

## RIM CEOs To Face Deposition In Data Security IP Row

By **Nick Brown**

*Law360, New York (August 10, 2010)* -- Wireless software company Mformation Technologies Inc. can depose Research In Motion Ltd.'s co-CEOs in its suit accusing the BlackBerry maker of infringing two patents for remote wireless security software, a federal judge has ruled.

Jim Basillie and Mike Lazaridis, co-CEOs of Ontario, Canada-based RIM, will be required to give one-hour depositions regarding failed licensing negotiations between the parties in 2002, Magistrate Judge Howard R. Lloyd of the U.S. District Court for the Northern District of California said Friday.

RIM had argued that Basillie and Lazaridis did not oversee the talks and would have no unique information to offer. It added that Mformation shouldn't be granted access to the CEOs until the plaintiff deposes David Castell, the RIM executive supplied by the company for information related to the negotiations.

Judge Lloyd acknowledged that Basillie and Lazaridis met only briefly with Mformation, and that the plaintiff had taken its time deposing Castell. Still, RIM fell short of its burden to prove that the desired depositions were unnecessary, the judge said.

"Basillie and Lazaridis did make certain statements about Mformation and its technology" during negotiations, he said. "Mformation says that it has, so far, been unsuccessful in obtaining testimony from others about those statements; and indeed, plaintiff says that others will probably not be able to testify about them."

The judge limited the depositions to one hour, however, and imposed the prerequisite that Mformation depose Castell before speaking with Basillie and Lazaridis.

An attorney for Mformation said the pair played more than a passing role in the dispute.

"The CEOs may not have been involved in the day-to-day negotiations, but we're confident that the key decisions with respect to our client's relationship with RIM were made at the CEO level," Amar L. Thakur of Foley & Lardner LLP said Tuesday.

Counsel for RIM declined to speak on the record, while a spokesperson for the company could not be reached by deadline Tuesday.

The suit, filed in October 2008, centers on RIM's BlackBerry versions 4.0 and 4.1, unveiled in September 2004 and March 2006, respectively. Mformation says the devices contain remote management capabilities strikingly similar to technology it developed around 2000.

The software, aimed at corporate customers, allows certain actions to be performed remotely to promote better efficiency and tighter security across networks, one attorney explained.

Delaware-based Mformation, founded in 1999, signed cooperative marketing agreements with RIM in 2001 and met with the company in 2002 to discuss a deal to add the software — the patents for which were then-pending — to BlackBerrys as a standard feature.

RIM cut off negotiations after gaining confidential information about the technology, then built similar software on its own, according to the complaint.

When Mformation's patents-in-suit were issued in 2005 and 2008, RIM continued to sell BlackBerrys containing infringing programs, the plaintiff alleges.

Mformation says the infringement has caused it to lose its customer base with respect to BlackBerry users, and that it may also threaten its network operator customer base, as RIM has begun marketing its software to enterprise customers to support non-BlackBerry mobile devices.

"Mformation's mobile phone network operator customers will have no incentive to continue purchasing the software because the software's services will be provided to their enterprise customers by [RIM]," the plaintiff said.

The patents-in-suit are U.S. Patent Numbers 6,970,917 and 7,343,408.

RIM is represented by Kirkland & Ellis LLP.

Foley & Lardner LLP represents Mformation.

The case is Mformation Technologies Inc. v. Research In Motion Ltd. et al., case number 08-cv-04990, in the U.S. District Court for the Northern District of California.