BlackBerry: Innovation vs. Patents?
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NTP, the company suing the maker of BlackBerry, Research in Motion (RIM), does not manufacture a single product or offer any services. It is a legal entity created by the late Thomas Campana and his lawyer, Donald Stout, to protect the US patents for Campana’s inventions, which are related to wireless data systems.

RIM is a company created in the 1980s by a group of entrepreneurs—students at the time—who in 1999 carried out the market launch of the BlackBerry, a wireless device similar to a mobile telephone that allows the user to receive email. Despite the user-friendly nature of the device, the technology inside is complex. RIM was able to develop the technology—hardware and software—create an attractive product for executives, associate it with a brand name and even license the software to important mobile phone manufacturers. In 2000, NTP showed up on the scene, asking RIM to license its patents, where the technology used for the BlackBerry supposedly lied. The courts consider that it was indeed that way.

Patents exists to protect innovations and, therefore, to attach incentives to them. Thus if someone wants to use a protected technology they must have the approval of the owner and pay that individual a licensing fee to use it. In the software world, innovations are incremental and there are a myriad of patents, which means that companies infringe them with great ease. Normally, the solution is simple: patents often infringe on other patents and therefore the mutual licenses to be paid are canceled. In the case of RIM, the problem is that NTP is not an innovator in the area.

It is clear that this situation—one in which a company without the ability for innovation or productivity obstructs the activity of another that has struggled to bring a technology to the market—is not the most suitable for innovation. It is, however, a consequence of the logic of the patent system. The creators of the technology have a right to defend their intellectual property, albeit through companies specialized in the matter in sectors where the very effectiveness of the system is questioned.

This is precisely the opposite extreme at which that the patent system has arrived: the softening of the criteria that guarantee patentability, especially in the area of software, where the testers do not have much experience. Even the director of the US Patent and Trademark Office, James Rogan, admitted that many patents

**Highlights**

1. The patent violation by RIM only applies to the United States, where NTP has registered the developments related to BlackBerry. If RIM loses the lawsuit, it will have to shut down its service in the US, a market representing 70% of the company’s revenues.

2. In its subsequent appeals, RIM has been able to call into question the validity of NTP’s patents. Thus, the United States Patent and Trademark Office is reviewing whether or not the items registered by NTP meet all of the requirements to become patents.

3. In March 2005, RIM and NTP tried to arrive at an economic settlement valued at $450 million, but the efforts failed. The two companies could conceivably reach a new agreement whereby RIM would pay NTP approximately $1 billion.

4. RIM has announced that it has a plan for guaranteeing the continuity of the BlackBerry service, even if it should lose the upcoming legal battle against NTP. The solution would involve the replacement of the software being claimed by NTP, with new software being uploaded to BlackBerry devices in a transparent process.
on business methods had been ill-conceived. This lack of thoroughness in the granting 
of patents has produced a dynamic where companies are frequently in court. In fact, 
NTP watched as the US patent office reexamined their registers and declared them invalid, considering that some relevant “prior art” information was omitted in the moment of its granting.

The lack of thoroughness seems to have led into the courtroom a whole sector that, on the surface, seems to offer the same service: email in a portable device that uses a wireless network. Recently, Visto sued Good Technology, saying that the company had infringed its patents. Meanwhile, Good and RIM sued each other a few years ago for patent-related problems. And Visto has filed a complaint against Microsoft for the same reason.

Nevertheless, it is not clear as to whether RIM will shut down service for its BlackBerry units, as NTP has been seeking through the courts. In the end, NTP’s business is licensing its patents and it is therefore in its best interest to have RIM continue to market its mobile device. The motion seems to be a means of applying pressure on RIM in order to force them to reach an financial agreement rather than a true threat to shut them down. Early in 2005, the two companies had actually reached an agreement, which they ultimately failed to sign, whereby RIM would pay NTP $450 million.

Furthermore, the US Department of Justice has asked the court to guarantee continuation of the BlackBerry service for its one million governmental employees—of the four million users that BlackBerry has in the United States—who use the devices to communicate in emergency situations.

Meanwhile, RIM is offering peace of mind to its users and investors by announcing a alternative plan to a shutdown if the judge ends up deciding against them. The company says it will replace the current BlackBerry software for another that does not infringe on any NTP patents and thus allow them to continue offering services. But the question that has everyone in the software world on the edge of their seats remains unanswered: Are patents the enemies of innovation in this sector?