

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

CHICAGO BOARD OPTIONS EXCHANGE,  
INCORPORATED,

Plaintiff,

v.

REALTIME DATA, LLC D/B/A/ IXO,

Defendant.

Case No. 09 CV 4486

Hon. George W. Lindberg, U.S.D.J.

Hon. Jeffrey Cole, U.S.M.J.

Jury Trial Demanded

**FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Chicago Board Options Exchange, Incorporated (“CBOE”), for its First Amended 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”); 7,161,506 (the “‘506 patent”); 7,400,274 (the “‘274 patent”); and 7,417,568 (the “‘568 patent”) (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, Sections 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.

6. This Court has personal jurisdiction over Realtime Data because (1) defendant has purposefully directed its enforcement activities of the Realtime Data patents at residents of this forum; (2) the claims set forth herein arise out of or relate to Realtime Data's enforcement activities of the Realtime Data patents within this forum; and (3) the assertion of personal jurisdiction is reasonable and fair. Defendant has purposefully directed its enforcement activities of the Realtime Data patents at all of the options and futures exchanges in the City of Chicago. In particular, Realtime Data has engaged in enforcement activities against and sought to enjoin CBOE, the Chicago Mercantile Exchange ("CME"), the Chicago Board of Trade ("CBOT"), and the Options Price Reporting Authority ("OPRA"), all of which have their principal place of business in the City of Chicago, and all of which comprise a significant part of the futures and options trading activity in the United States.<sup>1</sup>

#### **FACTS COMMON TO ALL CLAIMS**

7. CBOE operates a national options exchange based in Chicago, Illinois that specializes in the trading of financial options products. Among other things, CBOE operates a hybrid trading system in Chicago through which CBOE members can buy and sell options for their own account, for their employers' accounts or for their customers.

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<sup>1</sup> For example, as of September 2009, CBOE was the options industry market leader with a 31.4% market share. On information and belief, CME is the futures industry market leader.

8. CBOE is a registered financial options exchange, subject to oversight by the Securities and Exchange Commission (“SEC”). Compliance with certain SEC regulations requires CBOE to communicate electronically with other registered options exchanges, as well as with OPRA. CBOE is a participant in OPRA.

9. CBOE conducts some of its electronic communication with other options exchanges and OPRA using one or more implementations of the FIX protocols, which are open-standard communications protocols widely used in the securities industry. FIX Protocol Limited is a nonprofit organization that created the FIX protocols, including the open-source FIX Adapted for Streaming (“FAST”) Protocol. While the FAST Protocol provides for both the compression and decompression of data, particular implementations of that protocol may perform just one of those functions.

10. Upon information and belief, Realtime Data has filed a patent infringement lawsuit in the U.S. District Court for the Eastern District of Texas alleging that the CME Group Inc., CBOT, 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 protocols.

11. Upon information and belief, Realtime Data has filed a patent infringement lawsuit in the U.S. District Court for 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 protocols.

12. Upon information and belief, Realtime Data has filed a patent infringement lawsuit in the U.S. District Court for 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 protocols.

13. The fact that the filing by Realtime Data of patent infringement actions against multiple defendants in the U.S. District Court for the Eastern District of Texas is based on the Realtime Data patents (the "Texas Cases"); that the basis for Realtime Data's infringement allegations in the Texas Cases is the FIX protocols; that CBOE is a participant in OPRA, who is named as a defendant in the Texas Cases; and that CBOE communicates with OPRA using the FIX protocols, all taken together and under the totality of the circumstances, establish that there is a substantial controversy between CBOE and Realtime Data, and that the parties have adverse legal interests of sufficient immediacy and reality to warrant declaratory judgment jurisdiction. Indeed, three days after CBOE filed its Complaint in this action, Realtime Data filed an amended complaint in the U.S. District Court for the Eastern District of Texas Civil Action No. 6:09-cv-327 on July 27, 2009 naming CBOE as a defendant.

#### **FIRST CLAIM FOR RELIEF**

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

15. By reason of the facts set forth in Paragraphs 7 through 13, 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 CBOE claims the right to use the FIX protocols without further interference from defendant and without any charges of infringement against it.

16. 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 CBOE under one or more of the provisions of Title 35, United States Code, Sections 101, 102, 103 or 112.

### **SECOND CLAIM FOR RELIEF**

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

18. By reason of the facts set forth in Paragraphs 7 through 13, 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 CBOE claims the right to use the FIX protocols without further interference from defendant and any charges of infringement against it.

19. 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 CBOE under one or more of the provisions of Title 35, United States Code, Sections 101, 102, 103, or 112.

### **THIRD CLAIM FOR RELIEF**

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

21. By reason of the facts set forth in Paragraphs 7 through 13, 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 protocols without further interference from defendant and any charges of infringement against it.

22. 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 CBOE under one or more of the provisions of Title 35, United States Code, Sections 101, 102, 103, or 112.

#### **FOURTH CLAIM FOR RELIEF**

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

24. By reason of the facts set forth in Paragraphs 7 through 13, 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 CBOE claims the right to use the FIX protocols without further interference from defendant and any charges of infringement against it.

25. 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 CBOE 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.

**JURY DEMAND**

CBOE respectfully requests a trial by jury as to all issues so triable.

Dated: November 23, 2009

By: s/ Stacie R. Hartman

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on November 23, 2009, she electronically filed the foregoing *First Amended Complaint and Demand for Jury Trial* with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

s/ Stacie R. Hartman  
(Bar ID 6237265)