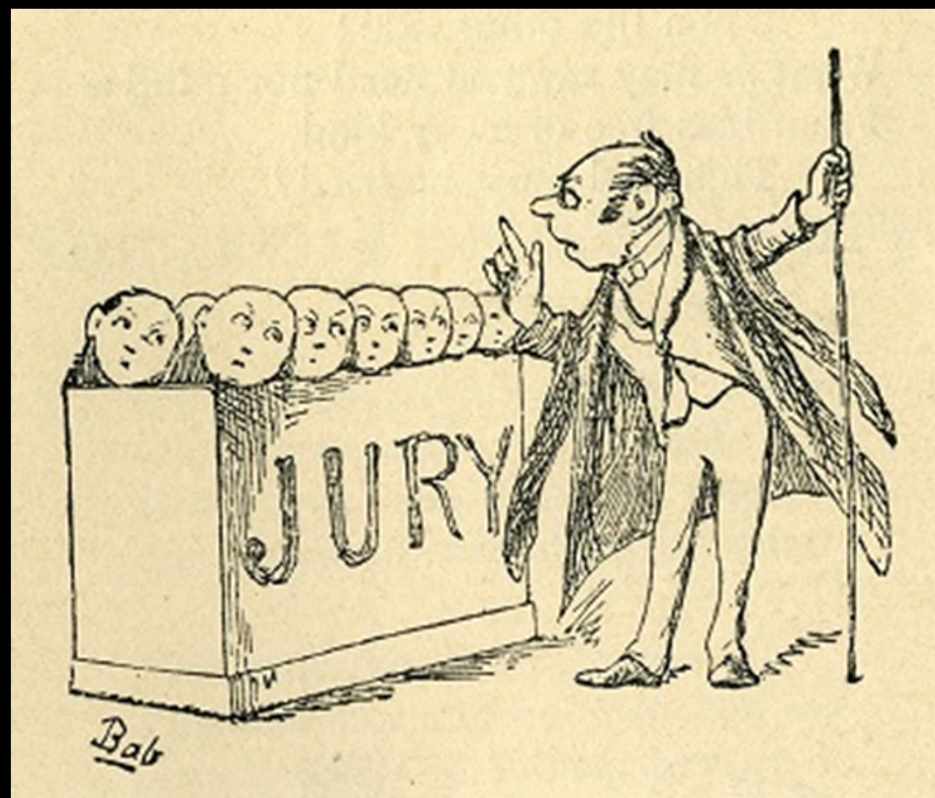
Jury Trial



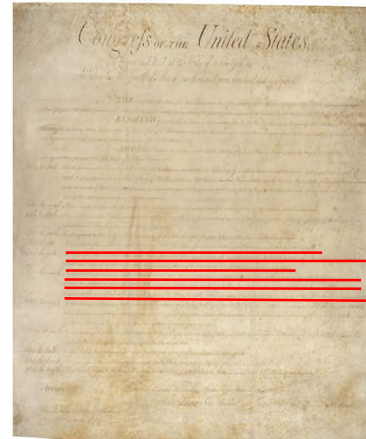
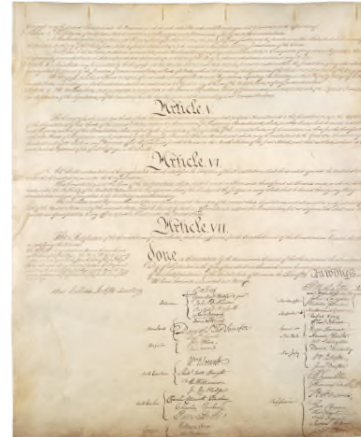
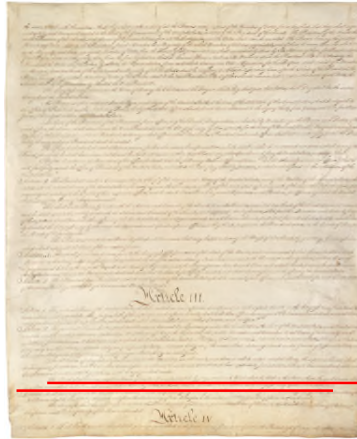
June 25, 2021

Jitsuro Morishita

Morgan Lewis



United States Constitution



United States Constitution/Bill of Rights

Article III Section 2

The trial of all crimes, except in cases of impeachment, **shall be by jury**; and such trial shall be held in the state where the said crimes shall have been committed...

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a **Grand Jury**, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger...

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, **by an impartial jury** of the state and district wherein the crime shall have been committed...

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, **the right of trial by jury shall be preserved**, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Jury Verdict

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

APPLE INC., a California corporation,
Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.,
a Korean corporation;
SAMSUNG ELECTRONICS AMERICA, INC.,
a New York corporation;
SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC,
a Delaware limited liability company,

Defendants.

SAMSUNG ELECTRONICS CO., LTD.,
a Korean corporation;
SAMSUNG ELECTRONICS AMERICA, INC.,
a New York corporation;
SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC,
a Delaware limited liability company,

Counterclaim-Plaintiffs,

v.

APPLE INC., a California corporation,
Counterclaim-Defendant.

Case No.: 11-CV-01846-LHK
AMENDED
VERDICT FORM

Samsung Smartphones
BEFORE iPhone



Apple's iPhone
(announced Jan. 2007)



Samsung Smartphones
AFTER iPhone



Jury Verdict

1. For each of the following products, has Apple proven by a preponderance of the evidence that Samsung Electronics Co. (SEC), Samsung Electronics America (SEA), and/or Samsung Telecommunications America (STA) has **infringed Claim 19 of the '381 Patent?**

(Please answer in each cell with a "Y" for "yes" (for Apple), or with an "N" for "no" (for Samsung). Do not provide an answer for any cell that is blacked out.)

Accused Samsung Product	Samsung Electronics Co., Ltd.	Samsung Electronics America, Inc.	Samsung Telecommunications America, LLC
Captivate (JX 1011)	Y		Y
Continuum (JX 1016)	Y		Y
Droid Charge (JX 1025)	Y		Y
Epic 4G (JX 1012)	Y		Y
Exhibit 4G (JX 1028)	Y		Y
Fascinate (JX 1013)	Y		Y
Galaxy Ace (JX 1030)	Y		
Galaxy Prevail (JX 1022)	Y		Y
Galaxy S (i9000) (JX 1007)	Y		
Galaxy S 4G (JX 1019)	Y		Y
Galaxy S II (AT&T) (JX 1031)	Y		Y
Galaxy S II (i9100) (JX 1032)	Y		
Galaxy Tab (JX 1036)	Y		Y
Galaxy Tab 10.1 (WiFi) (JX 1037)	Y	Y	
Gem (JX 1020)	Y		Y
Indulge (JX 1026)	Y		Y
Infuse 4G (JX 1027)	Y		Y
Mesmerize (JX 1015)	Y		Y
Nexus S 4G (JX 1023)	Y		Y
Replenish (JX 1024)	Y		Y
Vibrant (JX 1010)	Y		Y

10. If you answered "Yes" to any of Questions 1 through 9, and thus found that any Samsung entity has infringed any Apple patent(s), has Apple proven by clear and convincing evidence that the Samsung entity's infringement was **willful?**

(Please answer in each cell with a "Y" for "yes" (for Apple), or with an "N" for "no" (for Samsung).)

Apple Utility and Design Patents	Samsung Electronics Co., Ltd.	Samsung Electronics America, Inc.	Samsung Telecommunications America, LLC
'381 Patent (Claim 19)	Y	Y	Y
'915 Patent (Claim 8)	Y	Y	Y
'163 Patent (Claim 50)	Y	Y	Y
D'677 Patent	Y		Y
D'087 Patent	N		N
D'305 Patent	Y		Y
D'889 Patent	N	N	N

11. Has Samsung proven by clear and convincing evidence that Apple's asserted **utility and/or design patent claims are invalid?**

'381 Patent (Claim 19)	Yes _____ (for Samsung)	No <input checked="" type="checkbox"/> (for Apple)
'915 Patent (Claim 8)	Yes _____ (for Samsung)	No <input checked="" type="checkbox"/> (for Apple)
'163 Patent (Claim 50)	Yes _____ (for Samsung)	No <input checked="" type="checkbox"/> (for Apple)
D'677 Patent	Yes _____ (for Samsung)	No <input checked="" type="checkbox"/> (for Apple)
D'087 Patent	Yes _____ (for Samsung)	No <input checked="" type="checkbox"/> (for Apple)
D'305 Patent	Yes _____ (for Samsung)	No <input checked="" type="checkbox"/> (for Apple)
D'889 Patent	Yes _____ (for Samsung)	No <input checked="" type="checkbox"/> (for Apple)

Jury Verdict

DAMAGES TO APPLE FROM SAMSUNG (IF APPLICABLE)

22. What is the total dollar amount that Apple is entitled to receive from Samsung on the claims on which you have ruled in favor of Apple?

\$ ~~1,051,855,000.00~~
\$ 1,049,343, ~~293~~ 540.00 *Att* 8/24/12



Federal Rules of Civil Procedure

Rule 48. Number of Jurors; Verdict; Polling

- (a) Number of Jurors. A jury must begin with **at least 6 and no more than 12 members**, and each juror must participate in the verdict unless excused under Rule 47(c).
- (b) Verdict. Unless the parties stipulate otherwise, the verdict **must be unanimous** and must be returned by a jury of at least 6 members.
- (c) Polling. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or **may order a new trial**.

Jury Selection and Service Act of 1968

To be legally qualified for jury service, an individual must:

- ✓ be a United States citizen;
- ✓ be at least 18 years of age;
- ✓ reside primarily in the judicial district for one year;
- ✓ be adequately proficient in English to satisfactorily complete the juror qualification form;
- ✓ have no disqualifying mental or physical condition;
- ✓ not currently be subject to felony charges punishable by imprisonment for more than one year; and
- ✓ never have been convicted of a felony (unless civil rights have been legally restored)

Groups that are exempt from federal jury service:

- ✓ members of the armed forces on active duty;
- ✓ members of professional fire and police departments; and
- ✓ "public officers" of federal, state or local governments, who are actively engaged full-time in the performance of public duties.

Excuses from Jury Service by Court's discretion

- ✓ persons over age 70;
- ✓ persons who have, within the past two years, served on a federal jury;
- ✓ persons who serve as volunteer fire fighters or members of a rescue squad or ambulance crew;
- ✓ persons with "undue hardship or extreme inconvenience."

Jury Selection and Service Act of 1968

Juror Pay

Federal jurors are paid **\$50 a day** (\$60 a day after serving 10 days). Employees of the federal government are paid their regular salary in lieu of this fee. Jurors also are reimbursed for reasonable transportation expenses and parking fees. Jurors also receive a subsistence allowance covering their meals and lodging if they are required to stay overnight.

Juror's Duty

The judge determines the appropriate law that should be applied to the case and the **jury finds the facts in the case based on the evidences presented**. At the end of a trial, the judge instructs the jury on the applicable law. While the jury must obey the judge's instructions as to the law, the jury alone is responsible for determining the facts of the case. The standard of proof is a "**preponderance of the evidence,**" or "**more true than not.**"

Jury Selection and Service Act of 1968

Juror Selection

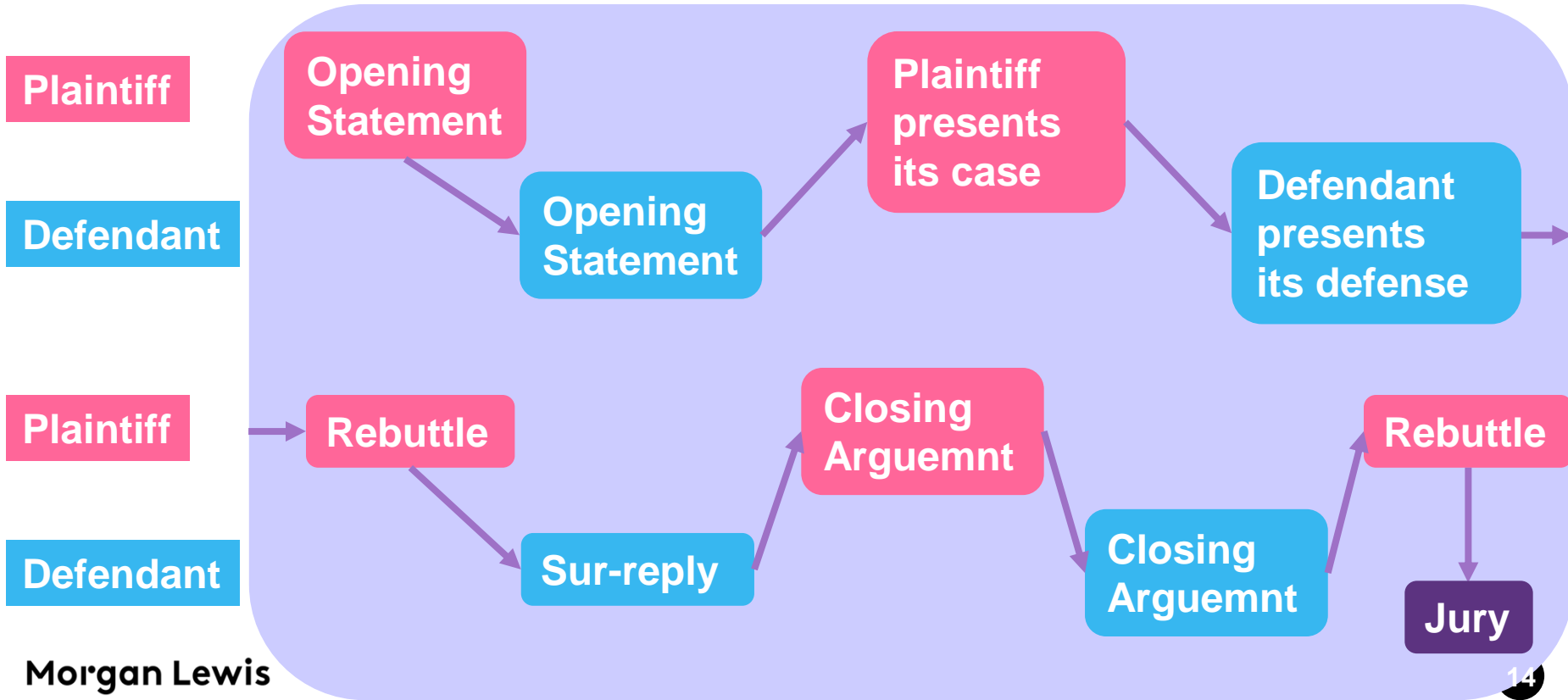
Each district court randomly selects citizens' names from lists of **registered voters** and people with **drivers licenses** who live in that district. The people randomly selected complete a questionnaire and those qualified are randomly chosen to be summoned to appear for jury duty.

Voire Dire

The judge and the attorneys ask the summoned potential jurors questions to determine their suitability to serve on the jury. The purpose of voir dire is to exclude from the jury people who may not be able to decide the case fairly. Members of the panel **who know any person involved in the case, who have information about the case, or who may have strong prejudices about the people or issues involved in the case**, typically will be excused by the judge. The attorneys also may exclude a certain number of jurors **without giving a reason**.



General Flow of Jury Trial



Opening Statement

- Provide a “Road Map” for the jury for the arguments to be presented
- Discuss “Facts” to be established at trial
- Must be limited to the evidence reasonably expected to be presented
- Arguments based on to be established “Facts” not allowed
- Typically, little of no discussion of law
- Defendants are allowed to conduct the opening statement after the close of the Plaintiff’s case (seldom done)

Presentation of Case

Evidences introduced through witnesses (Fact and Expert)

- Typical **Fact Witness** in a patent trial include
 - Corporate Representative (“Face of Company”)
 - Inventor
 - Engineer
 - IP representative
 - Sales and Marketing representative
- Typical **[Testifying] Expert Witness** in a patent trial include
 - Technical Expert
 - Damages Expert
 - Licensing Expert
 - Source Code Expert
 - Marketing (Survey) Expert

Closing Argument

- Reiterate “key arguments” for the jury to consider
- Work only with “Facts” established in trial (no new evidence)
- Argument based on to be established “Facts” is the goal
- Some discussion of law (e.g. burden of proof)
- Plaintiffs usually gets the last word

Jury Deliberation

- Jury Instruction is provided by the Judge
 - Patent Jury Instructions
 - Jury Verdict Form
- Jury selects a foreperson who is responsible for presiding over the deliberation
- Jury members are not allowed to access any outside info, including the internet
- Jury is allowed to submit questions to the Judge

Jury Verdict

SAMSUNG'S UTILITY PATENT CLAIMS AGAINST APPLE

24. For each of the following products, has Samsung proven by a preponderance of the evidence that **Apple has infringed** the indicated Samsung utility patent claims?

(Please answer in each cell with a "Y" for "yes" (for Samsung), or with an "N" for "no" (for Apple). Do not provide an answer for any cell that is blacked out.)

'60 Patent Claim 1 Describe of Equivalents					Z	Z	Z	Z
'60 Patent Claim 1 Literal Infringement		Z	Z	Z				Z
'893 Patent Claim 10			Z	Z	Z			Z
'711 Patent Claim 9		Z	Z	Z				Z
'941 Patent Claim 15					Z	Z		
					Z	Z		
'516 Patent Claim 16					Z	Z		
					Z	Z		
Accused Apple Product	iPhone 3G (IX 1053)	iPhone 3GS (IX 1054 and IX 1076)	iPhone 4 (IX 1055 and IX 1056)	iPad 2 3G (IX 1050 and IX 1051)				
								iPod Touch 4 th Gen. (IX 1057 and IX 1077)

26. Has Apple proven by clear and convincing evidence that Samsung's asserted **utility patent claims are invalid?**

'516 Patent

Claim 15: Yes _____ (for Apple)

No (for Samsung)

Claim 16: Yes _____ (for Apple)

No (for Samsung)

'941 Patent

Claim 10: Yes _____ (for Apple)

No (for Samsung)

Claim 15: Yes _____ (for Apple)

No (for Samsung)

'711 Patent

Claim 9: Yes _____ (for Apple)

No (for Samsung)

'893 Patent

Claim 10: Yes _____ (for Apple)

No (for Samsung)

'460 Patent

Claim 1: Yes _____ (for Apple)

No (for Samsung)

DAMAGES TO SAMSUNG FROM APPLE (IF APPLICABLE)

27. What is the total dollar amount that Samsung is entitled to receive from Apple for Samsung's utility patent infringement claims on the '516 and '941 patents?

\$ 0

28. What is the total dollar amount that Samsung is entitled to receive from Apple for Samsung's utility patent infringement claims on the '711, '893, and '460 patents?

\$ 0

The Runaway Jury/John Grisham



Morgan Lewis



My Cousin Vinny



Morgan Lewis

Webinar Series ~ Better Safe than Sorry ~

- No. 1: Introduction (2021.01.29)
- No. 2: Willful Infringement (2021.02.26)
- No. 3: Virtual Patent Marking (2021.05.28)
- No. 4: Jury Trial (2021.06.25)
- No. 5: Damages (2021.07.30)
- No. 6: Discovery (2021.09.24)
- No. 7: Doctrine of Equivalents (2021.10.29)
- No. 8: ITC (2021.11.26)



Presenter



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Jitsuro Morishita devotes his practice to resolving complex global disputes in the areas of intellectual property, antitrust, governmental investigations, labor, and environmental issues.

Early in his career, he worked in-house for two global technology companies, Pioneer Corporation and Fujifilm Corporation, bringing unique expertise to advocate using profound understanding of Japanese company cultures.

Jitsuro is devoted to bringing his clients (i) easy communication using excellent communication skills, (ii) pleasant surprises from creative and out-of-the-box ways of thinking, and (iii) deep satisfaction through great results and client-friendly experiences.



31 OFFICES
ACROSS 17
TIME ZONES

700+
PARTNERS

180+
SENIOR
LAWYERS

1100+
ASSOCIATES

450+
LEGAL
PROFESSIONALS