Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Fed. Circ. Upholds Win For NYSE In Papyrus IP Suit

By **Richard Vanderford**

Law360, New York (October 08, 2010) -- A federal appeals court has affirmed a win for New York Stock Exchange LLC in a patent infringement suit brought by Papyrus Technology Corp., upholding the lower court's decision to invalidate two patents that cover trading floor communication and data organization.

A three-judge panel of the U.S. Court of Appeals for the Federal Circuit dealt the loss to Papyrus on Thursday with a one-word per curiam decision: “Affirmed.” The decision was a quick one — the two sides gave their oral arguments in the appeals court just Tuesday.

The patents-in-suit cover hand-held computers that floor brokers use to provide real-time updates on their status, as well as a way of organizing trading data in the computer systems.

The district court found that prior art — including commercial systems already in place in exchanges in Chicago and a patent covering a technology used in a multiplayer computer game — had similar aspects to the patents and invalidated them.

Papyrus attorney Steven Amundson of Frommer Lawrence & Haug LLP argued that the lower court construed the prior art too broadly. The prior art at issue didn't encompass the type of real-time data transmission and display that Papyrus' patents covered, he said.

The Federal Circuit, though, found the lower court's analysis sound.

“I'm having a hard time understanding,” Circuit Judge Sharon Prost said as Amundson presented the ostensible differences between the Papyrus patents and the prior art.

“Obviously I'm very pleased with the outcome and the client is pleased with the outcome,” said Michael M. Murray of Milbank Tweed Hadley & McCloy LLP, who represents NYSE. “It's a complete win.”

An attorney for Papyrus did not immediately respond to a request for comment.

Of the 15 securities exchanges in operation during the early and mid-1990s, not one of them chose to license Papyrus' technology, Judge Judith Barzilay of the U.S. District Court for the Southern District of New York noted when she invalidated patents.

Papyrus has not offered any products or services for sale since 1995 when it terminated all employees and effectively mothballed its business, Judge Barzilay said.

In the end, the judge found the evidence weighed predominantly in favor of finding obviousness. While Papyrus' system may have improved the efficiency or accuracy of trading, that result does not mean its invention was sufficiently different from prior art to be patentable, she said.

The case has been winding its way through the court since the beginning of 2004, and previously involved five patents held by Papyrus.

Papyrus agreed to withdraw two of the patents from the case after the discovery process closed. After a Markman hearing in 2009, the company stipulated that NYSE did not infringe a third patent, leaving only two patents remaining in the case.

The patents-in-suit are U.S. Patent Numbers 5,774,877 and 5,797,002.

Judges Arthur J. Gajarsa, Richard Linn and Sharon Prost sat on the panel for the Federal Circuit.

Frommer Lawrence & Haug LLP represents Papyrus.

Milbank Tweed Hadley & McCloy LLP represents NYSE.

The case is Papyrus Technology Corp. v. New York Stock Exchange LLC, case number 2010-1166, in the U.S. Court of Appeals for the Federal Circuit.