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→ Nearmap, like Crocodile Dundee, having trouble navigating in the U.S. market

Nearmap Ltd. (NEA ASX)

May 06, 2021

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Prepared for Gillem Tulloch of GMT Research

# Nearmap: Can you trust management?

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After denying there was any problem, Nearmap (NEA ASX) has now been locked out of 65% of its U.S. sales by an ironclad patent challenge. After paying heavy damages, Nearmap is unlikely ever to be profitable in the U.S. It will mean losing 39% of total revenue and all of the company's growth. If Nearmap survives, it will return to the small Australian market, where it is losing share.

When the news of the lawsuit broke, Nearmap said "The business remains unaffected." The market begs to differ: share price fell by nearly 25%.

Australian regulators had halted the stock as soon as we issued our [February 10 report](#) warning that this would happen, allowing the company to publish a non-response and push up the stock when the market re-opened. Investors lost out. Insiders won: Non-Executive Chairman Peter James made another AUD\$809,497 from selling shares on March 15.

Nearmap upgraded profit guidance after closing on May 4, and shares rose 15% the next day, before

the news broke. Eagleview filed its case sometime during the U.S. day on May 4, 2021. Why didn't management request a trading halt before the open at 10 am in Sydney? Six million shares traded before the halt.

If investors are to recover any value, they need to confront management with tough questions:

- ▶ ***JCap said that the Eagleview camera system is twice as efficient as Nearmap's. Is this true? If Nearmap has good technology, why is the company redesigning its camera system?***
- ▶ ***Is Nearmap losing market share in Australia and New Zealand?***
- ▶ ***Why, after seven years in the U.S. market, does Nearmap not lead in at least one segment?***
- ▶ ***What is the company's future in North America?***

## The case against Nearmap

U.S. competitor EagleView [filed a lawsuit](#) in Utah against Nearmap on May 4, 2021 claiming infringement of their patents for roof estimation, impacting EagleView sales in the insurance, solar, construction, and government sectors.

This litigation revisits EagleView's [successful action against Exactware](#). Initially required to pay \$125 mln in 2019, Exactware appealed, lost, and had the damages trebled to \$375 mln plus costs estimated at \$50 mln because the infringement and litigation were considered wilful and vexatious.

EagleView is relying on two key patents that protect the display of aerial roof estimations and the process for calculating roof measurement. These two patents are particularly broad in their definition. It does not really matter what process

a competitor uses to generate a roof measurement and display: the fact that they do it at all is sufficient to infringe on EagleView's rights.

We expect Nearmap to counter by saying they don't produce roof reports and their methodology is sufficiently different. Nearmap will likely claim it uses digital surface models (based on 3D modelling). Our research indicates this method is inaccurate and that it is likely that Nearmap has been relying on a methodology similar to Eagleview's. Nearmap has made a clear decision to fight the complaint so we believe the middle path of a negotiated settlement where Nearmap agrees to say pay a royalty to Eagleview is out of the question. Expect the two parties to expend around \$50 mln to slug those details out.

Eagleview is now armed with a court-tested pat-

ent from the Exactware case. We expect Eagleview to easily defeat Nearmap in court.

Should Nearmap lose they will be shut out of the \$120 mln roof-measurement market and segments of the government sector. Without those sectors, Nearmap will struggle ever to make a profit in the U.S. We believe that Nearmap failed to disclose its patent-infringement risk. Our interviews suggest that Nearmap was aware of the risk of an EagleView patent-infringement action as early as 2019. We learned in interviews that:

- ▶ EagleView sent letters to insurers to advise them Nearmap was potentially infringing their patent.

### **Nearmap has carefully structured business relationships with third parties to attempt to avoid patent infringement.**

- ▶ Nearmap staff were restricted in bidding for federal contracts as there was the potential for patent infringement.
- ▶ According to a former senior manager at Eagleview, “Eagleview’s lawyers issued warning letters to insurers that Nearmap infringes its copyright.”
- ▶ **Nearmap has carefully structured business relationships with third parties to attempt to avoid patent infringement.**
- ▶ Nearmap has indemnified clients for patent infringement in order to do business with them.

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