Futures exchanges brace for patent suits

By Alex Skorecki

European exchanges, brokers and traders are preparing for possible legal battles with Trading Technologies, a US software company.

TT, run by a former Mississippi catfish farmer, Harris Brumfield, has won damages for patent infringement from the Chicago-based brokerages Kingstree Trading and Goldenberg Hehmeyer, both of which settled remarkably quickly.

The independent software vendor has launched another case of patent infringement against eSpeed, the electronic arm of the US brokerage Cantor Fitzgerald. Earlier this month the judge, in an interim decision, made comments favourable to TT's case, saying that eSpeed had not raised substantial questions against it.

TT has 80 patents in the pipeline around the world.

The momentum building behind TT's campaigns has made European exchanges and brokers nervous about the implications. London-based Euronext.Liffe would make no comment, nor would German-Swiss Eurex.

In Europe, patent litigation in the futures industry is a much rarer phenomenon because it is harder to patent software inventions. But the TT case is threatening to change that. In London this week, lawyers from Clifford Chance briefed a roomful of traders and other futures industry participants on the state of affairs and what they might need to do to defend themselves.

Vanessa Marsland, a Clifford Chance partner in the intellectual property practice, said: "In the US, patent damages can be substantial."

She added: "Independent software vendors may have to reconsider the way they do business, and in particular the way they roll out new software to customers."

TT has proposed to the four main futures exchanges – two in Chicago, plus Euronext.Liffe and Eurex – that it should be paid a fee for not starting patent infringement cases against them. It has taken out full-page advertisements in the Financial Times and The Wall Street Journal setting out its argument in an open letter. TT wants 2½ cents for each side of a trade, which would amount to revenue of about $130m annually. The company's successful cases so far have been with parties that it previously had good relations with. This has led some to question why these parties chose to settle so readily.

The situation is being made harder for potential defendants because the cases so far have all been sealed, so that no one else can see the documents involved and what the evidence is on each side.

In the US, the Futures Industry Association, which represents market participants, has asked for the documents in the eSpeed case to be unsealed, so far without success. TT's open letter said that if the exchanges rejected its request for 2½ cents per trade, it would instead raise the price of its software and step up its litigation programme. But it also said it might accept a takeover offer if the right offer emerged.