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WASHINGTON INVESTING

Jerry Knight

BlackBerry Users Can Relax: NTP Won't Shut You Down

This column is for all those traumatized people who type with their thumbs.

You know who you are: You carry a little BlackBerry wherever you go, and you're freaked out by reports that your pocket e-mail machine could be shut down by a dispute over who holds the patent on portable text-messaging.

To all those BlackBerry users, including many Washington area lawyers, lobbyists and government workers, I send this message: Don't worry.

It's not bye-bye, BlackBerry.

Santa Claus is more likely to fall down your chimney than your BlackBerry is to go black.

The BlackBerry blackout threat is the urban myth of the moment — a too-bad-not-to-be-true tale. Check with some patent and trademark lawyers and you'll find they think the odds of BlackBerry shutting down are extremely remote, even though it is legally possible.

"This is gamesmanship. Everybody's playing chicken,

See INVESTING, D2, Col. 1

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Northern Virginia's NTP Has No Incentive to Shut Down BlackBerry Service

INVESTING, From D1

waiting to see who's going to blink first," said Scott Creasman, a patent lawyer in the firm Powell Goldstein LLP.

The case reminds me of the old National Lampoon cover showing a pistol pointed at the head of a lovable pooch with a headline, "Buy this magazine or we'll shoot this dog."

There is "a gun to BlackBerry's head," said Doug Miro, a partner with Ostrolenk, Faber, Gerb & Soffen LLP in New York. But, he added, the consequences of pulling the trigger are precisely why it's not going to happen.

The gun is in the hand of Washington lawyer James Wallace, who represents NTP Inc., the little Northern Virginia company that claims the patent on portable text messaging. In years of legal proceedings, NTP has won in every venue. Judges and juries have ruled that NTP's patent was knowingly violated by Research in Motion Ltd., the Canadian company that sells BlackBerrys.

When people infringe on a patent, one obvious solution is to make them stop. The other obvious solution is to make them pay.

Money is what the dispute over the BlackBerry patent is all about. A Virginia jury has ruled

that NTP is entitled to 5.7 percent of RIM's BlackBerry sales. That's about \$240 million so far. NTP's share could, by one estimate, total \$3 billion before the patent expires.

That's why NTP isn't likely to shut down your BlackBerry.

Its goal is to wring as much money as possible out of RIM. It's not going to collect any more money by getting an injunction to shut down the service and would probably get less.

"An injunction is crazy," Creasman said.

"To me, it wouldn't make a lot of sense," Miro said.

Still, the legal proceedings have now reached the "pay or die" stage.

Miro and Creasman agree with NTP lawyer Wallace on what could happen next.

If RIM won't agree to pay royalties, NTP can go to court and ask for an injunction prohibiting RIM from using NTP's patented technology, which could mean shutting down BlackBerry service in the entire United States.

"They stole our technology. They refuse to take a license," Wallace said. "Why shouldn't we shut them down? We have a right to."

Yes, he does, the two other lawyers agreed. "I've not seen a case in which the plaintiff [NTP

in this case] prevailed and sought an injunction and was turned down," Miro said.

RIM's lawyers aren't talking. The Canadian company and its lawyers have played hardball all along and have done little to discourage people from thinking they could lose their BlackBerrys if NTP wins the case. It has said that it developed a "workaround" that would keep the devices running without using the disputed patent, but it has provided no details and some tech experts are skeptical that it could be done.

The bye-bye-BlackBerry threat is a variation on what has long been known in Washington as the "shut down the Washington Monument" ploy.

You know how this gambit works. Congress gets into a stalemate over the budget and some bureaucrat warns solemnly, "Well, if we don't get the money, we're going to have to close the Washington Monument to tourists." Or cut the high school football team. Or drain the swimming pools. Or whatever painfully symbolic sacrifice you can come up with.

In the end, BlackBerrys aren't likely to be shut down, but all the fear and trembling hasn't helped RIM's stock.

The people who have the most at stake in how the

BlackBerry brawl ends are the stockholders of Research in Motion — and the speculators who have bet against BlackBerry by shorting RIM stock.

The short sellers — who borrow shares and then sell them, betting that they can buy them back later at a lower price — have made good money so far. Though BlackBerry sales have grown steadily, RIM stock is falling. It peaked at around \$93 a share in October of last year and closed Friday at \$64.13.

That's a \$5 billion loss in market value — substantially more than is at stake in the patent case.

National Bank Financial Ltd., a Toronto investment firm, estimated that settling the dispute would cost RIM about \$1 billion. It's a price the firm could easily afford, NBF notes, because RIM has \$2 billion in cash.

So why not simply settle?

Perhaps it's a matter of pride. RIM is Canada's best-known high-tech company, the north-of-the-border equivalent of Microsoft or Google. It would be a real comedown for the Canadians to admit that their revolutionary product is based on U.S.-owned technology.

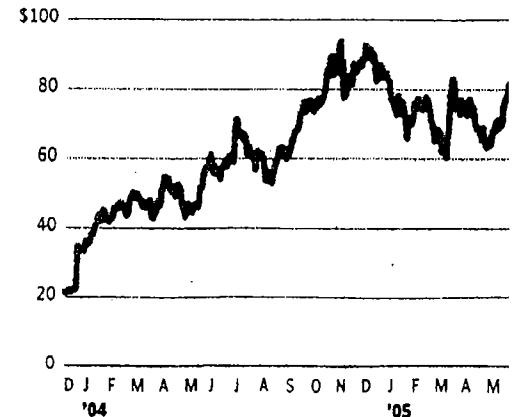
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BY KC

NTP Inc. could win less money from BlackBerry maker RIM Ltd. should an injunction halt service.

Research in Motion Daily stock closes



SOURCE: Bloomberg