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## Gateway Loses Bid To Toss Intergraph Settlement

By **Sam Howard**

*Law360, New York (January 20, 2009) --* Gateway Inc. is bound to the royalty terms of a 2004 settlement agreement with Intergraph Hardware Technologies Co., now that a federal judge has rejected the computer maker's challenge to the deal.

Judge T. John Ward of the U.S. District Court for the Eastern District of Texas held Monday that Gateway could not evade the terms of the settlement agreement and was obligated to pay Intergraph a royalty from the sale of various computer systems until the expiration of Intergraph's patents on Feb. 25, 2009.

Gateway argued that the recent U.S. Supreme Court decision in Quanta Computer Inc. v. LG Electronics Inc. resurrected Gateway's claims for patent exhaustion, its original infringement defense, and nullified the settlement.

Gateway claimed a license for chip technology Intergraph granted Intel Corp. applied to Intel's customers, exhausting Intergraph's claims on Gateway computer systems that use Intel's chips.

In July 2008, Gateway suspended its royalty payments to Intergraph and sought the refund of its past payments, claiming the Supreme Court decision supported Gateway's interpretation of patent exhaustion.

The court, however, deemed the Supreme Court case new law and affirmed the case law that existed at the time of the agreement, refusing to let Gateway re-litigate issues previously raised in the infringement case and subsequently abandoned in favor of a settlement with the patent holder.

While Judge Ward tipped his hat to the ingenuity of Gateway's argument, which claimed a license Intergraph granted Intel Corp. for the patents-in-suit exhausted Intergraph's claims against Gateway's use of Intel chips in its computer systems, he affirmed the standing of the settlement agreement.

"Although creative, Gateway's arguments are not persuasive. It is undisputed that Intergraph owns the patents-at-issue. It is also undisputed that Intergraph has rights in these patents that it can license," Judge Ward said.

Discounting Gateway's contention, the court held that the settlement clearly preserved Intergraph's right to grant future licenses, including the license to Intel, without breaching the agreement between Intergraph and Gateway.

"Therefore, Intergraph did indeed have patent rights to grant to Gateway at the time of the agreement and Gateway sought a license to those rights, fully aware of its patent exhaustion defense as it existed at that time," Judge Ward said.

The court ordered Gateway to comply with the terms of its settlement agreement, which originally resolved the Intergraph's claims for patent infringement.

Under the terms of the settlement, Gateway paid Intergraph \$10 million and agreed to pay an additional royalty rate of \$1.25 per unit for certain U.S. sales of Gateway computer systems through February 2009. Gateway also obtained a Clipper license for eMachines and agreed to pay royalties to Intergraph of \$1.25 per unit for certain U.S. sales of eMachines computer systems through February 2009.

Intergraph has netted over \$860 million in settlements related to its so-called Clipper chip technology, protected by U.S. Patent Numbers 4,899,275; 4,933,835; and 5,091,846.

Intergraph launched an infringement action in 2002 against Hewlett-Packard Co., Gateway and Dell Computer Corp., eventually inking settlement agreements with all three defendants.

Representatives for Gateway and Intergraph were not available for comment Tuesday.

Intergraph is represented by Rickey L. Faulkner PC, Robins Kaplan Miller & Ciresi LLP, Parker Bunt & Ainsworth, Ireland Carroll & Kelley PC, Capshaw DeRieux LLP and Jones & Jones.

Gateway is represented by Sidley Austin Brown & Wood LLP and Young Pickett & Lee LLP.

The case is Intergraph Hardware et al. v. Dell Computer Corp. et al., case number 2:02-cv-00312, in the U.S. District Court for the Eastern District of Texas.