By JOE PALAZZOLO And ASHY JONES

While technology companies continue to fight over smartphone patents, one judge has fought his way into the ring.

He is 73-year-old Richard Posner, among the most potent forces on the federal bench and an outspoken critic of the patent system.

Presiding over a lawsuit between Apple Inc. AAPL +0.78% and Google Inc.'s GOOG +2.47% Motorola Mobility in June, he dropped a bombshell, scrapping the entire case and preventing the companies from refiling their claims. The ruling startled the litigants in the case and fueled a national discussion about whether the patent system is broken.
Now, Judge Posner's sharply worded views are getting a fresh test. Judge Lucy H. Koh, who is overseeing Apple's suit against Samsung Electronics Co., went the other direction in a recent ruling. She granted Apple a preliminary injunction that stopped U.S. sales of some Samsung products.

Her trial will be closely watched to see if Judge Posner's skeptical view of patent suits further takes hold.

The California trial, like that overseen by Judge Posner's, involves claims from each company that the other was infringing patents for mobile phone technology, some of it very arcane.

But Judge Posner boiled it down to a straightforward conclusion. In his opinion, he said the companies failed to marshal plausible experts and theories to calculate damages for alleged infringement, and in any event, companies shouldn't be able to win injunctions on patents involving technologies that have become part of an industry standard.

His harshest words perhaps were for Apple's claims that Motorola should pay it significant sums or should be banned from selling certain smartphones. "The notion that...minor-seeming infringements have cost Apple market share and consumer good will is implausible [and] has virtually no support in the record," he wrote.

Judge Posner's role in the patent wars came via a seemingly innocuous scheduling maneuver in November. The judge, who normally sits on the Seventh Circuit Court of Appeals, decided to take a stint in a lower court so he could preside over the Apple-Google lawsuit.
Judge Posner is one of the founders of a school of thought that says that legal problems are often best understood when seen through the lens of economics. In this case, he questioned whether using the federal court and its resources to handle these types of disputes was economically efficient. That notion is woven throughout the opinion.

"He's the grandfather of the law and economics movement, and people pay close attention to what he says," said Brian J. Love, a patent expert and law professor at Santa Clara University.

In the June ruling, explaining why he wouldn't ban Motorola products from the shelves, Judge Posner said: "An injunction that imposes greater costs on the defendant than it confers benefits on the plaintiff reduces net social welfare."

Judge Posner, who declined to be interviewed for this article, has continued to press the issue.

This month, he wrote an essay in the Atlantic headlined, "Why There Are Too Many Patents In America." He said "most industries could get along fine without patent protection" and that the U.S. Patent and Trademark Office has done a woeful job, calling it "understaffed," and "many patent examinations…perfunctory."

He saved ammunition for juries and fellow jurists. "Judges have difficulty understanding modern technology and jurors have even greater difficulty," he wrote. He suggested several reforms to the patent system, including shortening the patent term for inventors in some industries and expanding the authority of the Patent and Trademark Office to try patents cases.
"Empowering software innovators with IP rights fuels exports and creates U.S. jobs," said David Kappos, undersecretary of commerce for intellectual property and director of the United States Patent & Trademark Office. Mr. Kappos said his office has already taken steps to better measure patent quality, strengthen examiner guidelines, and allow more time for application examinations.

In regard to his taking over the case of Apple and Google, another judge might not have gotten away with such a brazen maneuver, but Judge Posner, a prolific writer and blogger, who also teaches at the University of Chicago Law School, commands a respect and influence surpassed on the federal judiciary only by the nine justices of the U.S. Supreme Court. He normally sits on the Seventh Circuit Court of Appeals, but he took a shift in Chicago's federal trial court so he could handle the case.

Judge Posner's intellectual curiosity is well-known and "people assume he has no political ax to grind because he's not trying to advance the fortunes of any particular segment of the economy," said Arthur D. Hellman, a law professor at University of Pittsburgh who studies the judiciary.

Yet his ruling poses a difficult question for the Federal Circuit Court of Appeals, the specialized one that handles intellectual property cases, about whether infringement matters without damages.

Peter Menell, a law professor at UC Berkeley, likened it to the old thought experiment that begins "If a tree falls in the woods." He said: "If there are no damages, do you need to have a trial?"
Juge Posner also rejected Google's bid to block the sale of iPhones that allegedly infringed a so-called "standards-essential patent" owned by Google. Standards-essential patents protect innovations used in technologies that industries collectively agree to use, like Wi-Fi or 3G. A company that holds one of these patents stands to profit enormously, because its competitors have to pay it for licenses to use the technology.

But Judge Posner ruled that holders of such patents aren't entitled to injunctions. Michael Carrier, a law professor at Rutgers University, Camden, said the opinion on standards-essential patents came amid a groundswell of opposition to injunctions for such patents and could put an end to the practice among U.S. federal judges.

Write to Joe Palazzolo at joe.palazzolo@wsj.com or Ashby Jones at ashby.jones@wsj.com

A version of this article appeared July 24, 2012, on page B1 in the U.S. edition of The Wall Street Journal, with the headline: Also on Trial: A Judge's Worldview.