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Apple Gets Antitrust OK To Bid On Nortel Patents

By Ian Thoms

Law360, New York (June 23, 2011) -- U.S. antitrust regulators on Thursday gave Apple Inc. the green light to bid in next week's auction for the highly sought-after patent portfolio held by bankrupt Canadian telecom Nortel Networks Corp.

The Federal Trade Commission said it had accepted Apple's request for earlier termination of its antitrust review, paving the way for the company to make a run at the portfolio of 6,000 patents and patent applications for wireless, data networking and semiconductor technology at a bankruptcy auction starting Monday.

Apple will likely face stiff competition from Google Inc., Intel Corp., Ericsson AB and others. Google secured a Delaware bankruptcy court's approval in May for its \$900 million stalking horse bid, but Nortel pushed for the auction after several other deep-pocketed suitors emerged. Google's bid will now serve as the auction's floor.

Whoever ends up with Nortel's patent portfolio will become part of an elite group of companies that possess powerful and threatening patent portfolios in the mobile computing world, said Ron Epstein, CEO of Epicenter IP Group LLC, a large independent patent broker.

"They won't become the 800-pound gorilla, but they will be in the big gorilla club," Epstein said in a previous interview.

The U.S. Department of Justice cleared Google's bid for the patent portfolio last week, and has reportedly also approved Apple's bid. However, an agency representative declined to confirm the reports on Apple's proposal on Thursday.

The DOJ's approval of Google's bid came a day after Microsoft Corp. and AT&T Services Inc. objected to the sale plan, saying a free-and-clear patent sale would hurt the industry.

Google — or whoever wins the auction — cannot be allowed to gain control of Nortel's patents without being bound by licensing deals Nortel made with industry standards-setting organizations, known as SSOs, Microsoft told U.S. Bankruptcy Judge Kevin Gross in an objection on June 13.

The sale as proposed would allow the buyer to ignore some of the contracts Nortel had with other players in the tech industry, according to Microsoft.

AT&T and Verizon Communications Inc. made nearly identical points in briefs also filed June 13.

Nortel's portfolio of U.S. and foreign patents and patent applications is its last major asset. The defunct company has been selling off its assets at a steady clip since being hit hard by the financial crisis. It filed for bankruptcy protection in the U.S. and Canada in January 2009.

Nortel is represented in the bankruptcy by Morris Nichols Arsht & Tunnell LLP and Cleary Gottlieb Steen & Hamilton LLP.

Google is represented by Steven Kortanek and Matthew Ward of Womble Carlyle Sandridge & Rice PLLC, and Philip Mindlin, Douglas Mayer, Benjamin Roth and Gregory Pessin of Wachtell Lipton Rosen & Katz.

Microsoft is represented by Jami Nimeroff of Brown Stone Nimeroff LLC, and David M. Feldman and Matthew K. Kelsey of Gibson Dunn & Crutcher LLP.

AT&T is represented by William P. Bowden and Leigh-Anne M. Raport of Ashby & Geddes PA, and Pamela Jones Harbour, David A. Rosenzweig, Sue Ross and Peter Guirguis of Fulbright & Jaworski LLP.

Verizon is represented by Darryl S. Laddin and Frank N. White of Arnall Golden Gregory LLP, and Kathleen Miller of Smith Katzenstein & Jenkins LLP.

Counsel information for Apple was not immediately available.

The bankruptcy case is In re Nortel Networks Inc. et al., case number 1:09-bk-10138, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Carolina Bolado. Editing by John Williams.

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