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**Adverse Jury Instruction Results from Failure to Disable Auto-Deletion of Emails****Intellectual Property Client Alert**

*This Alert provides only general information and should not be relied upon as legal advice. This Alert may be considered attorney advertising under court and bar rules in certain jurisdictions.*

*For more information, contact your Patton Boggs LLP attorney or the authors listed below.*

**Richard J. Oparil**  
[roparil@pattonboggs.com](mailto:roparil@pattonboggs.com)

**Christopher W. Adams**  
[cadams@pattonboggs.com](mailto:cadams@pattonboggs.com)

**Caroline C. Maxwell**  
[cmaxwell@pattonboggs.com](mailto:cmaxwell@pattonboggs.com)

**WWW.PATTONBOGGS.COM**

The U.S. District Court, Northern District of California, granted in part Apple's request for an adverse jury instruction in its ongoing battle with Samsung. See *Apple, Inc. v. Samsung Elecs. Ltd.*, Case No. C 11-1846, Dkt. No. 895 (N.D. Cal. July 24, 2012). In doing so, the court found that Samsung did not take adequate steps to avoid spoliation of evidence by electing not to disable the "auto-delete" function of its email system.

Apple argued, and the court agreed, that litigation was "reasonably foreseeable" when Apple delivered to Samsung a comprehensive summary of its specific patent infringement claims against Samsung products, not when Apple filed its complaint. Samsung had a duty to preserve relevant evidence upon receiving this notice, yet kept its auto-delete policy of emails in place. The court found that Samsung acted with a "conscious disregard" of its obligations" in failing to halt its biweekly automatic destruction policy. The court found that "Samsung never checked whether even a single Samsung custodian was at all in compliance with the given directives, while at all times the 14-day destruction policy was in place." While the record did not establish that Samsung acted in bad faith, the court noted that bad faith is not the required mental state for the relief Apple sought. Samsung's actions were "more than sufficient to show willfulness".

In levying spoliation sanctions against Samsung, the court will instruct the jury that they are allowed to infer a certain fact or set of facts from the absence of specific evidence. Specifically, the court will instruct the jury that (1) "relevant evidence was destroyed after the duty to preserve arose" and (2) the lost evidence was favorable to Apple.

Parties must take care to avoid spoliation of evidence, or risk an adverse jury instruction. While the court could have imposed an even harsher sanction by ordering the jury to presume certain of Apple's claims proven as a result of evidence being destroyed, any adverse inference instruction to the jury is disfavored.

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