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Samsung reins in Europe fight with Apple

By Tim Bradshaw in San Francisco and James Fontanella-Khan in Brussels - Dec 18, 2012

Samsung has said it will no longer seek an injunction against sales of Apple's devices in Europe, as US and European authorities press the smartphone industry to rein in their patent disputes.

Before Tuesday's statement by Samsung, the European Commission had been preparing to challenge the South Korean company over what it sees as the group's reluctance to license its intellectual property to competitors, according to people familiar with the situation.

Samsung's withdrawal comes after several months of pressure from both EU and US antitrust regulators, and follows Monday evening's ruling by a US judge denying an injunction sought by Apple against 26 Samsung devices. This summer a California jury found that Samsung had infringed its US rival's patents.

A person at Samsung familiar with the matter said the company is still pursuing legal action against Apple in Germany, Italy, France, the Netherlands and the UK, and that the decision to drop the pursuit of product bans did not reflect any change in the basis of Samsung's grievances.

Samsung's patent battles with Apple do not seem to have harmed the rapid growth of its mobile-phone business. Analysts at IHS iSuppli, a researcher, said on Tuesday that Samsung had overtaken Nokia in 2012 to become the world's largest mobile-phone manufacturer by unit shipments for the first time, with a 29 per cent market share, and was pulling "decisively ahead of Apple". Nokia had held the mobile industry's top spot since 1998.

While the two cases are not directly related, legal and industry experts say they demonstrate the high hurdles smartphone companies face in their attempts to secure bans against rival products. "There is a common theme here of trusting more in damages and less in injunctions in cases that involve large, multi-component products," said Mark Lemley, professor at Stanford Law School. "A move toward damages is a move toward greater rationality."

Charles Golvin, analyst at Forrester Research, added: "This is a nudge or push from the regulators and judiciary to say: 'Can you guys please go find some common ground and make a deal.'"

In a ruling issued in San Jose, California, on Monday evening, Judge Lucy Koh refused Apple's injunction against Samsung devices, saying the iPhone maker could not demonstrate that the specific designs covered in its infringed patents were driving consumer demand for smartphones.

"The public interest does not support removing phones from the market when the infringing components constitute such limited parts of complex, multi-featured products," Judge Koh said.

Edward Naughton, who represents high-tech clients in patent disputes at law firm Brown Rudnick, said: "This is a decision that a lot of people will be talking about and a lot of judges will be paying attention to."

Apple declined to comment on the Monday ruling, which was accompanied by another refusing Samsung's bid for a retrial over alleged jury misconduct.

In a separate development, Samsung said it would “withdraw our injunction requests against Apple on the basis of our standard essential patents pending in European courts, in the interest of protecting consumer choice”.

European authorities want to ensure that smartphone companies licence “standards-essential” patents, which cover their products’ basic functions, on a “fair, reasonable and non-discriminatory” basis.

A European official said the commission had taken note of Samsung’s statement but declined to comment because its investigation was ongoing.