

## Visto's Suit Against Research in Motion Could Take Years to Resolve

Ken Dulaney, Todd Kort, Monica Basso, Martin Reynolds

RIM faces another round of patent disputes initiated by Visto, a wireless e-mail software platform provider. But BlackBerry customers and their technology investments are likely to remain unaffected as appeals proceed.

## NEWS ANALYSIS

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### Event

On 28 April 2006, a federal court in the Eastern District of Texas found that the wireless e-mail service which is run from Seven Networks' software platform willfully infringes on patents held by Visto. Each of the five claims and three patents that Visto brought to trial were upheld. The jury awarded Visto damages of approximately \$3.6 million.

On the same date, Visto's lawyers filed a similar suit against Research in Motion (RIM), maker of the BlackBerry mobile device. Visto has asked the court to ban all BlackBerry products and services in the U.S. and to award unspecified damages. Visto is currently suing other companies as well, including Microsoft and Good Technology.

### Analysis

Visto's earlier, successful litigation against Seven used three of the four patents that are now listed in the filing against RIM. In legal documents, these are referred to as the 708 patent (claims 5 and 24), the 192 patent (claims 11 and 22) and the 221 patent (claim 8). The 606 patent is a new addition in Visto's suit against RIM. Visto's patents primarily deal with synchronization through firewalls, a fundamental technology for many wireless e-mail and application vendors.

- The 708 and 192 patents deal with the synchronization of information through a firewall. While synchronization is an old technology, this application was made possible by the challenge of synchronizing through firewalls required by the advent of the Internet. These two patents affect all defendants in litigation with Visto.
- The 221 patent deals with synchronization to an intermediate global server, a patent that clearly aims at vendors that make use of a network operations center, like Seven, Good and RIM.
- The 606 patent deals with the creation of a data manager on an untrusted device for the purposes of synchronization.

Visto's legal victory against Seven has established its patents in the same Texas federal court where the RIM case will be tried. For its case against RIM, however, Visto may assert claims that differ from those it cited in the suit against Seven. Previous rulings on litigation brought within that court have largely favored patent holders, placing RIM at a disadvantage. Visto has had at least one of its patents reaffirmed through the patent re-examination process — although this will not affect the federal trial, as the patents were not invalidated. Visto faces several challenges:

- Visto must simultaneously manage its suits against RIM, Microsoft and Good, as well as a countersuit from RIM and likely appeals from Seven. Microsoft, in particular, may prove to be a formidable legal opponent because of its financial resources.
- Seven's and RIM's products are based on different architectures; thus, the court may evaluate patent infringement differently in the case against RIM.
- Synchronization methods have matured considerably. Vendors may be able to implement work-arounds to avoid Visto's patents, which may moderate any eventual settlement. For example, the BlackBerry servers could be "hardened" and moved outside the firewall, bypassing the firewall synchronization patents.

At this point, RIM is determined to challenge the case through the court system. Although settlement is always an option, Gartner believes that Visto's patent disputes are not likely to be resolved promptly. The litigants may spend three to five years in appeals. We expect Visto's dispute with RIM will be resolved by year-end 2011 (0.6 probability).

**Recommendations:** Current users of RIM products — as well as users of other products offered by vendors involved in litigation with Visto — need take no action in the face of the latest patent dispute. The vendors could settle, or the appeals process could drag resolution out well beyond the four-year primary useful life of wireless e-mail systems. Thus, any systems purchased today would remain unaffected. Keep abreast of developments in these cases, but do not let them alter your purchasing plans.

**Analytical Sources:** Ken Dulaney, Todd Kort, Martin Reynolds and Monica Basso, Gartner Research

#### **Recommended Reading and Related Research**

- "Vendor Rating Update: Research in Motion Opens Up to Other Vendors" — Gartner upgraded its rating of RIM to "positive" in light of its decision to open its BlackBerry platform to other mobile handset makers. **By Monica Basso and Ken Dulaney**
- "The Pros and Cons of Using NOCs for Wireless E-Mail" — Gartner discusses whether the inclusion of a component called a network operations center in a wireless e-mail system architecture matters for buyers of "push" e-mail. **By Ken Dulaney, Monica Basso and Leif-Olof Wallin**

(You may need to sign in or be a Gartner client to access the documents referenced in this First Take.)

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