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Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | [www.law360.com](http://www.law360.com)  
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@portfoliomedia.com](mailto:customerservice@portfoliomedia.com)

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## USPTO To Review Check Patent In BoNY, Deutsche Suit

By **Jacqueline Bell**

Law360, New York (August 02, 2010) -- The U.S. Patent and Trademark Office has agreed to re-examine the patent at the center of a suit brought by LML Payment Systems Inc. over electronic check-reading technology, at the behest of Deutsche Bank Trust Co. Americas, The Bank of New York Mellon Corp. and two other defendants.

LML Payment Systems said Thursday that the USPTO had posted a nonfinal office action that noted that 16 of the patent's claims were subject to an inter partes re-examination and had been rejected.

The administrative proceeding is designed to challenge the validity of a patent, and involves proposing the rejection of certain patent claims and providing prior art references.

When a re-examination is granted, a patent examiner issues a nonfinal office action identifying which claims are being rejected. The patent holder may file a response amending the claims or even adding new claims under certain circumstances.

The inter partes re-examination was requested in May by four defendants in the patent infringement lawsuit launched by LML Payment Systems subsidiary LML Patent Corp., including Deutsche Bank, Bank of New York Mellon, PayPal Inc. and Marshall & Ilsley Corp.,

In a statement Thursday, LML said that it planned to file a response to the USPTO that may confirm, amend or add new claims.

"The incidence of patent re-examinations related to ongoing litigation is a defense tactic that is on the increase and, in our case, not unexpected. We believe our patents and the claims therein to be valid and will vigorously defend their validity in this re-examination proceeding or any court of law," LML CEO Patrick H. Gaines said.

The suit, filed in November 2008, accuses several major banks, among others, of infringing U.S. Patent Number RE40,220, titled "Checkwriting point of sale system."

According to documents filed with the U.S. Securities and Exchange Commission, the patent-in-suit addresses electronic check methods and systems. It is a reissue of a former patent held by the company.

"A point of sale system designed to read information from a consumer's check, credit card or manual input with a subsequent debiting of a consumer's account," patent documents said. "The invention eliminates the need for paper checks with all bank reconciliation being accomplished electronically."

The suit seeks an injunction barring further infringement, unspecified damages and a compulsory future royalty.

LML provides services that allow businesses to send and receive payments over the Internet. It processes payments from major credit cards and electronic fund transfers and also offers risk management services to online and brick-and-mortar business, according to its Web site.

The patent-in-suit is U.S. Patent Number RE40,220.

The law firms that submitted the request for re-examination on behalf of the defendants included Blakely Sokoloff Taylor & Zafman LLP and Novak Druce & Quigg LLP.

Gillam & Smith LLP and McKool Smith PC represent LML.

The case is LML Patent Corp. v. JPMorgan Chase & Co. et al., case number 08-cv-00448, in the U.S. District Court for the Eastern District of Texas.

--Additional reporting by Ryan Davis

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