

How RIM dispute was resolved: 'No screaming or yelling this time around'

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Two new Research In Motion Ltd. lawyers, three long days of negotiations, a lot of concessions and "lousy sandwiches."

That's what it took to end the BlackBerry maker's bitter legal dispute with NTP Inc. on Friday, which threatened to turn off the company's popular e-mail devices in the United States.

Marty Glick and Ron Star, lawyers with Howard Rice Nemerovski Canady Falk & Rabkin in San Francisco representing RIM, set the stage for a settlement on Wednesday last week when they offered NTP a "no strings attached" clause to any cash offer, NTP told the Financial Post after accepting the US\$612.5-million settlement.

Previously, the wireless e-mail device maker had offered NTP a lump sum payment that could have been retracted if the company's controversial patents were thrown out by the U.S. Patent and Trademark Office as part of an ongoing review process, the patent holding company said.

"It was clear very quickly that we were in real negotiations," said Don Stout, an NTP co-founder and patent lawyer. "They set a different tone from RIM's previous lawyers."

Mr. Glick and his associate Mr. Star became RIM's lead negotiators back in June after a US\$450-million settlement with NTP fell apart. Messrs. Glick and Star assumed the negotiating role from Henry Bunsow, a partner with Howrey LLP, who continued on as RIM's lead attorney in the Virginia court proceedings versus NTP.

NTP lawyer Jim Wallace said a phone call with Mr. Glick a week ago today led him to believe a deal could be forged even though the companies publicly traded barbs in separate press releases the same day.

"There was no screaming or yelling this time around," he said of the negotiations last year that were supposed to close the first deal. "Marty Glick and his team added a level of professionalism that wasn't there before. They were instrumental in setting the pace."

With a conciliatory tone apparent, Messrs. Wallace

and Stout agreed to meet RIM's five-person negotiating team, a group that also included two RIM lawyers and licensing expert Barry Sookman, in New York City for settlement talks on Wednesday morning.

Mr. Sookman, a lawyer with Toronto-based McCarthy Tetrault LLP, helped create the parameters for the deal, Mr. Stout said, helped RIM secure licensing rights to NTP's five disputed patents.

A source close to the RIM camp said the deal hinged on several issues. "It wasn't as simple as inserting a [no-refund] clause," said the RIM source, who spoke to the Post on condition of anonymity. "I don't know why they're telling you that. There were a number of factors needed to get the talks going."

For example, the source said RIM needed to protect its partners and customers from future lawsuits. "The talks didn't turn on one factor," the source said. "What turned the negotiation process was we actually sat down together."

Judge James R. Spencer had warned the parties on Feb. 24 he would impose an "imperfect" settlement if an agreement wasn't reached in the near future.

Citigroup Global Markets, NTP's financial advisor, first encouraged the parties to meet last week. But Mr. Wallace, who helped NTP secure an injunction in August 2003 that if implemented would have banned the device from the U.S., wasn't optimistic going into the meetings.

"I went up to New York [from Washington, D.C.] last week thinking I was going to be there for a half a day," he told the Post.

And despite coming to terms on a settlement in relatively short order, Mr. Stout said there were still some testy moments in negotiations. "At one point [on Wednesday] I said to them, 'you're only hurting yourself, why would you do that to yourself?' Let's settle this thing."

After a flurry of offers and counteroffers traded over the marathon 14-hour session, a deal was formed in principle.

Another lengthy session on Thursday, where participants consumed more coffee and "lousy sandwiches," according to Mr. Wallace, was spent haggling over the final value of the deal.

NTP and the Citigroup advisors mulled over the deal at a late night pizza joint in mid-town Manhattan, adjacent to Citigroup's office. Though Mr. Wallace remembers having an upset stomach, his mind was at ease.

"By midnight on Thursday, we knew we were going to take the deal," said Mr. Wallace. "We could have gone for more money but it would have taken more time."

On Friday, details were ironed out, the deal was signed and RIM cut the cheque. The parties announced the "full and final" settlement that resolved all legal claims between the companies early in the evening on Friday.

Mr. Glick, reached at his home in San Francisco yesterday, said he couldn't comment on the talks because of mediation privilege.

Meanwhile, Mr. Stout said he's still puzzled by how RIM handled the whole affair. "I don't think RIM really ever figured us out," said Mr. Stout. "We never really figured them out either. But it's over and we're relieved."