

Research In Motion risks loss of domestic e-mail service as court denies \$450M settlement

A BlackBerry squeeze

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The BlackBerry e-mail pager service came closer to being blocked in the United States after a federal judge ruled that a \$450 million patent settlement isn't enforceable and rejected a request for a delay in the case.

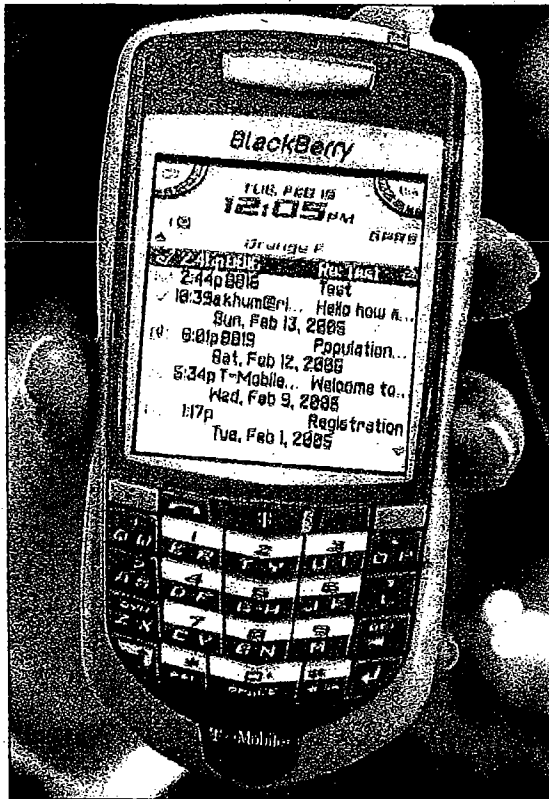
U.S. District Judge James R. Spencer in Richmond, Va., yesterday rejected the BlackBerry company's argument that a March draft settlement with NTP Inc., a patent-holding company, was final. He refused to delay the suit and told lawyers to prepare arguments on blocking U.S. BlackBerry service and on how much its company, Research In Motion, should pay NTP for infringing its technology patents.

The millions of BlackBerry customers in the United States, including Wall Street bankers and top executives, will put pressure on Research In Motion to settle, analysts said. The United States accounts for 70 percent of BlackBerry sales. NTP co-founder Donald Stout said a decision on blocking service could come in weeks, since Spencer has said he wants the case to move quickly.

"Essentially, the judge is holding a gun to RIM's head to settle," said Richard Williams, a Garban Institutional Equities analyst in Jersey City, N.J., who rates the shares "sell" and doesn't own them. "Ultimately, we believe there will be a settlement soon and for a lot of money. It's in RIM's best interests to pay a one-time settlement."

Research In Motion shares fell \$3.79, or 5.8 percent, to close at \$61.13 in Nasdaq Stock Market trading. They have fallen 31 percent in 12 months. Shares of Palm Inc., which makes the competing Treo device, rose \$1.61, or 6 percent, to \$28.38.

Williams and Pablo Perez-Fernandez, an analyst with ThinkEquity Partners in San Francisco, said it could cost Re-



Millions in the U.S. who rely on BlackBerry e-mail service could soon be looking at blank screens.

search In Motion, based in Waterloo, Ontario, between \$1 billion and \$1.5 billion to end the case.

"They should be concerned," Perez-Fernandez said of the company. "The fact that this settlement is not enforceable means we're one step closer to an actual injunction."

Stout said Research In Motion could have ended the case for about \$50 million early on. Research In Motion has been "defiant," he said. The suit by NTP of Arlington, Va., was filed in 2001. "It's not

like we want to shut down RIM," Stout said.

The \$450 million agreement broke down because "the conditions that were attached to the payment of the money were totally unacceptable to us," Stout said.

Research In Motion said in a statement it "maintains that an injunction is inappropriate given the specific facts of this case." The company said it is preparing changes to its software that it believes would work around the patent "which it intends to implement if necessary to maintain the operation of BlackBerry services."

It's unlikely that Research In Motion will persuade the judge to deny NTP's request for a court block of the BlackBerry service, patent lawyers said.

"The law doesn't recognize a compulsory license for infringers," said Douglas Miro of Ostrolenk, Faber, Gerb & Soffen in Manhattan who specializes in patent litigation. "The basic right of a patent is the right to exclude others from using the technology."

One option would be for the judge to issue the injunction, and then delay its imposition until the other issues, such as an appeal to the U.S. Supreme Court, are completed, said Darryl Woo, a patent litigator with Fenwick & West in San Francisco.

"The likelihood is high that he'll issue the injunction," Woo said. "The odds are good that he'll stay the injunction while these other issues work out. He could grant the injunction because that's what the law says to do, and then stay it because he has more discretion."

Any injunction would not, by law, affect government workers. NTP has said it will ask that it not include emergency workers, such as Red Cross personnel. Research In Motion has said it may be impossible to segregate its users.

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