Intellectual property and the dazzling object of desire

On 24 August 2012, a jury in California ruled that Samsung had infringed several Apple patents. The jury decided for mega compensation: more than US$1bn to be paid by Samsung to its rival. The fact that the controversy involved highly desired products, such as the iPhone and the iPad, magnified the case, making it a favourite subject for late summer conversations.

On 12 September, less than one month after the verdict, a new version of the iPhone was released, with a higher price tag than any other mobile on the market. Despite the price, consumers queued outside shops to hold the fresh dazzling object of desire. Willing or unwilling, the judgment had become part of a spectacular marketing strategy: wasn’t the super compensation the best proof of the intrinsic value of the iPhone?

Legal cases are currently taking place in at least 10 other countries and the judgments have already taken a different tone. The Seoul Central District Court anticipated the verdict of their American colleagues and released a more Solomonic judgment, according to which both companies copied each other. The courts are keen to protect the interests of national companies but with notable differences: in the USA, penalties for infringement of intellectual property are much higher than anywhere else.

The Korean court demanded that Samsung pay Apple US$22,000 and that Apple should pay Samsung US$35,500: peanuts in comparison to the US court ruling.

Over the last two decades, American companies, actively supported by the US Government, have created a dangerous trend: making intellectual property rights tougher. In principle, this should have led to more investment in research and development and innovation.

In reality, it has increased rents and, above all, litigation and legal costs. Each contract involving the generation or exchange of knowledge is now scrutinised by an increasing number of lawyers and attorneys, often at the expense of researchers and engineers.

Companies go to court only as a last resort. In most cases, deals are done confidentially, as companies prefer to avoid consumers knowing the profit margins associated with their product innovation. In front of the Cupertino court in California, Samsung admitted that it cashes US$460 for each tablet. Apple does even better and makes US$538 for each iPad sold. We already knew that innovative products bring in extra profits. But the consumers still queuing to buy the latest gadget may eventually wonder whether the current intellectual property legislation is protecting their interest or not.

Daniele Archibugi is Professor of Innovation Governance and Public Policy at Birkbeck. Andrea Filippetti is a Visiting Research Fellow in the Department of Management at Birkbeck.