

ESTTA Tracking number: **ESTTA111280**

Filing date: **11/22/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91158189
Party	Plaintiff Intec Telecom Systems PLC & ADC Telecomm ADC Telecommunications, Inc. 12501 Whitewater Drive Minnetonka, MN 55343
Correspondence Address	SCOTT W. JOHNSTON MERCHANT & GOULD PC PO BOX 2910 MINNEAPOLIS, MN 55402-0910 UNITED STATES john.mcelwaine@nelsonmullins.com, sjohnston@merchant-gould.com
Submission	Other Motions/Papers
Filer's Name	John C. McElwaine
Filer's e-mail	john.mcelwaine@nelsonmullins.com
Signature	/John C. McElwaine/
Date	11/22/2006
Attachments	MIS of mot to compel.PDF (43 pages)(273289 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ADC Telecommunications, Inc., and)	
Intec Telecom Systems, Inc.)	
)	Opposition No. 91158189
Opposers,)	
)	Mark: SINGLE VIEW
vs.)	
)	Application Serial No. 78/142,638
Avaya, Inc.)	
)	Filing Date: July 10, 2002
Applicant.)	
_____)	Published: July 29, 2003

INTEC'S MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL

COMES NOW ADC Telecommunications, Inc. ("ADC") and Intec Telecom Systems, Inc. ("Intec") and hereby moves the Board for an Order compelling discovery responses pursuant to TMBP 527.01(c) instructing that Avaya, Inc. ("Avaya") has waived all objections and that ADC's Requests for Admissions are deemed admitted under TMBP 527.01(a). Since Avaya's refusal to cooperate with discovery is based upon a settlement reached by the parties, yet which Avaya has refused to execute, in the alternative, Intec respectfully requests this Board pursuant to TMBP 527.03 and its inherent equitable powers, enters a default judgment pursuant to the terms of the settlement agreement.

Avaya, Inc. filed an application to register the mark SINGLE VIEW on July 10, 2002. The notice of application was published on July 29, 2003. On September 29, 2003, ADC Telecommunications, Inc. ("ADC") filed a Notice of Opposition indicating it owns a federal registration for the mark SINGL.EVIEW and thus had the exclusive right to use its SINGL.EVIEW in connection with "computer software for customer billing applications and to assist integrated communications providers in managing networks, communications services and customer data."

ADC also indicated that it owned various applications for the marks SINGL.EVIEW COMMERCE INDEX, SINGL.EVIEW COMMERCE ENGINE, SINGL.EVIEW CUSTOMER PERSONAE for its various computer-related software.

On March 26, 2004, ADC served its First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Set of Requests for Admissions on Avaya. To date, no responses to these discovery requests have been filed. On August 27, 2004 ADC assigned its rights to the SINGL.EVIEW mark to Intec Telecom Systems, PLC (“Intec”). On March 1, 2005, Intec filed a motion to join the action as an opposing party. Intec's motion was granted on April 26, 2005. Pursuant to the order allowing Intec to join the action, and given the fact that ADC had assigned its rights to the SINGL.EVIEW mark to Intec, Intec stepped into the shoes of ADC for purposes of this action. ADC was kept in the action to facilitate discovery. On May 20, 2005, counsel for Intec notified Avaya of their failure to respond to ADC's discovery request served on March 26, 2004 and giving them 30 days to respond in order to avoid a motion to compel.¹ (Letter from John McElwaine to Joan Pinaire dated May 20, 2005 is attached hereto as Exhibit A).

On June 1, 2005, Intec its First Set of Requests for Production of Documents and First Set of Interrogatories upon Avaya. Responses to these discovery requests were due on or about July 31, 2005. Shortly thereafter, the parties began to discuss settlement. In an effort to facilitate the settlement discussions, the parties agreed to stay the proceedings. Accordingly, on June 20, 2005, Avaya filed a motion to suspend the proceedings to allow the parties' time to continue their settlement efforts. The motion was granted and the proceedings were suspended until December 17, 2005. Pursuant to the terms of the order, the proceedings were set to resume on December 18, 2005 with the discovery period closing on February 16, 2006.

¹ At the time, the discovery period was set to close on July 6, 2005.

For the next six months, the parties discussed settlement and by February 2006 were close to reaching an agreement. By that time, however, the proceedings had resumed with discovery ending on February 16, 2006. With Intec's consent, on February 15, 2006, Avaya filed a Motion for an Extension of Discovery requesting an additional 60 day extension of the discovery period. The motion was granted and the discovery period was extended until April 17, 2006.

By February 2006, the parties had worked out the details of their settlement agreement and on March 8, 2006, counsel for Intec sent counsel for Avaya, via electronic email, an agreement which documented the terms discussed by the parties and which had been agreed to. (See Email dated March 8, 2006 from John McElwaine to Kenneth Chan, attached hereto as Exhibit B; and Settlement Agreement, attached hereto as Exhibit C.) On April 5, 2006, the undersigned sent an email to Avaya requesting an executed Settlement Agreement. (See Email dated April 5, 2006 from John McElwaine to Kenneth Chan, attached hereto as Exhibit D.) Avaya responded to the undersigned's email on April 5, 2006, stating that the agreement was satisfactory and that Avaya would execute the documents and return them to Intec that very day. (See Email from Kenneth Chan to John McElwaine dated April 5, 2006, attached hereto as Exhibit E.) A few hours later, Avaya sent the undersigned an email stating that he will need to propose "a few minor changes to implementation of [the] agreement" but promised to return the executed settlement documents to the undersigned by April 7, 2006. (See Email from Kenneth Chan to John McElwaine dated April 5, 2006, attached hereto as Exhibit F.)

On April 7, 2006, the undersigned sent an email to Avaya requesting for an update on the settlement. (See Email from John McElwaine to Kenneth Chan dated April 7, 2006 attached hereto as Exhibit G.) As of April 10, 2006, Intec had still not received the executed settlement

agreements and sent an email requesting an update on the settlement agreement. (See Email from John McElwaine to Kenneth Chan dated April 10, 2006 attached hereto as Exhibit H.) In a follow-up email communication to counsel for Avaya, Intec indicated that there was a need to extend discovery so as to allow Avaya to make its minor revisions to the settlement agreement. (See Email from John McElwaine to Kenneth Chan dated April 10, 2006, attached here to as Exhibit I.) On April 13, 2006, Avaya filed a motion to suspend the proceedings. On April 19, 2006, the undersigned's motion was granted and the proceedings were suspended until October 18, 2006.

To date, Intec has not received an executed settlement agreement from Avaya or responses to ADC and its discovery requests. On September 4, 2006, the undersigned contacted counsel for Avaya, via email, inquiring about the status of the executed settlement agreement. (See Email from John McElwaine to Kenneth Chan dated September 4, 2006, attached hereto as Exhibit J.) The undersigned received no response from Avaya. On October 17, 2006, the undersigned called Mr. Chan to request an update on the settlement agreement. The undersigned left a message on Mr. Chan's voice mail requesting the executed settlement agreement. The undersigned further advised that discovery was set to resume on October 18, 2006 and if Intec had not received the executed settlement documents or responses to the discovery requests, Intec would have no choice but to file a motion asking the Board to compel discovery responses from Avaya. Avaya failed to respond to Intec's request for a status update on the parties' settlement agreement or discovery responses.

On October 20, 2006, Intec's counsel made another attempt to contact Avaya about the settlement agreement and Avaya's discovery responses. Intec's counsel also contacted Mr. Robert Smith, Esquire, Avaya's counsel of record regarding the fact that the discovery period had

resumed on October 18, 2006 and that Avaya's discovery responses were overdue. Intec's counsel informed Mr. Smith that if no discovery responses had been received by Tuesday, October 24, 2006, Intec would have to file a motion to compel. Mr. Smith indicated that he would advise his client of the need to respond to the request for an executed settlement agreement, or in the alternative, provide responses to Intec's discovery requests. As of filing, Avaya has not responded submitted responses to Intec's discovery requests or provided Avaya with an executed settlement agreement.

It almost goes without saying that, in American jurisprudence and federal trademark litigation, a party an action has the right to "ascertain the facts underlying an adversary's case." It is also the expectation of this tribunal that the parties cooperate with each other during the discovery process. Both ADC and Intec served discovery upon Avaya in order to obtain information that would support Avaya's claim that it has a right to use the mark SINGLE VIEW. This information goes to the disputed issues of this case. To date, Avaya has not produced any responses to Opposer's discovery requests.

Avaya's failure to respond obstructs ADC and Intec's discovery of matters that are not only relevant to the claims in this action but would facilitate adjudication of same. It has been 32 months since ADC served its discovery requests on Avaya and over 18 months since Intec served its discovery requests. Yet, Avaya has failed to respond. These delays are premised on Avaya's so-called attempts to settle the case and Intec's efforts to cooperate with Avaya.

Avaya's conduct constitutes continuous and systematic tactic aimed at stonewalling Intec's ability to discover information relevant to its claims. Avaya has refused to provide Intec responses to its discovery requests and delayed this case for almost 18 months under the guise of cooperating with settlement discussions all the while continuing to infringe upon Intec's right to

the trademark at issue in this action. Intec asserts that it has gone over and beyond the bounds of cooperation with respect to its attempt to resolve this matter in an amicable manner. However, despite numerous attempts by Intec to finalize the settlement agreement or, in the alternative, to obtain discovery responses, Avaya has completely ignored Intec's requests for an executed settlement agreement or for responses to discovery requests.

Accordingly, Intec respectfully moves the Board for an Order compelling discovery responses pursuant to TMBP 527.01(c) instructing that Avaya, Inc. ("Avaya") has waived all objections and that ADC's Requests for Admissions are deemed admitted under TMBP 527.01(a). Since Avaya's refusal to cooperate with discovery is based upon a settlement reached by the parties, yet which Avaya has refused to execute, in the alternative, Intec respectfully requests this Board pursuant to TMBP 527.03 and its inherent equitable powers, enters a default judgment pursuant to the terms of the settlement agreement.

NELSON MULLINS RILEY & SCARBOROUGH, L.L.P.

By: 
John C. McElwaine
Douglas L. Lineberry
Liberty Building, Suite 600
151 Meeting Street
Charleston, SC 29401
Tel. (843) 853-5200
Fax (843) 720-4324

Kyle M. Globerman
Nelson Mullins Riley & Scarborough, L.L.P.
1320 Main Street
Columbia, South Carolina 29201
Tel. (404) 817-6204
Fax. (803) 255-9831

November 22, 2006
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., attorneys for Applicant, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

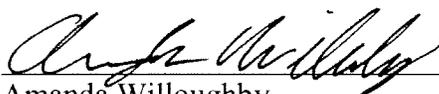
INTEC'S MEMORANDUM IN SUPPORT OF ITS MOTION TO COMPEL

Counsel Served:

Kenneth Chan
Counsel for Avaya, Inc.
211 Mt. Airy Road – Room 3C531
Basking Ridge, NJ 07920-2332
Counsel for Avaya, Inc.

Robert W. Smith, Esquire
Joan T. Pinaire, Esquire
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102-4096
Counsel for Avaya, Inc.

Anna W. Manville, Esquire
Merchant & Gould, P.C.
P. O. Box 2910
Minneapolis, MN 55402-0910
Counsel for ADC


Amanda Willoughby
Administrative Assistant

November 22, 2006
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough, L.L.P., attorneys for Applicant, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

**INTEC'S MEMORANDUM IN SUPPORT OF ITS MOTION
TO COMPEL**

Counsel Served:

Kenneth Chan
Counsel for Avaya, Inc.
211 Mt. Airy Road – Room 3C531
Basking Ridge, NJ 07920-2332
Counsel for Avaya, Inc.

Robert W. Smith, Esquire
Joan T. Pinaire, Esquire
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102-4096
Counsel for Avaya, Inc.

Amanda Willoughby
Administrative Assistant

November 22, 2006
Charleston, South Carolina

EXHIBIT A

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law

151 Meeting Street / Sixth Floor / Charleston, South Carolina 29401-2239

Tel: 843.853.5200 Fax: 843.722.8700

www.nelsonmullins.com

John C. McElwaine

843.720.4302

john.mcelwaine@nelsonmullins.com

May 20, 2005

Joan T. Pinaire, Esquire
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07101-0652

RE: Intec Telecom Systems, PLC and ADC Telecommunications, Inc. v. Avaya.
Opposition No. 91158189
NMRS File Number 24920/09017

Dear Ms. Pinaire:

As you are aware, Intec Telecom Systems, PLC ("Intec") was recently granted authorization to join these proceedings as a party-plaintiff. This letter is to advise you that Intec is stepping into the shoes of ADC Telecommunications, Inc. ("ADC") for purposes of this action and is adopting ADC's First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Set of Requests for Admission.

An assignee of a mark stands in the shoes of the assignor and assumes the assignor's rights and obligations. See *Tiger Press, L.L.C. v. Dorothy J. Patterson, d.b.a. True Promise Productions*, 2002 TTAB LEXIS 114, *22 (TTAB Jan. 24, 2002). The language of the TMBP echoes this view, stating that any action that "may or must be taken by the applicant or registrant may be taken by the assignee (acting itself, or through its attorney or other authorized representative)." TMBP 512.01. Thus, an assignee stands in a position to enforce discovery requests previously propounded by the assignor.

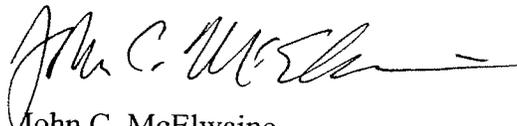
This discovery was served on you on March 26, 2004. I have enclosed another copy of these discovery requests for your convenience. According to my calculations, your responses to this discovery were due April 26, 2004.

Joan T. Pinaire, Esquire
McCarter & English, LLP

May 20, 2005
Page 2

We have not yet received any responses. Please provide your responses by no later than June 15, 2005 so that we can avoid a Motion to Compel. If you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. McElwaine", with a long horizontal flourish extending to the right.

John C. McElwaine

Enclosures

JCM:sel

cc: Anna W. Manville, Esquire

EXHIBIT B

Amanda Willoughby

From: John McElwaine
Sent: Wednesday, March 08, 2006 9:24 PM
To: 'chank@avaya.com'
Subject: Settlement Agreement
Attachments: D_8M01_.DOC

Ken,

I have attached a copy of the Settlement Agreement. This is in the same form as the last one. All that has been changed is a correction to the my client's corporate name.

If this meets with your approval, please sign, scan and email back to me.

- John

EXHIBIT C

AGREEMENT

THIS AGREEMENT is made this ____ day of March, 2006, by and between Intec Telecom Systems, plc a company organized and existing under the laws of England and Wales, having a United States business address at 301 Perimeter Center North, Suite 200, Atlanta, Georgia, 30346 (“Intec”), and Avaya Inc. (“Avaya”) a corporation organized and existing under the laws of the State of Delaware with a place of business at 211 Mount Airy Road, Basking Ridge, New Jersey 07920.

RECITALS:

WHEREAS, Intec is a communications company that provides network equipment, software solutions, and integration services for broadband, multiservice networks that deliver data, video, and voice communications over telephone, cable television, internet, broadcast, wireless, and enterprise networks;

WHEREAS, Intec purchased from ADC Telecommunications, Inc., a limited liability company organized and existing under the laws of the State of Minnesota, with a place of business at 13625 Technology Drive, Eden Prairie, Minnesota 55344-2252, the trademark right in SINGL.EVIEW and Registration No. 2,753,550 for the mark SINGL.EVIEW used in connection with “computer software used for customer billing applications, and to assist integrated communications providers in managing networks, communications services and customer data,” in Class 9;

WHEREAS, Intec’s Registration No. 2,753,550 is valid and subsisting and constitutes evidence of Intec’s exclusive right to use its SINGL.EVIEW mark in connection with the goods specified in that registration, i.e. computer software used for customer billing applications, and to

assist integrated communications providers in managing networks, communications services and customer data;

WHEREAS, Avaya has filed an application, Serial No. 78/142,628, for the mark SINGLE VIEW for “the installation and maintenance of computer hardware; maintenance and repair of telecommunications infrastructure apparatus and instruments; maintenance and repair of data infrastructure apparatus and instruments; maintenance and repair of data infrastructure apparatus, namely PBX and voice messaging systems,” in International Class 37, as well as for “the installation and maintenance of computer software, excluding computer software and hardware used for customer billing applications and managing networks, communications service or customer data,” in International Class 42;

WHEREAS, Intec and Avaya wish to continue to operate in their distinct respective markets; and

WHEREAS, the parties are both desirous of amicably resolving any and all past, present and foreseeable future conflicts between themselves related to their respective marks on the basis of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. CONSENT TO REGISTER AND DISMISSAL

1.1 Intec will consent to Avaya’s registration of the mark SINGLE VIEW, Serial No. 78/142,638, provided Avaya’s application is accepted by the U.S. Patent and Trademark Office containing the following exclusion in International Class 42 and 37:

“ . . . excluding computer software and hardware used for customer billing applications and managing networks, communications service or customer data.”

1.2 Within 15 days of the date of this Agreement, in conformance with TMBP § 514 and 37 C.F.R. § 2.133, Avaya will file electronically with the Trademark Trial and Appeal Board a request to amend the application in Serial No. 78/142,638 to reflect the provisions of Section 1.1. Upon notice of approval by the Trademark Trial and Appeal Board of such amendment, Intec and Avaya will file a Stipulated Order of Dismissal of Opposition Number 91158189.

2. RESTRICTION OF USE AND REGISTRATION BY AVAYA

2.1 Avaya agrees that for as long as Intec or one of its successors, subsidiaries, receivers, assignees or affiliates (“Affiliates”) owns a trademark registration or a pending trademark application for a trademark registration in any country for a mark containing SINGL.EVIEW or SINGLE VIEW, irrespective of the case of the letters thereof or the design associated therewith, used in connection with goods or services embracing computer hardware or software, Avaya will not use the term SINGLE VIEW, SINGLEVIEW alone and Avaya agrees to always use the mark “AVAYA SINGLE VIEW.”

2.2 Avaya agrees not to use the term SINGLE VIEW in connection with computer software and hardware used for customer billing applications and managing networks, communications service or customer data.

3. AGREEMENT TO COOPERATE

3.1 The parties agree that their use of their respective marks in accordance with the terms of this Agreement is not likely to cause confusion, mistake or deception in the marketplace. In the unlikely event that any instance of confusion, mistake or deception occurs, the parties agree to work together in good faith to take reasonable steps necessary to eliminate such confusion, mistake or deception, and to use commercially reasonable efforts to avoid any future instances. In the event that either party learns of any instance of actual confusion or

mistake by a consumer or customer as to whether the parties or their respective goods or services are associated or affiliated, the party shall promptly notify the other party of such confusion or mistake, and agrees to take reasonable steps to correct such misunderstanding, and to promptly notify the other party of such steps.

4. **ASSIGNMENT; BINDING EFFECT**

4.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors, assigns, agents and licensees, and any corporation or entity which owns or controls or which is owned or controlled by either party, or with which either party has common ownership or control.

4.2 The trademark rights referred to hereunder may be assigned, licensed or otherwise transferred only subject to the terms herein.

5. **ENTIRE AGREEMENT AND NO MODIFICATION**

5.1 This instrument embodies the entire agreement of the parties hereto with respect to the subject matter hereof. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto, with respect to the subject matter hereof.

5.2 No cancellation, modification, amendment, deletion, addition or other change in this Agreement or any provision hereof, or waiver of any right or remedy herein provided, shall be effective for any purpose unless specifically set forth in writing signed by the party to be bound thereby.

6. NOTICES

6.1 Any notice required or permitted to be given to either party to this Agreement shall be sufficiently given only if in a writing sent to such party by overnight courier and addressed to the party as follows:

If to **AVAYA**:

Kenneth Chan, Esquire
211 Mt. Airy Road, Room 3C531
Basking Ridge, NJ 07920-2332

with a copy to:

If to **INTEC**:

Norm Halvorson
301 Perimeter Center North,
Suite 200
Atlanta, Georgia, 30346

with a copy to:

John C. McElwaine, Esq.
Nelson Mullins Riley & Scarborough LLP
151 Meeting Street, Suite 600
Charleston, South Carolina 29401

or at such other addresses as the parties shall designate by written notice to the other party.

7. SEVERABILITY

7.1 The parties agree that it is the intention of neither party to violate any public policy, statutory or common law, or governmental regulation; that if any sentence, paragraph, clause or combination of the same is, or becomes, in violation of any applicable law or regulation, or is unenforceable or void for any reason, such sentence, paragraph, clause or combination thereof shall be inoperative, and the balance of this Agreement shall remain binding upon the parties.

8. REVIEW OF AGREEMENT

8.1 This Agreement has been entered into after negotiation and review of its terms and conditions by parties with substantially equal bargaining power and under no compulsion to execute and deliver a disadvantageous agreement. This Agreement incorporates provisions,

comments and suggestions proposed by both parties. No ambiguity or omission in this Agreement shall be construed or resolved against either party on the ground that the Agreement or any of its provisions was drafted or proposed by that party.

9. EXECUTION

9.1 This Agreement shall be executed in duplicate originals, each party to retain one (1) original.

10. CHOICE OF LAW

10.1 This Agreement and its enforcement shall be governed by, and construed in accordance with, the laws of the State of South Carolina, without regard to conflicts-of-law principles.

11. EQUAL BARGAINING POWER

11.1 This Agreement has been entered into after negotiation and review of its terms and conditions by the Parties with substantially equal bargaining power and under no compulsion to execute and deliver a disadvantageous agreement. This Agreement incorporates provisions, comments and suggestions proposed by both Parties. No ambiguity or omission in this Agreement shall be construed or resolved against either party on the ground that the Agreement or any of its provisions was drafted or proposed by that party.

12. HEADINGS

12.1 The headings in this Agreement are for convenience only and shall not define or limit any of the terms or provisions hereof.

13. AGREEMENT FREELY ENTERED

13.1 Each party represents and warrants that it has freely agreed to this Agreement, fully intending to be bound by the terms and conditions contained herein; that it has full corporate power and authority to execute, deliver, and perform this Agreement; that prior to the date of this Agreement, all corporate action of the party necessary for the execution, delivery, and performance of this Agreement by the party has been duly taken; and that this Agreement has been duly authorized and executed by the party, is the legal, valid, and binding obligation of the party, and is enforceable as to it in accordance with its terms in the United States

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective the date and year above first written, regardless of the actual date of signature of either of the parties.

INTEC

AVAYA, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

EXHIBIT D

Amanda Willoughby

From: John McElwaine
Sent: Wednesday, April 05, 2006 11:38 AM
To: 'chank@avaya.com'
Subject: RE: Settlement Agreement

Ken,

I have not received an executed Settlement Agreement from you and y client is questioning the delay. Please advise.

Thanks, John

-----Original Message-----

From: John McElwaine
Sent: Wednesday, March 08, 2006 9:24 PM
To: 'chank@avaya.com'
Subject: Settlement Agreement

Ken,

I have attached a copy of the Settlement Agreement. This is in the same form as the last one. All that has been changed ia correction to the my client's corporate name.

If this meets with your approval, please sign, scan and email back to me.

- John

EXHIBIT E

Amanda Willoughby

From: Chan, Kenneth (Kenneth) [chank@avaya.com]
Sent: Wednesday, April 05, 2006 11:44 AM
To: John McElwaine
Subject: RE: Settlement Agreement

John,

Agreement is fine. I'll execute and send it to you today.

Thanks,

Ken

From: John McElwaine [mailto:john.mcelwaine@nelsonmullins.com]
Sent: Wednesday, April 05, 2006 11:38 AM
To: Chan, Kenneth (Kenneth)
Subject: RE: Settlement Agreement

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Confidentiality Notice

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.

If you are not the named addressee, you are not authorized

11/21/2006

to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

=====

EXHIBIT F

Amanda Willoughby

From: Chan, Kenneth (Kenneth) [chank@avaya.com]
Sent: Wednesday, April 05, 2006 4:39 PM
To: John McElwaine
Subject: RE: Settlement Agreement

John,

Having thought through the implementation of our agreement, I will need to propose a few minor changes. I'll get those to you on Friday (I am out tomorrow).

Thanks,

Ken

From: Chan, Kenneth (Kenneth)
Sent: Wednesday, April 05, 2006 11:44 AM
To: 'John McElwaine'
Subject: RE: Settlement Agreement

John,

Agreement is fine. I'll execute and send it to you today.

Thanks,

Ken

From: John McElwaine [mailto:john.mcelwaine@nelsonmullins.com]
Sent: Wednesday, April 05, 2006 11:38 AM
To: Chan, Kenneth (Kenneth)
Subject: RE: Settlement Agreement

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Subject: Settlement Agreement

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- John

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If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

=====

EXHIBIT G

Amanda Willoughby

From: John McElwaine
Sent: Friday, April 07, 2006 4:17 PM
To: 'Chan, Kenneth (Kenneth)'
Subject: RE: Settlement Agreement

Ken,

Any progress?

- John

-----Original Message-----

From: Chan, Kenneth (Kenneth) [mailto:chank@avaya.com]
Sent: Wednesday, April 05, 2006 4:39 PM
To: John McElwaine
Subject: RE: Settlement Agreement

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Sent: Wednesday, April 05, 2006 11:44 AM
To: 'John McElwaine'
Subject: RE: Settlement Agreement

John,

Agreement is fine. I'll execute and send it to you today.

Thanks,

Ken

From: John McElwaine [mailto:john.mcelwaine@nelsonmullins.com]
Sent: Wednesday, April 05, 2006 11:38 AM
To: Chan, Kenneth (Kenneth)
Subject: RE: Settlement Agreement

Ken,

I have not received an executed Settlement Agreement from you and y client is questioning the delay. Please advise.

Thanks, John

-----Original Message-----

From: John McElwaine
Sent: Wednesday, March 08, 2006 9:24 PM
To: 'chank@avaya.com'
Subject: Settlement Agreement

Ken,

I have attached a copy of the Settlement Agreement. This is in the same form as the last one. All that has been changed is a correction to the my client's corporate name.

If this meets with your approval, please sign, scan and email back to me.

- John

=====
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=====

EXHIBIT H

Amanda Willoughby

From: John McElwaine
Sent: Monday, April 10, 2006 12:09 PM
To: 'Chan, Kenneth (Kenneth)'
Subject: RE: Settlement Agreement

Ken,

I have not received the proposed minor changes. Please send them as soon as possible.

- John

-----Original Message-----

From: Chan, Kenneth (Kenneth) [mailto:chank@avaya.com]
Sent: Wednesday, April 05, 2006 4:39 PM
To: John McElwaine
Subject: RE: Settlement Agreement

John,

Having thought through the implementation of our agreement, I will need to propose a few minor changes. I'll get those to you on Friday (I am out tomorrow).

Thanks,

Ken

From: Chan, Kenneth (Kenneth)
Sent: Wednesday, April 05, 2006 11:44 AM
To: 'John McElwaine'
Subject: RE: Settlement Agreement

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Agreement is fine. I'll execute and send it to you today.

Thanks,

Ken

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To: Chan, Kenneth (Kenneth)
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=====

EXHIBIT I

Amanda Willoughby

From: John McElwaine
Sent: Monday, April 10, 2006 12:12 PM
To: 'Chan, Kenneth (Kenneth)'
Subject: RE: Settlement Agreement

Ken,

Since, you are proposing some revisions so close to the cutoff of discovery, I also need your consent to either extend discovery another sixty days or in the alternative take discovery depositions outside of the close of the discovery period.

- John

-----Original Message-----

From: Chan, Kenneth (Kenneth) [mailto:chank@avaya.com]
Sent: Wednesday, April 05, 2006 4:39 PM
To: John McElwaine
Subject: RE: Settlement Agreement

John,

Having thought through the implementation of our agreement, I will need to propose a few minor changes. I'll get those to you on Friday (I am out tomorrow).

Thanks,

Ken

From: Chan, Kenneth (Kenneth)
Sent: Wednesday, April 05, 2006 11:44 AM
To: 'John McElwaine'
Subject: RE: Settlement Agreement

John,

Agreement is fine. I'll execute and send it to you today.

Thanks,

Ken

From: John McElwaine [mailto:john.mcelwaine@nelsonmullins.com]
Sent: Wednesday, April 05, 2006 11:38 AM
To: Chan, Kenneth (Kenneth)
Subject: RE: Settlement Agreement

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EXHIBIT J

Amanda Willoughby

From: John McElwaine
Sent: Monday, September 04, 2006 10:17 AM
To: 'Chan, Kenneth (Kenneth)'
Subject: RE: Settlement Agreement

Ken,

Last time we spoke you said that your minor revisions would be forthcoming. That was months ago. Please forward to me your revisions so that we can finish this matter as soon as possible. Thanks,

John

-----Original Message-----

From: John McElwaine
Sent: Friday, April 07, 2006 4:17 PM
To: 'Chan, Kenneth (Kenneth)'
Subject: RE: Settlement Agreement

Ken,

Any progress?

- John

-----Original Message-----

From: Chan, Kenneth (Kenneth) [mailto:chank@avaya.com]
Sent: Wednesday, April 05, 2006 4:39 PM
To: John McElwaine
Subject: RE: Settlement Agreement

John,

Having thought through the implementation of our agreement, I will need to propose a few minor changes. I'll get those to you on Friday (I am out tomorrow).

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Subject: RE: Settlement Agreement

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Ken

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To: Chan, Kenneth (Kenneth)
Subject: RE: Settlement Agreement

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Subject: Settlement Agreement

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- John

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