

## Smartphone makers hit with broad patent lawsuit

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SAN FRANCISCO (MarketWatch) -- A firm that won a massive settlement in litigation over the BlackBerry wireless e-mail system four years ago now is going after the latest entrants in the smartphone market.

NTP, a patent holding company based in Richmond, Virginia, said Friday that it has filed lawsuits against Apple Inc. [AAPL, -0.64%](#) Google Inc. [GOOG, -0.40%](#) Motorola Inc. [MSI, -1.18%](#) Microsoft Corp. [MSFT, -0.37%](#) LG Electronics and Taiwanese cell phone maker HTC over eight patents related to wireless e-mail.

The company is best known for winning a \$612 million settlement with Research In Motion Ltd. [RIMM](#) for similar claims back in 2006. That case had nearly resulted in a court injunction that could have shut down RIM's popular BlackBerry service.

"Use of NTP's intellectual property without a license is just plain unfair to NTP and its licensees," NTP co-founder Donald Stout said in a statement. "We took the necessary action to protect our intellectual property."

The lawsuits were filed in the U.S. District Court for the Eastern District of Virginia. In addition to RIM, NTP has previously sued wireless carriers AT&T [T, -0.03%](#) Verizon [VZ, +0.20%](#) Sprint [S, +3.41%](#) and T-Mobile over the same issue. Those cases are still pending. [Read "NTP faces uphill battle against rich foes."](#)

NTP was founded in 1992 on patents held by a Chicago inventor named Tom Campana, who developed wireless e-mail technology in the 1980s that was never broadly commercialized. It has since sought license payments from companies that provide this type of service, which the company contends is covered by its portfolio.

"That's our belief. These patents cover some of the most basic technology on which wireless e-mail is based," said Ron Epstein, a lawyer for NTP, said in an interview.

However, some of the legal landscape has changed since the RIM settlement. David Levitt, an intellectual property lawyer with Hinshaw & Culbertson, noted that a major factor in NTP securing a large settlement with RIM was the fact that the court had ordered an injunction against the BlackBerry service.

Thanks to a later case involving eBay Inc. at the Supreme Court, lower courts are now not as ready to grant such injunctions -- unless the plaintiff in the case can prove the potential for substantial harm if one is not in place.

"If you are a non-practicing entity, it is more difficult to prove irreparable hardship," Levitt said, using terminology that refers to companies with patent portfolios but no other businesses.

Several companies named in the lawsuits saw their share prices weaken Friday. By the closing bell, Motorola fell

1.3% to \$6.76, while Microsoft slipped 0.6%.

Google shares rose by 2.4% , mostly on the news that the company has settled a long-running dispute over its Web search service in China. [See full story on Google.](#)

#### **Deep-pocketed foes**

Analysts say NTP may have a better position than other small patent litigants, but they are going up against deep-pocketed companies that are unlikely to agree to any payouts before battling the allegations.

"NTP is going to have to prevail against some very large, well-funded legal departments," said Ed Snyder, a wireless industry analyst with Charter Equity. "Companies like Apple and Google are not going to roll over and just pay off some nuisance suit."

However, Tero Kuittinen of MKM Partners believes the lawsuit spells potentially bad news for Google's Android mobile operating system and its major handset supporters, such as Motorola and HTC. He noted that the royalty rate established by the court in the RIM litigation was 8.5%.

"This would represent a big hit to operating margins for all infringing parties, undermining the free, low-cost reason to adopt Android," he wrote in a note to clients on Friday.

Shares of RIM picked up significant ground Friday, moving up nearly 8% to \$53.33 by the close. The stock has been under significant pressure over the last month, since its last earnings report that gave rise to concerns about its outlook in the smartphone market. [See full story on RIM's results.](#)



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