

Wireless World: Premature predictions?

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Predictions that the maker of BlackBerry wireless e-mail technology was about to collapse due to protracted and bitter patent litigation were premature, experts are now telling United Press International's Wireless World.

The U.S. Patent and Trademark Office this week rejected patent claims by NTP, the developer that has been suing Research in Motion, the owner of BlackBerry. The surprise move comes after lengthy litigation, which RIM was losing, and which led many to say that RIM might be shuttered, and even caused the U.S. government to develop contingency plans in the event that the wireless service went dark.

"The USPTO announcement sends two strong messages to the wireless market," said Carmi Levy, an analyst with Info-Tech Research Group, based in London, Ontario, Canada. "The first is that predictions of BlackBerry's imminent demise were highly premature and unnecessarily inflammatory. The second is that life will get tougher on companies whose business model consists of using patents to sue successful vendors instead of competing for clients and markets."

What is more, Levy said, if the patent ruling holds, there would be no further basis for court action against Research in Motion in the case now in the U.S. District Court in Richmond, Va. Essentially, the ruling will have "taken the wind out of NTP's sails," said Levy.

Strange as it seems to the regular person, the court litigation and contention over the patents before the patent office may actually benefit

American consumers.

"What we are seeing is the proper operation of the patent system in our country," Steve Kelber, an intellectual-property attorney with Merchant & Gould, based in Washington, told Wireless World. "We are just seeing it in detail on our handheld devices. Whether or not the patents survive re-examination, the litigation can only benefit the system and the public."

Some, however, think the litigation has caused enough uncertainty that BlackBerry's future is still quite unclear. The enterprise messaging market is sure to change as a result of the controversy.

"The wireless e-mail market continues to evolve and flourish," said Terry Austin, president and chief executive officer at Good Technology, a competitor to Research in Motion. "Whether BlackBerry exists or not will be a footnote in the face of diversifying handheld alternatives from Nokia, Motorola, HP, Palm and others, and powerful enterprise software and service incentives. These industry leaders will continue to grow the industry because they've chosen to focus on innovation, rather than litigation."

Experts note that there is also now an open-source wireless project -- called Funambol -- that is seeking to provide a lower-cost alternative to RIM and other commercial wireless e-mail systems.

Those developments are long-term considerations. There is some speculation that the patent case against RIM may have actually spurred some innovation in the short-term too, "allowing other competitors with non-infringing systems to come to the forefront with better designs, and forcing those infringing on the patents to re-design their systems," said Ken Godlewski, a partner with the law firm of Kilpatrick Stockton who works on intellectual-property cases, based in Washington.

There are other considerations, as well, emerging from this long-fought conflict. The case was very widely perceived as a precedent for future litigation in technology patents. "Within the last month, Visto has sued Microsoft for violating its mobile e-mail patents, while Inpro has initiated proceedings against RIM in British court for intellectual property violations," said Levy, the analyst. "If the original NTP/RIM lawsuit is ultimately thrown out of court, other cases that were riding on NTP's coat tails will have less chance of success. The end of litigious frivolity could be upon us."

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