

# Networking: Feds calls BlackBerry essential

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The feds are intervening in a 5-year-old patent case against Research in Motion Ltd., the Canadian-based developer of BlackBerry, arguing in court papers filed last week that the networked wireless computing devices are essential and a network outage could cause severe problems for the U.S. government.

"The injunction would, literally, prevent RIM from providing the services that would be essential for the federal government, as well as state and local governments, to continue their use of the BlackBerry devices," the U.S. Department of Justice argued in a court filing.

Experts tell United Press International's Networking that the case -- before a federal judge in Richmond, Va., who has promised to move "swiftly" on the matter -- could be one of the biggest computer cases in history.

The trial against the maker of BlackBerry opened last week after the U.S. Supreme Court refused to grant a stay in the patent proceeding. NTP, another technology developer, is suing Blackberry, and if the plaintiff prevails in a request for an injunction, the popular business e-mail service could be shuttered.

"This case is a good example of the power of the patent," said Douglas A. Miro, partner with the intellectual-property law firm Ostrolenk, Faber, Gerb & Soffen LLP of New York. "The implications are enormous. Needless to say, if the district court grants NTP's injunction request, without a last-minute settlement, RIM probably can not stay in

business in the United States."

Miro said that RIM's chances of convincing the court not to grant the injunction are minimal -- based solely on legal grounds. "NTP is sitting pretty because it knows RIM must pay it an enormous sum of money to stay in business," he added.

Another attorney said the case promises to be one of the most momentous patent cases in history. "This could turn out to be as big as or bigger than Kodak v. Polaroid, in which an injunction based upon Polaroid's patents put Kodak out of the instant camera business," said Bob Fieseler, partner and board member with McAndrews, Held & Malloy, based in Chicago.

The federal government's entry into the case is probably going to have an impact on the outcome of the trial, experts said.

The government asked for 90 days' notice before the trial court enforces any injunction on BlackBerry devices in the United States to ensure government workers can keep using them. BlackBerry devices first came to popularity among government workers when former Vice President Al Gore's campaign used them extensively during the 2000 presidential election.

The U.S. DOJ also argued in court papers that three months were needed to respond to the injunction so the U.S. Patent and Trademark Office could reconsider the wireless e-mail patents held by NTP. The Patent Office has overturned the disputed patents filed by the late inventor Thomas Campana Jr., which NTP owns, and which NTP has asked the patent office to reconsider.

There are other complicating factors in the trial. Judge James R. Spencer of the U.S. District Court for the Eastern District of Virginia is

considering whether a \$450 million settlement with NTP, disclosed this past spring, should be enforced.

The deal fell apart three months later after both parties disagreed on the terms of the settlement -- but now RIM wants the court to enforce the failed agreement.

Spencer said in open court that he would schedule hearings on the injunction when he decides if the March agreement is enforceable.

The case is NTP Inc. vs. Research In Motion Ltd., 01CV767.

"I intend to move swiftly on this," Spencer said Wednesday. I've spent enough of my life and my time on NTP and RIM."

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