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Patent suits becoming common in tech industry

A firm's protection of intellectual property 'an expected expense'

BY ROBERT THOMPSON

When it comes to fighting legal battles over patent infringement, a good offence starts with a stellar defence. And that's where Bob Kahrl comes in.

Mr. Kahrl, 56, is the head of the intellectual property practice at Cleveland law firm Jones Day, and has been defending Waterloo, Ont.-based Research In Motion Ltd. from copycat technologies for about eight years.

He'll be spending the next few years fending off two patent cases launched by California-based upstart Good Technology Inc. that take aim at RIM and its ubiquitous BlackBerry e-mail pager.

"This is a case that RIM is taking very seriously," said Mr. Kahrl, who has been handling patent cases for more than 26 years. "Patent lawsuits are just part of doing business for Research In Motion. Spending millions to protect your patents is an expected expense."

Good Technology kicked off the dispute at the end of May when it sought to have a California court declare RIM's e-mail patent invalid. The company also asked for a court to rule that it wasn't infringing on the RIM's technology patent.

RIM fired back in a Delaware court filing, saying Good Technology's wireless offerings infringed on four of its patents.

RIM did not take action on the unified mailbox issue and instead said Good is infringing patents which "relates to a mobile device that is optimized for use with thumbs," and another which "relates to a method and system for loading an application program on a device."

Patent disputes, like RIM's current battle with Good, are becoming commonplace in the technology industry where intellectual property is often the main asset of companies.

"What's become more recognized by the business community is that a lot of their assets are intellectual property," said Robin Coster, a partner at Toronto-based Torys LLP who works in the firm's technology group.

"Patents tend to be the best way to protect technology because they

are respected by most legal jurisdictions."

There is no police force to protect companies from businesses that may be infringing on patented concepts or technology, Mr. Coster said, which means patent holders must take legal action and often spend millions of dollars to protect their creations.

Mr. Coster said there are both strong patents, as well as patents that may not hold up well under scrutiny. He added that some of his clients feel patents are easy to "get around," but Mr. Coster said if done properly, patents should protect an invention or idea.

"If you come up with a big development and have good lawyers, you should get good patent protection," said Mr. Coster.

In the case of Good Technology, the company's case is not strong and is unlikely to proceed, according to Mr. Kahrl, who said he expects the dispute to be tossed out of court by the end of August.

"Their case is not likely to survive. I think they would have a hard time convincing a judge that this should go forward."

In order for the case to succeed, RIM must threaten legal action, which it has yet to do in the case of the unified e-mail patent.

Good Technology refused to discuss the case or its involvement in patent litigation. The company is being represented in the case by noted Palo Alto, Calif.-based law firm Fenwick & West LLP.

That doesn't mean that both cases won't be settled. Since patent cases may take years to conclude (one case Mr. Kahrl was involved with took six years to go to trial), businesses often decide to settle.

"At the end of the day, the business person just wants to get these things finished and get back to business," said Mr. Coster.

That doesn't mean RIM will be looking to settle, Mr. Kahrl said, despite the fact it reached an agreement earlier this year on its most recent lawsuit involving Atlanta-based Glenayre Technologies Inc.

"Once a smaller company like RIM displays their technology for the world, the world will imitate it," said Mr. Kahrl. "RIM is just taking the approach of protecting its strong patents."

Because of the rapidly changing nature of the business, many patent dispute cases end with a technology reaching obsolescence, rather than being decided by verdict.

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