

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

CHICAGO BOARD OPTIONS EXCHANGE,
INCORPORATED,

Plaintiff,

v.

REALTIME DATA, LLC D/B/A IXO,

Defendant.

Case No. 09 CV 4486

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Chicago Board Options Exchange, Incorporated (“CBOE”), for its Complaint, alleges:

THE PARTIES

1. Plaintiff CBOE is a Delaware corporation having its principal place of business at 400 South LaSalle Street, Chicago, Illinois 60605.

2. Upon information and belief, defendant, Realtime Data, LLC (“Realtime Data”) doing business as IXO, is a limited liability company organized and existing under the laws of the State of New York with a principal place of business at 15 West 36th Street, New York, New York.

JURISDICTION AND VENUE

3. This action arises under the Patent Laws of the United States, Title 35, United States Code, Section 1 et seq., and is for a declaratory judgment that United States Patents Nos. 6,624,761 (the “761 patent”), a true and correct copy of which is attached as Exhibit A; 7,161,506 (the “506 patent”), a true and correct copy of which is attached as Exhibit B; 7,400,274 (the “274 patent”), a true and correct copy of which is attached as Exhibit C; and 7,417,568 (the “568 patent”), a true and correct copy of which is attached as Exhibit D

(collectively, the “Realtime Data patents”) are not infringed and/or not valid and/or not enforceable against plaintiff.

4. This court has jurisdiction of the subject matter hereof under the provisions of Title 28, United States Code, Sections 1338(a), 2201 and 2202.

5. Venue in this judicial district is proper under Title 28, United States Code, 1391(b) and 1391(c) in that a substantial part of the property that is the subject of this action is situated in this judicial district.

FACTS COMMON TO ALL CLAIMS

6. CBOE operates a national securities exchange based in Chicago, Illinois that specializes in the trading of standardized securities products. Among other things, CBOE operates a trading floor in Chicago, and maintains and operates trading systems in Chicago, through which members can buy and sell securities for their own accounts and for the accounts of others.

7. CBOE is a registered securities exchange, subject to oversight by the Securities and Exchange Commission (“SEC”). Compliance with certain SEC regulations requires CBOE to communicate electronically with other registered securities exchanges, as well as with the information processor used by Options Price Reporting Authority (“OPRA”). CBOE is a party to OPRA.

8. CBOE conducts some of its electronic communications with other options exchanges and OPRA using the FIX protocol, an open-standard protocol that is widely used in the securities industry.

9. Upon information and belief, Realtime Data has filed a patent infringement lawsuit in the Eastern District of Texas alleging that the CME Group Inc., BATS Trading, Inc.,

International Securities Exchange, NASDAQ OMX Group, Inc., NYSE Euronext, and OPRA infringe the Realtime Data patents (Civil Action No. 6:09-cv-327). Upon information and belief, Realtime Data's infringement allegations in Civil Action No. 6:09-cv-327 relate to usage of the FIX protocol.

10. Upon information and belief, Realtime Data has filed a patent infringement lawsuit in the Eastern District of Texas alleging that Morgan Stanley Bank of America Corporation, The Bank Of New York Mellon Corporation, Credit Suisse Holdings (USA), Inc., The Goldman Sachs Group, Inc., HSBC Bank USA, N.A., JPMorgan Chase & Co., and SWS Group, Inc. infringe the Realtime Data patents (Civil Action No. 6:09-cv-326). Upon information and belief, Realtime Data's infringement allegations in Civil Action No. 6:09-cv-326 relate to usage of the FIX protocol.

11. Upon information and belief, Realtime Data has filed a patent infringement lawsuit in the Eastern District of Texas alleging that Thomson Reuters, Bloomberg, L.P., Factset Research Systems Inc., Interactive Data Corporation, and Penson Worldwide, Inc. infringe the Realtime Data patents (Civil Action No. 6:09-cv-333). Upon information and belief, Realtime Data's infringement allegations in Civil Action No. 6:09-cv-333 relate to usage of the FIX protocol.

12. There is a substantial controversy between CBOE and Realtime Data, parties who have adverse legal interests, of sufficient immediacy and reality to warrant declaratory judgment jurisdiction, including: Realtime Data has filed patent infringement actions against multiple defendants in the Eastern District of Texas based on the Realtime Data patents (the "Texas Cases"); the basis for Realtime Data's infringement allegations in the Texas Cases is the FIX

protocol; CBOE is a party to OPRA, which is named as a defendant in the Texas Cases; and CBOE communicates with OPRA using the FIX protocol.

FIRST CLAIM FOR RELIEF

13. Plaintiff CBOE repeats and realleges each and every allegation contained in Paragraphs 1 through 12, inclusive, hereof as though fully set forth herein.

14. By reason of the facts set forth in Paragraphs 6 through 12, inclusive, hereof, a conflict of asserted rights has arisen between the parties and an actual controversy exists between plaintiff CBOE and defendant Realtime Data with respect to the infringement, validity, scope and/or enforceability of the '761 patent, in that plaintiff claims the right to use the FIX protocol without further interference from defendant and without any and all charges of infringement against it.

15. The '761 patent and each claim of such patent is, on information and belief, not infringed, and/or not valid and/or not enforceable against plaintiff under one or more of the provisions of Title 35, United States Code, Sections 101, 102, 103 or 112.

SECOND CLAIM FOR RELIEF

16. Plaintiff CBOE repeats and realleges each and every allegation contained in Paragraphs 1 through 12, inclusive, hereof as though fully set forth herein.

17. By reason of the facts set forth in Paragraphs 6 through 12, inclusive, hereof, a conflict of asserted rights has arisen between the parties and an actual controversy exists between plaintiff CBOE and defendant Realtime Data with respect to the infringement, validity, scope and/or enforceability of the '506 patent, in that plaintiff claims the right to use the FIX protocol without further interference from defendant and any and all charges of infringement against it.

18. The '506 patent and each claim of such patent is, on information and belief, not

infringed, and/or not valid and/or not enforceable against plaintiff under one or more of the provisions of Title 35, United States Code, Sections 101, 102, 103, or 112.

THIRD CLAIM FOR RELIEF

19. Plaintiff CBOE repeats and realleges each and every allegation contained in Paragraphs 1 through 12, inclusive, hereof as though fully set forth herein.

20. By reason of the facts set forth in Paragraphs 6 through 12, inclusive, hereof, a conflict of asserted rights has arisen between the parties and an actual controversy exists between plaintiff CBOE and defendant Realtime Data with respect to the infringement, validity, scope and enforceability of the '274 patent, in that plaintiff claims the right to use the FIX protocol without further interference from defendant and any and all charges of infringement against it.

21. The '274 patent and each claim of such patent is, on information and belief, not infringed, and/or not valid and/or not enforceable against plaintiff under one or more of the provisions of Title 35, United States Code, Sections 101, 102, 103, or 112.

FOURTH CLAIM FOR RELIEF

22. Plaintiff CBOE repeats and realleges each and every allegation contained in Paragraphs 1 through 12, inclusive, hereof as though fully set forth herein.

23. By reason of the facts set forth in Paragraphs 6 through 12, inclusive, hereof, a conflict of asserted rights has arisen between the parties and an actual controversy exists between plaintiff CBOE and defendant Realtime Data with respect to the infringement, validity, scope and enforceability of the '568 patent, in that plaintiff claims the right to use the FIX protocol without further interference from defendant and any and all charges of infringement against it.

24. The '568 patent and each claim of such patent is, on information and belief, not infringed, and/or not valid and/or not enforceable against plaintiff under one or more of the provisions of Title 35, United States Code, Sections 101, 102, 103, or 112.

PRAYER FOR RELIEF

Wherefore, plaintiff CBOE demands judgment as follows:

- A. The Realtime Data patents are invalid.
- B. The Realtime Data patents are not infringed by plaintiff.
- C. The Realtime Data patents are unenforceable against plaintiff.
- D. Awarding plaintiff its costs and disbursements in this action.
- E. Awarding plaintiff reasonable attorneys' fees.
- F. For such other and further relief as the Court deems just and proper.

Dated: July 24, 2009

By: s/ Stacie R. Hartman

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