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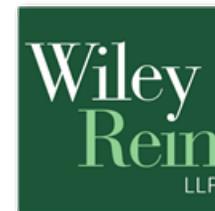
# Centre de Patents de la Universitat de Barcelona

**El Lunes de Patentes  
(Patent Mondays)**

**Barcelona, Spain**

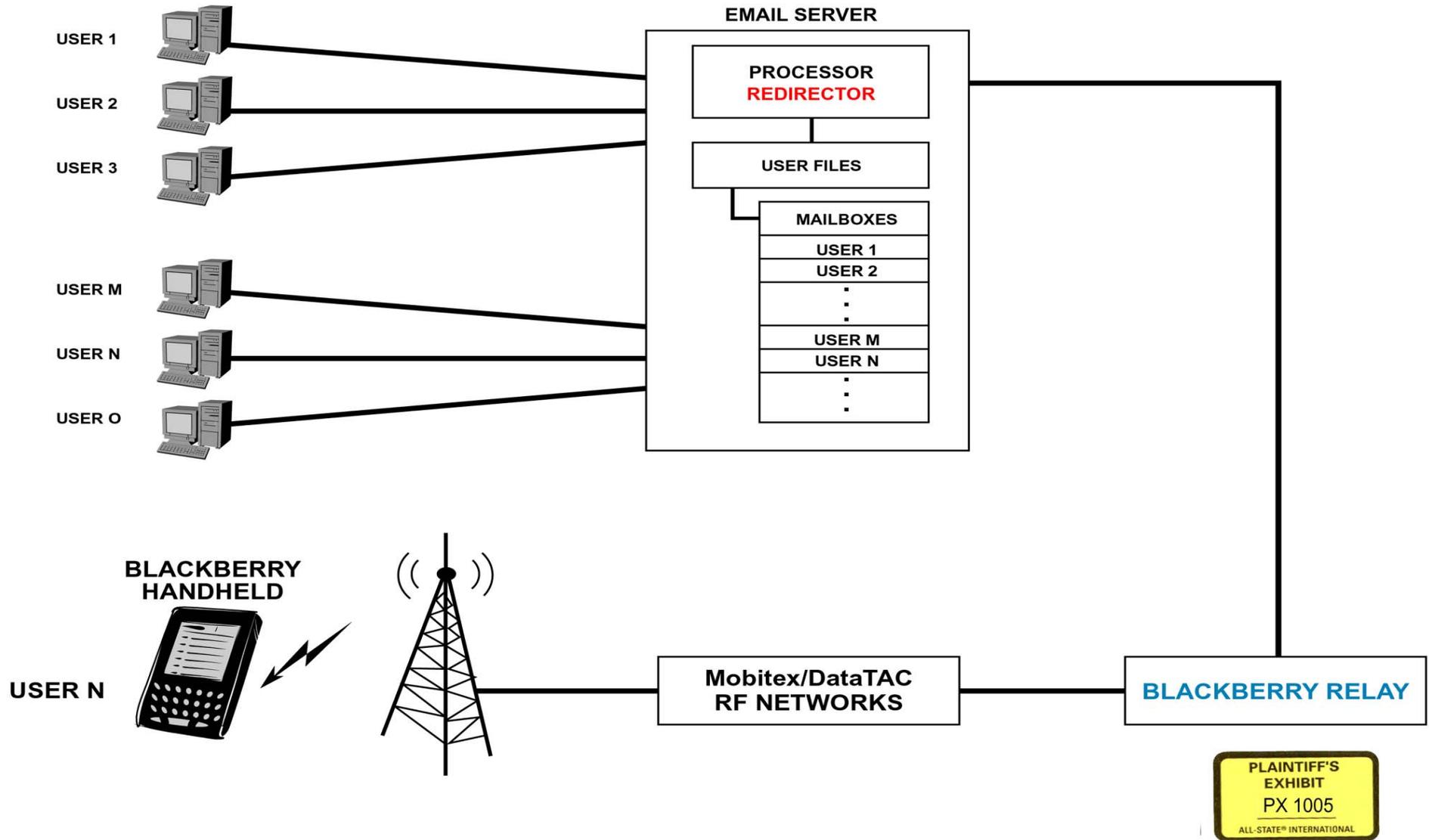
**September 29, 2008**

**The Blackberry Patent Case  
(NTP v RIM): How NTP got \$612.5 Million**



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# Accused RIM Products and Methods (Server Version)



## Litigation Strategy – Key Themes

We pursued a strategy based on four basic concepts:

1. We are confident that we will win and that defendant is afraid to go to trial;
2. Our invention is the single biggest technological advance since email itself;
3. Our patents deserve very high royalties; and
4. The defendant is not to be believed.

# 1. We Are Confident That We Will Win, And That Defendant Is Afraid To Go To Trial.

This is a very simple and effective approach. It is especially easy to implement in a “Rocket Docket.”

NTP sought:

- Expedited discovery
- Early patent claim construction (*Markman*)
- An early trial date

The rest was up to RIM.

# 1. We Are Confident That We Will Win, And That Defendant Is Afraid To Go To Trial. (Cont'd)

RIM sought:

- Extensions of time
- A more definite statement
- To delay *Markman*
- To delay trial
- Stonewalled discovery
- Filed duplicative motions for summary judgment based on theories that had been repeatedly rejected by the Court.

We could not have written their script better.

## **2. Our Invention Is The Single Biggest Technological Advance Since Email Itself.**

This point is crucial when facing an obviousness challenge. It is also important in justifying a high royalty rate. Here is how we did it.

- We were years ahead of RIM
- Major companies such as Bell Labs failed, NTP succeeded
- We got numerous patents with thousands of claims
- Great commercial success of the BlackBerry

### **3. Our Patents Deserve Very High Royalties.**

- Our invention is the greatest – see above
- The billion dollar a year DRAM story as extracted from RIM's damage expert.

## 4. The Defendant Is Not To Be Believed.

**OFFICE E-MAIL.  
TO GO.**



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Fig. 2

- In public – RIM ad: BlackBerry “lets you send and receive work and personal email.”

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- RIM's "TekNow" demonstration and testimony: The patents are invalid in view of 1989 software that predates in 1990 NTP invention date.

Here is what we found. By the software file size we showed that software used in the Demonstration was not 1989, but 1994 version -- not prior art.



Fig. 5

In ruling that damages should be enhanced, the trial judge pointed to, among other things, RIM's demonstration as designed "to confuse and misled the jury."

**5. Video depositions highlighted RIM's unbelievable positions.**





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## NTP v. RIM Background

The *NTP* litigation charged Research in Motion with infringing various patents held by a previously obscure Virginia patent holding company, NTP. In fact, RIM disdainfully referred to NTP as a mere “file drawer.”

Let us first look at how the BlackBerry system works:

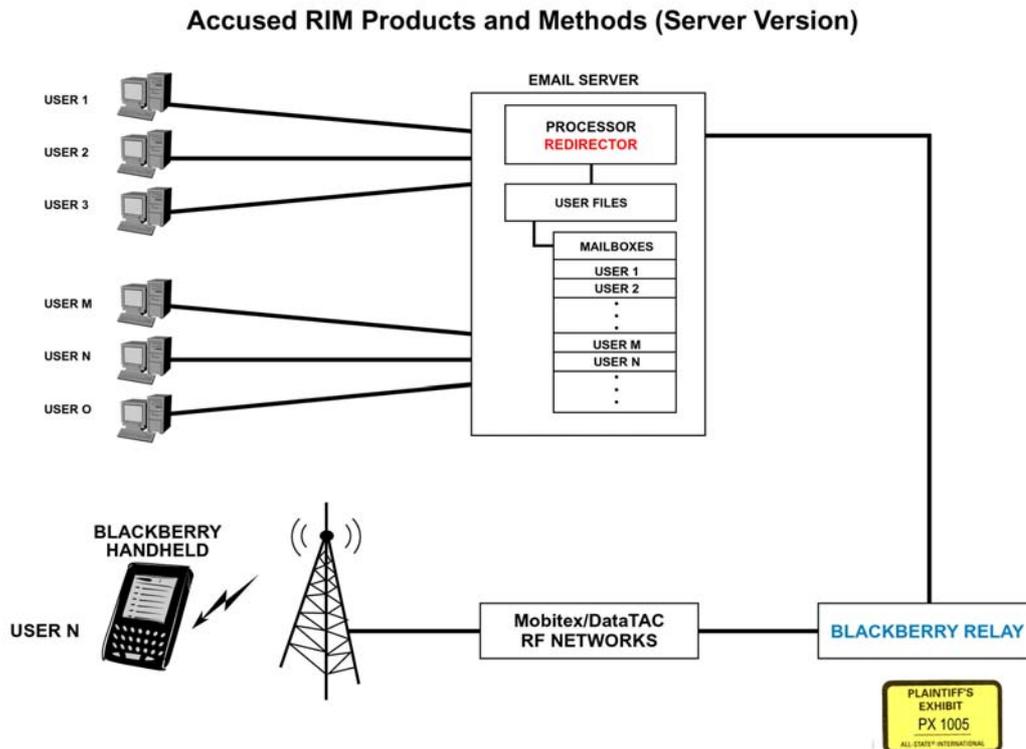


Fig. 1

One of the key legal issues was whether a U.S. patent is infringed when an essential part of the system, the BlackBerry relay, is located outside the United States, in this case in Canada. That issue alone could be the subject of a day-long seminar.

In its decision in *NTP, Inc. v. Research in Motion, Inc.*, 418 F.3d 1282 (Fed. Cir. 2005), cert. denied, 546 U.S. 1174 (2006), the Federal Circuit determined that a system claim is used “within the United States” if the United States “is the place at which the system as a whole is put into service,” *i.e.*, the place where control of the system is exercised and beneficial use of the system is obtained. A method claim, on the other hand, is used “within the United States” only if each of the steps is performed within the United States, without regard to a “beneficial use” equivalent.

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- The billion dollar a year DRAM story as extracted from RIM's damage expert.

**4. The Defendant Is Not To Be Believed.**

In most cases, this is a tough theme to establish. Unless you have some powerful hooks, it can backfire. But look at the hooks we had in the BlackBerry case.

- RIM's statements in court were contrary to its statements in public.

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Fig. 2

- ● In public – RIM ad: BlackBerry “lets you send and receive work and personal email.”



Fig. 3

Figure 3.wpl

- RIM's President's court testimony: You can't stay on top of your email with a BlackBerry.
  - Q. With the BlackBerry handheld can the customer stay on top of his email?
  - A. The BlackBerry handheld connects [to] the DataTAC network. It provides him with a device that he can input data with the keyboard, and he can select data with the roller wheel. It provides him with a convenient experience in terms of its small size, light weight and its long battery life.
  - Q. And it will enable the customer to stay on top of their email?

A. Not the wireless handheld.

Q. They can't stay on top of their email with a wireless handheld?

A. No.

- • • The contrast was significant.

- Similarly, RIM's description of its pre-litigation conduct contrasted sharply with the facts we uncovered.
  - • RIM: We assigned countless executives, engineers and attorneys the task of evaluating all 2000 of NTP's patent claims.
  - • Here is what we found:

| Willfulness Pre-Complaint Critical Factors  |                            |
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Fig. 4

- RIM’s “TekNow” demonstration and testimony: The patents are invalid in view of 1989 software that predates in 1990 NTP invention date.

Here is what we found. By the software file size we showed that software used in the demonstration was not 1989, but 1994 version -- not prior art.

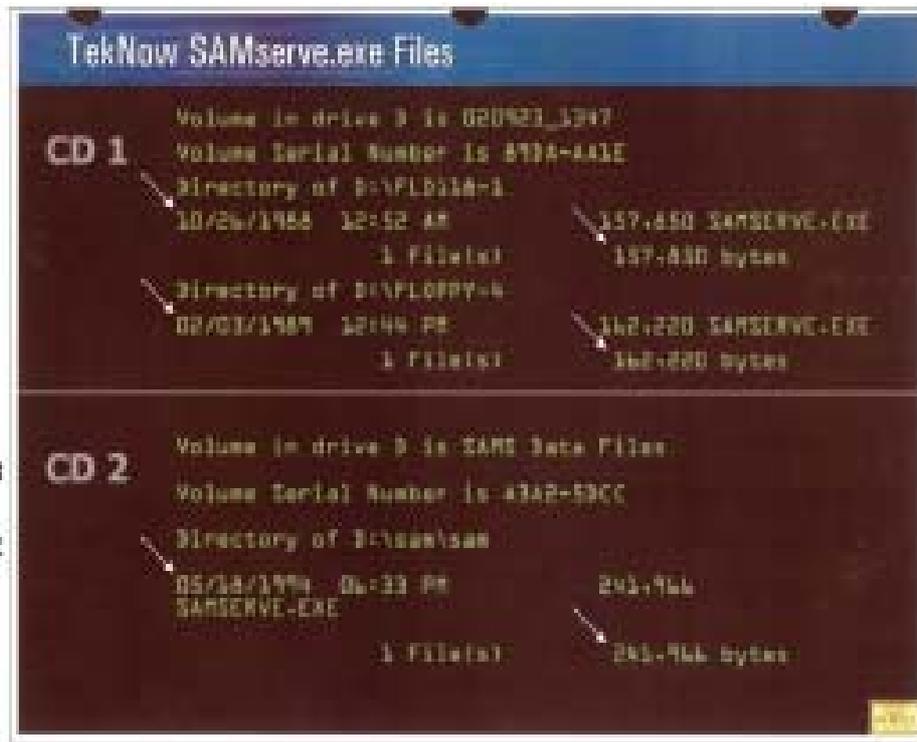


Fig. 5

In ruling that damages should be enhanced, the trial judge pointed to, among other things, RIM’s demonstration as designed “to confuse and mislead the jury.”

##### 5. Video depositions highlighted RIM’s unbelievable positions.

In the pre-video days, we generally advised witnesses to take lots of time in thinking about and framing their answers. The written transcript does not reflect the long pauses. Let’s take a look at this series of questions and answers. The answers are not all that good even in the written transcript, but look how much worse they are when viewed on video.



Fig. 6

Figure 6.wpl

- Q. Did you ever receive any email, read your email on your handheld BlackBerry?
- A. Can you please define what you mean by e-mail, sir?
- Q. If when you had your 950 in your belt holster –
- A. Mm-hmm.
- Q. -- and Mr. Balsillie sent an e-mail to you, were you able to read that message on your handheld device?
- A. You haven't answered by question.

- Q. I'm asking the questions, sir. If when you have your 950 on your belt holster, if Mr. Balsillie sent you an e-mail that said "Dear Mike, call me right away", were you able to read on your screen the message, "Dear Mike, call me right away"?
- A. When you say "message" what do you mean by message?
- Q. Mr. Balsillie types an e-mail to you, to your e-mail address, and it says, "Dear Mike, call me right away", if you were carrying your 950 did your screen display the words "Dear Mike, call me right away"?
- A. To be clear, my screen did display "Dear Mike, call me right away".
- Q. No doubt about it?
- A. Yes.
- Q. And your screen told you that the person who originated that message was Mr. Balsillie?
- A. My screen displayed those words.
- Q. That he was the sender?
- A. My screen displayed his name.
- Q. Okay. And your screen indicated that he was the sender; is that correct?
- A. Can you describe what the sender means?
- Q. When you saw his name on your screen what did it mean to you?
- A. What did it mean to me?
- Q. Yes.
- A. It was Jim Balsillie's name.
- Q. What did it mean to you in relation to who had typed that message?
- A. I don't know who had typed the message. I never saw them type the message.

- Q. I see. Did it indicate to you who had caused that message to be sent to you?
- A. Okay. So describe to me what you mean by sent to me.
- Q. Do you have problems understanding the words “sent to me”?
- A. We have a very complex system. I need to understand what you mean by “sent to me”.
- Q. When you saw his name on the screen did you recognize that it originated from him or his office?
- A. Which one is it? I don’t know where it originated from.
- Q. Okay. Did it convey any information to you that your screen revealed that he was the sender?
- A. I can’t be sure of that.
- Q. Did the screen indicate that it was from him?
- A. The screen has the words “Jim Balsillie” on it. That is all I know.
- Q. It doesn’t say from Jim Balsillie?
- A. Sorry?
- Q. It doesn’t say from him?
- A. The screen says “from Jim Balsillie.”
- Q. Okay. And why does the screen say “from Jim Balsillie”?
- A. Because that’s the way the pixels are arranged on the screen.
- Q. I understand that’s the way the pixels are arranged on the screen, but in designing the product you designed it to say from somebody for a reason, didn’t you?
- A. You? I didn’t design the product.
- Q. Your company.
- A. Yes.

Q. Okay. What's the reason your company designed the product to say "from"?

A. Because those bites were in the memory.

Q. Okay. But what's the reason those bites were in the memory?

A. It's a complex system. I wouldn't know that.

\* \* \*

In conclusion, carefully thought out themes are invaluable in planning for focused, efficient discovery, persuading the Court early on of the merits of your case, and securing a favorable jury verdict. This is especially important if your client is a mere file drawer or alleged troll.