03-1615

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

NTP, INC.,
Plaintiff-Appellee

v.

RESEARCH IN MOTION, LTD.,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Virginia in 01-CV-767: Judge James R. Spencer

NTP'S OPPOSITION TO INTEL CORPORATION'S MOTION TO FILE *AMICUS* BRIEF SUPPORTING REHEARING PETITION

Plaintiff-Appellee NTP, Inc. ("NTP") opposes the August 26, 2005 "Motion of *Amicus Curiae* Intel Corporation For Leave To File A Brief In Support Of The Petition For Rehearing *En Banc* Of Appellant Research In Motion, Ltd."

1. **Intel's Motion Is Untimely.** RIM filed its rehearing petition on August 16, 2005. On August 17, the Court notified NTP that its response was due to be delivered to the Clerk's office no later than August 31. RIM's other *amici* filed their *amici curiae* briefs shortly thereafter, allowing NTP to prepare a consolidated response.

Intel, by contrast, served its motion and *amicus* brief after the close of business on Friday, August 26, so that it was not received and analyzed until Monday, August 29 – only two business days before NTP's response was due. Intel's motion to file a belated *amicus* brief should be denied as untimely.

2. Intel's Financial Interest. Intel's *amicus* brief (p. 1) asserts that "Intel has no direct interest in the outcome of the dispute between NTP and [RIM] ..." In making this assertion, Intel is not fully candid with the Court.

Intel has had a longstanding business alliance with RIM for almost a decade. Intel specially designed the microprocessor chip that is used in the infringing BlackBerry handheld units. In the past, Intel has had a direct financial investment in RIM and an Intel corporate officer has served as an observer on the RIM Board of Directors.

Intel has a clear and direct financial interest in the outcome of the *NTP v. RIM* litigation. The infringing RIM products are designed around the Intel microprocessor which RIM purchases from Intel. By contrast, NTP has licensed the Campana patents to other equipment manufacturers who do not use an Intel microprocessor. The longer that Intel and RIM can delay remand to the District Court, the more money Intel will receive from RIM and the greater the prejudice to NTP and its authorized licensees.

3. Intel's Brief Merely Rehashes Arguments Advanced By RIM And Its Other *Amici*. Each of the arguments in Intel's *amicus* brief is either irrelevant or duplicative of arguments raised by RIM and its other *amici*.

- "Make" Prong Contentions. At pp. 1-2 of its *amicus* brief, Intel discusses how teams located in multiple countries may be involved in the development, manufacture, assembly and packaging of products and systems. This discussion concerns the "make" prong of §271(a) and is completely irrelevant to the *NTP v. RIM* litigation and the Panel's decision. When a product or system is used "within the United States," no matter where it may have been designed or assembled, it is fully subject to infringement liability under § 271(a).

- Sections 271(f) and (g). At pp. 2-4, Intel's *amicus* brief discusses issues relating to the application of Sections 271(f) and (g) to method claims. NTP, not RIM, is the only party adversely affected by the Panel's decision regarding the method claims. NTP has not cross-petitioned for rehearing regarding the method claims, because the judgment below, including both monetary and injunctive relief, is fully supported by the affirmed claims of the '592 patent (which raise no issue of territoriality) and the affirmed system claims in the '960, '670 and '451 patents.

- Additional Congressional Action. Intel's discussion of an alleged need for additional Congressional action, referencing subsections (f)(1), (f)(2) and (g) of Section 271, merely rehashes arguments discussed by RIM and its other *amici*. These arguments ignore the well-established "use" prong of Section 271(a) and almost 100 years of Supreme Court and Court of Claims precedent. *E.g.*, *Bauer & Cie v. O'Donnell*, 229 U.S. 1, 10-11 (U.S. 1913)("use" of a patented invention is a "comprehensive term and embraces within its meaning the right to put into service any given invention").

- Claim Drafting. Intel's claim drafting arguments (pp. 6-7) confirm that the Panel's decision should not be reheard. As the Panel correctly ruled, the claims of the '592 patent do not include the "interface" limitation that allegedly gives rise to the issue of territoriality. The affirmed claims of the '592 patent should therefore be returned to the District Court for enforcement proceedings without further delay. As for drafting of system claims, the Panel applied longstanding Supreme Court and Court of Claims precedent that infringement is a tortious act and infringement by "use" takes place where the benefit of the patented systems is usurped without authority. Here, the Campana invention is being put to use in the United States and RIM has not appealed the determination that its U.S. customers "are directly putting into action the system that is the subject of NTP's claim limitations." Op. at 56, n. 13.

For the foregoing reasons, Intel's motion for leave to file a belated *amicus* brief should be denied.

Respectfully submitted,

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Dated: August 31, 2005

Certificate of Service

I hereby certify that on this 31st day of August, 2005, I caused copies of the foregoing document to be served, as per agreement of Counsel, in the following manner:

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