

## Patent Issues in Market Data Licenses

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Quantitative investment analysts should be aware of recent patent litigation among participants in the market data industry. Such litigation has shed light on the importance to quant firms of having protection from patent infringement claims relating to the manipulation of market data.

RealTime Data LLC, a proprietor of data compression technology, continues to pursue patent infringement claims against a multitude of defendants in the financial services industry. The defendants in the lawsuit include the leading global securities exchanges, investment banks and data providers. RealTime has alleged that the use and/or provision of data by the defendants infringes upon RealTime's patented technology that examines a flow of data and then chooses the most effective compression process.

The U.S. District Court for the Southern District of New York rejected most of RealTime's claims, concluding that the data manipulation techniques used by the defendants differed from RealTime's technology. RealTime, however, has appealed the District Court's decision with the U.S. Court of Appeals for the Federal Circuit. The appeals process is continuing at this time.

Quantitative analysts understand that the lifeblood of their trading models is digital data, which they depend on to discover signals for predicting market patterns. To obtain that data, they need to enter into a license agreement with a data provider. When licensing data from an outside source, however, the quant firms are risking that such data is actually owned by a third party other than the data provider and thus have exposure to an infringement claim. To address that risk, the data licensee typically requests an indemnification provision in the license agreement that requires the data provider to hold harmless the licensee against any such third party infringement claims.

A problem, however, is that those indemnification provisions often address only the content of the data, not the related technology. The lawsuit by RealTime has shown that market data infringement claims are not only limited to the content of the data but can also comprise the delivery and manipulation of the data. As such, when negotiating the indemnification provision for third party intellectual property infringement claims, quant firms should insist on a broader indemnification right that will adequately address the exposure relating to all proprietary rights concerning market data, including data compression and delivery.

Moreover, the quant firm licensee may wish to terminate the license agreement in the event of a third party infringement claim. Conversely, the licensee might consider the data providers offer to change the data or its related technology so that it ceases to be infringing. Nevertheless, any

such changes could, as a practical matter, diminish the effectiveness of the data to the licensee. Therefore, quant firms would prefer a provision in the license agreement that allows the licensee to terminate the agreement even if the data provider makes such curing changes.

RealTime's patent infringement lawsuit commenced in May 2010 and continues to this day. The costs of enduring a lawsuit of that type and duration can be crippling to most quant firms. Accordingly, quant firms should be mindful to carefully negotiate their market data licenses and review their current licenses to minimize their legal exposure.

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